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federal register

BOOK 1 OF 2 BOOKS
FRIDAY, MARCH 17, 1978

highlights

CHICAGO, ILLINOIS WORKSHOPS

HOW TO USE THE FEDERAL REGISTER

FOR: Any person who must use the Federal Register and Code of Federal Regulations.

WHAT: Free public workshop (approximately 3 hours) to present:

1. Brief history of the Federal Register system.
2. Difference between legislation and regulations.
3. Relationship of Federal Register and the Code of Federal Regulations.
4. Important elements of a typical Federal Register document.
5. An introduction to the finding aids of the FR/CFR system.

WHEN: April 12, 13, and 14, 1978 at 9 a.m. (Each session identical)

WHERE: Everett M. Dirksen Federal Building, Conference Room 572, 219 S. Dearborn Street, Chicago, Illinois.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in government actions. There will be no discussion of specific agency regulations.

RESERVATIONS: Call Ardean Merrifield, Area Code 312-353-4242 or 353-0339.

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
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DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
	CSC			CSC
	LABOR			LABOR
	HEW/ADAMHA			HEW/ADAMHA
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	HEW/HSA			HEW/HSA
	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

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

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

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

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Rules Going Into Effect Today

FCC—FM broadcast stations; table of assignments:
Baxley, Sandersville and Sparta, Ga .. 4611; 2-3-78

HEW/OCSE—Establishing paternity and securing child support; State plan requirements when applicant has good cause not to cooperate 2178; 1-16-78

List of Public Laws

This is a continuing listing of public bills that have become law, the text of which is not published in the FEDERAL REGISTER. Copies of the laws in individual pamphlet form (referred to as "slip laws") may be obtained from the U.S. Government Printing Office.

S. 2076 ..... Pub. L. 95-244
To authorize the Secretary of the Interior to make payments to appropriate school districts to assist in providing educational facilities and services for persons living within or near the Grand Canyon National Park on nontaxable Federal lands, and for other purposes. (Mar. 14, 1978; 92 Stat. 154) Price $.50.

H.R. 9851 ..... Pub. L. 95-245
To amend the Federal Aviation Act of 1958 to improve cargo air service. (Mar. 14, 1978; 92 Stat. 156) Price $.50.

H.J. Res. 746 ..... Pub. L. 95-246
Making urgent power supplemental appropriations for the Department of Energy. Southwestern Power Administration for the fiscal year ending September 30, 1978. (Mar. 15, 1978; 92 Stat. 157) Price $.50.

[3195-01]

Title 3—The President

PROCLAMATION 4552

Cancer Control Month, 1978

By the President of the United States of America

A Proclamation

Of all known diseases in this country, cancer is probably the most feared. Recent statistics indicate that 700,000 cases of cancer will be diagnosed in the United States in 1978 and that 390,000 Americans will die of some form of the disease this year. Only through continued support of cancer research and control can we reduce these figures.

The Federal Government, in cooperation with non-Federal organizations, is committed to finding the cause and cure of all forms of cancer and of controlling it to the extent possible while that search goes on. Since the inception of the National Cancer Program, we have learned much about the cause, detection, treatment and control of cancer. Today, cancer can often be detected earlier, making more effective treatment possible and saving many lives. Surgical, radiation and chemotherapy techniques have been improved, and research shows promise of adding immunotherapy as an additional method of treatment. Because prevention offers the best hope for ultimate control of cancer, cause and prevention research remains one of our highest priorities for we still have much to learn.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim the month of April, 1978, as Cancer Control Month as requested in the joint resolution of the Congress March 28, 1938 (52 Stat. 148, 36 U.S.C. 150). I invite the Governors of the States and the appropriate officials of all other areas under the United States flag to issue similar proclamations.

I also encourage the medical and health professions, the communications media and other interested persons and groups to take this opportunity to educate the people on this subject and to help them to take advantage of available resources to prevent needless suffering and death.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of March, in the year of our Lord nineteen hundred seventy-eight, and of the Independence of the United States of America the two hundred and second.

Jimmy Carter

[FR Doc. 78-7340 Filed 3-15-78; 4:25 pm]

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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.

[6325-01]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Transportation

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment changes the title of the position of Director, Office of Public Affairs to that of Director, Office of Consumer and Public Affairs.

EFFECTIVE DATE: March 17, 1978.

FOR FURTHER INFORMATION CONTACT:

On position authority: Dean Bollman, Civil Service Commission, 202-632-7676. On position content: Robert S. Smith, Director of Personnel and Training, Department of Transportation, 202-426-4088.

Accordingly, 5 CFR 213.3394(a)(29) is amended as set out below:

§ 213.3394 Department of Transportation.

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

(29) Director, Office of Consumer and Public Affairs.

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

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-6645 Filed 3-16-78; 8:45 am]

[3410-02]

Title 7—Agriculture

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

[Lemon Reg. 137]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period March 19-25, 1978. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: March 19, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act.

The committee met on March 15, 1978, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is expected to remain constant on mid-range sizes and easier on other sizes.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.437 Lemon Regulation 137.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period March 19, 1978, through March 25, 1978, is established at 235,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

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

Dated: March 16, 1978.

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

[FR Doc. 78-7396 Filed 3-16-78; 12:59 am]

[3410-07]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER J—LOAN AND GRANT PROGRAMS (GROUP)

[FmHA Instruction 1933-I]

PART 1933—LOAN AND GRANT PROGRAMS (GROUP)

Subpart I—Self-Help Technical Assistance Grants

FINAL RULE; CORRECTION

AGENCY: Farmers Home Administration, USDA.

ACTION: Correction to final rule.

SUMMARY: This action corrects a final rule which appeared at page 2852 in the FEDERAL REGISTER of Friday,

January 20, 1978, regarding rates and terms for Site Option Loans.

EFFECTIVE DATE: March 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Paul R. Conn, 202-447-7207.

In FR Doc. 78-1475, in paragraph V of Exhibit F, page 2869, paragraph (A) was inadvertently omitted and should be inserted as follows:

V *Rates and terms.*

(A) *Interest.* Loans will be made at an interest rate of 3 percent.

* * * * *

Dated: March 2, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-7133 Filed 3-16-78; 8:45 am]

[3410-34]

Title 9—Animals and Animal Products

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

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 78—BRUCELLOSIS

Swine Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the brucellosis regulations in regard to swine to clarify the classes of swine being restricted, and to make the language uniform in the different sections. This action is necessary to correct and clarify the intent of the prior amendment which becomes effective March 23, 1978. The intended effect of this action is to relieve certain restrictions on swine inadvertently imposed in the previous amendment.

EFFECTIVE DATE: March 23, 1978.

FOR FURTHER INFORMATION, CONTACT:

A. D. Robb, Staff Veterinarian, National Brucellosis Eradication Program, USDA, APHIS, Veterinary Services, Room 805, Federal Building, Hyattsville, Md. 20782, 301-436-8713.

SUPPLEMENTARY INFORMATION: On December 23, 1977, there was published in the FEDERAL REGISTER (42 FR 64339-64341) a notice of final rulemaking which prohibited swine from being moved interstate except in compliance with the regulations, effective March 23, 1978. The purpose of the amended regulation was to place restrictions only on certain classes of swine. However, the general restrictions inadvertently referred to all swine although the intent was only to restrict the interstate movement of swine defined as "breeding swine," "sows," "boars," "brucellosis reactor swine," and "brucellosis exposed swine." Brucellosis in swine is most prevalent in breeding swine, sows and boars, and therefore the movement of only these animals should be regulated in order to prevent the spread of brucellosis by swine.

The amendment also inadvertently placed restrictions on brucellosis reactor swine and brucellosis exposed swine which required them to be moved interstate only for immediate slaughter directly to a slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or directly to a specifically approved slaughtering establishment, or to a specifically approved stockyard for sale and shipment to such slaughtering establishment, if such swine are accompanied by a permit. The intent of the amendment was to restrict the interstate movement of brucellosis reactor swine and brucellosis exposed swine only for immediate slaughter directly to a slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or directly to a State inspected slaughtering establishment, or directly to a stockyard posted under the provisions of the Packers and Stockyards Act, as amended (7 U.S.C. 181 et seq.), or directly to a market agency or dealer registered under said Packers and Stockyards Act, if such swine are accompanied by a permit. The references to approved stockyards or specifically approved slaughtering establishment is deleted because there are no such facilities at present to handle these swine. Therefore, the Department has determined that such reactor swine and exposed swine could be shipped directly to a slaughtering establishment operated under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or directly to a State inspected slaughtering establishment, or directly to a stockyard posted under the provisions of the Packers and Stockyards Act, as amended (7 U.S.C. 181 et seq.) or directly to a market agency or dealer registered under said Packers and Stockyards Act, without undue risk. The procedures established at such facilities should help assure that these animals are handled in accordance with the regulations.

The correct wording appeared in § 78.30.

All of the changes in this amendment relieve restrictions under which swine may be moved interstate and it has been determined that it is necessary that these changes be made effective concurrent with the previous brucellosis regulation amendment in regard to the interstate movement of swine with the effective date of March 23, 1978.

Accordingly, 9 CFR Part 78, is amended as follows:

1. Section 78.26, is amended to read:

§ 78.26 General restrictions

Breeding swine, sows, boars, brucellosis reactor swine, and brucellosis exposed swine may not be moved interstate except in compliance with the regulations in this subpart.

2. In § 78.27 the introductory paragraph is amended to read:

§ 78.27 Brucellosis reactor swine.

Brucellosis reactor swine may only be moved interstate under this section for immediate slaughter directly to a slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or directly to a State inspected slaughtering establishment, or directly to a stockyard posted under the provisions of the Packers and Stockyards Act, as amended (7 U.S.C. 181 et seq.) or directly to a market agency or dealer registered under said Packers and Stockyards Act, for sale to such a slaughtering establishment in accordance with the following requirements:

* * * * *

3. Section 78.28 is amended to read:

§ 78.28 Brucellosis exposed swine.

Brucellosis exposed swine may be moved interstate only for immediate slaughter directly to a slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or directly to a State inspected slaughtering establishment, or directly to a stockyard posted under the provisions of the Packers and Stockyards Act, as amended (7 U.S.C. 181 et seq.) or directly to a market agency or dealer registered under said Packers and Stockyards Act, for sale to such a slaughtering establishment, if such swine are accompanied by a permit as defined in paragraph 78.1(v).

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132 (21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-125, 134b, 134f); 37 FR 28464; 28477; 38 FR 19141).

The amendments clarify the classes of swine to be regulated and relax restrictions unintentionally imposed. They must be made effective concurrently with the regulations amended effective March 23, 1978, in order to avoid unnecessary restriction on the

interstate movement of swine. It does not appear that public participation in this rulemaking procedure would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 13th day of March 1978.

NOTE.—The Animal and Plant Health Inspection Service 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.

J. K. ATWELL,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 78-7166 Filed 3-16-78; 8:45 am]

[3410-34]

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

PART 112—PACKAGING AND LABELING

Miscellaneous Amendments

AGENCY: Animal and Plant Health Inspection Service (APHIS).

ACTION: Final rule.

SUMMARY: This amendment permits unlabeled final containers of liquid biological products to be exported. Unlabeled desiccated products may be exported under the present regulations. This amendment relaxes the regulations by giving liquid products the same treatment as desiccated products.

EFFECTIVE DATE: This amendment becomes effective March 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. R. J. Price, Biologics Licensing and Standards Staff, USDA, APHIS, VS, Room 827, Federal Building, Hyattsville, Md. 20782, 301-436-8245.

SUPPLEMENTARY INFORMATION: Many licensees export biological products to foreign countries. In some cases, they are connected with firms in these foreign countries which are staffed and equipped to adequately package and label the products for consumption in those countries. In some cases, the economic advantage of having the packaging and labeling done in a foreign country is considerable.

For several years licensees have been permitted to ship desiccated products to be completed in a foreign country. This amendment would authorize them to ship liquid products as well.

Part 112 is amended by revising § 112.8(c) to read:

§ 112.8 For export only.

* * * * *

(c) Final containers of products, labeled or unlabeled, may be exported in sealed shipping boxes, adequately identified as to contents with an approved label, and plainly marked "For Export Only": *Provided*, That such products shall not be diverted to domestic use.

* * * * *

(21 U.S.C. 151 and 154; 37 FR 28477, 28646; 38 FR 19141.)

These amendments make administrative changes to make the packaging and labeling requirements consistent with respect to all products for export without making other substantive changes in the regulations. In order for them to be of maximum benefit, they must be made effective immediately.

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

Done at Washington, D.C., this 13th day of March 1978.

NOTE.—The Animal and Plant Health Inspection Service 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.

J. K. ATWELL,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 78-7164 Filed 3-16-78; 8:45 am]

[3410-34]

PART 113—STANDARD REQUIREMENTS

Miscellaneous Amendments

AGENCY: Animal and Plant Health Inspection Service (APHIS).

ACTION: Final rule.

SUMMARY: This amendment codifies, in the regulations under the Virus-Serum-Toxin Act, test requirements for detection of extraneous viruses in Master Seed Virus. Purity of the Master Seed Virus is essential in the preparation of vaccines. The test methods and procedures prescribed in this amendment assures such purity with respect to extraneous viruses.

EFFECTIVE DATE: This amendment becomes effective April 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. R. J. Price, Biologics Licensing and Standards Staff, USDA, APHIS, VS, Room 827, Federal Building, Hyattsville, Md. 20782, 301-436-8245.

SUPPLEMENTARY INFORMATION: Seed virus derived from a Master Seed Virus (MSV) is used in the preparation of each viral vaccine. The Master Seed Virus is defined in the regulations (9 CFR 101.7(a)). Before MSV can be used for vaccine production, it must be of proven purity, safety, and antigenicity.

To meet the standards of purity established by Veterinary Services, a lot of Master Seed Virus must be free of contaminants, such as extraneous microorganisms, before it is approved for use in the preparation of viral vaccines.

The tests for such microorganisms as bacteria, fungi, or mycoplasma are prescribed in the regulations. Although the Master Seed Virus is also required to be free of extraneous viruses before it is used for the production of viral vaccines, there is no section in the present regulations specifically dealing with the detection of such viruses in the Master Seed Virus.

On November 18, 1977, a notice of proposed amendment to Part 113 was published in the FEDERAL REGISTER at 42 FR 59510.

Comments on this proposal were solicited and six responses were received. Only one response was favorable to the proposal as written.

Two responses contained comments indicating concern over having the proposed requirements apply to vaccines which cannot be evaluated by the methods proposed. Since an MSV is subject to these requirements only when prescribed in the Standard Requirement or filed Outline of Production for a product, the concern is not justified.

A suggestion in one response that all references to testing of Master Seed Virus be incorporated in § 113.55 was rejected as being impractical and cumbersome.

Suggestions received in two responses were considered appropriate and constructive. These suggestions have been incorporated in this final rule and are explained in the discussion of changes below.

After due consideration of all relevant matters, including the proposal set forth in the aforesaid notice and pursuant to the authority contained in the Virus-Serum-Toxin Act of March 4, 1913 (21 U.S.C. 151-158), the amendment of Part 113, Subchapter E, Chap-

ter I, Title 9 of the Code of Federal Regulations, as contained in the aforesaid notice is hereby adopted with the following exceptions:

Paragraph (a) is reworded to clarify the type of cell lines or cells to be used in part of the tests.

Paragraph (b) was rewritten to make the following changes:

Subculturing was reduced from three times to one time as being sufficiently sensitive, less costly, and less time consuming. Editorial changes were made as indicated.

"Hemadsorbing virus" has been inserted into the introductory portion for consistency and clarity. Printing errors have been corrected by substituting "for" for "by" and "stain" for "strain."

Paragraph (c) has been rewritten for clarification as to the cells to be used and when the monolayers are to be subcultured.

Paragraph (c) has been changed to make the time of fluorescent antibody staining consistent with the time the tests are conducted for cytopathic viruses and hemadsorbing viruses. These changes will expedite completion of these tests.

Paragraph (c)(2) has been reworded to permit the fixing of positive control monolayers that have been infected with cytopathogenic viruses before the 7 day period specified for the other monolayers, but allowing the staining of all monolayers at the same time for added convenience.

Printing errors have been corrected in paragraph (d) by changing (a) to (d) and correcting the spelling of cytopathology and hemadsorption in the lead paragraph of (d) and the spelling of uninoculated in paragraph (d)(3).

Part 113 is amended by adding a new section to read:

§ 113.55 Detection of extraneous viruses in Master Seed Virus.

Master Seed Virus (MSV) shall be tested and found free of extraneous viruses by the procedures provided in this section when prescribed in a Standard Requirement or the filed Outline of Production for a product.

(a) At least a 1.0 ml aliquot per cell culture of MSV shall be dispensed onto monolayers (at least 75 cm^2 in area) of pretested:

(1) Vero (African green monkey) cell line; and

(2) Embryonic cells, neonatal cells, or a cell line of the species for which the vaccine is recommended; and

(3) Embryonic cells, neonatal cells, or a cell line (other than Vero cell line) of the species in which the MSV is presently being propagated if different than the species for which the vaccine is recommeded.

At least one monolayer of each of these cell types shall be maintained as an uninoculated control. If the MSV is cytopathic for, or causes hemadsorption in the cells in which it is to be tested, the MSV shall be neutralized with monospecific antiserum or counteracted by a method approved by Veterinary Services.

(b) Each monolayer shall be maintained for at least 14 days and shall be subcultured at least once during the maintenance period. The monolayers shall be examined regularly throughout this period for evidence of virus induced abnormalities. At subculturing at least one inoculated monolayer and one control monolayer of each cell type shall be planted onto suitable surfaces for the tests for cytopathic viruses, hemadsorbing virus, and when applicable, for the fluorescent antibody (FA) test. At the conclusion of the maintenance period, and at least 7 days after subculturing, at least one inoculated and one uninoculated control monolayer of each cell type which are at least 90 percent confluent shall be tested for cytopathic and hemadsorbing extraneous viruses.

(1) *Test for hemadsorbing viruses.* At least one inoculated and one control monolayer of each cell type shall be washed with several changes of phosphate buffered saline. A mixed suspension of 0.2 percent guinea pig, chicken, and human "O" erythrocytes shall be added, and the cells incubated at 4° C and 25° C for an appropriate incubation period and the monolayer examined for evidence of hemadsorption.

(2) *Test for cytopathic viruses.* At least one inoculated and one control monolayer of each cell type, each with a total area of at least 8 cm^2, shall be stained with a suitable cytological stain and the entire monolayer examined for evidence of inclusion bodies, abnormal number of giant cells, or other cytopathology indicative of cell abnormalities attributable to an extraneous virus.

(c) Each MSV shall be tested by the FA technique for the presence of applicable extraneous viruses normally associated with those species for which the vaccine is intended and for those viruses that would not be detected by other required test methods. The most susceptible cell type, from among those inoculated with MSV shall be used for each extraneous virus. The monolayers for the FA technique shall be prepared at the time of subculturing as described in paragraph (b) of this section. Positive control monolayers shall be prepared from the innoculated cells by infecting a portion of the cells with the specific virus being tested for. The remaining uninoculated cells shall serve as negative controls. (If the MSV has been neutralized with a monospecific antiserum, the antiserum must be shown to be free of neutralizing antibody for the virus being tested for.) The test system for each extraneous virus shall consist of at least 4 MSV-inoculated monolayers, 4 positive control monolayers, and 4 negative control monolayers. Each group of 4 monolayers shall have a total area of at least 8 cm^2. At the conclusion of the maintenance period, and at least 7 days after subculturing, the monolayers shall be processed and stained with the appropriate antiviral fluorescein tagged antibody, and examined for the presence of specific fluorescence attributable to the virus.

(1) The viruses specified and the test conducted will depend upon the species in which the MSV was previously passed or presently propagated and upon the species for which the vaccine is intended. When applicable, reagents for the tests may be furnished by Veterinary Services.

(2) Positive control monolayers may be fixed at an earlier time if fluorescence is enhanced by so doing. Monolayers that are so treated shall be stained at the same time as the MSV-inoculated monolayers and the negative control monolayers.

(d) *Interpretation of results.* (1) If the MSV-inoculated cells show any evidence of specific cytopathology or hemadsorption attributable to an extraneous virus, the MSV is unsatisfactory and shall not be used to prepare biological products. If an extraneous virus is suspected because of cytopathology or hemadsorption and cannot be eliminated as a possibility by additional testing, the MSV is unsatisfactory, and shall not be used to prepare biological products.

(2) If the MSV-inoculated cells show any evidence of specific viral fluorescence, the MSV is unsatisfactory and shall not be used to prepare biological products: *Provided,* That, if specific fluorescence attributable to the virus is absent in more than one of the monolayers deliberately inoculated as positive controls, the test is inconclusive and may be repeated.

(3) If the fluorescence of the monolayers inoculated with the specific virus as positive controls is equivocal, or if the uninoculated monolayers show equivocal fluorescence indicating possible viral contamination, or both, the test shall be declared inconclusive and may be repeated: *Provided,* That, if the test is not repeated, the MSV shall be regarded as unsatisfactory and shall not be used to prepare biological products.

(21 U.S.C. 151 and 154; 37 FR 28477, 28646; 38 FR 19141.)

Done at Washington, D.C., this 13th day of March 1978.

NOTE.—The Animal and Plant Health Inspection Service 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.

J. K. ATWELL,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc. 78-7163 Filed 3-16-78; 8:45 am]

[3410-37]

CHAPTER III—FOOD SAFETY AND QUALITY SERVICE MEAT AND POULTRY INSPECTION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—VOLUNTARY INSPECTION AND CERTIFICATION SERVICE

SUPPLEMENTAL RULES OF PRACTICE

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends certain regulations under the Agricultural Marketing Act of 1946, as amended, to bring such regulations into compliance with the Department's rules of practice, published January 4, 1977 (42 FR 743-749), governing, among other things, formal adjudicatory, administrative proceedings and the denial or withdrawal of voluntary inspection or certification services under the Agricultural Marketing Act of 1946, as amended.

EFFECTIVE DATE: March 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. W. J. Minor, Chief Staff Officer, Issuance Coordination Staff, Technical Services, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-6189.

SUPPLEMENTARY INFORMATION: On January 4, 1977, the Department of Agriculture promulgated rules of practice, published in the FEDERAL REGISTER at 42 FR 743-749, governing, inter alia, formal adjudicatory, administrative proceedings under the regulations promulgated under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 et seq.), for the denial or withdrawal of voluntary inspection or certification service. The Department's rules of practice (7 CFR 1.130 et seq.) became effective on February 1, 1977, and superseded all rules of practice and regulations which were in conflict with such rules. The Department's rules of practice require the Administrator of each agency administering the programs involved to publish documents revoking any rules or regulations superseded by the new rules and promulgating new or additional and supplemental rules and regulations relating to particular circumstances arising in connection with proceedings under the statutes and regulations administered by them, pursuant to such new rules. Supplemental rules of practice and revised regulations governing some programs formerly administered by the Animal and Plant Health Inspection Service have previously been published in the FEDERAL REGISTER in separate documents (42 FR 10959, 10962). However, those supplemental rules of practice and regulations did not amend certain regulations (9 CFR Parts 350, 351, 354, 355, and 362) under the Agricultural Marketing Act of 1946, as amended, formerly administered by the Animal and Plant Health Inspection Service and now administered by the Food Safety and Quality Service.

Those regulations in 9 CFR, Parts 350, 354, and 355 authorize the "Administrator" to withdraw or deny inspection service under certain specified circumstances. The regulations in this respect are inconsistent with the Department's rules of practice which authorize such actions, after opportunity for a hearing, by an Administrative Law Judge, and, upon appeal from a decision of such Judge, by the Judicial Officer of this Department. Accordingly, the regulations are being amended to provide for such actions by those officials in accordance with the Department's rules of practice. Pending final determination in such matters, the Administrator or other specified officials of the Food Safety and Quality Service will still have authority to suspend, deny, or withdraw inspection service as provided in the regulations (9 CFR 350.6, 351.20, 354.45, and 355.38). With repect to such actions, regulations are being issued to provide for notification to the affected parties with respect to the determination of the Administrator or other specified officials. The regulations in 9 CFR Part 362, concerning Voluntary Poultry Inspection, are also being amended, for clarification purposes, to specify the applicability of the Department's rules of practice and supplemental rules of practice to certain proceedings under those regulations.

The regulations are amended as follows:

PART 350—SPECIAL SERVICES RELATING TO MEAT AND OTHER PRODUCTS

1. A new § 350.2(k) is added to Subchapter B, Chapter III, Title 9 of the Code of Federal Regulations (9 CFR 350.2(k)), to define the term "Secretary" as follows:

§ 350.2 Definitions.

* * * * *

(k) Secretary. The Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or may hereafter be delegated, to act in his stead in connection with the function involved.

2. Section 350.6(b) of Subchapter B, Chapter III, Title 9 of the Code of Federal Regulations (9 CFR 350.6(b)), is amended by deleting the term "Administrator" in the first sentence of said section and inserting in lieu thereof the term "Secretary," and by deleting the second sentence of said section and inserting the following in lieu thereof:

§ 350.6 Denial or withdrawal of service.

* * * * *

(b) * * *. When the Administrator determines that the public interest so requires, he may deny or withdraw service provided for in this Part, without a hearing, pending final determination of the matter. The applicant or recipient of service involved shall be notified of the Administrator's decision to deny or suspend service and the reasons therefor, in writing, in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)), or orally. The Administrator's decision to deny or suspend the service shall be effective upon such oral or written notification, whichever is earlier, to the applicant or recipient of service. If such notification is oral, the Administrator shall confirm such decision and the reasons therefor, in writing, as promptly as circumstances permit, and such written confirmation shall be served upon the applicant or recipient of service, in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)).

3. A new § 350.8 is added to Subchapter B, Chapter III, Title 9 of the Code of Federal Regulations (9 CFR 350.8), to read as follows:

§ 350.8 Scope and applicability of rules of practice.

The rules of practice of the Department of Agriculture in subpart H of Part I, Subtitle A, Title 7 of the Code of Federal Regulations, are the rules of practice applicable to adjudicatory, administrative proceedings under the regulations in this part (9 CFR Part 350).

PART 351—CERTIFICATION OF TECHNICAL ANIMAL FATS FOR EXPORT

4. Section 351.20 of Subchapter B, Chapter III, Title 9 of the Code of Federal Regulations (9 CFR 351.20), is amended by adding three new sentences to the end of paragraph (b) and by adding a new paragraph (c) to read as follows:

§ 351.20 Withdrawal of service from certified plants.

* * * * *

(b) * * *. The operator of the certified plant shall be notified of the Administrator's decision to suspend summarily the certification service at such plant and the reasons therefor, in writing, in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)), or orally. The Administrator's decision to suspend summarily the certification service shall be effective upon such oral or written notification, whichever is earlier, to the operator of the certified plant. If such notification is oral, the Administrator shall confirm such decision, and the reasons therefor, in writing, as promptly as circumstances permit, and such written confirmation shall be served upon the operator of the certified plant, in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)).

(c) The rules of practice of the Department of Agriculture in Subpart H of Part I, Subtitle A, Title 7 of the Code of Federal Regulations, are the rules of practice applicable to adjudicatory, administrative proceedings under the regulations in this Part (9 CFR Part 351).

PART 354—VOLUNTARY INSPECTION OF RABBITS AND EDIBLE PRODUCTS THEREOF

5. Section 354.45(a) of Subchapter B, of Chapter III, Title 9 of the Code of Federal Regulations (9 CFR 354.45(a)), is amended by deleting the term "Administrator", each time it appears therein, and inserting in lieu thereof the term "Secretary".

6. Section 354.45(b) of Subchapter B, of Chapter III, Title 9 of the Code of Federal Regulation (9 CFR 354.45(b)) is amended to read as follows:

§ 354.45 Denial of service

* * * * *

(b) Whenever the Administrator has reason to believe that any person or his employee, agent, or representative has flagrantly or repeatedly committed any of the acts or practices specified in §§ 354.46 to 354.51, he may, without hearing, direct that the benefits of the Act be denied such person, including any agents, officers, subsidiaries, or affiliates of such person, pending investigation and hearing, and shall give notice thereof to any such person in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)). The Administrator's decision to deny the benefits of the Act to any such person, including any agents, officers, subsidiaries, or affiliates of such person, shall be effective upon service of such notice. A written petition for reconsideration of such interim denial may be filed with the Administrator by any person so denied the benefits of the Act within 10 days after notice of the interim denial. Such petition shall state specifically the errors alleged to have been made by the Administrator in denying the benefits of the Act pending investigation and hearing. Within 20 days following the receipt of such petition for reconsideration, the Administrator shall reinstate the benefits of the Act or notify the petitioner of the reasons for continued interim denial.

7. A new § 354.248 is added to Subchapter B, Chapter III, Title 9 of the Code of Federal Regulations (9 CFR 354.248), to read as follows:

§ 354.248 Scope and applicability of rules of practice.

The rules of practice of the Department of Agriculture in Subpart H of Part I, Subtitle A, Title 7 of the Code of Federal Regulations, are the rules of practice applicable to adjudicatory, administrative proceedings under the regulations in this part (9 CFR Part 354).

PART 355—CERTIFIED PRODUCTS FOR DOGS, CATS, AND OTHER CARNIVORA; INSPECTION, CERTIFICATION, AND IDENTIFICATION AS TO CLASS, QUALITY, QUANTITY, AND CONDITIONS

8. Section 355.38 of Subchapter B, Chapter III, Title 9 of the Code of Federal Regulations (9 CFR 355.38), is amended by inserting the following after the second sentence of said section:

§ 355.38 Withdrawal of service.

* * * The operator of the inspected plant shall be notified of the Administrator's decision to suspend such inspection, certification or identification service, and the reasons therefor, in writing, in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)), or orally. The Administrator's decision to suspend such inspection, certification or identification service shall be effective upon such oral or written notification, whichever is earlier, to the operator of the plant. If such notification is oral, the Administrator shall confirm such decision and the reasons therefor, in writing, as promptly as circumstances permit, and such written confirmation shall be served upon the operator of the inspected plant, in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)). * * *

9. A new § 355.43 is added to Subchapter B, Chapter III, Title 9 of the Code of Federal Regulations (9 CFR 355.43), to read as follows:

§ 355.43 Scope and applicability of rules of practice.

The rules of practice of the Department of Agriculture in Subpart H of Part I, Subtitle A, Title 7 of the Code of Federal Regulations, are the rules of practice applicable to adjudicatory, admininstrative proceedings under the regulations in this part (9 CFR Part 355).

PART 362—VOLUNTARY POULTRY INSPECTION REGULATIONS

10. Section 362.4 of Subchapter B, Chapter III, Title 9 of the Code of Federal Regulations (9 CFR 362.4) is amended as follows:

§ 362.4 Denial or withdrawal of service.

(a) * * *

(2) *Procedure.* An application or request for service may be rejected, or benefits of the service may be otherwise denied to or withdrawn by the Secretary, as provided by this paragraph, after notice and opportunity for hearing before a proper official of the Department. The Administrator may reject an application or request for service or deny or withdraw service under this paragraph without hearing, pending final determination of the matter, when he determines that the public interest so requires. The operator or applicant of such plant shall be notified of the Administrator's decision to reject the application or request for service or to deny or withdraw such service, and the reasons therefor, in writing, in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)), or orally. The Administrator's decision to reject an application or request for service or to deny or withdraw the benefits of service under the Act shall be effective upon such oral or written notification, whichever is earlier, to the operator or applicant of such plant. If such notification is oral, the Administrator shall confirm such decision, and the reasons therefor, in writing, as promptly as circumstances permit, and such written confirmation shall be served upon the operator or applicant of such plant in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)).

(b) * * *

(2) *Procedure.* An application or request for service may be rejected, or benefits of the service may be otherwise denied to or withdrawn by the Secretary, as provided by this paragraph, after notice and opportunity for hearing before a proper official of the Department. The Administrator may reject an application or request for service or deny or withdraw service under this paragraph without hearing, pending final determination of the

matter, when he determines that the public interest so requires. The operator or applicant of such plant shall be notified of the Administrator's decision to reject the application or request for service or to deny or withdraw such service, and the reasons therefor, in writing, in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)), or orally. The Administrator's decision to reject an application or request for service or to deny or withdraw the benefits of service under the Act shall be effective upon such oral or written notification, whichever is earlier, to the operator or applicant of such plant. If such notification is oral, the Administrator shall confirm such decision, and the reasons therefor, in writing, as promptly as circumstances permit, and such written confirmation shall be served upon the operator or applicant of such plant in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)).

(c) *For miscellaneous reasons.* An application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person, without a hearing, by the official in charge of the appropriate regional office, with the concurrence of the Regional Director (1) for administrative reasons such as the nonavailability of personnel to perform the service; (2) for the failure to pay for service; (3) in case the application or request relates to birds or products which are not eligible for service under this Part 362; or (4) in case the person is a partnership, corporation, or other person from whom the benefits of the service are currently being withheld under paragraph (a) of this section. Notice of such rejection, denial, or withdrawal, and the reasons therefor, shall promptly be given to the person involved. The operator or applicant of such plant shall be notified of such decisions to reject an application or request for service or to deny or withdraw the benefits of the service, and the reasons therefor, in writing, in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)), or orally. Such decision shall be effective upon such oral or written notification, whichever is earlier, to the operator or applicant of such plant. If such notification is oral, the person making such decision shall confirm such decision, and the reasons therefor, in writing, as promptly as circumstances permit, and such written confirmation shall be served upon the operator or applicant of such plant in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)).

(d) *Scope and applicability of rules of practice.* The rules of practice of the Department of Agriculture in Subpart H of Part I, Subtitle A, Title 7 of the Code of Federal Regulations, are the rules of practice applicable to adjudicatory, administrative proceedings under the regulations in this part (9 CFR Part 362).

(Secs. 203, 205, 60 Stat. 1087, 1090; 7 U.S.C. 1622, 1624.)

These new and amended regulations are required so that the regulations governing voluntary inspection service under the Agricultural Marketing Act of 1946, as amended, will conform with the Department's rules of practice. It does not appear that public participation in this rulemaking proceeding would provide the Department with any additional relevant information which would alter the actions reflected in this document. Accordingly, it is concluded that public participation in this rulemaking proceeding is impracticable and unnecessary, and under the administrative procedure provisions in 5 U.S.C. 553, good cause is found for making these regulations effective less than 30 days after publication in the FEDERAL REGISTER.

NOTE.—The Food Safety and Quality Service 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.

Done at Washington, D.C., on March 13, 1978.

ROBERT ANGELOTTI,
Administrator,
Food Safety and Quality Service.

[FR Doc. 78-7131 Filed, 3-16-78; 8:45 am]

[4110-03]

Title 21—Food and Drugs

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

SUBCHAPTER A—GENERAL

[Docket No. 77C-0381]

D&C BLUE NO. 6

Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document confirms the effective date of January 13, 1978, for a regulation concerning the use of D&C Blue No. 6 in coloring polyethylene terephthalate sutures and polypropylene sutures for use in general surgery, and in coloring plain or chromic collagen absorbable sutures for use in general and ophthalmic surgery.

DATE: Effective date confirmed: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerad L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: A regulation published in the FEDERAL REGISTER of December 13, 1977 (42 FR 62471), amended Chapter I in Parts 74, 81, and 82 (21 CFR Parts 74, 81, and 82). The regulation added § 74.1106 (21 CFR 74.1106) to Subpart B of Part 74 to provide for the safe use of D&C Blue No. 6 in coloring polyethylene terephthalate sutures and polypropylene sutures for use in general surgery, and in coloring plain or chromic collagen absorbable sutures for use in general and ophthalmic surgery. The regulation also removed D&C Blue No. 6 from the provisionally listed colors in Parts 81 and 82 by deleting it from the list in § 81.1(b) (21 CFR 81.1(b)), and by revoking the section on its specifications, § 82.1106 (21 CFR 82.1106).

Under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c), and (d))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), notice is given that no objection or requests for hearing were filed in response to the regulation of December 13, 1977. Accordingly, the amendments promulgated thereby became effective on January 13, 1978.

Dated: March 13, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-7072 Filed 3-16-78; 8:45 am]

[4110-03]

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

Panel on Review of Vitamin, Mineral, and Hematinic Drug Products; Termination

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: Under the public advisory committee procedures, the Food and Drug Administration announces the termination of the Panel on Review of Vitamin, Mineral, and Hematinic Drug Products and amends the regulation listing the standing advisory committees. The panel was terminated on February 28, 1978 because it was no longer needed.

EFFECTIVE DATE: March 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas M. DeCillis, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of

Health, Education, and Welfare, 5600 Fishers Lane Rockville, Md. 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: The panel's functions were to review and evaluate available data concerning the safety and effectiveness of nonprescription vitamin, mineral, and hematinic drug products. The conclusions and recommendations in the panel's report will be published in a future issue of the FEDERAL REGISTER.

Accordingly, the usefulness of the panel has been served, and the panel is no longer needed. On February 28, 1978, the charter of this panel expired, and renewal will not be requested of the Secretary of Health, Education, and Welfare.

Since this is a technical conforming amendment to Part 14 (21 CFR Part 14), the Commissioner of Food and Drugs finds there is good cause for the rule to be effective immediately.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority deleglated to the Commissioner (21 CFR 5.1), Part 14 is amended in § 14.100 List of standing advisory committees, by deleting paragraph (c)(20)(i)(*o*).

Effective date: March 17, 1978.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)).)

Dated: March 10, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-6768 Filed 3-16-78; 8:45 am]

[4110-03]

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 75P-0347]

PART 131—MILK AND CREAM

Revocation of Standard of Identity for Sour Cream Dressing

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document revokes the stayed standard of identity for sour cream dressing. It has been decided that the standard could be misleading to consumers.

EFFECTIVE DATE: March 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Eugene T. McGarrahan, Bureau of Foods (HFF-415), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1155.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration advises interested persons that the previously stayed standard of identity for sour cream dressing (21 CFR 131.164) is revoked and that a public hearing will not be held.

A standard if identity for sour cream dressing (21 CFR 131.164) was proposed in the FEDERAL REGISTER of August 2, 1973 (38 FR 20627). The final regulation ruling on the proposal was published in the FEDERAL REGISTER of May 7, 1974 (39 FR 15993). The main intent of the standard was that the use of the word "dressing" in the name of the food would indicate to the consumer that there was a difference between sour cream and sour cream dressing, i.e., that sour cream dressing could be fabricated from milk-derived ingredients rather than from "cream."

A written objection requesting a hearing was filed in response to the final regulation. As a result, in the FEDERAL REGISTER of April 29, 1975 (40 FR 18549), the Commissioner stayed the effective date of the standard of identity for sour cream dressing (21 CFR 131.164) and announced that a hearing would be scheduled at a later date to resolve the issues raised by the objection.

The request for a hearing was from a manufacturer of a pourable dressing for salads that labeled its product "sour cream dressing" even though it contained only a small amount of sour cream solids. The manufacturer contended that the standard of identity for sour cream dressing infringed on its use of the name "sour cream dressing."

Upon reconsideration of the entire matter, the Commissioner of Food and Drugs concludes that the use of the words "sour cream" in the name of a product that would not be required to contain sour cream (as defined in 21 CFR 131.160) could be misleading to the consumer and has therefore decided that the standard of identity for "sour cream dressing" should be revoked. For the same reason, the Commissioner has decided that the standard of identity for "sour half-and-half dressing" should be repealed; a proposal to this effect appears elsewhere in this issue of the FEDERAL REGISTER.

Notwithstanding the revocation of this standard of identity, the Commissioner advises that the objector's product does not contain enough sour cream to be labeled "sour cream dressing." Therefore, its product is considered to be misbranded within the meaning of section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) and is subject to regulatory action.

§ 131.164 [Revoked]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner (21 CFR 5.1), the abovementioned hearing is hereby cancelled and Part 131 is amended by revoking § *131.164 Sour cream dressing.*

Effective date: March 17, 1978.

(Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)).)

Dated: March 13, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-7074 Filed 3-16-78; 8:45 am]

[4110-03]

[Docket No. 77P-0335]

SUBCHAPTER D—DRUGS FOR HUMAN USE

PART 433—EXEMPTIONS FROM ANTIBIOTIC CERTIFICATION AND LABELING REQUIREMENTS

Hypersensitivity Testing; Neomycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: In response to a petition from the North American Contact Dermatitis Group of the American Academy of Dermatology, the antibiotic drug regulations are being amended to exempt from certification neomycin sulfate used for hypersensitivity testing. This will make available to physicians a standardized testing material to determine the sensitivity of patients to topical drug preparations containing neomycin.

DATES: Effective March 17, 1978; comments by April 17, 1978.

ADDRESS: Written comments (preferably four copies) to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fisher Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Robert J. Rice, Jr., Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-5220.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs has received a petition from the North American Contact Dermatitis Group of the American Academy of Dermatology requesting that neomycin sulfate for hypersensitivity testing be exempted from the certification requirements of section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

The Commissioner recognizes the medical need for allergy testing sub-

stances and has previously provided for shipment of nonantibiotic new-drug substances as defined in § 310.3(g) (21CFR 310.3(g)) for such purposes if the conditions described in § 310.103 (21 CFR 310.103) are met. Provisions that would have allowed a similar exemption for antibiotic drugs were not included at that time because no such requests had been received by FDA.

Trays or kits containing ingredients for hypersensitivity testing are distributed by the American Academy of Dermatology in an effort to standardize the chemicals used by physicians. The Academy has recommended that neomycin sulfate ointment containing 200 milligrams of neomycin per gram be included as one of the diagnostic chemicals in its testing kit because of the sensitizing potential of neomycin. The Commissioner also recognizes the problem of neomycin hypersensitivity. The issue of neomycin allergy was considered by the FDA's Advisory Review Panel on OTC Antimicrobial (II) Drug Products; their findings were a part of the proposed monograph for over-the-counter (OTC) topical antibiotic drugs published in the FEDERAL REGISTER of April 1, 1977 (42 FR 17642).

Because neomycin sulfate is an antibiotic, it is subject to the certification requirements of section 507 of the Federal Food, Drug, and Cosmetic Act. However, section 507(c) of the act provides that antibiotics may be exempted from certification requirements if such certification is not necessary to ensure safety and efficacy of use.

The Commissioner has evaluated this petition and concludes that under conditions similar to those specified in § 310.103 for new-drug substances, certification of neomycin sulfate for use in hypersensitivity testing is not necessary. The conditions of use in new § 433.26 set forth below require, however, that the neomycin sulfate used in preparing the ointment intended for hypersensitivity testing be from a certified batch.

The Commissioner has also received information from the petitioner that the hypersensitivity testing kits distributed by the petitioner (the American Academy of Dermatology) are manufactured only once a year. Therefore, if final action on the petition cannot be completed early in 1978, neomycin sulfate cannot be included in the hypersensitivity testing kits for the calendar year 1978. Because FDA's policy governing the conditions under which certain drugs for hypersensitivity testing are exempted from requirements of the act and regulations has been previously announced (21 CFR 310.103), and delayed action on this petition would deprive physicians of a convenient means of determining whether patients will exhibit sensitivity to topical neomycin sulfate therapy, the Commissioner concludes under § 10.40(c)(4)(i) and (e)(1) (21 CFR 10.40(c)(4)(i) and (e)(1)) that a notice of proposed rulemaking, period for public comment, and delayed effective date are unnecessary and contrary to the public interest. However, an opportunity for submission of comments to determine whether the regulation should subsequently be modified or revoked is provided.

Copies of the petition and other pertinent information regarding the need for immediate action on this regulation are on file at the office of the Hearing Clerk, Food and Drug Administration (address given above).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner (21 CFR 5.1), Part 433 is amended by adding new § 433.26 to Subpart C, to read as follows:

§ 433.26 Neomycin sulfate ointment intended for hypersensitivity testing.

Neomycin sulfate ointment subject to sections 502(1) and 507 of the act and packaged for use as an allergen for skin patch testing of hypersensitivity shall be exempt from the certification requirements of section 502(1) and 507 of the act if it complies with all the following conditions:

(a) It contains neomycin sulfate equivalent to 200 milligrams of neomycin per gram in petrolatum.

(b) The neomycin sulfate used in preparing the neomycin sulfate ointment conforms to the standards prescribed by § 444.42(a)(1) of this chapter, except § 444.42(a)(1)(ii).

(c) The shipment of neomycin sulfate is made as a result of a specific request made to the manufacturer or distributor by a practitioner licensed by law to administer such drug, and the use of neomycin sulfate ointment for patch testing is not promoted by the manufacturer or distributor.

(d) Each package shall bear on its outside wrapper or container and on the immediate container, in addition to other labeling information required by the act and regulations, the following statements in lieu of adequate directions for use:

(1) The statement, "Caution: Federal law prohibits dispensing without prescription".

(2) The statement, "For use only in patch testing".

(3) The potency of the ointment.

(4) The expiration date as prescribed by § 432.5(a)(3) of this chapter.

(e) The quantity shipped is limited to an amount reasonable for the purpose of patch testing in the normal course of the practice of medicine and is used solely for such patch testing.

(f) The manufacturer or distributor maintains records of all shipments for this purpose for a period of 2 years after shipment and will make them available to the Food and Drug Administration upon request.

The Commissioner finds for good cause that prior notice and public procedure are unnecessary and not in the public interest, and that the amendment may become effective upon the day of publication. Interested persons may, on or before, April 17, 1978, file with the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments, in quadruplicate and identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the office of the Hearing Clerk between 9 a.m. and 4 p.m., Monday through Friday. Any changes in this regulation justified by such comments will be subject to a further amendment.

Effective date: March 17, 1978.

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

Dated: March 8, 1978.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 78-6772 Filed 3-16-78; 8:45 am]

[4110-03]

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 76N-0167]

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

Updating and Technical Revisions

AGENCY: Food and Drug Administration.

Action: Final rule.

SUMMARY: This rule amends the antibiotic drug regulations that provide for certification of tetracycline drug products for human use. This action is taken to update and make technical changes to these regulations. Certain inactive sections or partial sections are revoked; nomenclature changes are made; changes affecting indexing and placement of sections within Part 446 (21 CFR Part 446) are made, and technical changes are made by this action.

DATES: Effective April 17, 1978; except that the effective date for minor nomenclature changes is September 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Joan M. Eckert, Bureau of Drugs (HFD-140), Food and Drug Adminis-

tration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs proposed, in the FEDERAL REGISTER of September 17, 1976 (41 FR 40168) and corrected November 9, 1976 (41 FR 49504), to amend the antibiotic drug regulations by updating and making technical changes to those regulations providing for tetracycline drugs intended for human use.

Interested persons were given until November 16, 1976, to submit written comments. Comments in response to the proposal are as follows:

1. One comment from a manufacturer of veterinary products pointed out that several animal drug monographs refer to portions of the human drug monographs that were changed or revoked in the proposal.

The Commissioner recognizes these inconsistencies, and a document amending the regulations regarding certification of tetracycline drug products for animal use to conform with amendments to regulations on tetracycline drug products for human use is published elsewhere in this issue of the FEDERAL REGISTER.

2. One comment represented several manufacturers of tetracycline products. The firms objected to the proposed designation of the turbidimetric assay as the official method of determining potency of tetracycline. The manufacturers contend that another method, the microbiological agar diffusion assay, which they use, is more accurate and more reliable. They also contend that the results obtained by this method have always been in accordance with the results of FDA. They requested time to submit data in support of their position.

The Commissioner has considered the comment but, for the following reasons, does not find cause to revise the proposed regulations:

a. The proposal did not introduce the turbidimetric assay, nor did it modify the procedure—it merely deleted an alternative method, a microbiological agar diffusion assay, so that only one method would be designated as official. The turbidimetric assay, which FDA finds to give equivalent results to other assay methods, has been used by FDA laboratories for many years and, where its use is appropriate, it has become the preferred analytical procedure for the certification program.

b. The manufacturers may have mistakenly inferred that they are now required to use the turbidimetric assay. This is not the case. Under § 436.2 (21 CFR 436.2), as assay method other than that designated as the official method may be used by manufacturers: *Provided*, The results obtained are as accurate as those produced by the official methods.

3. One comment requested clarification of that part of the proposal pertaining to the change in the minocycline hydrochloride reference concentration.

The Commissioner realizes that this change was not explained in the preamble of the proposal and is concerned that all firms involved in the manufacture of minocycline may not be aware of this proposed change. Therefore, the proposed reference concentration and corresponding revisions of the standard response-line concentrations will not be adopted at this time and will be considered for a future proposal.

4. One comment contained several objections and noted a correction.

a. The comment pointed out that the acid used in various monograph tests for oxytetracycline and sterile oxytetracycline, §§ 446.65 and 446.65a (21 CFR 446.65 and 446.65a), appeared incorrectly as 1.0*N* hydrochloric acid. It should read 0.1*N* hydrochloric acid. This error is corrected.

b. The firm requested time to confirm the validity of the revised assay procedure proposed for methacycline and methacycline dosage forms. In the potency determination, 0.01*N* methanolic hydrochloric acid and 0.1*M* potassium phosphate buffer were replaced by distilled water. The firm did a study, and based on the results, concluded that the proposed method of replacing acid and buffer with distilled water is not equivalent to the current method for either potency or precision.

The Commissioner has reviewed the firm's study and has concluded that it is not valid because the test organism used was *Klebsiella pneumoniae*, not *Staphylococcus aureus*, as required by the method specified in the proposed and existing regulations.

The recommended change from methanolic acid buffer to distilled water as the diluent was based on a 3-month study performed in FDA's laboratories. It was concluded from the FDA study that the assay results using water as the diluent are equivalent to the current method. In addition, the assay is easier to perform, the results are more uniform, and the dose response of the standard curve is improved. Therefore, the Commissioner sees no need to revise the proposal.

c. The firm objected to the revisions of § 446.81a (21 CFR 446.81a), which deleted the provision "with or without one or more suitable and harmless stabilizing agents." The firm markets a product containing tetracycline and a stabilizing agent. The proposed revision would make this drug ineligible for certification.

The Commissioner has considered this comment and agrees that the phrase referred to is necessary to allow for the certification of this product. In the antibiotic regulations, however, each Subpart A is intended only for bulk drugs containing no added substances, such as stabilizing agents. Therefore, § 446.81a is amended as proposed, and the monograph providing certification for tetracycline hydrochloride for injection, § 446.281 (21 CFR 446.281), is amended to provide for the product containing tetracycline hydrochloride and a stabilizing agent. This change is reflected in the document.

5. One comment suggested changes were necessary in the sterility test methods for sterile oxytetracycline, particularly in § 446.65a(b)(2).

The Commissioner notes that the comments do not apply to any revisions proposed in the September 17, 1976 proposal. Therefore, he finds that these comments should be considered separately and, if valid, should be the subject of separate rulemaking proceedings to allow for public comment from other interested persons.

The Commissioner reconsidered whether to include the waters of hydration in the section heading and text of the monographs providing for antibiotic drugs and concludes that it is scientifically correct to include the waters of hydration in the name of the drug. It was proposed to delete "monohydrate" from doxycycline, but the Commissioner has decided to disregard that part of the proposal, and monohydrate will not be deleted from the name doxycycline monohydrate.

An editorial correction is included in this final rulemaking document. The microbiological agar diffusion assay is deleted as an alternate potency assay for chlortetracycline, oxytetracycline, and tetracycline. Therefore, these items appearing in the tables providing assay methods for these drugs in § 446.105 are no longer necessary and are deleted.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner (21 CFR 5.1), Parts 436 and 446 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

A. Part 436 is amended as follows:

1. In Subpart C, § 436.33(b) is amended by alphabetically inserting a new item in the table, as follows:

§ 436.33 Safety test.

* * * * *

(b) * * *

Antibiotic drug	Test dose: Diluent (diluent) number as listed in sec. 436.31	Test dose: Concentration in units or milligrams of activity per milliliter	Test dose: Volume in milliliters to be administered to each mouse	Route of administration as described in para. (c) of this section
• • •	•	•	•	•
Oxytetracycline injection	3	2 mg	0.5	Intraperitoneal.
• • •	•	•	•	•
• • •	•	•	•	•

§ 436.105 [Amended]

2. In § 436.105 *Microbiological agar diffusion assay,* paragraphs (a) and (b) are amended in the tables therein by deleting the items "Chlortetracycline," "Oxytetracycline," and "Tetracycline."

3. In Subpart D, § 436.106(a) is amended in the table by revising the entries for the items "Chlortetracycline," "Demeclocycline," "Doxycycline," "Methacycline," "Minocycline," "Oxytetracycline," "Rolitetracycline," and "Tetracycline" to read as follows:

§ 436.106 Microbiological turbidimetric assay.

• • • • •

(a) • • •

Antibiotic	Working standard stock solutions: Drying conditions (method number as listed in sec. 436.200)	Working standard stock solutions: Initial solvent	Working standard stock solutions: Diluent (solution number as listed in sec. 436.101(a))	Working standard stock solutions: Final concentration units or milligrams per milliliter	Working standard stock solutions: Storage time under refrigeration	Standard response line concentrations: Diluent (solution number as listed in sec. 436.101(a))	Standard response line concentrations: Final concentrations, units or micrograms of antibiotic activity per milliliter
• •	•	•	•	•	•	•	•
Chlortetracycline	(1)		0.01*N* HCl	1 mg	4 d		(2) 0.038, 0.048, 0.060, 0.075, 0.094 μg.
• •	•	•	•	•	•	•	•
Demeclocycline	1		0.1*N* HCl	1 mg	4 d		(2) 0.064, 0.080, 0.100, 0.125, 0.156 μg.
• •	•	•	•	•	•	•	•
Doxycycline	(1)		0.1*N* HCl	1 mg	5 d		(2) 0.064, 0.080, 0.100, 0.125, 0.156 μg.
• •	•	•	•	•	•	•	•
Methacycline	1		(2)	1 mg	7 d		(2) 0.038, 0.048, 0.060, 0.075, 0.094 μg.
Minocycline	(1)		0.1*N* HCl	1 mg	2 d		(2) 0.070, 0.084, 0.100, 0.120, 0.143 μg.
Oxytetracycline	(1)		0.1*N* HCl	1 mg	4 d		(2) 0.154, 0.192, 0.240, 0.300, 0.375 μg.
Rolitetracycline	1		(2)	1 mg	1 d		(2) 0.154, 0.192, 0.240, 0.300, 0.375 μg.
• •	•	•	•	•	•	•	•
Tetracycline	(1)		0.1*N* HCl	1 mg	1 d		(2) 0.154, 0.192, 0.240, 0.300, 0.375 μg.
• •	•	•	•	•	•	•	•

• • • • • • •

[1] Not dried.
[2] Distilled water.

4. In Subpart F, § 436.309 is amended by revising the first and last lines of the calculations in paragraph (a)(3) and by deleting paragraph (b)(7), as follows:

§436.309 Anhydrotetracyclines and 4-epianhydrotetracyclines.

• • • • •

(a) • • •
(3) • • •

$$\text{Percent anhydrotetracyclines} = \frac{[\alpha 430 - (\alpha 356 \times 0.0019)] \times 100}{195}$$

• • • •

195 = Absorptivity (1 pct, 1 cm) of anhydrotetracycline at 430 millimicrons.

5. In Subpart F by adding new § 436.320 to read as follows:

§ 436.320 Ferric chloride colorimetric assay.

(a) *Reagents.* (1) 1*N* hydrochloric acid.

(2) 0.01*N* hydrochloric acid.

(3) Ferric chloride stock solution. Quickly weigh (very hygroscopic) 5.0 grams of $FeCl_3 \cdot 6H_2O$ into a 100-milliliter beaker. Add approximately 10 milliliters of 1*N* hydrochloric acid and stir to dissolve. Quantitatively transfer to a 50-milliliter glass-stoppered amber volumetric flask and make up to volume with water

(4) Ferric chloride working reagent. Pipette 10 milliliters of ferric chloride stock solution into a 2-liter volumetric flask, add 20 milliliters 1*N* hydrochloric acid, and bring to volume with water. Check the pH; it should be between 2 and 2.1.

(b) *Standard solution.* Accurately weigh approximately 50 milligrams of the working standard of the antibiotic to be tested and dissolve with 25 milliliters of 0.1*N* hydrochloric acid. Quantitatively transfer to a 250-milliliter volumetric flask and dilute to volume with distilled water. Keep in a glass-stoppered flask and store under refrigeration. Discard solution after 7 days.

(c) *Sample solution.* Accurately weigh approximately 50 milligrams of the sample and dissolve with 25 milliliters of 0.1*N* hydrochloric acid. Quantitatively transfer to a 250-milliliter volumetric flask and dilute to volume with distilled water.

(d) *Procedure.* Pipette exactly 10 milliliters of the standard solution and of the sample solution into separate test tubes. To each tube add exactly 10 milliliters of ferric chloride working reagent, mix, and allow to stand 15 minutes. Determine the absorbance of each solution at 490 nanometers in a suitable spectrophotometer against a blank prepared from 10 milliliters of 0.01*N* hydrochloric acid and 10 milliliters of ferric chloride working reagent.

(e) *Estimation of potency.* Calculate the potency as follows:

$$\text{Micrograms of antibiotic per milligram} = \frac{\text{Absorbance of sample}}{\text{Absorbance of standard}} \times \frac{\text{Milligrams of standard}}{\text{Milligrams of sample}} \times \text{Potency of standard in micrograms per milligram.}$$

B. Part 446 is amended as follows:

1. In Subpart A by adding new § 446.10 to read as follows:

§ 446.10 Chlortetracycline hydrochloride.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Chlortetracycline hydrochloride is [4S-(4aα,4aα,5aα,6β,12aα]-7-chloro-4-(dimethylamino)-1,4,4a,5,5a,6,11,12a-octahydro- 3,6,10,12,12a-pentahydroxy-6-methyl - 1, 11-dioxo-2-naphthacenecarboxamide monohydrochloride. Chlortetracycline is produced by the growth of *Streptomyces aureofaciens.* It is a yellow powder. It is so purified and dried that:

(i) Its potency is not less than 900 micrograms per milligram.

(ii) It passes the safety test.

(iii) Its loss on drying is not more than 2 percent.

(iv) Its pH in an aqueous solution containing 10 milligrams per milliliter is not less than 2.3 and not more than 3.3.

(v) It is crystalline.

(vi) It meets the identity test for chlortetracycline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, safety, loss on drying, pH, crystallinity, and identity.

(ii) Samples required: 10 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay—*(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.01*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of chlortetracycline hydrochloride per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.06 microgram of chlortetracycline hydrochloride per milliliter (estimated).

(2) *Safety.* Proceed as directed in § 436.33 of this chapter.

(3) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 10 milligrams per milliliter.

(5) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

(6) *Identity.* To 1 milligram of sample, add 2 milliliters of concentrated sulfuric acid. In the presence of chlortetracycline, a deep blue color is produced that becomes dark green.

2. By revising § 446.10a to read as follows:

§ 446.10a Sterile chlortetracycline hydrochloride.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Chlortetracycline hydrochloride is [4S-(4aα,4aα,5aα,6β,12aα)] - 7 - chloro - 4 - (dimethylamino) - 1,4,4a,5,5a,6,11,12a - octahydro - 3,6,10,12,12a - pentahydroxy - 6 - methyl - 1,11 - dioxo - 2 - naphthacenecarboxamide monohydrochloride. Chlortetracycline is produced by the growth of *Streptomyces aureofaciens.* It is a yellow powder. It is so purified and dried that:

(i) Its potency is not less than 900 micrograms per milligram.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) It passes the safety test.

(v) It contains no histamine or histamine-like substances.

(vi) Its loss on drying is not more than 2 percent.

(vii) Its pH in an aqueous solution containing 10 milligrams per milliliter is not less than 2.3 and not more than 3.3.

(viii) It is crystalline.

(ix) It meets the identity test for chlortetracycline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, safety, histamine, loss on drying, pH, crystallinity, and identity.

(ii) Samples required:

(*a*) For all tests except sterility: 10 packages, each containing approximately 300 milligrams.

(*b*) For sterility testing: 20 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay—*(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.01*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of chlortetracycline hydrochloride per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.06 microgram of chlortetracycline hydrochloride per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section, except use diluting field D in lieu of diluting fluid A.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 5 milligrams of chlortetracycline hydrochloride per milliliter.

(4) *Safety.* Proceed as directed in § 436.33 of this chapter.

(5) *Histamine.* Proceed as directed in § 436.35 of this chapter.

(6) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

(7) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 10 milligrams per milliliter.

(8) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

(9) *Identity.* To 1 milligram of sample, add 2 milliliters of concentrated sulfuric acid. In the presence of chlortetracycline, a deep blue color is produced that becomes dark green.

3. In § 446.15 by revising paragraphs (a)(1), (a)(1)(v), and (b)(1) to read as follows:

§ 446.15 Demeclocycline.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Demeclocycline is [4S-(4α,4aα,5aα,6β,12aα)]-7 - chloro-4-(dimethylamino) -1,4,4a,5,5a,6,11, 12a-octahydro-3,6,10,12,12a-pentahydroxy-1, 11-dioxo-2-naphthacenecarboxamide. It is so purified and dried that:

* * * * *

(v) When calculated on the an- hydrous basis, its absorptivity at 380 nanometers relative to that of the demeclocycline hydrochloride working standard is 107.4±3.88.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of demeclocycline hydrochloride per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.100 microgram of demeclocycline hydrochloride per milliliter (estimated).

* * * * *

4. In § 446.16 by revising paragraphs (a)(1), (a)(1)(v), and (b)(1) to read as follows:

§ 446.16 Demeclocycline hydrochloride.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Demeclocycline hydrochloride is [4S-(4α,4aα,5aα,6β, 12aα)]-7-chloro-4-(dimethylamino)-1,4,4a,5,5a,6,11,12a-octahydro-3,6,10,12, 12a-pentahydroxy-1,11-dioxo- 2-naphthacenecarboxamide monohydrochloride. It is so purified and dried that:

* * * * *

(v) When calculated on the an- hydrous basis, its absorptivity at 380 nanometers relative to that of the demeclocycline hydrochloride working standard is 100±4.2 percent.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of demeclocycline hydrochloride per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.100 microgram of demeclocycline hydrochloride per milliliter (estimated).

* * * * *

5. In § 446.20 by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 446.20 Doxycyline hyclate.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Doxycycline hyclate is [4S-(4α,4aα,5α,5aα,6α,12aα)]-4-(dimethylamino)-1,4,4a,5,5a,6,11,12a-octahydro-3,5,10,12,12a-pentahydroxy-6-methyl-1,11-dioxo-2-naphthacenecarboxamide hydrochloridehemiethanolate hemihydrate. It is so purified and dried that:

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of doxycycline per milliliter (estimated). Further dilute with sterile distilled water to the reference concentration of 0.100 microgram of doxycycline per milliliter (estimated).

* * * * *

6. In § 446.20a by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 446.20a Sterile doxycycline hyclate.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Sterile doxycycline hyclate is [4S-(4α,4aα,5α,5aα, 6α,12aα)] - 4 - (dimethylamino) - 1,4,4a,5,5a,6,11,12a - octahydro - 3,5,10,12,12a - pentahydroxy - 6 - methyl - 1,11 - dioxo - 2 - naphthacenecarboxamide hydrochloride hemiethanolate hemihydrate. It is so purified and dried that:

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of doxycycline per milliliter (estimated). Further dilute with sterile distilled water to the reference concentration of 0.100 microgram of doxycycline per milliliter (estimated).

* * * * *

7. In § 446.21 by revising paragraphs (a)(1), (a)(1)(vi), and (b)(1) to read as follows:

§ 446.21 Doxycycline monohydrate.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Doxycycline monohydrate is [4S-(4α,4aα,5α,5aα,6α, 12aα)] - 4 - (dimethylamino) - 1,4,4a,5,5a,6,11,12a - octahydro - 3,5,10,12,12a - pentahydroxy - 6 - methyl - 1,11 - dioxo - 2 - naphthacenecarboxamide monohydrate. It is so purified and dried that:

* * * * *

(1) * * *

(vi) It gives a positive identity test for doxycycline.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of doxycycline per milliliter (estimated). Further dilute with sterile distilled water to the reference concentration of 0.100 microgram of doxycycline per milliliter (estimated).

* * * * *

8. In § 446.50 by revising paragraphs (a)(1), (a)(1)(v), and (b)(1) to read as follows:

§ 446.50 Methacycline hydrochloride.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Methacycline hydrochloride is [4S-(4α,4aα,5α,5aα, 12aα)] - 4 - (dimethylamino) - 1,4,4a,5,5a,6,11,12a - octahydro - 3,5,10,12,12a - pentahydroxy - 6 - methylene - 1,11 - dioxo - 2 - naphthacenecarboxamide monohydrochloride. It is so purified and dried that:

* * * * *

(v) Its absorptivity at the absorption maximum at 345 nanometers relative to that of the methacycline working standard similarly treated is 92.4±4 percent.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient sterile distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.06 microgram of methacycline per milliliter (estimated).

* * * * *

9. In § 446.60 by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 446.60 Minocycline hydrochloride.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Minocycline hydrochloride is [4S-(4α,4aα,5aα,12aα)] - 4,7 - bis (dimethylamino) - 1,4,4a,5,5a,6,11,12a - octahydro - 3,10,12,12a - tetrahydroxy - 1,11 - dioxo - 2 - naphthacenecarboxamide monohydrochloride. It is so purified and dried that:

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follow: Dissolve an accurately weighed sample in sufficient 0.1*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of minocycline per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.100 microgram of minocycline per milliliter (estimated).

* * * * *

10. In Subpart A by adding new § 446.65 to read as follows:

§ 446.65 Oxytetracycline.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Oxytetracycline is [4S-(4α,4aα,5α,5aα,6β,12aα)]-4-(dimethylamino)-1,4,4a,5,5a,6,11,12a-octahydro- 3,5,6,10,12,12a-hexahydroxy-6-methyl- 1,11-dioxo-2-naphthacenecarboxamide dihydrate. Oxytetracycline is produced by the growth of *Streptomyces rimosus.* It is so purified and dried that:

(i) Its potency is not less than 832 micrograms of oxytetracycline per milligram on an "as is" basis.

(ii) It passes the safety test.

(iii) Its moisture content is not less than 6 percent and not more than 9 percent.

(iv) Its pH in an aqueous suspension containing 10 milligrams per milliliter is not less than 4.5 and not more than 7.0.

(v) When calculated on an anhydrous basis its absorptivity at 353 nanometers relative to that of the oxytetracycline working standard similarly treated is 100±4 percent.

(vi) It gives a positive result to an identity test for oxytetracycline.

(vii) It is crystalline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, safety, moisture, pH, absorptivity, identity, and crystallinity.

(ii) Samples required: 10 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay—*(1) *Potency.* Assay for potency by either of the following methods; however, the results obtained from the microbiological turbidimetric assay shall be conclusive.

(i) *Microbiological turbidimetric assay.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of oxytetracycline per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(ii) *Chemical assay.* Proceed as directed in § 436.320 of this chapter.

(2) *Safety.* Proceed as directed in § 436.33 of this chapter, preparing the sample as follows: Dissolve at the ratio of 40 milligrams to 2.0 milliliters of 0.1*N* hydrocloric acid and dilute with the required amount of sterile distilled water (diluent 3).

(3) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous suspension containing 10 milligrams per milliliter.

(5) *Absorptivity.* Determine the absorbance of the sample and standard solutions in the following manner: Dissolve approximately 50 milligrams each of the sample and standard in 250 milliliters of 0.1*N* hydrochloric acid. Transfer a 10-milliliter aliquot to a 100-milliliter volumetric flask and dilute to volume with 0.1*N* hydrochloric acid. Using a suitable spectrophotometer and 0.1*N* hydrochloric acid as the blank, determine the absorbance of each solution at 353 nanometers. Determine the percent absorptivity of the sample relative to the absorptivity of the standard using the following calculations:

$$\text{Percent relative absorptivity} = \frac{\text{Absorbance of sample}}{\text{Absorbance of standard}} \times \frac{\text{Milligrams of standard}}{\text{Milligrams of sample}} \times \text{Potency of standard in micrograms per milligram} \times \frac{10}{(100-m)}$$

where: m = Percent moisture in the sample.

(6) *Identity.* To about 1 milligram of sample, add 2 milliliters of sulfuric acid; a light-red color is produced when oxytetracycline is present.

(7) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

11. By revising § 446.65a to read as follows:

§ 446.65a Sterile oxytetracycline.

(a) *Requirements for certification—*(1) *Standards of ifentity, strength, quality, and purity.* Sterile oxytetracycline is [4S - (4α,4aα,5α,5aα,6β,12aα)]-4 - (dimethylamino) - 1,4,4a,5,5a,6,11,12a-octahydro - 3,5,6,10,12,12a-hexahydroxy-6-methyl-1,11-dioxo-2-naphthacenecarboxamide dihydrate. Oxyteracycline is produced by the growth of *Striptomyces rimosus.* It is so purified and dried that:

(i) Its potency is not less than 832 micrograms of oxytetracycline per milligram on an "as is" basis.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) It passes the safety test.

(v) It contains no histamine or histamine-like substances.

(vi) Its moisture content is not less than 6 percent and not more than 9 percent.

(vii) Its pH in an aqueous suspension containing 10 milligrams per milliliter is not less than 4.5 and not more than 7.

(viii) When calculated on an anhydrous basis, its absorptivity at 353 nanometers relative to that of the oxy- tetracycline working standard similarly treated, is 100±4 percent.

(ix) It gives a positive result to an identity test for oxytetracycline.

(x) It is crystalline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, safety, histamine, moisture, pH, absorptivity, identity, and crystallinity.

(ii) Samples required:

(*a*) For all tests except sterility: 10 packages, each containing approximately 300 milligrams.

(*b*) For sterility testing: 20 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay—*(1) *Potency.* Assay for potency by either of the following methods; however,

the results obtained from the microbiological turbidimetric assay shall be conclusive.

(i) *Microbiological turbidimetric assay.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of oxytetracycline per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(ii) *Chemical assay.* Proceed as directed in § 436.320 of this chapter.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section, except use diluting fluid D in lieu of diluting fluid A.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 5 milligrams of oxytetracycline per milliliter prepared by dissolving 40 milligrams in 2 milliliters of 0.1*N* hydrochloric acid and diluting with the required amount of sterile, pyrogen-free distilled water.

(4) *Safety.* Proceed as directed in § 436.33 of this chapter, preparing the sample as follows: Dissolve at the ratio of 40 milligrams to 2 milliliters of 0.1*N* hydrochloric acid and dilute with the required amount of sterile distilled water (diluent 3).

(5) *Histamine.* Proceed as directed in § 436.35 of this chapter, preparing the sample by dissolving 40 milligrams in 2 milliliters of 0.1*N* hydrochloric acid and diluting with the required amount of sterile distilled water.

(6) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(7) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous suspension containing 10 milligrams per milliliter.

(8) *Absorptivity.* Determine the absorbance of the sample and standard solutions in the following manner: Dissolve approximately 50 milligrams each of the sample and standard in 250 milliliters of 0.1*N* hydrochloric acid. Transfer a 10-milliliter aliquot to a 100-milliliter volumetric flask, and dilute to volume with 0.1*N* hydrochloric acid. Using a suitable spectrophotometer and 0.1*N* hydrochloric acid as the blank, determine the absorbance of each solution at 353 nanometers. Determine the percent absorptivity of the sample relative to the absorptivity of the standard using the following calculations:

$$\text{Percent relative absorptivity} = \frac{\text{Absorbance of sample}}{\text{Absorbance of standard}} \times \frac{\text{Milligrams of standard}}{\text{Milligrams of sample}} \times \frac{\text{Potency of standard in micrograms per milligram}}{} \times \frac{10}{(100-m)}$$

where: m = Percent moisture in the sample.

(9) *Identity.* To about 1 milligram of sample, add 2 milliliters of sulfuric acid; a light-red color is produced when oxytetracycline is present.

(10) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

12. By revising § 446.66 to read as follows:

§ 446.66 Oxytetracycline calcium.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Oxytetracycline calcium is [4S-(4α,4aα,5α,5aα,6β,12aβ)]-4-(dimethylamino)-1,4,4a,5,5a,6,11,12a- octahydro-3,5,6,10,12,12a-hexahydroxy-6-methyl-1,11-dioxo- 2-naphtha- cene-carboxamide calcium salt. Oxytetracycline is produced by the growth of *Streptomyces rimosus.* It is so purified and dried that:

(i) Its potency is equivalent to not less than 865 micrograms of oxytetracycline per milligram on an anhydrous basis.

(ii) It passes the safety test.

(iii) Its moisture content is not less than 8 percent and not more than 14 percent.

(iv) Its pH in an aqueous suspension containing 25 milligrams per milliliter is not less than 6 and not more than 8.

(v) Its calcium content as the sulfated ash is not less than 3.85 percent and not more than 4.35 percent on an anhydrous basis.

(vi) It gives a positive identity test.

(vii) It is crystalline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, safety, moisture, pH, calcium content, identity, and crystallinity.

(ii) Samples required: 10 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay—*(1) *Potency.* Assay for potency by either of the following methods; however, the results obtained from the microbiological turbidimetric assay shall be conclusive.

(i) *Microbiological turbidimetric assay.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of oxytetracycline per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(ii) *Chemical assay.* Proceed as directed in § 436.320 of this chapter.

(2) *Safety.* Proceed as directed in § 436.33 of this chapter.

(3) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using a saturated aqueous suspension containing 25 milligrams per milliliter.

(5) *Calcium content.* Proceed as directed in § 436.207(b) of this chapter, except from the weight of residue obtained calculate the calcium content as follows:

$$\text{Percent calcium} = \frac{\text{Weight of residue} \times 0.29435 \times 100 \times 100}{\text{Weight of sample (anhydrous basis)} \times (100-m)}$$

where: m = Percent moisture in the sample.

(6) *Identity.* To about 1 milligram of sample, add 2 milliliters of sulfuric acid; a light-red color is produced when oxytetracycline is present.

(7) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

13. By adding new § 446.67 to read as follows:

§ 446.67 Oxytetracycline hydrochloride.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Oxytetracycline hydrochloride is [4S-(4α,4aα,5α,5aα,6β,12aα,)]-4-(dimethylamino)-1,4,4a,5,5a,6, 11, 12a-octahydro-3,5,6,10,12,12a-hexahydroxy-6-methyl-1,11-dioxo-2-naphthacenecarboxamide monohydrochloride. Oxytetracycline is produced by the growth of *Streptomyces rimosus.* It is so purified and dried that:

(i) Its potency is not less than 835 micrograms of oxytetracycline per milligram on an anhydrous basis.

(ii) It passes the safety test.

(iii) Its loss on drying is not more than 2 percent.

(iv) Its pH in an aqueous solution containing 10 milligrams per milliliter is not less than 2 and not more than 3.

(v) When calculated on an anhydrous basis, its absorptivity at 353 nanometers relative to that of the oxy- tetracycline standard similarly treated is 92.5±4.3 percent.

(vi) It gives a positive result to an identity test for oxytetracycline.

(vii) It is crystalline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, safety, loss on drying, pH, absorptivity, identity, and crystallinity.

(ii) Samples required: 10 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Assay for potency by either of the following methods; however, the results obtained from the microbiological turbidimetric assay shall be conclusive.

(i) *Microbiological turbidimetric assay.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of oxytetracycline per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(ii) *Chemical assay.* Proceed as directed in § 436.320 of this chapter.

(2) *Safety.* Proceed as directed in § 436.33 of this chapter.

(3) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 10 milligrams per milliliter.

(5) *Absorptivity.* Determine the absorbance of the sample and standard solutions in the following manner: Dissolve approximately 50 milligrams each of the sample and standard in 250 milliliters of 0.1*N* hydrochloric acid. Transfer a 10-milliliter aliquot to a 100-milliliter volumetric flask and dilute to volume with 0.1*N* hydrochloric acid. Using a suitable spectrophotometer and 0.1*N* hydrochloric acid as the blank, determine the absorbance of each solution at 353 nanometers. Determine the percent absorptivity of the sample relative to the absorptivity of the standard, using the following calculations:

$$\text{Percent relative absorptivity} = \frac{\text{Absorbance of sample}}{\text{Absorbance of standard}} \times \frac{\text{Milligrams of standard}}{\text{Milligrams of sample}} \times \frac{\text{Potency of standard in micrograms per milligram}}{} \times \frac{10}{(100-m)}$$

where: m = Percent moisture in the sample?

(6) *Identity.* To about 1 milligram of sample, add 2 milliliters of sulfuric acid; a light-red color is produced when oxytetracycline is present.

(7) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

14. By revising § 446.67a to read as follows:

§ 446.67a Sterile oxytetracycline hydrochloride.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.*—Sterile oxytetracycline hydrochloride is [4S - (4α,4aα,5α,5aα,6β,12aα)] - 4 - (dimethylamino) - 1,4,4a,5,5a,6,11,12a - octahydro - 3,5,6,10,12,12a - hexahydroxy - 6 - methyl - 1,11 - dioxo - 2 - naphthacenecarboxamide monohydrochloride. It is produced by the growth of *Streptomyces rimosus.* It is so purified and dried that:

(i) Its potency is not less than 835 micrograms of oxytetracycline per milligram on an anhydrous basis.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) It passes the safety test.

(v) It contains no histamine or histamine-like substances.

(vi) Its loss on drying is not more than 2.0 percent.

(vii) Its pH in an aqueous solution containing 10 milligrams per milliliter is not less than 2 and not more than 3.

(viii) When calculated on an anhydrous basis, its absorptivity at 353 nanometers relative to that of the oxytetracycline working standard similarly treated is 92.5±4.3 percent.

(ix) It gives a positive result to an identity test for oxytetracycline.

(x) It is crystalline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, safety, histamine, loss on drying, pH, absorptivity, identity, and crystallinity.

(ii) Samples required:

(*a*) For all tests except sterility: 10 packages, each containing approximately 300 milligrams.

(*b*) For sterility testing: 20 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.*—Assay for potency by either of the following methods; however, the results obtained from the microbiological turbidimetric assay shall be conclusive.

(i) *Microbiological turbidimetric assay.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of oxytetracycline per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(ii) *Chemical assay.* Proceed as directed in § 436.320 of this chapter.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section, except use diluting fluid D in lieu of diluting fluid A.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 5 milligrams of oxytetracycline per milliliter.

(4) *Safety.* Proceed as directed in § 436.33 of this chapter.

(5) *Histamine.* Proceed as directed in § 436.35 of this chapter.

(6) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

(7) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 10 milligrams per milliliter.

(8) *Absorptivity.* Determine the absorbance of the sample and standard solutions in the following manner: Dissolve approximately 50 milligrams each of the sample and standard in 250 milliliters of 0.1*N* hydrochloric acid. Transfer a 10-milliliter aliquot to a 100-milliliter volumetric flask and dilute to volume with 0.1*N* hydrochloric acid. Using a suitable spectrophotometer and 0.1*N* hydrochloric acid as the blank, determine the absorbance of each solution at 353 nanometers. Determine the percent absorptivity of the sample relative to the absorptivity of the standard using the following calculations:

$$\text{Percent relative absorptivity} = \frac{\text{Absorbance of sample}}{\text{Absorbance of standard}} \times \frac{\text{Milligrams of standard}}{\text{Milligrams of sample}} \times \frac{\text{Potency of standard in micrograms per milligram}}{} \times \frac{10}{(100-m)}$$

where: m = Percent moisture in the sample.

(9) *Identity.* To about 1 milligram of sample, add 2 milliliters of sulfuric acid; a light-red color is produced when oxytetracycline is present.

(10) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

15. In § 446.75a by revising paragraphs (a)(1), (a)(1)(ix), and (b)(1) to read as follows:

§ 446.75a Sterile rolitetracycline.

(a) *Requirements for certification*—(1) *Standards of identity, strength,*

quality, and purity.—Sterile rolitetracycline is [4S - (4α,4aα,5aα,6β,12aα)] - 4 - (dimethylamino) - 1,4,4a,5,5a,6,11,12a - octahydro - 3,6,10,12,12a - pentahydroxy - 6 - methyl - 1,11 - dioxo - *N* - (1 - pyrrolidinylmethyl) - 2 - naphthacenecarboxamide. It is so purified and dried that:

* * * * *

(ix) When calculated on the anhydrous basis, its absorptivity at 380 nanometers relative to that of the rolitetracycline working standard similarly treated is 100±4.4 percent.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed portion of the sample in sufficient sterile distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with sterile distilled water to the refer- ence concentration of 0.24 microgram of rolitetracycline per milliliter (estimated).

* * * * *

16. In § 446.76a by revising paragraphs (a)(1), (a)(1)(ix), and (b)(1) to read as follows:

§ 446.76a Sterile rolitetracycline nitrate.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.*—Sterile rolitetracycline nitrate is [4S - (4α,4aα,5aα,6β,12aα)] - 4 - (dimethylamino) - 1,4,4a,5,5a,6,11,12a - octahydro - 3,6,10,12,12a - pentahydroxy - 6 - methyl - 1,11 - dioxo - *N* - (1 - pyrrolidinylmethyl) - 2 - naphthacenecarboxamide mononitrate sesquihydrate. It is so purified and dried that:

* * * * *

(ix) When calculated on an anhydrous basis, its absorptivity at 380 nanometers relative to that of the rolitetracycline standard similarly treated is 89.2±4.0 percent.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient sterile distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of rolitetracycline per milliliter (estimated).

* * * * *

17. By revising §446.80 to read as follows:

§ 446.80 Tetracycline.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.*—Tetracycline is [4S - (4α,4aα,5aα,6β,12aα)] - 4 - (dimethylamino) - 1,4,4a,5,5a,6,11,12a - octahydro - 3,6,10,12,12a - pentahydroxy - 6 - methyl - 1,11 - dioxo - 2 - naphthacenecarboxamide. It is so purified and dried that:

(i) Its potency is not less than 975 micrograms per milligram on the anhydrous basis.

(ii) It passes the safety test.

(iii) Its moisture content is not more than 13 percent.

(iv) Its pH in an aqueous suspension containing 10 milligrams per milliliter is not less than 3 and not more than 7.

(v) When calculated on the anhydrous basis, its absorptivity at 380 nanometers relative to that of the tetracycline hydrochloride working standard similarly treated is 108.2±3.75 percent.

(vi) Its 4-epianhydrotetracycline content is not more than 2 percent.

(vii) It is crystalline.

(viii) It passes the identity test for tetracycline.

(2) *Labeling.* In addition to the requirements of § 432.5 of this chapter, each package shall bear on its label or labeling the statement "For use only in the manufacture of nonparenteral drugs."

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, safety, moisture, pH, absorptivity, 4-epianhydrotetracycline content, crystallinity, and identity.

(ii) Samples required: 10 packages, each containing approximately 60 milligrams.

(b) *Tests and methods of assay—*(1) *Potency.*—Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of tetracycline hydrochloride per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of tetracycline hydrochloride per milliliter (estimated).

(2) *Safety.* Proceed as directed in § 436.33 of this chapter, preparing the test dose solution as follows: Dissolve 40 milligrams (as the anhydrous compound) in 2 milliliters of 0.1*N* hydrochloric acid and dilute with sterile distilled water (diluent 3) to the appropriate test dose concentration.

(3) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous suspension containing 10 milligrams per milliliter.

(5) *Absorptivity.* Dissolve approximately 40 milligrams of the sample (as the anhydrous compound), accurately weighed, in 2.0 milliliters of 0.1*N* hydrochloric acid and dilute with distilled water to 250 milliliters. Transfer a 10.0-milliliter aliquot of this solution to a 100-milliliter volumetric flask, add approximately 75 milliliters of distilled water and 5.0 milliliters of 5*N* NaOH, dilute to volume with water and mix thoroughly. Treat a sample of the tetracycline hydrochloride working standard in the same manner. Exactly 6 minutes after the addition of the NaOH, determine the absorbance of each solution at 380 nanometers, using a suitable spectrophotometer and distilled water as the blank. Determine the percent absorptivity of the sample relative to the absorptivity of the standard using the following calculations:

$$\text{Percent relative absorptivity} = \frac{\text{Absorbance of sample} \times \text{Milligrams of standard} \times \text{Potency of standard in micrograms per milligram}}{\text{Absorbance of standard} \times \text{Milligrams of sample} \times (100-m)} \times 10$$

where: m = Percent moisture in the sample.

(6) *4-epianhydrotetracycline.* Proceed as directed in § 436.309 of this chapter.

(7) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

(8) *Identity.* Proceed as directed in § 436.308 of this chapter.

18. By adding new § 446.81 to read as follows:

§ 446.81 Tetracycline hydrochloride.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Tetracycline hydrochloride is [4S-(4α,4aα,5aα,6β,12aα)]-4-(dimethylamino)-1,4,4a,5,5a,6,11,12a-octahydro-3,6,10,12,12a-pentahydroxy-6-methyl-1,11-dioxo-2-naphthacenecarboxamide monohydrochloride. It is so purified and dried that:

(i) Its potency is not less than 900 micrograms per milligram.

(ii) It passes the safety test.

(iii) Its loss on drying is not more than 2 percent.

(iv) Its pH in an aqueous solution containing 10 milligrams per milliliter is not less than 1.8 and not more than 2.8.

(v) When calculated on the anhydrous basis, its absorptivity at 380 nanometers relative to that of the tetracycline hydrochloride working standard similarly treated is 100±4 percent.

(vi) Its 4-epianhydrotetracycline content is not more than 2.0 percent.

(vii) It is crystalline.

(viii) It passes the identity test for tetracycline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, safety, loss on drying, pH, absorptivity, 4-epianhydrotetracycline content, crystallinity, and identity.

(ii) Samples required: 10 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of tetracycline hydrochloride per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of tetracycline hydrochloride per milliliter (estimated).

(2) *Safety.* Proceed as directed in § 436.33 of this chapter.

(3) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 10 milligrams per milliliter.

(5) *Absorptivity.* Dissolve approximately 40 milligrams of the sample, accurately weighed, in approximately 150 milliliters of distilled water by mixing thoroughly. Dilute to 250 milliliters with distilled water and mix thoroughly. Transfer a 10.0 milliliter aliquot of this solution to a 100-milliliter volumetric flask, add about 75 milliliters of distilled water and 5.0 milliliters of 5*N* NaOH, dilute to volume with water, and mix thoroughly. Treat a sample of the tetracycline hydrochloride working standard in the same manner. Exactly 6 minutes after the addition of the NaOH, determine the absorbance of each solution at 380 nanometers, using a suitable spectrophotometer and distilled water as the blank. Determine the percent absorptivity of the sample relative to the absorptivity of the standard using the following calculations:

$$\text{Percent relative absorptivity} = \frac{\text{Absorbance of sample}}{\text{Absorbance of standard}} \times \frac{\text{Milligrams of standard}}{\text{Milligrams of sample} \times (100-m)} \times \text{Potency of standard in micrograms per milligram} \times 10$$

where: m = Percent moisture in the sample.

(6) *4-Epianhydrotetracycline.* Proceed as directed in § 436.309 of this chapter.

(7) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

(8) *Identity.* Proceed as directed in § 436.308 of this chapter.

19. By revising § 446.81a to read as follows:

§ 446.81a Sterile tetracycline hydrochloride.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Tetracycline hydrochloride is [4S - (4α,4aα,5aα,6β,12aα)] - 4 - dimethylamino) - 1,4,4a,5,5a,6,11,12a - octahydro - 3,6,10,12,12a - pentahydroxy - 6 - methyl - 1,11 - dioxo - 2 - naphthacene - carboxamide monohydrochloride. It is so purified and dried that:

(i) Its potency is not less than 900 micrograms of tetracycline hydrochloride per milligram.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) It passes the safety test.

(v) It contains no histamine or histamine-like substances.

(vi) Its loss on drying is not more than 2 percent.

(vii) Its pH in an aqueous solution containing 10 milligrams per milliliter is not less than 1.8 and not more than 2.8.

(viii) When calculated on the anhydrous basis, its absorptivity at 380 nanometers relative to that of the tetracycline hydrochloride working standard similarly treated is 100±4 percent.

(ix) Its 4-epianhydrotetracycline content is not more than 2.0 percent.

(x) It is crystalline.

(xi) It passes the identity test for tetracycline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, safety, histamine, loss on drying, pH, absorptivity, 4-epianhydrotetracycline content, crystallinity, and identity.

(ii) Samples required:

(a) For all tests except sterility: 10 packages, each containing approximately 300 milligrams.

(b) For sterility testing: 20 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of tetracycline hydrochloride per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of tetracycline hydrochloride per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section, except use diluting fluid D in lieu of diluting fluid A.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 5 milligrams of tetracycline hydrochloride per milliliter.

(4) *Safety.* Proceed as directed in § 436.33 of this chapter.

(5) *Histamine.* Proceed as directed in § 436.35 of this chapter.

(6) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

(7) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 10 milligrams per milliliter.

(8) *Absorptivity.* Dissolve approximately 40 milligrams of the sample, accurately weighed, in approximately 150 milliliters of distilled water by mixing thoroughly. Dilute to 250 milliliters with distilled water and mix thoroughly. Transfer a 10-milliliter aliquot of this solution to a 100-milliliter volumetric flask, add approximately 75 milliliters of distilled water and 5 milliliters of 5*N* NaOH, dilute to volume with water, and mix thoroughly. Treat a sample of the tetracycline hydrochloride working standard in the same manner. Exactly 6 minutes after the addition of the NaOH, determine the absorbance of each solution at 380 nanometers, using a suitable spectrophotometer and distilled water as the blank. Determine the percent absorptivity of the sample relative to the absorptivity of the standard using the following calculation:

$$\text{Percent relative absorptivity} = \frac{\text{Absorbance of sample}}{\text{Absorbance of standard}} \times \frac{\text{Milligrams of standard}}{\text{Milligrams of sample} \times (100-m)} \times \text{Potency of standard in micrograms per milligram} \times 10$$

where: m = Percent moisture in the sample.

(9) *4-Epianhydrotetracycline.* Proceed as directed in § 436.309 of this chapter.

(10) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

(11) *Identity.* Proceed as directed in § 436.308 of this chapter.

20. By revising § 446.82 to read as follows:

§ 446.82 Tetracycline phosphate complex.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Tetracycline phosphate complex is [4S-(4aα,4aα,5aα,6β,12aα)] - 4 - (dimethylamino) - 1,4,4a,5,5a,6,11,12a - octahydro - 3,6,10,12,12a - pentahydroxy - 6 - methyl - 1,11 - dioxo - 2 - naphthacenecarboxamide phosphate complex. It is so purified and dried that:

(i) Its potency is not less than 750 micrograms per milligram on the anhydrous basis.

(ii) It passes the safety test.

(iii) Its moisture content is not more than 9 percent.

(iv) Its pH in an aqueous suspension containing 10 milligrams per milliliter is not less than 2 and not more than 4.

(v) When calculated on the anhydrous basis, its absorptivity at 380 nanometers relative to that of the tetracycline hydrochloride working standard similarly treated is 82.0±4.9 percent.

(vi) Its 4-epianhydrotetracycline content is not more than 2 percent.

(vii) It passes the identity test, showing a presence of phosphate, a content of not more than 0.2 percent chloride, and a content of not more than 1 percent tetracycline base.

(viii) It is crystalline.

(2) *Labeling.* In addition to the requirements of § 432.5 of this chapter, each such package shall bear on its label or labeling the statement "For use only in the manufacture of nonparenteral drugs".

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, safety, moisture, pH, absorptivity, 4-epianhydro- tetracycline content, identity, and crystallinity.

(ii) Samples required: 10 packages, each containing approximately 60 milligrams.

(b) *Tests and methods of assay—*(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficent 0.1*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of tetracycline hydrochloride per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of tetracycline hydrochloride per milliliter (estimated).

(2) *Safety.* Proceed as directed in § 436.33 of this chapter, preparing the sample solution as follows: Dissolve 40 milligrams (as the anhydrous compound) in 2.0 milliliters of 0.1*N* hydrochloric acid and dilute with sterile distilled water (diluent 3) to the appropriate test dose concentration.

(3) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using a suspension containing 10 milligrams of the sample per milliliter.

(5) *Absorptivity.* Dissolve approximately 40 milligrams of the sample, accurately weighed, in 2.0 milliliters of 0.1*N* HCl and dilute to 250 milliliters with distilled water. Transfer a 10.0 milliliter aliquot of this solution to a 100-milliliter volumetric flask, add about 75 milliliters of distilled water and 5.0 milliliters of 5*N* NaOH, dilute to volume with water, and mix thoroughly. Treat a sample of the tetracycline hydrochloride working standard in the same manner. Exactly 6 minutes after the addition of NaOH, determine the absorbance of each solution at 380 nanometers, using a suitable spectrophotometer and distilled water as the blank. Determine the percent absorptivity of the sample relative to the absorptivity of the standard using the following calculations:

$$\text{Percent relative absorptivity} = \frac{\text{Absorbance of sample}}{\text{Absorbance of standard}} \times \frac{\text{Milligrams of standard}}{\text{Milligrams of sample} \times (100-m)} \times \text{Potency of standard in micrograms per milligram} \times 10$$

where: m = Percent moisture in the sample.

(6) *4-Epianhydrotetracycline.* Proceed as directed in § 436.309 of this chapter.

(7) *Identity—*(i) *Presence of phosphate.* Prepare a filtrate as follows: Suspend 100 milligrams of the sample in 10 milliliters of distilled water and filter a small portion by gravity. Transfer 1.0 milliliter of the filtrate to a 100-milliliter glass-stoppered cylinder, add 10.0 milliliters of distilled water, 2.0 milliliters of ammonium molybdate test solution, 1.0 milliliter of stannous chloride test solution, and 10.0 milliliters of isobutyl alcohol-benzene mixture (1:1 ratio), all in the order named. Shake vigorously for 1 minute, allow the layers to separate, and examine the top organic layer. In the presence of phosphate, the top layer turns blue.

(ii) *Chloride content.* To 1.0 milliliter of the filtrate prepared as directed in the first sentence of paragraph (b)(7)(i) of this section, add 1 drop of silver nitrate test solution and 1 drop of nitric acid. Any turbidity produced is not greater than that obtained by similarly treating 1.0 milliliter of 0.057*N* hydrochloric acid.

(iii) *Determination of percent tetracycline base.* This test is used to determine the quantity of tetracycline present as base in mixtures with phosphate salts.

(*a*) *Reagents—*(*1*) 1,4-Dioxane.

(*2*) Purified dioxane: Pass the dioxane through a column of Amberlite IRA 400 (OH-) resin or equivalent.

(*3*) Perchloric acid, 0.01*N:* Dilute 0.84 milliliter of 70 percent perchloric acid to 1,000 milliliters with purified dioxane; standardize at least once every 2 days, as follows: Weigh accurately about 70 milligrams of diphenylguanidine, and dissolve in 50 milliliters of ethyl alcohol in a 250-milliliter flask. Add two drops of methyl red, and titrate with the perchloric acid solution until the yellow color changes to orange. Deduct the volume of the perchloric acid consumed by 50 milliliters of the ethyl alcohol, and calculate the normality. Each 2.113 milligrams of diphenylguanidine is equivalent to 1 milliliter of 0.01*N* perchloric acid.

(*4*) Methyl red indicator: Dissolve 100 milligrams of methyl red in 100 milliliters of methyl alcohol.

(*b*) *Procedure.* Place an accurately weighed 1-gram sample into a 50-milliliter Erlenmeyer flask, add 10.0 milliliters of purified dioxane and shake the mixture manually for about 2 minutes. Allow to settle, decant all the supernatant liquid into a 50-milliliter polyethylene centrifuge tube, cover with Parafilm (or equivalent), and centrifuge until clear (about 3 minutes). Pipette 5.0 milliliters of the clear, supernatant solution into a 50-milliliter beaker, stir magnetically, and titrate with 0.01*N* perchloric acid, using methyl red as the indicator. The endpoint is the last color change to orange when a drop of titrant is added. Calculate the percent tetracycline base as follows:

$$\text{Percent tetracycline base} = \frac{\text{Milliliters of acid used} \times \text{Normality} \times 0.4445 \times 200}{\text{Weight of sample}}$$

(8) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

21. By revising § 446.110 to read as follows:

§ 446.110 Chlortetracycline hydrochloride capsules.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Chlortetracycline hydrochloride capsules are composed of chlortetracycline hydrochloride and one or more suitable and harmless diluents, lubricants, and fillers. Each capsule contains 50, 100, or 250 milligrams of chlortetracycline hydrochloride. The potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of chlortetracycline hydrochloride that it is represented to contain. The loss on drying is not more than 1 percent. The chlortetracycline hydrochloride used conforms to the standards prescribed by § 446.10(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The chlortetracycline hydrochloride used in making the batch for potency, safety, loss on drying, pH, crystalinity, and identity.

(*b*) The batch for potency and loss on drying.

(ii) Samples required:

(*a*) The chlortetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 36 capsules.

(b) *Test and methods of assay—*(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place a representative number of capsules into a high-speed glass blender jar containing sufficient 0.01*N* hydrochloric acid to give a stock solution of convenient concentration. Blend for 3 to 5 minutes. Remove a aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.06 microgram of chlortetracycline hydrochloride per milliliter (estimated).

(2) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

§ 446.110a [Revoked]

22. By revoking § 446.110a *Chlortetracycline hydrochloride tablets; tetracycline hydrochloride tablets; tetracycline tablets.*

§ 446.110b [Revoked]

23. By revoking § 446.110b *Chlortetracycline hydrochloride capsules; tetracycline hydrochloride capsules; tetracycline capsules; tetracycline phosphate complex capsules.*

§ 446.111 [Revoked]

24. By revoking § 446.111 *Chlortetracycline calcium sirup (chlortetracycline calcium oral drops); tetracycline sirup (tetracycline oral drops); tetracycline magnesium sirup (tetracycline magnesium oral drops).*

25. In § 446.115a by revising paragraph (b)(1) to read as follows:

§ 446.115a Demeclocycline oral suspension.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Transfer an accurately measured representative portion of the well-shaken suspension to an appropriate-sized volumetric flask and dilute to volume with 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of demeclocycline hydrochloride per milliliter (estimated). Mix well. Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.100 microgram of demeclocycline hydrochloride per milliliter (estimated).

* * * * *

26. In § 446.115b by revising paragraph (b)(1) to read as follows:

§ 446.115b Demeclocycline for oral suspension.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Reconstitute as directed in the labeling. Transfer an accurately measured representative portion of the well-shaken suspension to an appropriate-sized volumetric flask and dilute to volume with 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of demeclocycline per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.100 microgram of demeclocycline hydrochloride per milliliter (estimated).

* * * * *

27. In § 446.116a by revising paragraph (b)(1) to read as follows:

§ 446.116a Demeclocycline hydrochloride tablets.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place a representative number of tablets into a high-speed glass blender jar containing sufficient 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of demeclocycline hydrochloride per milliliter (estimated). Blend for 3 to 5 minutes. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.100 microgram of demeclocycline hydrochloride per milliliter (estimated).

* * * * *

28. In § 446.116c by revising paragraph (b)(1) to read as follows:

§ 446.116c Demeclocycline hydrochloride capsules.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place a representative number of capsules into a high-speed glass blender jar containing sufficient 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of demeclocycline hydrochloride per milliliter (estimated). Blend for 3 to 5 minutes. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.100 microgram of demeclocycline hydrochloride per milliliter (estimated).

* * * * *

29. In § 446.120a by revising paragraph (b)(1) to read as follows:

§ 446.120a Doxycycline hyclate capsules.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place a representative number of capsules into a high-speed glass blender jar containing sufficient 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of doxycycline per milliliter (estimated). Blend for 3 to 5 minutes. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.100 microgram of doxycycline per milliliter (estimated).

* * * * *

30. In § 446.121 by revising paragraphs (a)(2) and (b)(1), to read as follows:

§ 446.121 Doxycycline monohydrate for oral suspension.

* * * * *

(a) * * *

(2) *Labeling.* In addition to the labeling requirements of § 432.5 of this chapter, this drug shall be labeled "doxycycline for oral suspension".

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Reconstitute as directed in the labeling. Transfer an accurately measured representative portion of the well-shaken suspension to an appropriate-sized volumetric flask and dilute to volume with 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of doxycycline per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.100 microgram of doxycycline per milliliter (estimated).

* * * * *

31. In § 446.150a by revising paragraph (b)(1) to read as follows:

§ 446.150a Methacycline hydrochloride capsules.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place a representative number of capsules into a high-speed glass blender jar containing sufficient sterile distilled water to give a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.06 microgram of methacycline per milliliter (estimated).

* * * * *

32. In § 446.150b by changing the word "sirup" to read "oral suspension" in the section heading and in paragraph (a)(1) and by revising paragraph (b)(1) to read as follows:

§ 446.150b Methacycline hydrochloride oral suspension.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Transfer an accurately measured representative portion of the well-shaken suspension to an appropriate-sized volumetric flask, and dilute to volume with sterile distilled water. Mix well. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.06 microgram of methacycline per milliliter (estimated).

* * * * *

33. In § 446.160a by revising paragraph (b)(1) to read as follows:

§ 446.160a Minocycline hydrochloride tablets.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place a representative number of tablets into a high-speed glass blender jar containing sufficient 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of minocycline per milliliter (estimated). Blend for 3 to 5 minutes. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.100 microgram of minocycline per milliliter (estimated).

34. In § 446.160b by revising paragraph (b)(1) to read as follows:

§ 446.160b Minocycline hydrochloride capsules.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place a representative number of capsules into a high-speed glass blender jar containing sufficient 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of minocycline per milliliter (estimated). Blend for 3 to 5 minutes. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.100 microgram of minocycline per milliliter (estimated).

* * * * *

35. In § 446.160c by revising paragraph (b)(1) to read as follows:

§ 446.160c Minocycline hydrochloride oral suspension.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Transfer an accurately measured representative portion of the well-shaken suspension to an appropriate-sized volumetric flask and dilute to volume with 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of minocycline per milliliter (estimated). Mix well. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.100 microgram of minocycline per milliliter (estimated).

* * * * *

36. By revising § 446.165a to read as follows:

§ 446.165a Oxytetracycline tablets.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Oxytetracycline tablets are tablets composed of oxytetracycline and one or more suitable and harmless diluents, binders, lubricants, colorings, and coating substances. The potency of each tablet is 250 milligrams of oxytetracycline. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain. The moisture content is not more than 7.5 percent. They shall disintegrate within 1 hour. The oxytetracycline used conforms to the standards prescribed by § 446.165(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The oxytetracycline used in making the batch for potency, safety, moisture, pH, absorptivity, identity, and crystallinity.

(*b*) The batch for potency moisture, and disintegration time.

(ii) Samples required:

(*a*) The oxytetracycline used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 36 tablets.

(b) *Tests and methods of assay—*(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place a representative number of tablets into a high-speed glass blender jar containing sufficient 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of oxytetracycline per milliliter (estimated). Blend for 3 to 5 minutes. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *Disintegration time.* Proceed as directed in § 436.212 of this chapter, using the method described in paragraph (e)(1) of that section.

§ 446.165b [Revoked]

37. By revoking § 446.165b *Oxytetracycline capsules; oxytetracycline hydrochloride capsules.*

38. By revising § 446.165d to read as follows:

§ 446.165d Oxytetracycline for oral suspension.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Oxytetracycline for oral suspension is oxytetracycline with one or more suitable and harmless buffer substances, preservatives, diluents, colorings, and flavorings. When prepared as directed in the labeling, each milliliter contains 50 milligrams of oxytetracycline. Its potency is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of oxytetracycline that it is represented to contain. Its loss on drying is not more than 2 percent. When reconstituted as directed in the labeling, its pH is not less than 5.5 and not more than 7.5. The oxytetracycline used conforms to the standards prescribed by § 446.65(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The oxytetracycline used in making the batch for potency, safety, moisture, pH, absorptivity, identity, and crystallinity.

(*b*) The batch for potency, loss on drying, and pH.

(ii) Samples required:

(*a*) The oxytetracycline used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of six immediate containers.

(b) *Tests and methods of assay—*(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Reconstitute as directed in the labeling. Transfer an accurately measured representative portion of the well-shaken suspension to an appropriate-sized volumetric flask and dilute to volume with 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of oxytetracycline per milliliter (estimated). Mix well. Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(2) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

(3) *pH.* Reconstitute as directed in the labeling and proceed as directed in § 436.202 of this chapter.

39. By revising § 446.166 to read as follows:

§ 446.166 Oxytetracycline calcium oral suspension.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Oxytetracycline calcium oral suspension contains oxytetracycline calcium with one or more suitable and harmless buffer substances, suspending and stabilizing agents, flavorings, colorings, solvents, and preservatives suspended in a suitable and harmless vehicle. It contains *N*-acetyl glucosamine. Each milliliter contains a quantity of oxytetracycline calcium equivalent to either 25 milligrams or 100 milligrams of oxytetracycline. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain. Its pH is not less than 5.0 and not more than 8.0. The oxytetracycline calcium used conforms to the standards prescribed by § 446.66(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The oxytetracycline calcium used in making the batch for potency, safety, moisture, pH, calcium content, identity, and crystallinity.

(*b*) The batch for potency and pH.

(ii) Samples required:

(*a*) The oxytetracycline calcium used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of five immediate containers.

(b) *Tests and methods of assay—*(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Transfer an accurately measured representative portion of the sample to an appropriate-sized volumetric flask and dilute to volume with 0.1*N* hydrochloric acid to give a stock solution of convenient concentration containing not less than 150 micrograms of oxytetracycline per milliliter (estimated). Mix well. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(2) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted sample.

40. By revising § 446.167 to read as follows:

§ 446.167 Oxytetracycline hydrochloride capsules.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Oxytetracycline hydrochloride capsules are gelatin capsules containing oxytetracycline hydrochloride with or without one or more suitable and harmless buffers, preservatives, diluents, binders, and lubricants. They may contain glucosamine hydrochloride. Each capsule contains 50 milligrams, 100 milligrams, 125 milligrams, or 250 milligrams of oxytetracycline. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain. The loss on drying is not more than 5.0 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 446.67(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The oxytetracycline hydrochloride used in making the batch for potency, safety, loss on drying, pH, absorptivity, identity, and crystallinity.

(*b*) The batch for potency and loss on drying.

(ii) Samples required:

(*a*) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 30 capsules.

(b) *Tests and methods of assay—*(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place a representative number of capsules into a highspeed glass blender jar containing sufficient 0.1*N* hydrochloric acid to give a stock solution of convenient concentration containing not less than 150 micrograms of oxytetracycline per milliliter (estimated). Blend for 3 to 5 minutes. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracyline per milliliter (estimated).

(2) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

41. By adding new § 446.180c to read as follows:

§ 446.180c Tetracycline oral suspension.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Tetracycline oral suspension is composed of tetracycline with or without one or more suitable

and harmless buffer substances, suspending and stabilizing agents, and preservatives, suspended in a suitable and harmless vehicle. Each milliliter contains 25 milligrams of tetracycline. Its potency is satisfactory if it contains the equivalent of not less than 90 percent and not more than 125 percent of the number of milligrams of tetracycline hydrochloride that it is represented to contain. Its pH is not less than 3.5 and not more than 6.0. Its 4-epianhydrotetracycline content is not more than 3.0 percent. The tetracycline used conforms to the standards prescribed by § 446.80(a).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The tetracycline used in making the batch for potency safety moisture, pH, absorptivity, 4-epianhydrotetracycline content, crystallinity, and identity.

(*b*) The batch for potency, pH, and 4-epianhydrotetracycline content.

(ii) Samples required:

(*a*) The tetracycline used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: a minmum of 10 immediate containers.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Transfer an accurately measured representative portion of the well-shaken suspension to an appropriate-sized volumetric flask and dilute to volume with 0.1*N* Hydrochloric acid to give a stock solution of convenient concentration containing not less than 150 micrograms of tetracycline hydrochloride per milliliter (estimated). Mix well. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.24 microgram of tetracycline hydrochloride per milliliter (estimated).

(2) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted suspension.

(3) *4-Epianhydrotetracycline.* Proceed as directed in § 436.309(b) of this chapter.

42. By adding new § 446.180d to read as follows

§ 446.180d Tetracycline for oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Tetracycline for oral suspension is composed of tetracycline with one or more suitable and harmless suspending agents, colorings, and flavorings. When reconstituted as directed in the labeling, each milliliter contains tetracycline equivalent to 50 milligrams of tetracycline hydrochloride. Its potency is satisfactory if it contains the equivalent of not less than 90 percent and not more than 125 percent of the number of milligrams of tetracycline hydrochloride that it is represented to contain. Its loss on drying is not more than 5.0 percent. When reconstituted as directed in the labeling., its pH is not less than 4.0 and not more than 6.5. Its 4-epianhydrotetracycline content is not more than 3.0 percent. The tetracycline used conforms to the standards prescribed by § 446.80(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The tetracycline used in making the batch for potency safety moisture, pH, absorptivity, 4-epianhydrotetracycline content, crystallinity, and identity.

(*b*) The batch for potency, loss on drying, pH, and 4-epianhydrotetra- cycline content.

(ii) Samples required:

(*a*) The tetracycline used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: a minmum of 10 immediate containers.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Reconstitute as directed in the labeling. Transfer an accurately measured representative portion of the well-shaken suspension to an appropriate-sized volumetric flask and dilute to volume with 0.1*N* Hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of tetracycline hydrochloride per milliliter (estimated). Mix well. Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of tetracycline hydrochloride per milliliter (estimated).

(2) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using the reconstituted suspension.

(4) *4-Epianhydrotetracycline.* Proceed as directed in § 436.309(b) of this chapter.

§ 446.181c [Revoked]

43. By revoking and reserving § 446.181c *Tetracycline hydrochloride oral suspension (tetracycline hydrochloride homogenized mixture); tetracycline phosphate complex oral suspension (tetracycline phosphate complex oral drops); tetracycline hydrochloride oral solution; tetracycline calcium oral suspension; tetracycline oral suspension.*

44. By adding new § 446.181d to Subpart B to read as follows:

§ 446.181d Tetracycline hydrochloride tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Tetracycline hydrochloride tablets contain tetracycline hydrochloride with or without one or more buffer substances, preservatives, diluents, binders, lubricants, colorings, and flavorings. Each tablet contains 250 milligrams or 500 milligrams of tetracycline hydrochloride. Its potency is satisfactory if it contains not less than 90 percent and not more than 125 percent of the number of milligrams of tetracycline hydrochloride that it is represented to contain. Its loss on drying is not more than 3.0 percent. The tablets shall disintegrate within 1 hour. Its 4-epianhydrotetracycline content is not more than 3.0 percent. The tetracycline hydrochloride used conforms to the standard . prescribed by § 446.81(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The tetracycline hydrochloride used in making the batch for potency, safety, loss on drying, pH, absorptivity, 4-epianhydrotetracycline content, crystallinity, and identity.

(*b*) The batch for potency, loss on drying, disintegration time, and 4-epianhydrotetracycline content.

(ii) Samples required:

(*a*) The tetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 36 tablets.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place a representative number of tablets into a high-speed glass blender jar containing sufficient 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of tetracycline hydrochloride per milliliter (estimated). Blend for 3 to 5 minutes. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.24 microgram of tetracycline hydrochloride per milliliter (estimated).

(2) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

(3) *Disintegration time.* Proceed as directed in § 436.212 of this chapter.

(4) *4-Epianhydrotetracycline.* Proceed as directed in § 436.309 of this chapter.

45. By adding new § 446.181e to read as follows:

§ 446.181e Tetracycline hydrochloride capsules.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Tetracycline hydrochloride capsules are composed of tetracycline hydrochloride with or without one or more suitable and harmless buffer substances, preservatives, diluents, binders, lubricants, colorings, and flavorings enclosed in a gelatin capsule. Each capsule contains 50, 100, 125, 250, or 500 milligrams of tetracycline hydrochloride. Its potency is satisfactory if it is not less than 90 percent and not more than 125 percent of the number of milligrams of tetracycline hydrochloride that it is represented to contain. Its loss on drying is not more than 4 percent. Its 4-epianhydrotetracycline content is not more than 3.0 percent. The tetracycline hydrochloride used conforms to the standards prescribed by § 446.81(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The tetracycline hydrochloride used in making the batch for potency, safety, loss on drying, pH, absorptivity, 4-epianhydrotetracycline content, crystallinity, and identity.

(*b*) The batch for potency, loss on drying, and 4-epianhydrotetracycline content.

(ii) Samples required:

(*a*) The tetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 30 capsules.

(b) *Tests and methods of assay—*(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place a representative number of capsules into a high-speed glass blender jar containing sufficient 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of tetracycline hydrochloride per milliliter (estimated). Blend for 3 to 5 minutes. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.24 microgram of tetracycline hydrochloride per milliliter (estimated).

(2) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

(3) *4-Epianhydrotetracycline.* Proceed as directed in § 436.309 of this chapter.

46. By adding new § 446.182 to Subpart B to read as follows:

§ 446.182 Tetracycline phosphate complex capsules.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.*—Tetracycline phosphate complex capsules contain tetracycline phosphate complex with or without one or more buffer substances, preservatives, diluents, binders, lubricants, colorings, and flavorings enclosed in a gelatin capsule. Each capsule contains tetracycline phosphate complex equivalent to 50, 100, 125, 250, or 500 milligrams of tetracycline hydrochloride. Its potency is satisfactory if it contains the equivalent of not less than 90 percent and not more than 125 percent of the number of milligrams of tetracycline hydrochloride that it is represented to contain. Its loss on drying is not more than 9.0 percent. Its 4-epianhydrotetracycline content is not more than 3.0 percent. The tetracycline phosphate complex used conforms to the standards prescribed by § 446.82 (a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification, samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The tetracycline phosphate complex used in making the batch for potency, safety, moisture, pH, absorptivity, 4-epianhydrotetracycline content, identity, and crystallinity.

(*b*) The batch for potency, loss on drying, and 4-epianhydrotetracycline content.

(ii) Samples required:

(*a*) The tetracycline phosphate complex used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 30 capsules.

(b) *Tests and methods of assay—*(1) *Potency.*—Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place a representative number of capsules into a high speed glass blender jar containing sufficient 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of tetracycline hydrochloride per milliliter (estimated). Blend for 3 to 5 minutes. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.24 microgram of tetracycline per milliliter (estimated).

(2) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

(3) *4-Epianhydrotetracycline.* Proceed as directed in § 436.309 of this chapter.

§ 446.210 [Revoked]

47. By revoking § 446.210 *Sterile chlortetracycline hydrochloride.*

48. In § 446.220(b)(1) by revising the last sentence therein to read as follows:

§ 446.220 Doxycycline hyclate for injection.

* * * * *

(b) * * *

(1) * * * Futher dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.100 microgram of doxycycline per milliliter (estimated).

* * * * *

49. In § 446.260(b)(1) by revising the last sentence therein to read as follows:

§ 446.260 Sterile minocycline hydrochloride.

* * * * *

(b) * * *

(1) * * * Futher dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.100 microgram of minocycline per milliliter (estimated).

* * * * *

50. By revising § 446.265 to read as follows:

§ 446.265 Oxytetracycline injection.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.*—Oxytetracycline injection is a solution of oxytetracycline with or without one or more suitable and harmless buffer substances, anesthetics, preservatives, antioxidants, complexing agents, and solvents. Each milliliter contains 50 milligrams or 125 milligrams of oxytetracycline. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain. It is sterile. It is nonpyrogenic. It passes the safety test. It contains no histamine or histamine-like substances. Its pH is not less than 8.0 and not more than 9.0. The oxytetracycline used conforms to the standards prescribed by § 446.65a(a)(1), except sterility, pyrogens, safety, and histamine.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the

requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The oxytetracycline used in making the batch for potency, moisture, pH, absorptivity, identity, and crystallinity.

(*b*) The batch for potency, sterility, pyrogens, safety, histamine, and pH.

(ii) Samples required:

(*a*) The oxytetracycline used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency.*—Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Transfer an accurately measured representative quantity of the sample to an appropriate-sized volumetric flask. Dilute to volume with 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of oxytetracycline per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 5.0 milligrams of oxytetracycline per milliliter.

(4) *Safety.* Proceed as directed in § 436.33 of this chapter, except inject the test dose intraperitoneally.

(5) *Histamine.* Proceed as directed in § 436.35 of this chapter.

(6) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted solution.

51. By revising § 446.267 to read as follows:

§ 446.267 Oxytetracycline hydrochloride for injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.*—Oxytetracycline hydrochloride for injection is a dry mixture of oxytetracycline hydrochloride and a suitable buffer substance. Its potency is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of oxytetracycline that it is represented to contain. It is sterile. It is nonpyrogenic. It passes the safety test. It contains no histamine or histamine-like substances. Its loss on drying is not more than 3.0 percent. Its pH in an aqueous solution containing 25 milligrams per milliliter is not less than 1.8 and not more than 2.8. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 446.67a(a)(1), except sterility, pyrogens, safety, and histamine.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The oxytetracycline hydrochloride used in making the batch for potency, loss on drying, pH, absorptivity, identity, and crystallinity.

(*b*) The batch for potency, sterility, pyrogens, safety, histamine, loss on drying, and pH.

(ii) Samples required:

(*a*) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency.*—Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Reconstitute as directed in the labeling. Then, using a suitable hypodermic needle and syringe, promptly remove all the withdrawable contents if it is represented as a single dose container; or, if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from the container. Dilute the sample thus obtained with sufficient 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of oxytetracycline per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section, except use diluting fluid D in lieu of diluting fluid A.

(3) *Pyrogens.* Proceed as directed in 436.32(b) of this chapter, using a solution containing 5.0 milligrams per milliliter.

(4) *Safety.* Proceed as directed in § 436.33 of this chapter.

(5) *Histamine.* Proceed as directed in § 436.35 of this chapter, using the diluent recommended by the manufacturer in the labeling for the drug.

(6) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

(7) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 25 milligrams per milliliter.

52. In § 446.275a by revising paragraph (b)(1) to read as follows:

§ 446.275a Rolitetracycline for intravenous use.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Reconstitute the sample as directed in the labeling. Using a suitable hypodermic needle and syringe, remove all the withdrawable contents if it is represented as a single dose container; or, if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Dilute the sample thus obtained with sufficient sterile distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of rolitetracycline per milliliter (estimated).

* * * * *

53. In § 446.275b by revising paragraph (b)(1) to read as follows:

§ 446.275b Rolitetracycline for intramuscular use.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Reconstitute the sample as directed in the labeling. Then, using a suitable hypodermic needle and syringe, remove all the withdrawable contents if it is represented as a single-dose container; or, if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Dilute the sample thus obtained with sufficient sterile distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of rolitetracycline per milliliter (estimated).

* * * * *

54. In § 446.276a by revising paragraph (b)(1) to read as follows:

§ 446.276a Rolitetracycline nitrate for intravenous use.

* * * * *

(b) * * *

(b) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Reconstitute the sample as directed in the labeling. Using a suitable hypodermic needle and syringe, remove all the withdrawable contents if it is represented as a singledose container; or, if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from the container. Dilute the sample thus obtained with sufficient sterile distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of rolitetracycline per milliliter (estimated).

* * * * *

55. In § 446.276b by revising paragraph (b)(1) to read as follows:

§ 446.276b Rolitetracycline nitrate for intramuscular use.

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Reconstitute the sample as directed in the labeling. Then, using a suitable hypodermic needle and syringe, remove all the withdrawable contents if it is represented as a single-dose container; or, if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Dilute the sample thus obtained with sufficient sterile distilled water to give a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of rolitetracycline per milliliter (estimated).

* * * * *

56. By revising § 446.281 to read as follows:

§ 446.281 Tetracycline hydrochloride for injection.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Tetracycline hydrochloride for injection is either a dry mixture of tetracycline hydrochloride, magnesium chloride, or magnesium ascorbate and one or more suitable buffer substances, with or without one or more suitable preservatives and anesthetic agents, and with or without one or more suitable solubilizers and stabilizers or a dry mixture of tetracycline hydrochloride with one or more suitable and harmless stabilizing agents. Its potency is satisfactory if it contains not less than 90 percent and not more than 115 percent of the number of milligrams of tetracycline hydrochloride that it is represented to contain. It is sterile. It is nonpyrogenic. Its loss on drying is not more than 5 percent. Its pH in an aqueous solution containing 10 milligrams per milliliter is not less than 2.0 and not more than 3.0. Its 4-epianhydrotetracycline content is not more than 3 percent. The tetracycline hydrochloride used conforms to the standards prescribed by § 446.81a(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The tetracycline hydrochloride used in making the batch for potency, safety, histamine, loss on drying, pH, absorptivity, 4-epianhydrotetracycline content, crystallinity, and identity.

(*b*) The batch for potency, sterility, pyrogens, loss on drying, pH, and 4-epianhydrotetracycline content.

(ii) Samples required:

(*a*) The tetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 10 immediate containers.

(b) *Tests and methods of assay—*(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Reconstitute the sample as directed in the labeling. Then, using a suitable hypodermic needle and syringe, remove all the withdrawable contents if it is represented as a singledose container; or, if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Dilute the sample thus obtained with sufficient 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of tetracycline hydrochloride per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of tetracycline hydrochloride per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section, except use diluting fluid D in lieu of diluting fluid A.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 5.0 milligrams of tetracycline hydrochloride per milliliter.

(4) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 10 milligrams per milliliter.

(6) *4-Epianhydrotetracycline.* Proceed as directed in § 436.309 of this chapter.

§ 446.281b [Revoked]

57. By revoking § 446.281b *Tetracycline hydrochloride for intramuscular use; tetracycline phosphate complex for intramuscular use.*

58. By adding new § 446.282 to Subpart C to read as follows:

§ 446.282 Tetracycline phosphate complex for injection.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Tetracycline phosphate complex for injection is a dry mixture of tetracycline phosphate complex, magnesium chloride or magnesium ascorbate and one or more suitable buffer substances, with or without one or more suitable preservatives and anesthetic agents, and with or without one of more suitable solubilizers and stabilizers. Its potency is satisfactory if it contains not less than 90 percent and not more than 115 percent of the number of milligrams of tetracycline hydrochloride that it is represented to contain. It is sterile. It is nonpyrogenic. Its loss on drying is not more than 5 percent. Its pH in an aqueous solution containing 10 milligrams per milliliter is not less than 2.0 and not more than 3.0. Its 4-epianhydrotetracycline content is not more than 3.0 percent. The tetracycline phosphate complex conforms to the standards prescribed by § 446.82(a)(1), and it contains no histamine or histamine-like substance.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The tetracycline phosphate complex used in making the batch for potency, safety, moisture, pH, histamine, absorptivity, 4-epianhydrotetracycline content, identity, and crystallinity.

(*b*) The batch for potency, sterility, pyrogens, loss on drying, pH, and 4-epianhydrotetracycline content.

(ii) Samples required:

(*a*) The tetracycline phosphate complex used in making the batch: 10 packages, each containing approximately 300 milligrams, and one package containing approximately 1 gram.

(*b*) The batch: A minimum of 10 immediate containers.

(b) *Tests and methods of assay—*(1) *Potency.* Reconstitute the sample as

directed in the labeling. Then, using a suitable hypodermic needle and syringe, remove all the withdrawable contents if it is represented as a single-dose container; or, if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Dilute the sample thus obtained with sufficient *0.1N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of tetracycline hydrochloride per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of tetracycline hydrochloride per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section, except use 50 milligrams in lieu of 300 milligrams of sample.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 5.0 milligrams of tetracycline hydrochloride per milliliter.

(4) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 10 milligrams per milliliter.

(6) *Histamine in the tetracycline phosphate complex used in making the batch.* Proceed as directed in § 436.35 of this chapter. Prepare the test solution by dissolving 40 milligrams of sample in 2.0 milliliters of 0.1*N* hydrochloric acid and diluting with sterile distilled water (diluent 3) to the prescribed concentration.

(7) *4-Epianhydrotetracycline.* Proceed as directed in § 436.309 of this chapter.

59. By revising § 446.310 to read as follows:

446.310 Chlortetracycline hydrochloride ophthalmic ointment.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.*—Chlortetracycline hydrochloride ophthalmic ointment contains chlortetracycline hydrochloride in a suitable and harmless ointment base. Each gram contains 10 milligrams of chlortetracycline hydrochloride. Its potency is satisfactory if it contains not less than 90 percent and not more than 125 percent of the number of milligrams of chlortetracycline hydrochloride that it is represented to contain. It is sterile. Its moisture content is not more than 0.5 percent. It passes the test for metal particles. The chlortetracycline hydrochloride used conforms to the standards prescribed by § 446.10a(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The chlortetracycline hydrochloride used in making the batch for potency, safety, loss on drying, pH, crystallinity, and identity.

(*b*) The batch for potency, sterility, moisture, and metal particles.

(ii) Samples required:

(*a*) The chlortetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of 15 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency.*—Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place an accurately weighed representative portion of the sample into a separatory funnel containing approximately 50 milliliters of peroxide-free ether. Shake the sample and ether until homogeneous. Add 20 to 25 milliliters of 0.01*N* hydrochloric acid and shake well. Allow the layers to separate. Remove the acid layer and repeat the extraction procedure with each of three more 20- to 25-milliliter quantities of 0.01*N* hydrochloric acid. Combine the extractives in a suitable volumetric flask and dilute to volume with 0.01*N* hydrochloric acid. Further dilute an aliquot with sterile distilled water to the reference concentration of 0.06 microgram of chlortetracycline hydrochloride per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(3) of that section.

(3) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(4) *Metal particles.* Proceed as directed in § 436.206 of this chapter.

§ 446.310a [Revoked]

60. By revoking § 446.310a *Chlortetracycline ophthalmic (chlortetracycline hydrochloride ophthalmic); tetracycline hydrochloride ophthalmic.*

§446.310b [Revoked]

61. By revoking § 446.310b *Chlortetracycline hydrochloride ointment; chlortetracycline calcium ointment; chlortetracycline calcium cream; tetracycline hydrochloride ointment (tetracycline hydrochloride in oil suspension) tetracycline ointment (tetracycline cream).*

§ 446.367a [Revoked]

62. By revoking § 446.367a *Ophthalmic oxytetracycline hydrochloride.*

§ 446.367b [Revoked]

63. By revoking § 446.367b *Oxytetracycline hydrochloride ophthalmic oil suspension.*

64. By revising § 446.367c to read as follows:

§ 446.367c Oxytetracycline hydrochloride-hydrocortisone acetate ophthalmic suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.*—Oxytetracycline hydrochloride-hydrocortisone acetate ophthalmic suspension is oxytetracycline hydrochloride and hydrocortisone acetate in a suitable and harmless oil base containing aluminum tristearate. Each milliliter contains oxytetracycline hydrochloride equivalent to 5 milligrams of oxytetracycline and 15 milligrams of hydrocortisone acetate. Its potency is satisfactory if it contains not less than 90 percent and not more than 115 percent of the number of milligrams of oxytetracycline that it is represented to contain. It is sterile. Its moisture content is not more than 1 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 446.67a (a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The oxytetracycline hydrochloride used in making the batch for potency, safety, loss on drying, pH, absorptivity, crystallinity, and identity.

(*b*) The batch for potency, sterility, and moisture.

(ii) Samples required:

(*a*) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of five immediate containers.

(*2*) For sterility testing: 20 immediate containers collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency.*—Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place an accurately measured, representative portion of the sample into a high-speed glass blender jar containing 1.0 milliliter of polysorbate 80 and sufficient 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150

micrograms of oxytetracycline per milliliter (estimated). Blend for 3 to 5 minutes. Further dilute an aliquot with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(2) of that section, except use 0.25 milliliter of the sample in lieu of 1.0 milliliter.

(3) *Moisture.* Proceed as directed in § 436.201 of this chapter.

§ 446.367d [Revoked]

65. By revoking § 446.367d *Oxytetracycline hydrochloride ophthalmic ointment.*

66. By revising § 446.367e to read as follows:

§ 446.367e Oxytetracycline hydrochloride-polymyxin B sulfate ophthalmic ointment.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Oxytetracycline hydrochloride-polymyxin B sulfate ophthalmic ointment is oxytetracycline hydrochloride and polymyxin B sulfate in a suitable and harmless ointment base. Each gram contains oxytetracycline hydrochloride equivalent to 5 milligrams of oxytetracycline and polymyxin B sulfate equivalent to 10,000 units of polymyxin B. Its oxytetracycline content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 125 percent of the number of units of polymyxin B that it is represented to contain. It is sterile. Its moisture content is not more than 1 percent. It passes the test for metal particles. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 446.67a (a)(1). The polymyxin B sulfate used conforms to the standards prescribed by § 448.30a(a)(1) of this chapter.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The oxytetracycline hydrochloride used in making the batch for potency, safety, loss on drying, pH absorptivity, crystallinity, and identity.

(*b*) The polymyxin B sulfate used in making the batch for potency, safety, pH, loss on drying, residue on ignition, and identity.

(*c*) The batch for oxytetracycline content, polmyxin B content, sterility, moisture, and metal particles.

(ii) Samples required:

(*a*) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The polymyxin B sulfate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*c*) The batch:

(*1*) For all tests except sterility: A minimum of 16 immediate containers.

(2) For sterility testing: 20 immediate containers collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay—*(1) *Potency—*(i) *Oxytetracycline content.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place an accurately weighed representative portion of the sample into a separatory funnel containing approximately 50 milliliters of peroxide-free ether. Shake the ointment and ether until homogeneous. Add 20 to 25 milliliters of 0.1*N* hydrochloric acid and shake well. Allow the layers to separate. Remove the acid layer and repeat the extraction procedure with each of three more 20- to 25-milliliter quantities of 0.1*N* hydrochloric acid. Combine the acid extractives in a suitable volumetric flask and dilute to volume with 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of oxytetracycline per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(ii) *Polymyxin B content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Weigh accurately 0.5 to 1 gram of the ointment and place into a 15-milliliter centrifuge tube. Add 10 milliliters of peroxide-free ether. Stir until contents are homogeneous and centrifuge for 10 minutes at 3,000 revolutions per minute. Decant the supernatant ether. Repeat washing and centrifugation steps once more. Add 10 milliliters of acetone, stir until contents are homogeneous, and centrifuge for 10 minutes at 3,000 revolutions per minute. Decant the supernatant acetone. Repeat acetone wash and centrifugation once more. Continue acetone washings until the yellow color in the residue disappears. Add 3 to 4 drops of polysorbate 80 to the residue and mix well. Gently wash the residue into a 100-milliliter volumetric flask with 10 percent potassium phosphate buffer, pH 6.0 (solution 6), and further dilute with solution 6 to the reference concentration of 10 units of polymyxin B per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(3) of that section.

(3) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(4) *Metal particles.* Proceed as directed in § 436.206 of this chapter.

67. By adding new § 446.381 to Subpart D to read as follows:

§ 446.381 Tetracycline hydrochloride ophthalmic dosage forms.

68. By adding new § 446.381a to read as follows:

§ 446.381a Tetracycline hydrochloride ophthalmic ointment.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Tetracycline hydrochloride ophthalmic ointment contains tetacycline hydrochloride in a suitable and harmless ointment base. Each gram contains 10 milligrams of tetracycline hydrochloride. Its potency is satisfactory if it contains not less than 90 percent and not more than 125 percent of the number of milligrams of tetracycline hydrochloride that it is represented to contain. It is sterile. Its moisture content is not more than 0.5 percent. It passes the test for metal particles. The tetracycline hydrochloride used confroms to the standards prescribed by § 446.81a(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The tetracycline hydrochloride used in making the batch for potency, safety, loss on drying, pH, absorptivity, crystallinity, and identity.

(*b*) The batch for potency, sterility, moisture, and metal particles.

(ii) Samples required:

(*a*) The tetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of 15 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay—*(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place an accurately weighed representative portion of the sample into a separatory funnel containing approximately 50 milliliters of peroxide-free ether. Shake the sample and ether until homogeneous. Add 20 to 25 milliliters of 0.1*N* hydrochloric acid and shake well.

Allow the layers to separate. Remove the acid layer and repeat the extraction procedure with each of 3 more 20- to 25-milliliter quantities of 0.1*N* hydrochloric acid. Combine the extractives in a suitable volumetric flask and fill to volume with 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of tetracycline hydrochloride per milliliter (estimated). Further dilute an aliquot with sterile distilled water to the reference concentration of 0.24 micrograms of tetracycline hydrochloride per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(3) of that section.

(3) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(4) *Metal particles.* Proceed as directed in § 436.206 of this chapter.

69. By adding new § 446.381b to read as follows:

§ 446.381b Tetracycline hydrochloride ophthalmic suspension.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Tetracycline hydrochloride ophthalmic suspension contains tetracycline hydrochloride in a suitable and harmless oily base. Each milliliter contains 10 milligrams of tetracycline hydrochloride. Its potency is satisfactory if it contains not less than 90 percent and not more than 125 percent of the number of milligrams of tetracycline hydrochloride that it is represented to contain. It is sterile. Its moisture content is not more than 0.5 percent. The tetracycline hydrochloride used conforms to the standards prescribed by § 446.81a(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The tetracycline hydrochloride used in making the batch for potency, safety, loss on drying, pH, absorptivity, crystallinity, and identity.

(*b*) The batch for potency, sterility, and moisture.

(ii) Samples required:

(*a*) The tetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of five immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay—*(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place an accurately measured representative portion of the sample into a high-speed glass blender jar with sufficient 0.1*N* hydrochloric acid to give a stock solution of convenient concentration containing not less jar with sufficient 0.1*N* hydrochloric hydrochloride per milliliter (estimated). Blend for 3 to 5 minutes. Remove an aliquot and further dilute with sterile distilled water to the reference concentration of 0.24 microgram of tetracycline hydrochloride per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 436.20 of his chapter, using the method described in paragraph (e)(3) of that section.

(3) *Moisture.* Proceed as directed in § 436.210 of this chapter.

70. By revising § 446.467 to read as follows:

§ 446.467 Oxytetracycline hydrochloride-polymyxin B sulfate otic ointment.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Oxytetracycline hydrochloride-polymyxin B sulfate otic ointment is oxytetracycline hydrochloride and polymyxin B sulfate in a suitable and harmless ointment base. Each gram of ointment contains oxytetracycline hydrochloride equivalent to 5 milligrams of oxytetracycline and polymyxin B sulfate equivalent to 10,000 units of polymyxin B. Its oxytetracycline hydrochloride content is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain. Its polymyxin B sulfate content is satisfactory if it contains not less than 90 percent and not more than 125 percent of the number of units of polymyxin B that it is represented to contain. Its moisture content is not more than 1 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 446.67(a)(1), except safety. The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1) of this chapter, except safety.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The oxytetracycline hydrochloride used in making the batch for potency, loss on drying, pH, absorptivity, identity, and crystallinity.

(*b*) The polymyxin B sulfate used in making the batch for potency, pH, loss on drying, residue on ignition, and identity.

(*c*) The batch for oxytetracycline content, polymyxin B content, and moisture.

(ii) Samples required:

(*a*) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The polymyxin B sulfate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*c*) The batch: A minimum of six immediate containers.

(b) *Tests and methods of assay—*(1) *Potency—*(i) *Oxytetracycline content.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place an accurately weighed representative portion of the sample into a separatory funnel containing approximately 50 milliliters of peroxide-free ether. Shake the sample and ether until homogeneous. Add 20 to 25 milliliters of 0.1*N* hydrochloric acid and shake well. Allow the layers to separate. Remove the acid layer and repeat the extraction procedure with each of three more 20- to 25-milliliter quantities of 0.1*N* hydrochloric acid. Combine the acid extractives in a suitable volumetric flask and fill to volume with 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of oxytetracycline per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(ii) *Polymyxin B content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Weigh accurately 0.5 to 1.0 gram of the ointment and place into a 15-milliliter centrifuge tube. Add 10 milliliters of peroxide-free ether. Stir until contents are homogeneous and centrifuge for 10 minutes at 3,000 revolutions per minute. Decant the supernatant ether. Repeat washing and centrifugation steps once more. Add 10 milliliters of acetone, stir until contents are homogeneous, and centrifuge for 10 minutes at 3,000 revolutions per minute. Decant the supernatant acetone. Repeat acetone wash and centrifugation once more. Continue acetone washings until the yellow color in the residue disappears. Add 3 to 4 drops of polysorbate 80 to the residue and mix well. Gently wash the residue into a 100-milliliter volumetric flask with 10 percent potassium phosphate buffer, pH 6.0 (solution 6), and further dilute with solution 6 to the reference concentration of 10 units of polymyxin B per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

§ 446.467d. [Revoked]

70a. By revoking § 446.467d *Oxytetracycline hydrochloride-polymyxin B sulfat otic ointment.*

71. By revising § 446.510 to read as follows:

§ 446.510 Chlortetracycline hydrochloride ointment.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality and purity.*—Chlortetracycline hydrochloride ointment contains chlortetracycline hydrochloride and one or more suitable and harmless preservatives in a suitable and harmless ointment base. Each gram contains 30 milligrams of chlortetracycline hydrochloride. Its potency is satisfactory if it is not less than 90 percent and not more than 125 percent of the number of milligrams of chlortetracycline hydrochloride that it is represented to contain. Its moisture content is not more than 0.5 percent. The chlortetracycline hydrochloride used conforms to the standards prescribed by § 446.10(a)(1), except safety.

(2) *Labeling.* In addition to the labeling requirements prescribed by § 432.5(a)(3) of this chapter, each package shall bear on its label or labeling, as hereinafter indicated, the following:

(i) On the label of the immediate container and on the outside wrapper or container, if any:

(*a*) The batch mark.

(*b*) The name and quantity of each active ingredient contained in the drug.

(ii) On the label of the immediate container or other labeling attached to or within the package, adequate directions under which the layman can use the drug safely and efficaciously.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The chlortetracycline hydrochloride used in making the batch for potency, loss on drying, pH, crystallinity, and identity.

(*b*) The batch for potency and moisture.

(ii) Samples required:

(*a*) The chlortetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 60 milligrams.

(*b*) The batch: A minimum of five immediate containers:

(b) *Tests and methods of assay*—(1) *Potency.*—Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place an accurately weighed representative portion of the sample into a separatory funnel containing approximately 50 milliliters of peroxide-free ether. Shake the sample and ether until homogeneous. Add 20 to 25 milliliters of 0.01*N* hydrochloric acid and shake well. Allow the layers to separate. Remove the acid layer and repeat the extraction procedure with each of three more 20- to 25-milliliter quantities of 0.01*N* hydrochloric acid. Combine the extractives in a suitable volumetric flask and dilute to volume with 0.01*N* hydrochloric acid. Further dilute an aliquot with sterile distilled water to the reference concentration of 0.06 microgram of chlortetracycline hydrochloride per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

§ 446.510a [Revoked]

72. By revoking § 446.510a *Chlortetracycline hydrochloride ointment; chlortetracycline calcium ointment; chlortetracycline calcium cream; tetracycline hydrochloride ointment (tetracycline hydrochloride in oil suspension); tetracycline ointment (tetracycline cream).*

§ 446.510b [Revoked]

73. By revoking § 446.510b *Chlortetracycline powder (chlortetracycline hydrochloride powder); tetracycline hydrochloride powder; tetracycline powder.*

74. By revising § 446.567a to read as follows:

§ 446.567a Oxytetracycline hydrochloride-hydrocortisone topical ointment.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.*—Oxytetracycline hydrochloride-hydrocortisone topical ointment is oxytetracycline hydrochloride and hydrocortisone in a suitable and harmless ointment base. Each gram contains oxytetracycline hydrochloride equivalent to 30 milligrams of oxytetracycline and 10 milligrams of hydrocortisone. Its potency is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of oxytetracycline that it is represented to contain. Its moisture content is not more than 1 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 446.67(a)(1), except safety.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The oxytetracycline hydrochloride used in making the batch for potency, loss on drying, pH, absorptivity, identity, and crystallinity.

(*b*) The batch for potency and moisture.

(ii) Samples required:

(*a*) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of five immediate containers.

(b) *Tests and methods of assay*—(1) *Potency.*—Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place an accurately weighed representative portion of the sample into a separatory funnel containing approximately 50 milliliters of peroxide-free ether. Shake the sample and ether until homogeneous. Add 20 to 25-milliliters of 0.1*N* hydrochloric acid and shake well. Allow the layers to separate. Remove the acid layer and repeat the extraction procedure with each of three more 20- to 25-milliliter quantities of 0.1*N* hydrochloric acid. Combine the acid extractives in a suitable volumetric flask and fill to volume with 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of oxytetracycline per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

75. By revising § 446.567b to read as follows:

§ 446.567b Oxytetracycline hydrochloride-polymyxin B sulfate topical ointment.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.*—Oxytetracycline hydrochloride-polymyxin B sulfate topical ointment is oxytetracycline hydrochloride and polymyxin B sulfate in a suitable and harmless ointment base. Each gram contains oxytetracycline hydrochloride equivalent to 30 milligrams of oxytetracycline and polymyxin B sulfate equivlent to 10,000 units of polymyxin B. Its oxytetracycline content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain. Its polymxin B sulfate content is satisfactory if it is not less than 90 percent and not more than 125 percent of the number of units of polymyxin B that it is represented to contain. Its moisture content is not more than 1 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 446.67(a)(1), except safety. The polymyxin B sulfate conforms to the standards prescribed by § 448.30(a)(1), except safety.

(2) *Labeling.* In addition to the labeling requirements prescribed by § 432.5(a)(3) of this chapter, each package shall bear on its label or labeling as hereinafter indicated, the following:

(i) On the label of the immediate container and on the outside wrapper or container, if any:

(*a*) The batch mark.

(*b*) The name and quantity of each active ingredient contained in the drug.

(ii) On the label of the immediate container or other labeling attached to or within the package: Adequate directions under which the layman can use the drug safely and efficaciously.

(3) *Requests for certification; samples.* In addition to the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The oxytetracycline hydrochloride used in making the batch for potency, loss on drying, pH, absorptivity, identity, and crystallinity.

(*b*) The polymyxin B sulfate used in making the batch for potency, loss on drying, pH, residue on ignition, and identity.

(*c*) The batch for oxytetracycline content, polymyxin B content, and moisture.

(ii) Samples required:

(*a*) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The polymyxin B sulfate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*c*) The batch: A minimum of six immediate containers.

(b) *Tests and methods of assay*—(1) *Potency*—(i) *Oxytetracycline content.*—Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place an accurately weighed representative portion of the sample into a separatory funnel containing approximately 50 milliliters of peroxide-free ether. Shake the ointment and ether until homogeneous. Add 20 to 25 milliliters of 0.1*N* hydrochloric acid and shake well. Allow the layers to separate, Remove the acid layer and repeat the extraction procedure with each of three more 20- to 25-milliliter quantities of 0.1*N* hydrochloric acid. Combine the acid extractives in a suitable volumetric flask and dilute to volume with 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of oxytetracycline per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(ii) *Polymyxin B content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Weigh accurately 0.5 to 1 gram of the ointment and place into a 15-milliliter centrifuge tube. Add 10 milliliters of peroxide-free ether. Stir until contents are homogeneous and centrifuge for 10 minutes at 3,000 revolutions per minute. Decant the supernatant ether. Repeat washing and centrifugation steps once more. Add 10 milliliters of acetone, stir until contents are homogeneous, and centrifuge for 10 minutes at 3,000 revolutions per minute. Decant the supernatant acetone. Repeat acetone wash and centrifugation once more. Continue acetone washing until the yellow color in the residue disappears. Add 3 to 4 drops of polysorbate 80 to the residue and mix well. Gently wash the residue into a 100-milliliter volumetric flask with 10 percent potassium phosphate buffer, pH 6.0 (solution 6), and further dilute with solution 6 to the reference concentration of 10 units of polymyxin B per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

76. By revising § 446.567c to read as follows:

§ 446.567c Oxytetracycline hydrochloride-polymyxin B sulfate topical powder.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.*—Oxytetracycline hydrochloride-polymyxin B sulfate topical powder is oxytetracycline hydrochloride and polymyxin B sulfate with a suitable filler. Each gram contains 30 milligrams of oxytetracycline and 10,000 units of polymyxin B. Its oxytetracycline content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of units of polymyxin B that it is represented to contain. The loss on drying is not more than 2.0 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 446.67, except safety. The polymyxin B sulfate used conforms to the standards prescribed by § 448.30 (a)(1) of this chapter, except safety.

(2) *Labeling.* Each package shall bear on its label or labeling, as hereinafter indicated, the following:

(i) On the label of the immediate container and on the outside wrapper or container, if any:

(*a*) The batch mark.

(*b*) The name and quantity of each active ingredient contained in the drug.

(*c*) An expiration date that is 12 months after the month during which the batch was certified, unless the use of a longer expiration period has been approved in accordance with the provisions of § 432.5(a)(3) of this chapter.

(ii) On the label of the immediate container or other labeling attached to or within the package, adequate directions for lay use of the drug.

(3) *Requests for certification; samples.* In addition to the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The oxytetracycline hydrochloride used in making the batch for potency, loss on drying, pH, absorptivity, identity, and crystallinity.

(*b*) The polymyxin B sulfate used in making the batch for potency, loss on drying, pH, residue on ignition, and identity.

(*c*) The batch for oxytetracycline content, polymyxin content, and loss on drying.

(ii) Samples required:

(*a*) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The polymyxin B sulfate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*c*) The batch: A minimum of six immediate containers.

(b) *Tests and methods of assay*—(1) *Potency*—(i) *Oxytetracycline content.*—Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place an accurately weighed representative portion of the sample into a high-speed glass blender jar with sufficient 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of oxytetracycline hydrochloride per milliliter (estimated). Blend for 3 to 5 minutes. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(ii) *Polymyxin content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Accurately weigh 1 gram of the powder and place into a 50-milliliter centrifuge tube. Add 15 milliliters of acetone and 1 drop of concentrated hydrochloric acid and stir well. Add 20 milliliters of acetone and centrifuge for 10 minutes at 3,000 revolutions per minute. Decant the supernatant liquid and repeat the acetone-acid extraction once more. Dissolve and dilute the residue with sufficient 10 percent potassium phosphate buffer, pH 6.0 (solution 6), to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with solution 6 to the reference concentration of 10 units of polymyxin B per milliliter (estimated).

(2) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

§ 446.567d [Revoked]

77. By revoking § 446.567d *Oxytetracycline hydrochloride-hydrocortisone aerosol topical.*

78. By revising § 446.567e to read as follows:

§ 446.567e Oxytetracycline hydrochloride-polymyxin B sulfate-hydrocortisone aerosol topical.

(a) *Requirements for certification*—(1) *Standards of identity, strength,*

quality, and purity. Oxytetracycline hydrochloride-polymyxin B sulfate-hydrocortisone aerosol topical is oxytetracycline hydrochloride, polymyxin B sulfate, and hydrocortisone in a suitable ointment base packaged with one or more suitable inert gases. Each spray pack contains the equivalent of 300 milligrams of oxytetracycline, 100,000 units of polymyxin B, and 100 milligrams of hydrocortisone. Its oxytetracycline hydrochloride content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain. Its polymyxin B sulfate content is satisfactory if it is not less than 90 percent and not more than 135 percent of the number of units of polymyxin B that it is represented to contain. The moisture content is not more than 1.0 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 446.67(a)(1), except safety. The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1) of this chapter, except safety.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The oxytetracycline hydrochloride used in making the batch for potency, loss on drying, pH, absorptivity, identity, and crystallinity.

(*b*) The polymyxin B sulfate used in making the batch for potency, loss on drying, pH, residue on ignition, and identity.

(*c*) The batch for oxytetracycline content, polymyxin content, and moisture.

(ii) Samples required:

(*a*) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The polymyxin B sulfate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*c*) The batch: A minimum of six immediate containers.

(b) *Tests and methods of assay*—(1) *Potency*—(i) *Oxytetracycline content.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Remove the cap and plastic spray tip from the aerosol can. Attach a 10-inch length of suitable plastic tubing over the nozzle of the aerosol can. Shake the can gently two of three times. Place the free end of the tubing into a 400-milliliter beaker, hold the can in an upright position, and depress the nozzle. Empty the entire contents into the beaker. Rinse the tubing with a minimum amount of 0.1*N* hydrochloric acid and add it to the contents of the beaker. Allow to stand at room temperature for ½ to 1 hour to evaporate residual propellant. Transfer the contents of the beaker with three 10-milliliter portions of 0.1*N* hydrochloric acid to a 1-liter volumetric flask. Dilute to volume with 0.1*N* hydrochloric acid and mix well. Remove an appropriate aliquot and dilute with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(ii) *Polymyxin content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Remove the cap and plastic spray tip from the aerosol can. Attach a 10-inch length of suitable plastic tubing over the nozzle and shake the can gently. Place the free end of the tubing into a filter funnel having a solvent-resistant membrane of 1.0 micrometer porosity, hold the can upright, and depress the nozzle until the contents are completely emptied into the funnel. Evaporate any residual propellant by allowing it to stand at room temperature for ½ to 1 hour. Rinse the plastic tubing with small portions of acetone and pour the washings into the funnel. Wash the sample with five 20-milliliter portions of acetone or until the yellow color has disappeared. Remove the filter and soak it in an adequate volume of 10 percent potassium phosphate buffer, pH 6.0 (solution 6). Quantitatively transfer to a 100-milliliter volumetric flask and adjust to volume with solution 6. Further dilute an aliquot with solution 6 to the reference concentration of 10 units of polymyxin B per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

79. By revising § 446.581 to read as follows:

§ 446.581 Tetracycline hydrochloride ointment.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Tetracycline hydrochloride ointment contains tetracycline hydrochloride in a suitable and harmless ointment base. Each gram contains 30 milligrams of tetracycline hydrochloride. Its potency is satisfactory if it contains not less than 90 percent and not more than 125 percent of the number of milligrams of tetracycline hydrochloride that it is represented to contain. Its moisture content is not more than 1 percent. The tetracycline hydrochloride used conforms to the standards prescribed by § 446.81(a)(1), except safety, and 4-epianhydrotetracycline content.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The tetracycline hydrochloride used in making the batch for potency, loss on drying, pH, absorptivity, crystallinity, and identity.

(*b*) The batch for potency and moisture.

(ii) Samples required:

(*a*) The tetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of six immediate containers.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place an accurately weighed representative portion of the sample into a separatory funnel containing approximately 50 milliliters of peroxide-free ether. Shake the sample and ether until homogeneous. Add 20 to 25 milliliters of 0.1*N* hydrochloric acid and shake well. Allow the layers to separate. Remove the acid layer and repeat the extraction procedure with each of three more 20- to 25-milliliter quantities of 0.1*N* hydrochloric acid. Combine the acid extractives in a suitable volumetric flask and fill to volume with 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of tetracycline hydrochloride per milliliter (estimated). Further dilute an aliquot of the stock solution with sterile distilled water to the reference concentration of 0.24 microgram of tetracycline hydrochloride per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

§ 446.581a [Revoked]

80. By revoking § 446.581a *Tetracycline hydrochloride-neomycin spray ointment topical.*

§ 446.581b [Revoked]

81. By revoking § 446.581b *Tetracycline hydrochloride-neomycin in oil suspension.*

§ 446.610 [Revoked]

82. By revoking § 446.610 *Chlortetracycline suppositories (chlortetracycline hydrochloride suppositories); tetracycline hydrochloride suppositories.*

83. By revising § 446.667 to read as follows:

§ 446.667 Oxytetracycline hydrochloride-polymyxin B sulfate vaginal tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Oxytetracycline hydrochloride-polymyxin B sulfate vaginal tablets are tablets composed of oxytetracycline hydrochloride and polymyxin B sulfate with one or more

suitable diluents, binders, lubricants, and preservatives. Each tablet contains oxytetracycline hydrochloride equivalent to 100 milligrams of oxytetracycline and polymyxin B sulfate equivalent to 100,000 units of polymyxin B. Its oxytetracycline content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of units of polymyxin B that it is represented to contain. The loss on drying is not more than 3.0 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 446.67(a)(1), except safety. The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1) of this chapter except safety.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The oxytetracycline hydrochloride used in making the batch for potency, loss on drying, pH, absorptivity, identity, and crystallinity.

(*b*) The polymyxin B sulfate used in making the batch for potency, loss on drying, pH, residue on ignition, and identity.

(*c*) The batch for oxytetracycline content, polymyxin B content, and loss on drying.

(ii) Samples required:

(*a*) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The polymyxin B sulfate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*c*) The batch: A minimum of 30 tablets.

(b) *Tests and methods of assay*—(1) *Potency*—(i) *Oxytetracycline content.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place a representative number of tablets into a high-speed glass blender jar containing sufficient 0.1*N* hydrochloric acid to obtain a stock solution of convenient concentration containing not less than 150 micrograms of oxytetracycline per milliliter (estimated). Blend for 3 to 5 minutes. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.24 microgram of oxytetracycline per milliliter (estimated).

(ii) *Polymyxin B content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Grind a representative number of tablets into a fine powder and place this powder, accurately weighed, into a filter funnel with a solvent-resistant membrane filter of 1.0 micrometer porosity. Wash the powder with five 20-milliliter portions of acetone or until the yellow color has disappeared. Remove the filter and soak in 400 milliliters of 10 percent potassium phosphate buffer, pH 6.0 (solution 6), and blend. Quantitatively transfer to a 500-milliliter volumetric flask and adjust to volume with solution 6. Further dilute an aliquot with solution 6 to the reference concentration of 10 units of polymyxin B per milliliter (estimated).

(2) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

§ 446.710 [Revoked]

84. By revoking § 446.710 *Chlortetracycline suppositories (chlortetracycline hydrochloride suppositories); tetracycline hydrochloride suppositories.*

§ 446.910 [Revoked]

85. By revoking § 446.910 *Chlortetracycline hydrochloride impregnated surgical silk.*

Effective date. This amedment shall become effective April 17, 1978, except that the effective date for minor nomenclature changes involving § 446.66, 446.150b, 446.166, 446.180c, 446.180d, 446.265, 446.281b, and 446.282 shall be effective September 13, 1978. Any preparation under this order that is labeled after September 13, 1978, and does not bear the appropriate revised name is misbranded.

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

Dated: March 10, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-6770 Filed 3-16-78; 8:45 am]

[4110-03]

CYANAMID AGRICULTURAL de PUERTO RICO, INC.; CHANGE OF SPONSOR NAME

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of nine supplemental new animal drug applications (NADA's) providing that the sponsor for certain levamisole-containing products be changed from American Cyanamid Co. to Cyanamid Agricultural de Puerto Rico, Inc.

EFFECTIVE DATE: March 17, 1978.

FOR FURTHER INFORMATION CONTACT:
William D. Price, Bureau of Veterinary Medicine (HFV-123), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., P.O. Box 400, Princeton, N.J. 08540, filed nine supplemental NADA's providing for a change of sponsor. The NADA's affected are as follows:

NADA number and drug name and form

39-356V Levamisole hydrochloride oblets
39-357V Levamisole hydrochloride powder (for oral use)
42-740V Levamisole hydrochloride powder (for oral use)
42-837V Levamisole hydrochloride oblets
44-015V Levamisole hydrochloride medicated premix
45-455V Levamisole hydrochloride medicated premix
45-513V Levamisole hydrochloride soluble powder (for drinking water)
49-553V Levamisole phosphate injectable solution
93-688V Levamisole hydrochloride-piperazine dihydrochloride solution (for oral use)

These amendments reflect approval of supplemental NADA's which provide for the intracorporate transfer of NADA's from American Cyanamid Co., to Cyanamid Agricultural de Puerto Rico, Inc. This action does not require a reevaluation of the NADA's nor does it constitute a reaffirmation of safety and effectiveness. In addition, approval does not involve changes in personnel or in manufacturing facilities.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), the animal drug regulations are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

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

* * * * *

(c) * * *
(1) * * *

Firm name and address:	*Drug listing No.*

* * * * *

Cyanamid Agricultural de Puerto Rico, Inc., P.O. Box 243, Manati, P.R. 00701; 043781.	

* * * * *

(2) * * *

Drug listing No.

Firm name and address

* * * * *

043781—Cyanamid Agricultural de Puerto Rico, Inc., P.O. Box 243, Manati, P.R. 00701.

* * * * *

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

2. In Part 520:

a. Section 520.1242a is amended in paragraph (c)(1) by deleting the sponsor number 010042 and inserting in its place the number 043781, to read as follows:

§ 520.1242a Levamisole hydrochloride drench and drinking water.

* * * * *

(c) * * *

(1) See No. 043781 in § 510.600(c) of this chapter for conditions of use provided for in paragraph (f) of this section.

* * * * *

b. Section 520.1242b is amended in paragraph (c)(1) by deleting the sponsor number 010042 and inserting in its place the number 043781, to read as follows:

§ 520.1242b Levamisole hydrochloride tablet or oblet (bolus).

* * * * *

(c) * * *

(1) See No. 043781 in § 510.600(c) of this chapter for conditions of use provided for in paragraph (f) of this section and § 520.1242a(f).

* * * * *

c. Section 520.1242c is amended in paragraph (b) by deleting the sponsor number 010042 and inserting in its place the number 043781, to read as follows:

§ 520.1242c Levamisole hydrochloride piperazine dihydrochloride.

* * * * *

(b) *Sponsor.* See No. 043781 in § 510.600(c) of this chapter.

* * * * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. In part 522:

Section 522.1244 is amended in paragraph (b) by deleting the sponsor number 010042 and inserting in its place the number 043781, to read as follows:

§ 522.1244 Levamisole phosphate injection.

* * * * *

(b) *Sponsor.* See No. 043781 in § 510.600(c) of this chapter.

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

4. In part 558:

Section 558.315 is amended in paragraph (c) by deleting the sponsor number 010042 and inserting in its place the number 043781, to read as follows:

§ 558.315 Levamisole hydrochloride (equivalent).

* * * * *

(c) *Approvals.* Premix level 227 grams per pound granted to No. 043781 in § 510.600(c) of this chapter.

Effective date: March 17, 1978.

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

Dated: March 10, 1978.

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

[FR Doc. 78-6766 Filed 3-16-78; 8:45 am]

[4110-03]

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Neomycin-Sulfacetamide Ophthalmic Ointment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a new animal drug application (NADA) filed by Byk-Gulden, Inc., providing for safe and effective use of a combination drug for treating certain eye conditions in cats and dogs.

EFFECTIVE DATE: March 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Henry C. Hewitt, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Byk-Gulden, Inc., Cantiague Rock Road, P.O. Box 730, Hicksville, N.Y. 11802, filed an NADA (47-091V) providing for safe and effective use of neomycin sulfate-sulfacetamide sodium ophthalmic ointment in the prophylaxis and local treatment of dogs and cats for superficial eye infections caused by organisms sensitive to neomycin or sulfacetamide.

In accordance with the freedom of information regulations and § 514.11(e)(2)(ii) of the animal drug regulations, a summary of safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFC-20), Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, Monday through Friday, from 9 a.m. to 4 p.m., except on Federal holidays.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i) 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), part 524 is amended by adding new § 524.1484j, to read as follows:

§ 524.1484j Neomycin sulfate-sulfacetamide sodium ophthalmic ointment.

(a) *Specifications.* Each gram of ointment contains 0.5 percent neomycin sulfate (equivalent to 3.5 milligrams per gram of neomycin base) and 10 percent sulfacetamide sodium.

(b) *Sponsor.* See No. 025463 in § 510.600(c) of this chapter.

(c) *Conditions of use—*(1) *Amount.* Apply four times daily to the inner lower eyelid.

(2) *Indications for use.* For use in the prophylaxis and local treatment of dogs and cats for superficial eye infections caused by commonly occurring gram-negative and gram-positive bacteria such as staphylococci, streptococci, and moraxella.

(3) *Limitations.* When infection is suspected as being the cause of the disease process, particularly in purulent or catarrhal conjunctivitis, attempts should be made to determine what effective antibiotic should be used by sensitivity tests prior to applying ophthalmic preparations. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date: March 17, 1978.

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

Dated: March 10, 1978.

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

[FR Doc. 78-6767 Filed 3-16-78; 8:45 am]

[4110-03]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Furosemide Syrup

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: This is an amendment to the regulations to reflect approval of a new animal drug application (NADA) filed by Hoechst-Roussel Pharmaceuticals, Inc., providing for use of furosemide syrup in the treatment of certain edematous conditions in dogs.

EFFECTIVE DATE: March 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Henry C. Hewitt, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Pharmaceuticals, Inc., Rt. 202-206, Somerville, N.J. 08876, filed an NADA (102-380V) providing for oral use of furosemide syrup in the treatment of edema (pulmonary congestion, ascites) associated with cardiac insufficiency and acute noninflammatory tissue edema in dogs.

Under the freedom of information regulations and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) of the animal drug regulations, a summary of safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFC-20), Rm. 4-65, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 520 is amended by adding new § 520.1010c to read as follows:

§ 520.1010c Furosemide syrup.

(a) *Specifications.* Each milliliter of syrup contains 10 milligrams of furosemide.

(b) *Sponsor.* See No. 000039 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 1 to 2 milliliters orally (10 to 20 milligrams) per 10 pounds of body weight (approximately 2.5 to 5 milligrams per kilogram), once or twice daily, with a 6- to 8-hour interval between successive daily doses.

(2) *Indications for use.* It is used in dogs for the treatment of edema (pulmonary congestion, ascites) associated with cardiac insufficiency and acute noninflammatory tissue edema.

(3) *Limitations.* The dosage should be adjusted to the animal's response. In severe edematous or refractory cases, the dosage may be doubled or increased by increments of 1 milligram per pound of body weight to establish the effective dose. This dose should be administered once or twice daily on an intermittent schedule. Diuretic therapy should be discontinued after reduction of edema or, when necessary, maintained after determining a programmed dosage schedule to prevent recurrence. If given in excessive amounts or over extended periods of time, the drug may result in dehydration and/or electrolyte imbalance. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date: March 17, 1978.

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

Dated: March 10, 1978.

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

[FR Doc. 78-6769 Filed 3-16-78; 8:45 am]

[4110-03]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

[Docket No. 78N-0016]

PART 539—BULK ANTIBIOTIC DRUGS SUBJECT TO CERTIFICATION

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

Conforming Amendments

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends provisions for certification of animal-use tetracycline drug products to conform with amendments to provisions for human-use tetracycline drug products. The human-use amendments are published elsewhere in this issue of the FEDERAL REGISTER, under FDA Docket No. 76N-0167.

EFFECTIVE DATE: April 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank Pugliese, Bureau of Veterinary Medicine (HFV-234), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3460.

SUPPLEMENTARY INFORMATION: These amendments are nonsubstantive, and they do not affect currently approved new animal drug applications (NADA's) or requirements for certification of the named antibiotic drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b)) and under authority delegated to the Commissioner (21 CFR 5.1), Parts 539 and 546 are amended as follows:

1. Part 539 is amended:

§ 539.210a [Amended]

a. In § 539.210a *Chlortetracycline,* by amending paragraph (b)(2) by deleting the reference to "§ 440.80a(b)(4)" and substituting therefor "§ 436.33", by amending paragraph (b)(3) by deleting the reference to "§ 440.74a(b)(5)" and substituting therefor "§ 436.20(e)(2)" and by amending paragraph (b)(4) by deleting the reference to "§ 440.80a(b)(5)(ii)" and substituting therefor "§ 436.202".

§ 539.210b [Amended]

b. In § 539.210b *Chlortetracycline bisulfate,* paragraph (b)(1) is amended by deleting the phrase ", except § 446.10a(b)(1)(ix) of this chapter."; paragraph (b)(2) is amended by deleting the reference to "§ 440.80a(b)(4)" and substituting therefor "§ 436.33"; paragraph (b)(3) is amended by deleting the reference to "§ 440.80a(b)(5)(i)" and substituting therefor "§ 436.200(b)"; and paragraph (b)(7) is amended by deleting the reference to "§ 440.80a(b)(5)(iii)" and substituting therefor "§ 436.203(a)".

c. By adding new § 539.210c, to read as follows:

§ 539.210c Chlortetracycline hydrochloride.

(a) *Requirements for certification.* The requirements for certification of chlortetracycline hydrochloride are described in § 446.10 of this chapter, except if it is intended for use solely in the manufacture of an animal drug for nonparenteral use its potency is not less than 820 micrograms per milligram.

(b) *Tests and methods of assay.* The tests and methods of assay for chlortetracycline are described in § 440.10 of this chapter.

2. Part 546 is amended.

§ 546.110a [Amended]

a. In § 546.110a *Crude chlortetracycline,* by amending paragraph (b)(1) by revising the third sentence therein to read: "Using an aliquot of the liquid, make the proper estimated dilutions in sterile distilled water, shake well and proceed as directed in

§ 436.106"; and by amending paragraph (b)(2) by deleting reference to "§ 440.80a(b)(5)(i)" and substituting therefor "§ 436.200(b)".

§ 546.110b [Amended]

b. In § 546.110b *Chlortetracycline seed,* by amending paragraph (a)(1) by deleting the phrase "§ 436.10a(a)(1) of this chapter, except paragraph (a)(1)(ii), (iv) and (v) of that section, or to the requirements prescribed by § 446.510b(a)(1)" and substituting therefor "§ 446.10(a)(1) of this chapter, or to the requirements prescribed by § 546.110c(a)(1)"; by amending paragraph (b)(1) by revising the third sentence to read, "Using an aliquot of the liquid make the proper estimated dilutions in sterile distilled water, shake well, and proceed as directed in § 436.106"; and by amending paragraph (b)(2) by deleting reference to "§ 440.80a(b)(5)(i)" and substituting therefor "§ 436.200(b)".

c. By revising § 546.110c(a) and (b) to read as follows:

§ 546.110c Chlortetracycline powder (chlortetracycline hydrochloride powder).

(a) *Requirements for certification.*—(1) *Standards of identity, strength, quality, and purity.* Chlortetracycline powder, (chlortetracycline hydrochloride powder), tetracycline hydrochloride powder, and tetracycline powder are crystalline chlortetracycline hydrochloride, tetracycline hydrochloride, or tetracycline, with or without glucosamine hydrochloride and with or without suitable and harmless buffer substances, preservatives, diluents, colorings, and flavorings. It may contain one or more suitable and harmless vitamin substances. The content of chlortetracycline or tetracycline hydrochloride or tetracycline is not less than 15 milligrams per gram of powder. The moisture content of chlortetracycline powder or tetracycline hydrochloride powder is not more than 2 percent. The moisture content of tetracycline powder is not more than 7.5 percent. The chlortetracycline used conforms to the requirements of § 446.10(a)(1) of this chapter. The tetracycline hydrochloride used conforms to the requirements of § 446.81(a)(1) of this chapter. The tetracycline used conforms to the requirements of § 446.80(a)(1) of this chapter. Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Packaging.* It is packaged for dispensing and intended solely for veterinary use: In all cases the immediate container shall be a tight container as defined by the U.S.P. The composition of the immediate container shall be such as will not cause any change in the strength, quality, or purity of the contents beyond any limits therefor in applicable standards, except that minor changes so caused which are normal and unavoidable in good packaging, storage, and distribution practice shall be disregarded. Its label and labeling shall comply with all the requirements prescribed by paragraph (a)(3) of this section, except that in lieu of the statement "Caution: Federal law prohibits dispensing without prescription", each package shall include information containing directions and warnings adequate for the veterinary use of the drugs by the laity.

(3) *Labeling.* In addition to the labeling requirements prescribed by § 201.105 of this chapter (regulations issued under section 502(f) of the act), each package shall bear on the outside wrapper or container and the immediate container, as hereinafter indicated, the following:

(i) The statement "Expiration date———", the blank being filled in with the date that is 60 months after the month during which the batch was certified it is chlortetracycline hydrochloride powder; or if it is tetracycline hydrochloride powder or tetracycline powder the blank is filled in with the date that is 24 months after the month during which the batch was certified, except that the blank may be filled in with the date that is 36 months, 48 months, or 60 months after the month during which the batch was certified if the person who requests certification has submitted to the Commissioner results of tests and assays showing that after having been stored for such period of time such drug as prepared by him complies with the standards prescribed by paragraph (a)(1) of this section.

(ii) If it contains, in addition to chlortetracycline hydrochloride, tetracycline hydrochloride, or tetracycline, one or more of the other active ingredients specified in paragraph (a)(1) of this section after the name "chlortetracycline powder", "tetracycline hydrochloride powder", or "tetracycline powder", wherever such name appears the words "with——— (the blank being filled in with the established name of each other such ingredient)", in juxtaposition with such name. If it is intended for use in animals raised for food production, it shall also be labeled in accordance with the requirements of paragraph (c) of this section.

(4) *Request for certification; samples.* (i) In addition to complying with the requirements of § 514.50 of this chapter, a person who requests certification of a batch shall submit with his request a statement showing the batch mark, the number of packages of each size in such batch, the batch mark and (unless it was previously submitted) the date on which the latest assay of the chlortetracycline, tetracycline hydrochloride or tetracycline used in making such batch was completed, the number of milligrams in each immediate container, the quantity of each ingredient used in making the batch, the date on which the latest assay of the drug constituting such batch was completed, and a statement that each ingredient used in making the batch conforms to the requirements prescribed therefor, if any, by this section.

(ii) Except as otherwise provided in paragraph (a)(4)(iv) of this section, such person shall submit in connection with his request, results of the tests and assays listed after each of the following, made by him on an accurately representative sample of:

(*a*) The batch; potency and moisture.

(*b*) The chlortetracycline, tetracycline hydrochloride, or tetracycline used in making the batch: potency, toxicity, moisture, pH, and crystallinity, and absorptivity if it is tetracycline hydrochloride or tetracycline.

(iii) Except as otherwise provided by paragraph (a)(4)(iv) of this section, such person shall submit in connection with his request, in the quantities hereinafter indicated, accurately representative samples of the following:

(*a*) The batch: one immediate container for each 5,000 containers in the batch, but in no case less than 5 immediate containers, unless each such container is packaged to contain more than 10 grams, in which case the sample shall consist of 1.0 gram for each 5,000 immediate containers in the batch, but in no case less than five 1.0-gram portions; except if it is intended for use as an ingredient in the drinking water of animals each portion in the sample submitted shall consist of 1 ounce in lieu of 1.0 gram. Such sample shall be collected by taking single immediate containers, 1.0-gram portions, or 1-ounce portions at such intervals throughout the entire time the containers are being filled so that the quantities filled during the intervals are approximately equal.

(*b*) The chlortetracycline, tetracycline hydrochloride, or tetracycline used in making the batch: 10 packages, each containing approximately equal portions of not less than 60 milligrams, packaged in accordance with the requirements of § 510.55 of this chapter.

(c) In case of an initial request for certification, each other ingredient used in making the batch: one package of each containing approximately 5 grams.

(iv) No result referred to in paragraph (a)(4)(ii)(*b*) of this section, and no sample referred to in paragraph (a)(4)(iii)(*b*) of this section, is required if such result or sample has been previously submitted.

(b) *Tests and methods of assay.*—(1) *Potency.* Using a 3.0-gram sample or the entire contents of the immediate container for each determination, proceed as directed in §446.10(b)(1) of this chapter if it is chlortetracycline powder. If it is tetracycline powder, blend a 3.0-gram sample as directed in §446.181d(b)(1) of this chapter, or reconstitute in the immediate container as directed in the labeling of the drug. Transfer an appropriate aliquot of 1.0 milliliter to 5.0 milliliters to a 100-milliliter volumetric flask and make to mark with 0.1*N* HCl. Withdraw an aliquot from the volumetric flask and dilute to 0.24 microgram per milliliter, using sterile distilled water and proceed as directed in §446.81(b)(1) of this chapter. The average potency of the powder is satisfactory if it contains not less than 85 percent of the number of milligrams of chlortetracycline or tetracycline hydrochloride or tetracycline per gram or per immediate container that it is represented to contain.

(2) *Moisture.* Proceed as directed in §436.200(b) of this chapter.

* * * * *

d. In §546.110d, paragraph (a)(1) is revised, paragraphs (a) (3), (4), and (5) are added, and paragraph (b) is revised to read as follows:

§546.110d Chlortetracycline hydrochloride tablets.

(a) *Requirements for certification.* (1) Chlortetracycline hydrochloride tablets, tetracycline hydrochloride tablets, and tetracycline tablets are tablets composed of crystalline chlortetracycline hydrochloride, tetracycline hydrochloride, tetracycline, or tetracycline phosphate complex, with or without one or more suitable and harmless buffer substances, preservatives, diluents, binders, lubricants, colorings, and flavorings. The average potency of the drug is satisfactory if it contains not less than 85 percent of the number of milligrams it is represented to contain. The average moisture content of the tablets is not more than 3 percent, unless the person who requests certification has submitted to the Commissioner information adequate to prove that his drug is stable when it has a moisture content not exceeding 6 percent. Tablets not exceeding 15 millimeters in diameter, or not intended only for use in preparing solutions, shall disintegrate within 1 hour. A person who requests certification shall therefore also submit for disintegration-time studies, results of this test made by him and a sample of six tablets. The chlortetracycline hydrochloride used conforms to the requirements of §446.10(a)(1) of this chapter. The tetracycline hydrochloride used conforms to the requirements of §446.81(a)(1) of this chapter. The tetracycline used conforms to the requirements of §446.80(a)(1) of this chapter. The tetracycline phosphate complex used conforms to the requirements of §446.82(a)(1) of this chapter. Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) * * *

(3) Packaging. Unless each tablet is enclosed in a foil or plastic film and such enclosure is a tight container as defined by the U.S.P., except the provision that it shall be capable of tight reclosure, the immediate container shall be a tight container as so defined. The immediate container may also contain a desiccant separated from the tablets by a plug of cotton or other like material. The composition of the immediate container, or of the foil or film enclosure, shall be such as will not cause any change in the stength, quality, or purity of the contents beyond any limit therefor in applicable standards, except that minor changes so caused which are normal and unavoidable in good packaging, storage, and distribution practice shall be disregarded.

(4) Labeling. In addition to the labeling requirements prescribed by §201.105 of this chapter (regulations issued under section 502(f) of the act), each package shall bear on the outside wrapper or container and the immediate container, as hereinafter indicated, the following: The statement "Expiration date———", the blank being filled in with one of the following dates after the month during which the batch was certified:

(*a*) If chlortetracycline hydrochloride is used, 60 months.

(*b*) If tetracycline hydrochloride is used, 48 months, except that the date that is 60 months may be used if the person who requests certification has submitted to the Commissioner results of tests and assay showing that after having been stored for such period of time such drug as prepared by him complies with the standards prescribed therefor by paragraph (a)(1) of this section.

(*c*) If tetracycline is used, 36 months.

(*d*) If tetracycline phosphate complex is used, 24 months, except that the blank may be filled in with the date that is 36 months, 48 months, or 60 months, after the month in which the batch was certified, if the person who requests certification has submitted to the Commissioner results of tests and assays showing that after having been stored for such period of time such drug as prepared by him complies with the standards prescribed by paragraph (a)(1) of this section.

(5) Requests for certification; samples. (i) In addition to complying with the requirements of §514.50 of this chapter, a person who requests certification of a batch shall submit with his request a statement showing the batch mark, the number of packages of each size in such batch, the batch mark and (unless it was previously submitted) the date on which the latest assay of the chlortetracycline, tetracycline hydrochloride, tetracycline or tetracycline phosphate complex used in making such batch was completed, the number of milligrams in each capsule, the quantity of each ingredient used in making the batch, the date on which the latest assay of the drug constituting such batch was completed, and a statement that each ingredient used in making the batch conforms to the requirements prescribed therefor, if any, by this section.

(ii) Except as otherwise provided in paragraph (a)(5)(iv) of this section, such person shall submit in connection with his request results of the tests and assays listed after each of the following made by him on an accurately representative sample of:

(*a*) The batch: average potency per tablet, average moisture, and disintegration time.

(*b*) The chlortetracycline, tetracycline hydrochloride, tetracycline, or tetracycline phosphate complex used in making the batch: Potency, toxicity, moisture, pH, crystallinity, absorptivity (if it is tetracycline hydrochloride, tetracycline, or tetracycline phosphate complex) and identity if it is tetracycline phosphate complex.

(iii) Except as otherwise provided by paragraph (a)(5)(iv) of this section, such person shall submit in connection with his request, in the quantities hereinafter indicated, accurately representative samples of the following:

(*a*) The batch: one tablet for each 5,000 tablets in the batch, but in no case less than 30 tablets, collected by taking single tablets at such intervals throughout the entire time of preparation that the quantities compressed during the intervals are approximately equal.

(*b*) The chlortetracycline, tetracycline hydrochloride, tetracycline, or tetracycline phosphate complex used in making the batch: 10 packages, each containing approximately equal portions of not less than 60 milligrams, and if it is tetracycline phosphate complex, one additional package containing approximately 1 gram. Each such package shall be packaged in accordance with the requirements of §510.45 of this chapter.

(*c*) In case of an initial request for certification, each other ingredient used in making the batch; one package of each containing approximately 5 grams.

(iv) No result referred to in paragraph (a)(5)(ii)(*b*) of this section and no sample referred to in paragraph

(a)(5)(iii)(*b*) of this section are required if such result or sample has been previously submitted.

(b) *Tests and methods of assay.*—(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Place a representative number of tablets into a high-speed glass blender jar containing sufficient 0.01*N* hydrochloric acid for chlortetracycline assay or 0.01*N* hydrochloric acid for tetracycline assay to obtain a stock solution of convenient concentration. Blend for 3 to 5 minutes. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.06 microgram of chlortetracycline hydrochloride per milliliter (estimated) or 0.24 microgram of tetracycline hydrochloride per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 436.200(b) or § 436.201 of this chapter. If it is tetracycline hydrochloride tablets and stability data have been submitted to prove that the drug is stable when it contains not more than 6 percent moisture, use the method described in § 436.201 of this chapter and proceed as directed in § 436.201(e)(3) of this chapter.

(3) *Disintegration time.* Proceed as directed in § 436.212 of this chapter.

§ 546.110f [Amended]

e. In § 546.110f *Chlortetracycline hydrochloride-neomycin tablets,* by amending the introductory text of paragraph (a) by deleting the phrase "§ 446.110b(a) of this chapter for chlortetracycline hydrochloride capsules and tetracycline hydrochloride capsules, except that:" and substituting therefor, "§ 546.110d(a)(1) except that:"; by amending paragraph (a)(3) by deleting reference to "§ 446.110b(a)(4)" and substituting therefor "§ 514.50"; by amending paragraph (b)(1)(i) by deleting the fourth and fifth sentences and substituting therefor "Dilute an aliquot of the clear solution in sterile distilled water to give a concentration of 0.06 microgram per milliliter (estimated). Proceed as directed in § 436.106 of this chapter."; by amending paragraph (b)(1)(ii) by deleting reference to "§ 446.81a(b)(1)(iii)" and substituting therefor "§ 436.106"; by amending paragraph (b)(2) by deleting reference "§ 440.80a(b)(5)(i) and substituting therefor "§ 436.200b"; and by amending paragraph (b)(3) by deleting reference to "§ 440.180a(b)(3)" and substituting therefor "§ 436.212."

§ 546.110g [Amended]

f. In § 546.110g by amending paragraph (a)(1) by deleting the phrase "§ 446.10a(a)(1) of this chapter, except paragraph (a)(1)(ii), (iv), and (v) of that section." and substituting therefor "§ 446.10(a)(1) of this chapter"; by amending paragraph (a)(4)(iii)(*b*) by deleting reference to "§ 466.10a(a)(2)" and substituting therefor "§ 510.45"; by amending paragraph (b)(1) by deleting reference to "§ 446.510a(b)(1)" and substituting therefor "§ 446.510(b)(1)"; and by revising paragraph (b)(2) to read as follows:

§ 546.110g Chlortetracycline hydrochloride in oil oral.

* * * * *

(b) * * *

(2) *Moisture.* Proceed as directed in § 436.500(c) of this chapter, using a weighed sample of approximately 1 gram dissolved in 10 milliliters of a mixture of equal parts of dry chloroform and carbon tetrachloride; but in lieu of calculating the milliliters of Karl Fischer reagent equivalent to 10 milliliters of chloroform, determine the milliliters of reagent equivalent to 10 milliliters of the mixture of chloroform and carbon tetrachloride.

§ 546.110h [Amended]

g. In § 546.11h *Chlortetracycline boluses,* by amending paragraph (b) by deleting reference to "§ 446.110a" and substituting therefor "§ 546.110d(b)."

§ 546.110a [Amended]

h. In § 546.113a *Chlortetracycline bisulfate soluble powder* by amending paragraph (b)(1) by deleting the phrase "§ 446.10a(b)(1) of this chapter, except § 446.10a(b)(1)(ix) of this chapter" and substituting therefor, "§ 436.106 of this chapter, preparing the sample as follows: Dissolve the 500 milligrams to be tested in 0.01*N* HCl to make a stock solution of convenient concentration. Further dilute with sterile distilled water to the reference concentration of 0.06 microgram of chlortetracycline hydrochloride equivalent activity (estimated)."; and by amending paragraph (b)(2) by deleting reference to "§ 440.80a(b)(5)(i)" and substituting therefor "§ 436.200b."

i. In § 546.180a, the introductory texts of paragraph (a) and paragraph (b) are revised; paragraph (a)(1) is amended by deleting the last sentence; paragraph (a)(2) is amended by deleting the reference to "§ 446.110b(a)(3)" and substituting therefor "§ 546.110d(a)(4) and § 101.105 of this chapter." and deleting the rest of the paragraph, as follows:

§ 546.180a Tetracycline hydrochloride capsules.

(a) *Requirements for certification.* The requirements for certification for tetracycline hydrochloride capsules are described under § 446.181e(a)(1), with the following exceptions:

* * * * *

(b) *Tests and methods of assay.* The tests and methods of assay for tetracycline hydrochloride capsules are as described under § 446.181e(b) (1) and (2) of this chapter.

* * * * *

j. By revising § 546.180e(a) and (b) to read as follows:

§ 546.180e Tetracycline oral liquid.

(a) *Requirements for certification.*—(1) *Standards of identity, strength, quality, and purity.* Tetracycline oral liquid is a suspension composed of tetracycline with or without one or more suitable and harmless buffer substances, suspending and stabilizing agents, and preservatives suspended in a suitable and harmless vehicle. Each milliliter contains the equivalent of either 25 or 100 milligrams of tetracycline hydrochloride. It contains not less than 90 percent and not more than 120 percent of the labeled amount of tetracycline hydrochloride. Its pH is not less than 3.5 nor more than 6. The tetracycline used conforms to the standards prescribed by § 446.80(a)(1) of this chapter.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 510.55 of this chapter and paragraph (c) of this section.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 514.50 of this chapter, each such request shall contain:

(i) Results of tests and assay on:

(*a*) The tetracycline used in making the batch for potency, safety, moisture, pH, absorptivity, 4-epian- hydrotetracycline content, crystallinity, and identity.

(*b*) The batch for potency and pH.

(ii) Samples required:

(*a*) The tetracycline used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 10 immediate containers.

(b) *Tests and methods of assay.*—(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Transfer an accurately measured representative portion of the well-shaken suspension to an appropriate-sized volumetric flask and dilute to volume with 0.1*N* hydrochloric acid to give a stock solution of convenient concentration containing not less than 150 micrograms of tetracycline hydrochloride per milliliter (estimated). Mix well. Remove an aliquot of the stock solution and further dilute with sterile distilled water to the reference concentration of 0.24 microgram of tetracycline hydrochloride per milliliter (estimated).

(2) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted suspension.

* * * * *

Effective date: April 17, 1978.

(Sec. 572, 82 Stat. 343-351 (21 U.S.C. 360b).)

Dated: March 10, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissoner for Compliance.

[FR Doc. 78-6771 Filed 3-16-78; 8:45 am]

[4110-03]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

[Docket No. 77F-0197]

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

Hemicellulose Extract

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document provides for revising conditions for manufacturing hemicellulose extract (wood sugars). The International Paper Co. filed a petition proposing expanded temperature and pressure requirements for manufacturing the product.

DATES: Effective March 17, 1978; objections by April 17, 1978.

ADDRESS: Written objections to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

William D. Price, Bureau of Veterinary Medicine (HFV-123), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: A notice published in the FEDERAL REGISTER of July 29, 1977 (42 FR 38649) announced that a petition (MF-3657) had been filed by the International Paper Co., P.O. Box 16807, Mobile, Ala. 36616, proposing that § 573.520 (21 CFR 573.520) be amended to expand the temperature and pressure requirements for manufacturing hemicellulose extract.

The Commissioner of Food and Drugs, having evaluated the petition and other relevant material, concludes that § 573.520 should be amended as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))) and under authority delegated to the Commissioner (21 CFR 5.1), § 573.520 is amended by revising paragraph (a) to read as follows:

§ 573.520 Hemicellulose extract.

* * * * *

(a) The additive is produced from the aqueous extract obtained by the treatment of wood with water at elevated temperatures (325 degrees to 535 degrees F) and pressure (80 to 900 pounds per square inch) and contains primarily pentose and hexose sugars.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before April 17, 1978 submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date: This regulation shall become effective March 17, 1978.

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

Dated: March 13, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-7073 Filed 3-16-78; 8:45 am]

[4210-01]

Title 24 Housing and Urban Development

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI 3932]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The date listed in the fourth column.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, requires the purchase of flood insurance as a condition of Federal financial assistance if such assistance is: (1) for acquisition and construction purposes, and (2) for property located in a special flood hazard area identified by the Secretary of Housing and Urban Development.

The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction in these areas unless the community has entered the program and insurance is purchased. Accordingly, for communities listed under this Part such restriction exists as of the effective date of suspension because insurance, which is required, cannot be purchased.

Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities suspended

in this notice no longer meet that statutory requirement for compliance with program regulations (24 CFR Part 1909 et seq.). Accordingly, the communities are suspended on the effective date in the list below.

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

In each entry, a complete chronology of effective dates appears for each listed community.

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of Suspended Communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
*	*	*	*	*	*
Connecticut	Hartford	Wethersfield, town of	Apr. 14, 1972, emergency; May 2, 1977, regular; Mar. 1, 1978, suspended.	May 11, 1973	090040-A
Florida	Palm Beach	Palm Springs, village of	Nov. 2, 1973, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Mar. 15, 1974, June 11, 1976	120223-B
Georgia	Fulton	Alpharetta, city of	Mar. 5, 1974, emergency; Feb. 15, 1978, regular; Mar. 1, 1978, suspended.	June 14, 1974, Oct. 17, 1975	130084-B
Illinois	Kankakee	Bradley, village of	Oct. 29, 1974, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Mar. 1, 1974, Apr. 16, 1976	170338-B
Iowa	Lee	Keokuk, city of	Mar. 27, 1974, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Jan. 23, 1974, Apr. 23, 1976	190185-B
Kansas	Montgomery	Coffeyville, city of	Dec. 17, 1971, emergency; May 3, 1974, regular; Mar. 12, 1976, suspended.	May 3, 1974, Nov. 21, 1975	200232-A
Do	Edwards	Kinsley, city of	May 9, 1973, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	May 17, 1974, Oct. 3, 1975	200092-B
Louisiana	Iberville	Grosse Tete, village of	Apr. 23, 1973, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Feb. 1, 1974, Nov. 14, 1975	220084-B
Maryland	Washington	Funkstown, town of	May 19, 1975, emergency; Feb. 1, 1978, regular; Mar. 1, 1978, suspended.	Mar. 8, 1974, Jan. 23, 1976	240073-B
Massachusetts	Berkshire	Pittsfield, city of	Oct. 29, 1973, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	May 10, 1974, Jan. 7, 1977	250037-B
Missouri	St. Francois	Flat River, city of	Dec. 3, 1971, emergency; Apr. 20, 1973, regular; Mar. 1, 1978, suspended.	Apr. 20, 1973	295264-A
Do	Gasconade	Hermann, city of	Aug. 13, 1971, emergency; Dec. 31, 1971, suspended; Apr. 24, 1974, reinstated; Mar. 5, 1976, regular; Mar. 1, 1978, suspended.	May 3, 1974, Nov. 7, 1975	290141-B
Do	St. Louis	Ladue, city of	Oct. 22, 1971, emergency; Mar. 16, 1976, regular; Mar. 1, 1978, suspended.	Mar. 15, 1974, Sept. 12, 1975	290363-B
Do	....do	Maplewood, city of	May 21, 1971, emergency; Nov. 23, 1973, regular; Mar. 1, 1978, suspended.	Nov. 23, 1973	295266
Do	Monroe	Paris, city of	Apr. 21, 1972, emergency; Mar. 5, 1976, regular; Mar. 1, 1978, suspended.	Apr. 5, 1974	290241
Do	Cass	Pleasant Hill, city of	Apr. 30, 1971, emergency; Sept. 15, 1972, regular; Mar. 1, 1978, suspended.	Sept. 15, 1972	295269-A
Do	Crawford	Steelville, city of	Oct. 15, 1971, emergency; Feb. 13, 1976, regular; Mar. 1, 1978, suspended.	Sept. 13, 1974	290114-B
Do	St. Louis	Times Beach, city of	Sept. 13, 1973, emergency; Sept. 15, 1977, regular; Mar. 1, 1978, suspended.	Jan. 9, 1974	290388
Mississippi	Monroe	Aberdeen, city of	Jan. 31, 1974, emergency; Feb. 1, 1978, regular; Mar. 1, 1978, suspended.	Jan. 23, 1974, June 18, 1976	280115-B
Nebraska	Platte	Columbus, city of	May 21, 1971, emergency; June 29, 1973, regular; Mar. 1, 1978, suspended.	June 29, 1973	315272-A
New Jersey	Union	Berkeley Heights, township of.	Dec. 30, 1971, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	May 24, 1974, July 30, 1976	340459-B
Do	Somerset	Bernardsville, borough of	Dec. 17, 1971, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Dec. 28, 1973	340429-A
Do	Monmouth	Sea Bright, borough of	Dec. 11, 1970, emergency; Oct. 14, 1971, regular; Mar. 1, 1978, suspended.	Oct. 14, 1971	345317-A
Do	Cape May	Sea Isle, city of	June 19, 1970, emergency; Dec. 31, 1970, regular; Mar. 1, 1978, suspended.	July 17, 1970	345318-B
Do	Ocean	Seaside Park, borough of	Dec. 11, 1970, emergency; Aug. 13, 1971, regular; Mar. 1, 1978, suspended.	Aug. 17, 1971	345319-C
Do	....do	Ship Bottom, borough of	May 29, 1970, emergency; Apr. 2, 1971, regular; Mar. 1, 1978, suspended.	May 26, 1970	345320-A
Do	Cape May	Stone Harbor, borough of	Oct. 16, 1970, emergency; Dec. 31, 1970, regular; Mar. 1, 1978, suspended.	Jan. 8, 1971	345323-B
Do	Ocean	Surf City, borough of	May 29, 1970, emergency; Apr. 2, 1971, regular; Mar. 1, 1978, suspended.	May 26, 1970	345324-A
New Mexico	McKinley	Gallup, city of	Aug. 6, 1973, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Mar. 1, 1974, Aug. 9, 1977	350042-B
*	*	*	*	*	*
New York	Nassau	Glen Cove, city of	Aug. 16, 1974, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Aug. 16, 1974, June 11, 1976	360465-B
Do	Schenectady	Niskayuna, town of	Nov. 7, 1973, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Mar. 29, 1974, July 23, 1976	360739-B
Do	Jefferson	Orleans, town of	June 7, 1973, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	May 31, 1974, July 16, 1976	360345-B
Do	Wayne	Palmyra, town of	Mar. 30, 1973, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Apr. 5, 1974, Dec. 5, 1975	360974-B
Do	Chautauqua	Panama, village of	Aug. 28, 1975, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Aug. 9, 1974, June 11, 1976	360143-B
Do	....do	Sherman, village of	Dec. 26, 1975, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Jan. 3, 1975	361502-A
Do	Steuben	South Corning, village of	Apr. 5, 1973, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	July 13, 1973, Nov. 16, 1973	360782-C
Do	Broome	Union, town of	July 11, 1973, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Feb. 6, 1976	360056-A

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
Ohio	Lorain	Avon, city of	Oct. 23, 1975, emergency; Oct. 23, 1975, regular; Mar. 1, 1978, suspended.	Apr. 12, 1974, Mar. 28, 1975	390348-A
Do	Lake	Mentor, city of	Dec. 29, 1972, emergency; Dec. 1, 1977, regular; Mar. 1, 1978, suspended.	June 14, 1974, June 18, 1976	390317-B
Oregon	Clackamas	Unincorporated areas	Apr. 2, 1971, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Mar. 1, 1978	415588
Do	....do	Gladstone, city of	Mar. 15, 1977, emergency; Mar. 15, 1977, regular; Mar. 1, 1978, suspended.	Apr. 5, 1974, June 25, 1976	410017-B
Do	....do	West Linn, city of	Oct. 20, 1972, emergency; Mar. 15, 1977, regular; Mar. 1, 1978, suspended.	Dec. 17, 1973, Aug. 20, 1976	410024-B
Do	Douglas	Winston, city of	Mar. 10, 1972, emergency; Sept. 14, 1972, regular; Mar. 1, 1978, suspended.	Sept. 14, 1973	415593-C
Pennsylvania	Perry	Bloomfield, borough of	Feb. 22, 1974, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Apr. 12, 1974	420748-B
Do	Fayette	Connellville, city of	July 23, 1973, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Nov. 30, 1973, Apr. 30, 1976	420459-B
Do	Juniata	Fermanagh, township of	June 1, 1973, emergency; Feb. 1, 1978, regular; Mar. 1, 1978, suspended.	Oct. 12, 1973	420517-A
Do	Lancaster	Leacock, township of	Dec. 17, 1973, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	June 7, 1974, July 2, 1976	420958-B
Do	Montgomery	Lower Moreland, township of.	Nov. 17, 1972, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Nov. 30, 1973, July 23, 1976	420702-B
Do	Juniata	Mifflin, borough of	Oct. 4, 1973, emergency; Feb. 1, 1978, regular; Mar. 1, 1978, suspended.	Jan. 16, 1974, Nov. 7, 1975	420518-B
Do	....do	Turbett, township of	May 10, 1973, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Apr. 5, 1974	420522-A
Do	Delaware	Upper Darby, township of	Dec. 10, 1971, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Jan. 16, 1974, June 18, 1976	420440-B
Do	Montgomery	Upper Gwynedd, township of.	Dec. 27, 1973, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	June 14, 1974, July 30, 1976	420956-B
Do	Bucks	Warminister, township of	Oct. 4, 1973, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Jan. 9, 1974	420990-A
Do	Lehigh	Whitehall, township of	Mar. 16, 1973, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Jan. 9, 1974, Jan. 23, 1976	420595-B
Do	Blair	Williamsburg, borough of	Aug. 7, 1973, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	Nov. 30, 1973, May 21, 1976	420165-B
South Carolina	Sumter	Sumter, city of	Dec. 11, 1973, emergency; June 21, 1974, regular; Mar. 1, 1978, suspended.	June 21, 1974, Apr. 16, 1976	450184-A
Tennessee	Marion	Jasper, town of	July 30, 1971, emergency; Feb. 26, 1972, regular; Mar. 1, 1978, suspended.	Feb. 26, 1972	475429-B
Texas	Tarrant	Haltom City, city of	Jan. 14, 1972, emergency; Feb. 1, 1978, regular; Mar. 1, 1978, suspended.	June 28, 1974	480599-A
Virginia	Campbell	Brookneal, town of	Jan. 15, 1974, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	May 17, 1974	510030-B
Do	Smyth	Saltville, town of	Jan. 15, 1974, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	May 10, 1974, Oct. 15, 1976	510191-B
Washington	Grays Harbor	Ocean Shores, city of	Feb. 12, 1974, emergency; Mar. 1, 1978, regular; Mar. 1, 1978, suspended.	June 21, 1974, June 4, 1976	530065-B
West Virginia	Mason	Hartford, town of	Apr. 29, 1975, emergency; Feb. 15, 1978, regular; Mar. 1, 1978, suspended.	Nov. 22, 1974	540247-A
New Jersey	Monmouth	Sea Grit, borough of	Nov. 26, 1971, emergency; Mar. 5, 1976, regular; Mar. 1, 1978, suspended.	Feb. 8, 1973	340325-B

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

Issued: February 17, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.78-6863 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI-3933]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The date listed in the fourth column of the table.

ADDRESSES: The addresses where flood insurance policies can be obtained are published at 24 CFR 1912.7.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93-234), amended, requires the purchase of flood insurance as a condition of Federal financial assistance of insurable property if such assistance is:

(1) For acquisition and construction purposes as defined in Part 1909 of Title 24 of the Code of Federal Regulations and

(2) For property located in a special flood hazard area identified by the Secretary of Housing and Urban Development.

The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction except

as authorized by section 202(a) of the Act unless the community has entered the program. Accordingly, for communities listed under this Part no such restriction exists, although insurance, if required, must be purchased.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association (NFIA) servicing company for the State.

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

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of Eligible Communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
•	•	•	•	•	•
Iowa	Pottawattamie	Carter Lake, city of	Dec. 27, 1977, emergency	Sept. 19, 1975	190492
Do	Sioux	Granville, city of	do	Sept. 26, 1975	190737
Michigan	Kalamazoo	Kalamazoo, township of	do	May 20, 1977	260429
Nebraska	Kearney	Wilcox, village of	do	Nov. 5, 1976	310334
North Dakota	Cass	Reed, township of	do		380257
Oklahoma	Murray	Dayis, city of	do	July 30, 1976	400366
Do	Oklahoma	Harrah, town of	do	Aug. 2, 1974 June 4, 1976	400140
Do	Pottawatomie	McLoud, town of	do	Aug. 13, 1976	400398
•	•	•	•	•	•
Alabama	Colbert	Muscle Shoals, city of	Dec. 19, 1977, emergency	Mar. 8, 1974 Aug. 6, 1976	010047
Connecticut	New Haven	Branford, town of	do	July 26, 1974 Nov. 26, 1976	090073-A
North Dakota	Mercer	Hazen, city of	do	Nov. 23, 1973 Mar. 26, 1976	380067-A
New Jersey	Hudson	Kearny, town of	do	June 28, 1974 Aug. 13, 1976	340224-A
Ohio	Cuyahoga	Bay Village, city of	do	Apr. 12, 1974 May 21, 1976	390093-A
Oklahoma	Creek	Sapulpa, city of	do	May 11, 1973	400053
Pennsylvania	Montgomery	Conshohocken, borough of	do	Mar. 22, 1974	420949
Do	Bucks	New Hope, borough of	do	Apr. 27, 1973 June 11, 1976	420195-A
Do	York	Springettsbury, township of	do	Mar. 22, 1974	421031
Rhode Island	Providence	North Providence, town of	do	Apr. 13, 1973	440020
Texas	Palo Pinto	Mineral Wells, city of	do	May 3, 1974 July 23, 1976	480517-A

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

Issued: January 26, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6862 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI 3934]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

List of Communities with Special Hazard Areas

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule identifies communities with areas of special flood, mudslide, or erosion hazards as authorized by the National Flood Insurance Program (NFIP). The identification of these areas is to provide guidance to communities on the reduction of property losses, by the adoption of appropriate flood plain management, and other measures to minimize damage. It will enable communities to guide future construction, where practicable, away from locations which are threatened by flood or other hazards.

EFFECTIVE DATES: April 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, requires the purchase of flood insurance as a condition of Federal financial assistance of insurable property if such assistance is:

(1) For acquisition and construction purposes as defined in Part 1909 of Title 24 of the Code of Federal Regulations and

(2) For property located in a special flood hazard area identified by the Secretary of Housing and Urban Development.

One year after the identification of the community as flood prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction in these areas unless the community has entered the program.

This 30-day period does not supersede the statutory requirement that a community, whether or not participating in the program, be given the opportunity for a period of 6 months to establish that it is not seriously flood prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The 6 months period shall be considered to begin April 17, 1978. Similarly, the 1 year period a community has to enter the program under section 201(d) of the Flood Disaster Protection Act of 1973 shall be considered to begin April 17, 1978.

This identification is made in accordance with Part 1915 of Title 24 of the Code of Federal Regulations as authorized by the National Flood Insurance Program (42 U.S.C. 4001-4128).

Section 1915.3 is amended by adding in alphabetical sequence a new entry to the table:

§ 1915.3 List of communities with special hazard areas (FHBMs in effect).

State	County	Community name and number of panels	Community No. and suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
Arkansas	Unincorporated areas.	Miller County (01-10, 12-47).	050451, A	N-5	I	F	Jan. 10, 1978	Jan. 10, 1978	Hon. Sam F. Rose, County Judge, Office of the County Judge, County Courthouse, Texarkana, Ark. 75501, 501-774-3256.
California	Fresno	City of Fresno (0002-0007).	060048, A	E-8, 9, 11, 12, 14.	I	F	Oct. 18, 1974	do	Mr. J. L. Randall, Deputy Director, Planning and Inspection Department, 2326 Fresno Street, Fresno, Calif. 93721, 209-488-1591.
Do	Unincorporated areas.	Inyo County (0002-0003, 0009-0011, 0015-0016, 0018, 0021, 0023, 0027, 0034-0037, 0042-0045, 0047-0048, 0051, 0055-0057, 0059-0064, 0066, 0068-0070, 0073, 0075-0077, 0080, 0082, 0084-0088, 0090, 0092-0093, 0095-0099, 0101-0102, 0104, 0106, 0108).	060073, A	E-8, 10, 11, 12.	I	F	Jan. 10, 1975	do	Mr. Roger D. Glidden, Associate Director, Department of Public Works, Drawer Q, Independence, Calif. 93526, 714-878-2411.
Louisiana	do	Acadia Parish (01-46).	220001, A	E-5	I	F	Jan. 10, 1978	do	Mr. Aaron L. Cart, President, Office of the Police Jury, Parish Courthouse, Crowley, La. 70526, 318-783-3107.
Do	do	De Soto Parish (0001-0014).	220363, A	N-5	I	F	do	do	Mr. Jerrell Burch, President, Office of the Police Jury, Parish Courthouse, Mansfield, La. 71052, 318-872-0738.
Do	do	LaFourche Parish (01-45, 47-104).	225202, A	E-5	C	F	May 8, 1971	do	Mr. Thomas M. Barker, President, Office of the Police Jury, P.O. Box 507, Thibodaux, La. 70301, 504-532-2931.
Montana	do	Lincoln County (0001-0010, 0012-0042.	300157, A	N-5	I	F	Jan. 10, 1978	do	Mr. Leo K. Collar, Chairman, Board of County Commissioners, County Courthouse, Libby, Mont. 59923, 406-293-7781, Ext. 211.
Nebraska	do	Madison County (0001-0006).	310455, A	E-5	I	F	do	do	Mr. Paul Terry, Chairman, Board of County Commissioners, County Courthouse, Madison, Nebr. 68748, 402-454-2726.
Nevada	do	Storey County (0001-0003, 0005).	320033, A	N-5	I	F	do	do	Mr. Henry Bland, Chairman, Board of County Commissioners, County Courthouse, Virginia City, Nev. 89440, 702-847-0577.
New Hampshire	Strafford	Town of Middleton (0001-0002).	330222, A	N-11, 12	I	F	Jan. 31, 1975	do	Mr. Milton E. Rich, Chairman, Office of Selectmen, R.F.D. 1, Middleton, N.H. 03887, 603-473-2358.
New Mexico	Unincorporated areas.	Dona Ana County (0002, 0004-0010, 0013-0042).	350012, A	E-9, 10, 11, 12.	I	F	Jan. 3, 1975	do	Mr. George R. Biel, Chairman, Board of County Administrators, County Courthouse, Las Cruces, N. Mex. 88001, 505-523-5634.
Oklahoma	do	Cherokee County (0001-0011).	400488, A	N-5, 9	I	F	Jan 10, 1978	do	Mr. Leon Carlile, Chairman, Board of County Commissioners, County Courthouse, Tahlequah, Okla. 74464, 918-456-4121.
Do	do	LeFlore County (0001-0020).	400484, A	N-5	I	F	do	do	Mr. Jack Craig, Chairman, Board of County Commissioners, County Courthouse, Poteau, Okla. 74953, 918-647-2527.
Do	do	Pontotoc County (0001-0010).	400495, A	N-5	I	F	do	do	Mr. Johnnie J. Boring, Chairman, Board of County Commissioners, County Courthouse, Ada, Okla. 74820, 405-332-1425.

State	County	Community name and number of panels	Community No. and suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
South Dakota	Unincorporated areas.	Beadle County (0001-0016).	460251, A	N-5	I	F	Jan. 10, 1978	Jan 10, 1978	Mr. Jerald Micheel, Chairman, Board of County Commissioners, County Courthouse, Huron, S. Dak. 57350, 605-352-8436.
Do	do	Charles Mix County (0001-0005).	460257, A	N-5	I	F	do	do	Mr. Albert Svatos, Chairman, Board of County Commissioners, County Courthouse, Lake Andes, S. Dak. 67356, 605-487-7230.
Do	do	Hughes County (0001-0010).	460271, A	N-5, 9	I	F	do	do	Mr. D. J. Hull, Chairman, Board of County Commissioners, County Courthouse, Pierre, S. Dak. 57501, 605-224-2181.
Do	do	Spink County (0001-0015).	460076, A	N-5	I	F	do	do	Mr. Cecil H. Gilbert, Chairman, Board of County Commissioners, County Courthouse, Redfield, S. Dak. 57469, 605-472-1825.
Texas	do	Hutchinson County (0001-0012).	480373, A	N-9, 10, 11, 12.	I	F	Feb. 7, 1975	do	Hon. Robert Mason Carp, County Judge, Office of the County Judge, County Courthouse, Stinnett, Tex. 79083, 806-878-2801.
Do	do	Kinney County (0001-0018).	481176, A	N-5	I	F	Jan. 10, 1978	do	Hon. Tommy Seargeant, County Judge, Office of the County Judge, County Courthouse, Brackettville, Tex. 78832, 512-563-2401.
Do	do	Randall County (0001-0012).	480532, A	N-5	I	F	do	do	Hon. Woody Pond, County Judge, Office of the County Judge, County Courthouse, Canyon, Tex. 79015, 806-655-3251.
Do	do	Van Zandt County (0001-0011).	481040, A	N-5	I	F	do	do	Hon. Richard L. Ray, County Judge, Office of the County Judge, County Courthouse, Canton, Tex. 75103, 214-567-4071.
Utah	Emery	City of Castle Dale (0001).	490059, A	E-5	I	F	do	do	Hon. Doyle Barney, Mayor, City Hall, Castle Dale, Utah 84513, 801-748-2115.
Do	Unincorporated areas.	Garfield County (0001-0003, 0005-0007, 0010-0011, 0015, 0018-0021, 0024, 0026-0037, 0039-0043).	490065, A	E-5	I	F	do	do	Mr. Jay Proctor, Chairman, Board of County Commissioners, County Courthouse, Panguitch, Utah 84759, 801-676-2327.
Do	do	Kane County (0001-0009, 0011-0016, 0018-0037, 0039-0044).	490083, A	E-5, 9	I	F	do	do	Mr. Merrill R. MacDonald, Chairman, Board of County Commissioners, County Courthouse, Kanab, Utah 84741, 801-644-2458.
Alabama	Covington	City of Andalusia (01-10).	010331, A	N-5	I	F	Jan. 13, 1978	Jan. 13, 1978	Chalmers Bryant, Mayor, P.O. Box 429, Andalasia, Ala. 36420, 205-222-3311.
Do	Unincorporated areas.	Coffee County (0001A-0008A).	010239	N-10, 11, 12, 14.	I	F	Jan. 17, 1975	do	James L. Sawyer, Probate Judge, P.O. Box 306, County Courthouse, Elba, Ala. 36323.
Do	Dekalb	Town of Geraldine (01-06).	010356, A	N-5	I	F	Jan. 13, 1978	do	C. C. Lowrey, Mayor, P.O. Box 71, Geraldine, Ala. 35974, 205-659-4327.
Do	Baldwin	Town of Summerdale (01).	010328, A	N-5	I	F	do	do	M. D. Dawkins, Mayor, P.O. Box 148, Summerdale, Ala. 36580, 205-989-6202.
Florida	Citrus	City of Inverness (01-04).	120348, A	E-5	I	F	do	do	Elfred Lassiter, Mayor, P.O. Box 337, Inverness, Fla. 32650.
Do	Unincorporated areas.	Liberty County (0001A-0014A).	120148	N-5	I	F	do	do	Richard Phillips, Chairman, County Commissioners, County Courthouse, Bristol, Fla. 32321, 904-643-3115.
Do	do	Taylor County (0001A-0017A).	120302	E-10, 11, 12, 14.	I	F	Jan. 10, 1975	do	Sam Osteen, Chairman, County Commissioners, County Courthouse, P.O. Box 620, Perry, Fla. 32347, 904-584-3531.

State	County	Community name and number of panels	Community No. and suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
Georgia	Fulton and Cherokee.	City of Mountain Park (01).	130315, A	N-5	I	F	Jan. 13, 1978	Jan. 13, 1978	Joyce Ayres, Mayor, Route No. 1, Roswell, Ga. 30075, 404-633-3311.
Do	Unincorporated areas.	Oconee County (0001A-0003A).	130453	E-5	I	F	do	do	Roy E. Barry, Chairman, County Commissioners, P.O. Box 145, Watkinsville, Ga. 30677, 404-769-5120.
Illinois	St. Clair	City of Centreville (01-03).	170622, A	E-5	I	F	do	do	Riley L. Ownes, Mayor, 5800 Bond Ave., Centerville, Ill. 62207, 618-332-1021.
Do	Unincorporated areas.	Franklin County (0001A-0006A).	170899	N-5	I	F	do	do	Charles Dawson, Chairman, County Board, County Courthouse, Benton, Ill. 62812, 618-439-3751.
Do	do	Kendall County (0001A-0005A).	170341	E-10, 11, 12, 14.	I	F	Feb. 21, 1975	do	Robert Cherry, Chairman, County board, Route No. 2, Box 50, Oswego, Ill. 60543, 312-554-3511.
Do	Cook and Will	Village of Tinley Park (01-05).	170169, A	E-8, 11, 12, 14.	I	F	May 17, 1974	do	Frank W. German, Village Clerk, 17355 68th Court, Tinley Park, Ill. 60477, 312-532-7700.
Indiana	Unincorporated areas.	Clinton County (0001A-0004A).	180029	E-10, 11, 12, 14.	I	F	Dec. 13, 1974	do	Clyde C. Johnson, President, County Commissioners, County Courthouse, Frankfort, Ind. 46044, 317-654-8529.
Minnesota	do	Crow Wing County (0001A-0006A, 0008A-0011A, 0013A-0014A).	270091	E-5	I	F	Jan. 13, 1978	do	Donald O'Brien, Chairman, County Courthouse, Brainerd, Minn. 56401, 218-829-1726.
Do	Hennepin	City of Minnetrista (01-12).	270175, A	N-5	I	F	do	do	Eli zabeth Reed, Mayor, Route No. 2, Box 738K, Mound, Minn. 55364, 612-472-3484.
Mississippi	Unincorporated areas.	Lauderdale County (0001A-0009A).	280224	E-5	I	F	do	do	R. N. McElroy, President, Board of Supervisors, P.O. Box 1945, Meridian, Miss. 39301, 601-693-2951.
Do	do	Monroe County (0001A-0012A).	280275	N-5	I	F	do	do	L M. Halbert, President, Board of Supervisors, County Courthouse, Aberdeen, Miss. 39730, 601-369-8143.
Do	do	Perry County (0001A-0008A).	280233	E-5	I	F	do	do	Paul D. Johnson, President, Board of Supervisors, County Courthouse, New Augusta, Miss. 39462, 601-964-3218.
Do	do	Wayne County (0001A-0012A).	280238	N-10, 11, 12, 14.	I	F	Dec. 20, 1974	do	Artiss Lay, President, Board of Supervisors, County Courthouse, Waynesboro, Miss. 39367, 601-735-3285.
New Jersey	Warren	Town of Hackettstown (01-02).	340484, A	E-5	I	F	Jan. 13, 1978	do	William Hobokan, Mayor, 315 Washington St., Hackettstown, N.J. 07840, 201-852-3130.
New York	Broome	Town of Colesville (0001C-0005C).	360041	E-11, 12, 14.	I	F	June 28, 1974; Apr. 18, 1975; Aug. 6, 1976	do	Richard N. Finch, Town Supervisor, R.D. No. 2, Harpursville, N.Y. 13787, 607-693-1774.
Do	Warren	Town of Hague (01-11).	360873 B	N-11	I	F	Nov. 5, 1976	do	William K. DeLarm, Town Supervisor, Hague, N.Y. 12836, 518-543-6663.
Do	Schoharie	Village of Middleburgh (01).	361245, C	E-9	I	F	May 31, 1974; Sept. 12, 1975; Sept. 10, 1976	do	Janet Mayer, City Clerk, Village Hall, Middleburgh, N.Y. 12122, 518-827-5143.
Do	Cayuga	Town of Montezuma (01-07).	360116, C	E-9	I	F	May 31, 1974; June 11, 1976; Feb. 18, 1977	do	Kermit Huttar, Chairman, Planning Board, P.O. Box 375, Montezuma, N.Y. 13117, 315-987-4204.
North Carolina	Granville	City of Oxford (01-06).	370108, A	E-5	I	F	Jan. 13, 1978	do	Hugh M. Curru, Major, College Street, Oxford, N.C. 75565, 919-693-7414.
Do	Person	City of Roxboro (0001A-0003A).	370347	N-5	I	F	do	do	Revis L. Carver, Mayor, P.O. Box 128, Roxboro, N.C. 27573, 919-599-3116.
Ohio	Darke	Village of Arcanum (01).	390684, A	N-5	I	F	do	do	Norman C. Irelan, Mayor, 104 West South St., Arcanum, Ohio 45304, 513-692-8263.
Do	Unincorporated areas.	Brown County (0001A-0007A).	390034	E-5	I	F	do	do	Steve Brnst, Chairman, County, Commissioners, County Courthouse, Georgetown, Ohio 45121, 513-378-3956.

State	County	Community name and number of panels	Community No. and suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
Ohio	Unincorporated areas.	Defiance County (0001A-0006A).	390143	N-5	I	F	Jan. 13, 1978	Jan. 13, 1978	Sylvester Lenhart, Chairman, County Commissioners, Courthouse, Defiance, Ohio 43512, 419-782-4761.
Do	Hamilton	City of Lockland (01).	390223, A	N-10, 11, 12, 14.	I	F	Feb. 15, 1974	do	Raymond A. Bauer, Mayor, City Hall, Lockland, Ohio 45215, 513-761-1124.
Do	Trumbull	Village of Lordstown (0001A-0002A).	390812	N-5	I	F	Jan. 13, 1978	do	Osta Crass, Mayor, 1455 Salt Springs SW., Lordstown, Ohio 44481.
Do	Unincorporated areas. *	Meigs County (0001A-0007A).	390387	E-5	I	F	do	do	Henry Wells, Chairman, County Commissioners, County Courthouse, Pomeroy, Ohio 45769, 614-992-2895.
Do	do	Sandusky County (0001A-0006A).	390486	E-5	I and C	F	do	do	Edward J. Sours, Chairman, County Commissioners, 100 North Park Ave., Fremont, Ohio 43420, 419-332-6411.
Ohio	Brown	Village of Sardinia (01).	390789, A	N-5	I	F	do	do	Gloria Spornhaver, Mayor, Village Hall, Sardinia, Ohio 45171, 513-446-2638.
Do	Unincorporated areas.	Stark County (0001A-0008A).	390780	E-5	I	F	do	do	Joseph A Sturrett, County Engineering Company Office Building,Canton, Ohio 44702 216-454-5651.
Pennsylvania	Cambria	Township of Portage (01-08).	421444, A	N-5	I	F	do	do	Steve Havrilak, Chairman, Township Supervisors, 807 Luther Ave., Portage, Pa. 15946, 814-736-8360.
Do	Tioga	Township of Tioga (01-12).	420628, B	E-12,14	I	F	Feb. 8, 1974; Jan. 7, 1977	do	Robert J. Blair, Executive Director, P.O. Box 176, Lawrenceville, Pa. 16929, 717-827-2117.
Do	Lycoming	Township of Upper Fairfield (0001A).	420660	E-5	I	F	Jan. 13, 1978	do	Edgar Hunter, Chairman, Township Supervisor, R.D. No. 2, Montoursville, Pa. 17754, 717-435-0426.
South Carolina	Richland and Lexington.	Town of Irmo (01-02).	450133, B	E-8, 11, 12, 14.	I	F	May 17, 1974; Apr. 30, 1976	do	Furman Younginer, Mayor, P.O. Box 124, Irmo, S.C. 29063, 803-781-2547.
Tennessee	Meigs	Town of Decatur (01-04).	470134, B	E-9	I	F	June 14, 1974, Mar. 11, 1977	do	William M. Buchanon, Mayor, P.O. Box 83, Decatur, Tenn. 37322, 612-334-5716.
Do	Perry	City of Lobelville (01-11).	470146, A	N-5	I	F	Jan. 13, 1978	do	Bill Sharp, Mayor, P.O. Box 366, Lobelville, Tenn. 37097, 615-593-2040.
Do	Unincorporated areas.	Overton County (0001A-0006A).	470362	N-5	I	F	do	do	Fred White, County Judge, 205 North Church St., Livingston, Tenn. 38570, 615-823-5419.
Do	Lake	Town of Tiptonville (0001A).	470350	E-5	I	F	do	do	Jerry Don Yates, Mayor, 130 South Ct., Tiptonville, Tenn. 38079, 901-253-7111.
West Virginia	Unincorporated areas.	Barbour County (0001A-0005A).	540001	E-10, 11, 12, 14.	I	F	Nov. 15, 1974	do	James F. Stemple, President, County Commissioners, P.O. Box 310, Phillipe, W. Va. 26416, 304-457-2544.
Arizona	Maricopa	City of Chandler (06, 10).	040040, B	E-11, 12...	I	F	May 24, 1977	Jan. 17, 1978	Mr. L.C. Johnson, City Engineer, Public Works Department, Municipal Building, P.O. Box 248, 200 East Commonwealth Ave., Chandler, Ariz. 85224, 602-963-8111, Ext. 227
California	San Mateo	City of South San Francisco (01-02, 07-08).	065062, A	E-11, 12, 14.	C	F	Jan. 10, 1975	do	Mr. Frank J. Addiego, Director of Public Services, City Hall, 400 Grand Ave., South San Francisco, Calif. 94080, 415-873-8000.
Iowa	Unincorporated areas.	Madison County (0001-0006).	190887, A	N-5, 9	I	F	Jan.17, 1978	do	Mr. Elton Hammons, Chairman, Board of County Supervisors, County Courthouse, Winterset, Iowa 50273, 515-462-3914.
Missouri	do	Franklin County (01-60).	290493, A	E-5	I	F	do	do	Hon. Hugh McCane, Presiding Judge, County Courthouse, Union, Mo. 63084, 314-583-5844.
New Mexico	Quay	City of Tucumcari (01-04).	350048, B	E-8, 9, 11, 12.	I	F	June 28, 1974	do	Mr. Hugh R. Riley, Deputy City Manager, P.O. Box 1188, Tucumcari, N. Mex. 88401, 505-461-3451.
North Dakota	Mercer	City of Golden Valley (01).	380175, A	N-11, 14...	I	F	June 27, 1975	do	Hon. Arnold Erbstoesser, Mayor, City Hall, Golden Valley, N. Dak. 58541, 701-983-4642.

State	County	Community name and number of panels	Community No. and suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
North Dakota	Sheridan	City of McClusky (01).	380109, A	N-11, 14	I	F	Nov. 5, 1976	Jan. 17, 1978	Hon. Alvin Burg, Mayor, City Hall, McClusky, N. Dak. 58463, 701-363-2216.
Oklahoma	McCurtain	City of Idabel (01-02, 04, 06).	400108, B	E-11, 14	I	F	Jan. 23, 1974	do	Hon. Rex Helms, Mayor, 207 South Dentral, Idabel, Okla. 74745, 405-286-7609.
Texas	Unincorporated area	Kenedy County (0001-0022).	481230,A	N-5	I	F	Jan. 17, 1978	do	Hon. Lee H. Lytton, Jr., County Judge, Office of the County Judge, County Courthouse, Sarita, Tex. 78385, 512-294-5224.
Utah	do	Emery County (0001-0002, 0004-0033, 0035-0039, 0042-0046, 0048-0049).	490058, A	E-5	I	F	do	do	Mr. Gardell Snow, Chairman, Board of County Commissioner, County Courthouse, Castle Dale, Utah 84513, 801-748-2465.
Alabama	Bullock	Bullock County (unincorporated areas) (0001A-0009A).	010231	E-10, 11, 12, 14.	I	F	Mar. 28, 1975	Jan. 20, 1978	Rufus Hoffman, Probate Judge, P.O. Box 71, Union Springs, Ala. 36089, 205-738-2250.
Do	Franklin	Franklin County (unincorporated areas (0001A-0009A).	010322	N-5	I	F	Jan. 20, 1978	do	Jimmy Byars, Chairman, County Board, Box 70, Russellville, Ala. 35653, 205-332-1410.
Do	Marshall	Marshall County (unincorporated areas) (0001A-0010A).	010275	N-5	I	F	do	do	Oriville Vandergriff, Chairman, County Board, County Courthouse Annex, Guntersville, Ala. 35976, 205-582-4318.
Do	Randolph	Randolph County (unincorporated areas) (0001A-0006A).	010182	N-10, 11, 12, 14.	I	F	Sept. 13, 1974	do	Judge Gober Benefield, Chairman, County Commissioners, Wedowee, Ala. 36278, 205-357-4903.
Florida	Columbia	Columbia County (unincorporated areas) (0001A-0012A).	120070	E-5	I	F	Jan. 20, 1978	do	Marion Mann, Chairman, County Commissioners, Columbia County Courthouse, Lake City, Fla. 32055, 904-752-4242.
Illinois	Calhoun	Calhoun County (unincorporated areas) (0001A-0006A).	170018	E-10, 11, 12, 14.	I	F	Jan. 10, 1975	do	Arthur Tepen, Chairman, County Board, County Courthouse, Hardin, Ill. 62407, 618-576-2351.
Do	Woodford	Woodford County (unincorporated areas) (0001A-0008A).	170730	E-5	I	F	Jan. 20, 1978	do	Charles Meginnes, Chairman, County Board, County Courthouse, Eureka, Ill. 61530, 309-923-3264.
Indiana	Decatur	Decatur County (unincorporated areas) (0001A-0006A).	180430	E-5	I	F	do	do	Paul Ernstes, Chairman, County Commissioners, c/o County Auditors Office, Decatur County Courthouse, Greensburg, Ind. 47240, 812-663-8223 or 254.
Do	Morgan	Morgan County (unincorporated areas) (0001A-0006A).	180176	N-10, 11, 12, 14.	I	F	Dec. 20, 1974	do	Bryon G. Gray, President, County Commissioners, Morgan County Courthouse, Martinsville, Ind. 46151, 317-342-3391.
Michigan	Barry	Township of Hope (0001A-0002A).	260681	E-5	I	F	Jan. 20, 1978	do	Reinder Dupon, Township Supervisor, RD No. 1, Delton, Mich. 49046.
Do	Delta	Township of Masonville (0001A-0007A).	260687	N-5	I	F	do	do	Harry Person, Township Supervisor, Route No. 1, Box 1553, Rapids River, Mich. 49878, 906-474-6838.
New York	Schoharie	Town of Blenheim (0002A, 0004A).	361580	E-5	I	F	do	do	Gail Shaffer, Town Supervisor, Indian Trail Road, North Blenheim, N.Y. 12131, 518-827-6353.
Do	Columbia	Village of Kinderhook (0001B).	361048	E-8, 11	I	F	Nov. 5, 1976	do	Harry A. Pulver, Mayor, Village Hall, Kinderhook, N.Y. 12106, 518-758-7944.
North Carolina	Bladen	Bladen County (unincorporated areas) (0001A-0013A).	370293	N-5	I	F	Jan. 20, 1978	do	W. G. Fussell, Executive Director of Planning, Box 725, Elizabethtown, N.C. 28337, 919-862-2011.
Do	Transylvania	Transylvania County (unincorporated areas) (0001A-0004A, 0006A).	370230	E-5	I	F	do	do	Leighton W. Martin, Chairman, County Commissioners, Administration Office, 28 East Main St., Brevard, N.C. 28712.
Ohio	Coshocton	Coshocton County (unincorporated areas) (0001A-0009A).	390765	E-5	I	F	do	do	Paul S. Gardner, Chairman, County Commissioners, Courthouse Annex, Coshocton, Ohio 43812, 614-622-1753.

State	County	Community name and number of panels	Community No. and suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
Ohio	Crawford	Crawford County (unincorporated areas) (0001A-0006A).	390811	N-5	I	F	Jan. 20, 1978	Jan. 20, 1978	Richard Shealy, Chairman, County Commissioners, County Courthouse, Bucyrus, Ohio 44820, 419-562-5876.
Do	Fulton	Fulton County (unincorporated areas) (0001A-0006A).	390182	N-5	I	F	do	do	Ray Peebles, Chairman, County Commissioners, County Courthouse, Wauseon, Ohio 43667, 419-335-5921.
Do	Holmes	Holmes County (unincorporated areas) (0001A-0006A).	390276	E-5	I	F	do	do	Ralph Kasner, Chairman, County Commissioners, County Courthouse, Millersburg, Ohio 44634, 216-674-1876.
Do	Allen	Village of Lafayette (0001A).	390803	N-5	I	F	do	do	Kenneth Schick, Mayor, 101 S. High St., Lafayette, Ohio 45854, 419-649-3911.
Do	Perry	Perry County (unincorporated areas) (0001A-0006A).	390778	E-5	I	F	do	do	Richard N. Sayre, Chairman, County Commissioners, Box 248, New Lexington, Ohio 43764, 614-342-2045.
Pennsylvania	Monroe	Township of Tobyhanna (0001A-0006A).	421897	E-5	I	F	do	do	Elwood Christman, Township Chairman, Pocono Pines, Pa. 18350, 717-646-2690.
South Carolina	Edgefield	Edgefield County (unincorporated areas) (0001A-0008A).	450229	N-5	I	F	do	do	H. O. Carter, County Administrator, P.O. Box 663, Edgefield, S.C. 29824, 803-637-5381.
Do	Greenwood	Greenwood County (unincorporated areas) (0001A-0008A).	450094	N-5	I	F	do	do	Fred Alewine, Chairman, County Council, County Courthouse, Greenwood, S.C. 29646, 803-229-2413.
Do	Saluda	Saluda County (unincorporated areas) (0001A-0002A, 0004A-0007A).	450230	N-5	I	F	do	do	J. R. Scurry, Chairman, County Council, 101 South Main St., Saluda, S.C. 29133, 903-445-2635.
Tennessee	Hardeman	Hardeman County (unincorporated areas) (0001A-0008A).	470360	N-5	I	F	do	do	C. M. Foote, County Judge, County Courthouse, Bolivar, Tenn. 38008, 901-658-3266.
Colorado	Unicorporated area	Custer County (03-06, 08, 11-16, 18-20, 22, 25-27, 33-35, 39-41, 46-47).	080040, A	N-5, 9	I	F	Jan. 24, 1978	Jan. 24, 1978	Mr. Leonard Ries, Chairman, Board of County Commissioners, County Courthouse, P.O. Box 10, Westcliffe, Colo. 81252, 303-783-2441.
Do	do	Dolores County (0001-0010, 0012).	080279, A	E-5	I	F	do	do	Mr. Wayne Twilley, Chairman, Board of County Commissioners, County Courthouse, Dove Creek, Colo. 81324, 303-677-2381.
Louisiana	do	Sabine Parish (0001-0017).	220368, A	N-5	I	F	do	do	Mr. C. C. Nabours, President, Office of the Police Jury, Parish Courthouse, Many, La. 71449, 318-256-2116.
Maine	Kennebec	Town of Oakland (0001-0002).	230242, A	E-11, 12	I	F	Jan. 24, 1975	do	Mr. Eric S. Meserve, Town Manager, P.O. Box 187, Oakland, Maine 04963, 207-465-7357.
Montana	Unincorporated areas.	Jefferson County (0002, 0004, 0008-0010, 0012-0014, 0016-0018, 0021-0024).	300154, A	N-5	I	F	Jan. 24, 1978	do	Mr. James Sanddal, Chairman, Board of County Commissioners, County Courthouse, Boulder, Mont. 59632, 406-225-3332.
Oregon	do	Marion County (01-25, 27-32, 34-39, 43-48, 50-58, 60-66).	410154, A	E-10, 11, 12.	I	F	Jan. 24, 1975	do	Mr. Walter R. Heine, Chairman, Board of County Commissioners, County Courthouse, Salem, Oreg. 97301, 503-588-5212.
Do	Linn	City of Millersburg (0001).	410284, A	N-5	I	F	Jan. 24, 1978	do	Hon. Clayton Wood, Mayor, City Council, 4310 Northeast Woods Road, Millersburg, Oreg. 97321, 503-928-6375.
South Dakota	Unincorporated areas.	Codington County (0001-0009).	460260, A	N-5	I	F	do	do	Mr. Ralph Mack, Chairman, Board of County Commissioners, County Courthouse, Watertown, S. Dak. 57201, 605-886-8497.

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Texas	Unincorporated areas.	Anderson County (0001-0018).	480001, A	N-5	I	F	Jan. 24, 1978	Jan. 24, 1978	Hon. N. R. Link, County Judge, Office of the County Judge, County Courthouse, Palestine, Tex. 75801, 214-729-5168.
Do	do	Brown County (0001-0013).	480717, A	N-5	I	F	do	do	Hon. James G. Bunnell, County Judge, Office of the County Judge, County Courthouse, Brownwood, Tex. 76801, 915, 646-0370.
Do	do	Dimmit County (0001-0016).	480789, A	N-5	I	F	do	do	Hon. Larry Speer, County Judge, Office of the County Judge, County Courthouse, Carrizo Springs, Tex. 78834, 512-876-2323.
Do	Fort Bend, Harris, and Waller.	City of Katy (0001).	480301, B	E-8, 11	I	F	June 28, 1974	do	Mrs. A. Murray, City Secretary, City Hall, 910 Avenue D, P.O. Box 617, Katy, Tex. 77450, 713-371-3131.
Do	Unincorporated areas.	Presidio County (0001-0005, 0007-0014, 0016-0018, 0021-0024, 0026-0029, 0031-0036).	480530, A	N-5	I	F	Jan. 24, 1978	do	Hon. W. B. Johnson, County Judge, Office of the County Judge, County Courthouse, Murfa, Tex. 79843, 915-729-4452.
Do	do	Starr County (0001-0016).	480575, A	E-8, 9, 10, 11, 12.	I	F	Nov. 1, 1974	do	Hon. Dr. Mario E. Ramirez, County Judge, Office of the County Judge, County Courthouse, Rio Grande City, Tex. 78582, 512-487-2307.
Do	do	Uvalde County (0001-0016).	480629, A	N-5	I	F	Jan. 24, 1978	do	Hon. Leo Darley, County Judge, Office of the County Judge, County Courthouse, Uvalde, Tex. 78801, 512-278-3216.
Vermont	Addison	Town of Hancock (0002, 0004).	500005, A	E-8, 10, 11, 12.	I	F	Sept. 20, 1974	do	Mr. Everett C. Bettis, Chairman, Board of Selectmen, Town Hall, Hancock, Vt. 05748, 802-767-8660.
Alabama	Choctaw	Choctaw County (unincorporated areas) (0001A-0017A).	010310	E-5	I	F	Jan. 27, 1978	Jan. 27, 1978	Charles Ford, Probate Judge, County Courthouse, Butler, Ala. 36904, 205-459-2417.
Do	Crenshaw	Crenshaw County (unincorporated areas) (0001A-0009A).	010246	E-10, 11, 12, 14.	I	F	Dec. 6, 1974	do	Tom Hardin, Probate Judge, Courthouse, Luverne, Ala. 36049, 205-335-5640.
Florida	Baker	Baker County (unincorporated areas) (0001A-0010A).	120419	N-5	I	F	Jan. 27, 1978	do	R. H. Davis, Chairman, County Board, County Courthouse, MacClenny, Fla. 32063, 904-259-3613.
Georgia	Hart	Hart County (unincorporated areas) (0001A-0005A).	130467	N-5	I	F	do	do	Byron Whitmire, Chairman, County Commission, P.O. Box 279, Hartwell, Ga. 30643, 404-376-2024.
Illinois	Jersey	Jersey County (unincorporated areas) (0001A-0005A).	170312	E-10, 11, 12, 14.	I	F	Dec. 27, 1974	do	Clyde Cope, Chairman, County Board, County Courthouse, Jerseyville, Ill. 62052, 618-498-5571.
Do	Menard	Menard County (unincorporated areas) (0001A-0004A).	170505	E-10, 11, 12, 14.	I	F	Jan. 10, 1975	do	James Combs, County Clerk, Box 456, Courthouse, Petersburg, Ill. 62675, 217-632-2415.
Indiana	Floyd	Floyd County (unincorporated areas) (0001A-0004A).	180432	E-5	I	F	Jan. 27, 1978	do	Raymond Libs, President, County Commissioners, Room 214, City County Building, New Albany, Ind. 47150, 812-944-3665.
Do	Henry	Henry County (unincorprated areas) (0001A-0006A).	180437	N-5	I	F	do	do	Homer Peckinpaugh, Chairman, County Commission, Courthouse, New Castle, Ind. 47363, 317-529-4705.
Do	Wabash	Wabash County (unincorporated areas) (0001A-0006A).	180266	E-10, 11, 12, 14.	I	F	Dec. 27, 1974	do	Glen Beery, County Commissioner, Wabash County Courthouse, Wabash, Ind. 46992, 219-563-5217.
Mississippi	Covington	Covington County, (unincorporated areas) (0001A-0005A).	280291	E-5	I	F	Jan. 27, 1978	do	Guy C. Hughs, President, Board of Supervisors, Courthouse, Collins, Miss. 39428, 601-722-3395.
New York	Allegany, Cattaraugus, Chautauga, Erie.	Seneca Nation of Indians (0001A-0005A).	361591	E-5	I	F	do	do	Calvin E. Lay, President, Saylor Community Building, P.O. Box 268A, Irving, N.Y. 14081, 716-532-5661.

State	County	Community name and number of panels	Community No. and suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
North Carolina	Chowan	Chowan County (unincorporated areas) (0001A-0004A).	370301	E-5	I and C	F	Jan. 27, 1978	Jan. 27, 1978	Dallas L. Jethro, Jr., County Commissioner, P.O. Box 405, Edenton, N.C. 27932, 919-482-8486.
Ohio	Madison	Madison County (unincorporated areas) (0001A-0009A).	390773	N-5	I	F	do	do	Louis Overturf, Chairman, County Commission, County Courthouse, London, Ohio 43140, 614-852-2972.
Do	Paulding	Paulding County (unincorporated areas) (0001A-0006A).	390777	N-5	I	F	do	do	John Dietrich, Chairman, County Commission, County Courthouse, Paulding, Ohio 45879, 419-399-2051.
Do	Columbiana	Village of Salineville (0001A).	390628	N-5	I	F	do	do	Stanley E. Fitch, Mayor, Main Street, Salineville, Ohio 43945, 216-679-2307.
Do	Williams	Williams County (unincorporated areas) (0001A-0006A).	390785	N-5	I	F	do	do	Donald Kaiser, Chairman, County Commission, County Courthouse, Bryan, Ohio 43506, 419-636-2059.
Pennsylvania	Warren	Township of Deerfield (0001A).	422118	N-8, 11, 12, 14.	I	F	Nov. 15, 1974	do	Joseph M. Pillar, Chairman, Deerfield Township Supervisors, Tidioute, Pa. 16351, 814-484-3474.
Wisconsin	Dodge	City of Beaver Dam (0001C).	550095	E-12, 14	I	F	Dec. 17, 1973; Oct. 10, 1975; Sept. 24, 1976.	do	Bob Kachelski, Mayor, City Hall, Beaver Dam, Wis. 53916, 414-885-5541.
Alaska	Unorganized borough.	City of Akolmiut (01-30).	020116, A	N-5, 9	I	F	Jan. 31, 1978	Jan. 31, 1978	Hon. Irvin Brink, Mayor, Bethel Division, City Hall, Nunapitchuk, Alaska 99641, 907-543-2064.
Idaho	Unincorporated areas.	Madison County (0001-0007).	160217, A	N-5	I	F	do	do	Mr. W. Keith Walker, Chairman, Board of County Commissioners, County Courthouse, Rexburg, Idaho 83440, 208-356-3662.
Do	do	Twin Falls County (0001-0023).	160231, A	N-5	I	F	do	do	Mr. Merl E. Leonard, Chairman, Board of County Commissioners, County Courthouse, Twin Falls, Idaho 83301, 208-734-3300.
Iowa	do	Clayton County (0001-0010).	190858, A	E-5	I	F	do	do	Mr. Virgil Wessel, Chairman, Board of Supervisors, County Courthouse, Elkader, Iowa 52043, 319-245-1106.
Montana	do	Richland County (0005, 0008-0012, 0014-0018, 0020-0021).	300165, A	N-5	I	F	do	do	Mr. Andrew Peterson, Chairman, Board of County Commissioners, County Courthouse, Sidney, Mont. 59270, 406-482-1708.
Nevada	do	Lyon County (0001-0008, 0010-0012, 0014-0015, 0017-0018, 0020-0023, 0025-0027).	320029, A	N-5	I	F	do	do	Mr. Robert H. Griffin, Chairman, Board of County Commissioners, County Courthouse, Yerington, Nev. 89447, 702-463-2382.
North Dakota	Barnes	City of Valley City (01-05).	380002, B	E-8, 9, 11, 12.	I	F	Feb. 8, 1974	do	Mr. Robert K. Barrow, City Engineer, City Hall, Valley City, N. Dak. 58072, 701-845-0380.
Oregon	Unincorporated areas.	Lake County (0003-0005, 0008, 0010-0016, 0029, 0031, 0034, 0036, 0042-0045, 0049-0050, 0052).	410115, A	E-5	I	F	Jan. 31, 1978	do	Mr. George Carlon, Chairman, Board of County Commissioners, County Courthouse, Lakeview, Oreg. 97630, 503-947-2421.
Texas	do	Bexar County (01-28, 31-36, 39-43, 46-52, 54-82).	480035, A	E-5	I	F	do	do	Hon. Blair Reeves, County Judge, Office of the County Judge, County Courthouse, San Antonio, Tex. 78204, 512-220-2626.
Do	do	Fayette County (0001-0014).	480815, A	N-5	I	F	do	do	Hon. Fritz C. Lobpries, County Judge, Office of the County Judge, County Courthouse, LaGrange, Tex. 78945, 713-968-3459.

State	County	Community name and number of panels	Community No. and suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
Utah	do	San Juan County (0003-0004, 0032).	490109, A	E-5	I	F	Jan. 31, 1978	Jan. 31, 1978	Mr. Calvin Black, Chairman, Board of County Commissioners, County Courthouse, Monticello, Utah 84535, 801-587-2232.

FINAL LIST CODES

1. Conversion to Regular Program with FIRM (elevations determined).
2. Conversion to Regular Program with FIRM (no elevations determined).
3. Conversion to Regular Program with no special Flood Hazard Areas—no FIRM.
4. Conversion to Regular Program with no Special Flood Hazard Areas—no FIRM; recission of FHBM effective on same date as conversion.
5. Initial FHBM.
Revision—Change of elevation; revised FIRM.
7. Revision—Change of zone designation; revised FIRM.
8. Revision—Corporate limit changes.
9. Revision—Drafting corrections; Printing errors.
10. Revision—Curvilinear.
11. Revision—Add Flood Hazard Area.
12. Revision—Reduce Flood Hazard Area.
13. Revision—Federal Register omission.
14. Revision—Refunds possible.
15. Attention! A previous map (or maps) has been rescinded or withdrawn for this community. This may have affected the sequence of suffixes.
R—Regular program.
E—Emergency program.
N—Not in program.

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

Issued: January 17, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6866 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI-3935]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Changes in Special Flood Hazard Areas

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator, after consultation with the Chief Executive Officer of each community listed, finds that modification of the proposed Special Flood Hazard Areas (SFHAs) for those communities is appropriate as a result of requests for changes in the interim rule.

DATES: These modified SFHAs are in effect as of the dates listed in the sixth column of the attached list and amend the Federal Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified SFHA determinations for each community are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator has published a notification of modification of the SFHAs in prominent local newspapers for the communities listed below. Ninety (90) days have elapsed since that publication, and the Administrator has received no appeals from the communities requesting changes in the proposed SFHA determinations.

The numerous changes made in the SFHAs on the Flood Insurance Rate Map for each community make it administratively infeasible to publish in this notice all of the SFHA changes contained on the maps. However, this notice includes the address of the Chief Executive Officer where the modified SFHA determinations are available for inspection.

The modifications are pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1916.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These SFHAs are basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These SFHAs together with the flood plain management measures required by 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified SFHAs shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The changes in the SFHAs listed below are in accordance with 24 CFR 1916.8:

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
Massachusetts	Barnstable	Falmouth, town of.	The Falmouth Enterprise, July 26, 1977, Aug. 2, 1977.	Mr. John De Mello, Chairman, Board of Selectman, town of Falmouth, Town Hall, Falmouth, Mass. 02540.	Sept. 30, 1977	255211B
Texas	Aransas	Rockport, city of.	Rockport Pilot, Nov. 3, 1977, Nov. 10, 1977.	Hon. Walter S. Falk, Jr., Mayor, city of Rockport, City Hall, Box 1058, Rockport, Tex. 78382.	Sept. 9, 1977..	485504C

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

Issued: January 26, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6864 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI-3936]

PART 1916—CONSULATION WITH LOCAL OFFICALS

Changes in Base Flood Elevations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator, after consultation with the Chief Executive Officer of each community listed, finds that modification of the proposed flood elevations for those communities is appropriate as a result of requests for changes in the interim rule.

DATES: These modified flood elevations are in effect as of the dates listed in the sixth column of the attached list and amend the Federal Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESS: The modified base (100-year) flood elevation determinations for each community are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator has published a notification of modification of the base (100-year) flood elevations in prominent local newspapers for the communities listed below. Ninety (90) days have elapsed since that publication, and the Administrator has received no appeals from the communities requesting changes in the proposed flood elevation determinations.

The numerous changes made in the base (100-year) flood elevations on the Flood Insurance Rate Map for each community make it administratively infeasible to publish in this notice all of the base (100-year) flood elevation changes contained on the maps. However, this notice includes the address of the chief Executive Officer where the modified base (100-year) flood elevation determinations are available for inspection.

The modifications are pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR Part 1916.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations together with the flood plain management measures required by 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The changes in the base (100-year) flood elevations listed below are in accordance with 24 CFR 1916.8:

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
California	Riverside	City of San Jacinto.	The Valley Register, Nov. 18, 1977, Nov. 25, 1977.	Hon. William E. Wilson, mayor of the city of San Jacinto, City Hall, P.O. Box 488, San Jacinto, Calif. 92383.	Nov. 25, 1977.	065056 0001B
Indiana	Brown	Town of Nashville.	Brown County Democrat, Sept. 28, 1977, Oct. 5, 1977.	Miss Margorie Tissot, president of the town board, Box 446, Nashville, Ind. 47448.	Sept. 23, 1977	180018 0001B

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
Kansas	Ford	City of Dodge City.	Dodge City Daily Globe, Dec. 15, 1977, Dec. 16, 1977.	Hon. William J. Miller, mayor of Dodge City, c/o Edwin Daley, City Hall, 705 1st Ave., Dodge City, Kans. 67801.	Nov. 25, 1977.	205184 0001C
Do	Shawnee	City of Topeka.	The Topeka Capital Journal, Dec. 15, 1977, Dec. 16, 1977.	Hon. Bill McCormick, mayor of the city of Topeka, City Hall, 215 East 7th St., Topeka, Kans. 66603.	Dec. 16, 1977.	205187B
New Jersey	Camden	Borough of Haddonfield.	The Town Crier Herald, Dec. 14, 1977, Dec. 21, 1977.	Hon. William W. Reynolds, mayor of the borough of Haddonfield, Borough Hall, 242 Kings Highway East, Haddonfield, N.J. 08033.	Dec. 23, 1977.	340501 0001C
Do	Middlesex	Borough of Highland Park.	The Home News, Sept. 15, 1977, Sept. 16, 1977.	Hon. Harold Berman, mayor of the borough of Highland Park, 21 South 9th Ave., Highland Park, N.J. 08904.	Sept. 16, 1977	340263A
Texas	Calhoun	.....	Port Lavaca Wave, Dec. 9, 1977, Dec. 16, 1977.	Mr. Donald W. Ragin, Calhoun County building inspector, 211 South Ann, Port Lavaca, Tex. 77977.	Dec. 2, 1977...	480097 0001-0014A
Pennsylvania	Delaware	Borough of Clifton Heights.	Daily Times, Oct. 7, 1977, Oct. 14, 1977.	Hon. E. Jack Ippoliti, mayor of Clifton Heights, 7 South Springfield Rd., Clifton Heights, Pa. 19018.	May 16, 1977.	420407A

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

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6865 Filed, 3-16-78; 8:45 am]

[4810-25]

Title 26—Internal Revenue

CHAPTER 1—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

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

Percentage To Be Used by Foreign Life Insurance Companies in Computing Income Tax for the Taxable Year 1977 and Estimated Tax for the Taxable Year 1978

AGENCY: Department of the Treasury.

ACTION: Proclamation.

SUMMARY: This proclamation announces the percentage to be used to compute the income tax liability of foreign corporations carrying on life insurance business in the United States.

EFFECTIVE DATE: Immediate.

FOR FURTHER INFORMATION, CONTACT:

Mr. Seymour Fiekowsky, Office of Tax Analysis, U.S. Treasury Department, Washington, D.C. 20220, 202-566-8282, not a toll free call.

SUPPLEMENTARY INFORMATION: This proclamation, issued each year by the Secretary of the Treasury, announces the percentage to be used to compute the income tax liability of foreign corporations carrying on life insurance business in the United States.

Proclamation. For purposes of computing the 1977 income tax of foreign corporations carrying on a life insurance business, a percentage of 16.1 shall be used in determining the "minimum figure" under section 819. The same percentage shall be used for purposes of computing the estimated tax and the installment payments of estimated tax for the taxable year 1978. No additions to tax shall be made because of any underpayment of estimated tax for the taxable year 1978 which results solely from the use of this percentage.

This proclamation is issued without notice and public procedure because the public cannot effectively participate in the determination of the percentage. It is computed from information contained in income tax returns that are not open to the public. The proclamation was not published prior to its effective date because the percentage is computed on the basis of data which was not then available.

Signed: March 14, 1978.

ROBERT H. MUNDHEIM,
General Counsel.

[FR Doc. 78-7206 Filed 3-16-78; 8:45 am]

[4510-26]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1902—STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS

Suspension of Action on State Petitions for Final Approval of State Plans and of the Application of the Two-Year Limitation on Initiating Such Proceedings

AGENCY: Occupational Safety and Health Administration.

ACTION: Suspension of final rule.

SUMMARY: This rule suspends certain provisions of the regulations on making determinations under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651) (hereinafter called the Act) as to the removal of Federal enforcement authority from States with approved plans. This action is necessary because of the additional requirements placed on the State plan approval process by the Court's decision in *American Federation of Labor and Congress of Industrial Organizations, Industrial Union Department, AFL-CIO* v. *F. Ray Marshall, Secretary of Labor, et al.*, C.A.D.C. No. 75-1506, January 20, 1978.

EFFECTIVE DATE: January 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Barbara Bryant, Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, D.C. 20210, 202-634-4922.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Subpart D of Part 1902 of this Chapter sets out procedures and requirements for making determinations under section 18(e) of the Act (29 U.S.C. 667(e)) that criteria of section 18(c) (29 U.S.C. 667(c)) for plan approval are being applied in actual operation and that Federal enforcement authority will cease to apply to issues covered under the plan. Section 18(e) requires a minimum 3 year period after plan approval before such a determination can be made. Where a plan does not meet all of the criteria upon submission but is approved with satisfactory assurances that the State will take the necessary steps within the 3 year period to fully meet the criteria, § 1902.2(b) of this chapter requires an additional minimum 1 year after the 3 year period before the determination of the application of the 18(c) criteria in actual operations may be made. Section 1902.39 of subpart D of part 1902 of this chapter requires not only the additional 1 year minimum of operations evaluation of a State plan, but also requires that the determination proceedings must be initiated by the Assistant Secretary of Labor for Occupational Safety and Health within 2 years following the publication in the FEDERAL REGISTER of the certification that the State has completed its developmental commitments. Section 1902.39 also provides for State petitions for initiating the determination procedures within this time frame.

DISTRICT OF COLUMBIA COURT OF APPEALS HOLDING ON CRITERIA FOR DETERMINATIONS ON REMOVING FEDERAL ENFORCEMENT AUTHORITY IN A STATE PLAN STATE

On January 20, 1978, the decision in *American Federation of Labor and Congress of Industrial Organizations, Industrial Union Department, AFL-CIO, Appellants,* v. *F. Ray Marshall, Secretary of Labor, et al.*, C.A.D.C. No. 75-1506, placed certain additional requirements on the Secretary of Labor in carrying out the State plan approval process. Under that decision the Court found that the application of the requirement that State plan staffing and resources be "at least as effective as" whatever was currently provided under the Federal program was not unreasonable with regard to initial plan approvals under section 18(c) of the Act. However, the Court held that such a standard was not sufficient for realizing the Act's objectives to provide a fully effective enforcement effort at some point in the foreseeable future. The Court required that supplements to the approval process be provided for a coherent program moving from an initial "as effective as" approach toward those personnel and funding levels needed for satisfactorily effective enforcement, and remanded to the District Court to enter a decree consistent with its holding.

CONCLUSION

As a result of this holding and the necessity of implementing the remand instructions in the regulations for determining under section 18(e) of the Act that States are applying the Act's requirements for an effective enforcement program in actual operation, it is apparent that no determinations on such operations' effectiveness can be made until the required standards are available for application in such determinations. Eight State plans are presently certified as having completed their developmental steps and two (South Carolina and Minnesota) having completed the minimum 1 year after certification have requested that their final approval proceedings be initiated. In addition, the 1 year period has elapsed for several other States, with the 2 year maximum period lapsing by the end of this calendar year. It appears that the 1 to 2 year time frame after certification cannot be complied with until the Occupational Safety and Health Administration makes the necessary changes in the State plans regulations in light of the Court's instructions.

Accordingly, the provisions of § 1902.38(a) of this chapter to the effect that a State may petition for an 18(e) determination 1 year after certification and that, in no case shall the determination of eligibility for such determination be later than 2 years following certification, are suspended effective January 20, 1978, until the adoption of regulations carrying out the decision of the Court in *American Federation of Labor and Congress of Industrial Organizations, Industrial Union Department, AFL-CIO* v. *F. Ray Marshall, Secretary of Labor, et al.*, C.A.D.C. No. 75-1506. No State petitions received prior or subsequent to the effective date of this suspension can be processed until such regulations are adopted. Any such petition may be withdrawn and submitted at that time.

In view of the decision in the above cited case it is determined that public comment and notice prior to the effective date of this action would serve no useful purpose.

(Secs. 8(g)(2), 18, Pub. L. 91-596, 84 Stat. 1600, 1608 (29 U.S.C. 657(g), 667).)

Signed at Washington, D.C., this 7th day of March 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-7054 Filed 3-16-78; 8:45 am]

[3810-70]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

SUBCHAPTER M—MISCELLANEOUS

[DoD Instruction 2140.4]

PART 268—COLLECTING AND REPORTING OF FOREIGN INDEBTEDNESS WITHIN THE DEPARTMENT OF DEFENSE

Final Rule

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is codifying certain of its operational, organizational, and procedural rules which are currently in use by DoD. This instruction incorporates policy, criteria, and controls regarding the collecting and reporting of foreign indebtedness within the Department of Defense (DoD).

EFFECTIVE DATE: June 23, 1977.

FOR FURTHER INFORMATION CONTACT:

Michael Melburn, OASD (Comptroller) Management Systems, Penta-

gon, Washington, D.C. 20310, telephone 202-697-3135.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

MARCH 13, 1978

Accordingly, 32 CFR Chapter I is amended by adding a new Part 268, reading as follows:

Sec.
268.1 Purpose.
268.2 Applicability.
268.3 Policy.
268.4 Responsibilities.
268.5 Collection and followup procedures.
268.6 Reporting of accounts receivable and sales under 120 days delayed payment terms (short-term credit).
268.7 Collecting and reporting of foreign debts under long-term loans and debts.
268.8 Flash report of major foreign debt arrearages.
268.9 Discussion of terms.

AUTHORITY.—Federal Claims Collection Act of 1966 (31 U.S.C. 951-953), Arms Export Control Act, Section 23.

§ 268.1 Purpose.

This part establishes standard procedures to be used for the collecting and reporting of foreign indebtedness. Such indebtedness may arise through the (a) sale of Defense articles and services pursuant to the Arms Export Control Act; (b) operation of military missions; and (c) logistical support provided under country-to-country agreements.

§ 268.2 Applicability.

The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, and the Defense Agencies (hereafter referred to as "DoD Components").

§ 268.3 Policy.

It is the policy of the Department of Defense that timely and aggressive collection efforts will be conducted to assure that foreign arrearages to DoD Components are held to the absolute minimum. Foreign indebtedness will be uniformly and accurately reported to the Department of the Treasury on forms prescribed by the Treasury Fiscal Requirements Manual. The information system on the status of collection actions will support the information requirements of the National Advisory Council on International Monetary and Financial Policies (NAC).

§ 268.4 Responsibilities.

(a) The assistant Secretary of Defense (Comptroller) is the DoD point of contact for matters concerning foreign indebtedness requirements imposed on DoD from outside the Department, such as by the Congress, Treasury Department, and NAC.

(b) The Defense Security Assistance Agency (DSAA) is responsible for consolidation of feeder arrearage reports and submission of a single consolidated DoD arrearage report to the Treasury Department. The DSAA shall (1) monitor collection actions; (2) follow up when initial collection actions have been unsuccessful; and (3) serve as the focal point within DoD for responding to NAC information requests.

(c) Unless otherwise directed, the DoD Component which makes the sale, or is otherwise assigned responsibility, is responsible for taking initial collection action, accounting for indebtedness, preparation of feeder arrearage reports, and providing copies of arrearage reports to the DSAA.

§ 268.5 Collection and followup procedures.

Each DoD Component is responsible for taking timely and aggressive billing and followup collection actions for each category of indebtedness incurred by official and private obligors pursuant to authorized programs.

§ 268.6 Reporting of accounts receivable and sales under 120-day delayed payment terms (short-term credit).

(a) *General.* (1) Amounts payable to DoD Components for sales of Defense articles and services on terms which require payment of cash in advance of delivery/performance or within 60 days thereof will be classified as accounts receivable. Military Departments shall submit reports to the DSAA of foreign indebtedness related to those sales.

(2) Sales made by DoD Components under existing cases which provide for 120-day payment terms shall be classified as short-term credit sales. Similarly, those sales made after September 30, 1976, under special emergency appropriations which provide for payments 120 days after delivery of articles or services will also be classified as short-term credit sales. DoD Components shall submit reports to the DSAA of these short-term credit sales.

(3) Foreign indebtedness to DoD Components for logistical support, mission support costs, and other programs is payable upon presentation of the appropriate billing documents. Reports of foreign indebtedness related to these programs will be submitted to the DSAA.

(b) *Basis for reporting.* Amounts to be reported will be determined by analyzing unpaid bills using the criteria and definitions contained in § 268.9.

§ 268.7 Collecting and reporting of foreign debts under long-term loans and debts.

The DSAA is responsible for administering FMS long-term loans and credit programs authorized by Section 23 of the Arms Export Control Act, and likewise is responsible for determining foreign indebtedness against these programs. Debts remaining uncollected 90 days after the due date will be referred to the State Department for diplomatic assistance to effect settlement.

§ 268.8 Flash report of major foreign debt arrearages.

Major foreign debt arrearages are monitored by the NAC. Therefore, periodically DSAA will request flash reports from the DoD Components to satisfy NAC requirements for information on major foreign debt arrearages. For this purpose, a "major" foreign debt arrearage is any country program arrearage which involves the sum of $250,000 or more. Flash reports will be submitted directly to DSAA by the local command in message form with information copies to the next higher command. The report will reflect any significant changes in major foreign debt arrearages from the quarterly foreign indebtedness reports submitted in accordance with § 268.6. Collections, information on increased indebtedness, problems encountered in unsuccessful collection attempts, or country circumstances which may adversely affect collections are examples of the information which should be included in the flash reports.

§ 268.9 Discussion of terms.

(a) *Accounts receivable.* "Accounts receivable" consist of those amounts due in which the original payment time required full payment within 90 days of delivery or performance. It excludes principal payments or interest on short-term and long-term loans and credits.

(b) *Arrearage delinquency determination.* Obligations generated by formal agreements, as in the case of Foreign Military Sales contracts, are due on the dates specified in the contract or on the date specified in billings rendered in accordance with these contracts. Obligations incurred under Military Mission Support (Program 142) Logistical Support (Program 143) and any other authorized programs are due on the date billings are made to the customer country unless otherwise stated in the bill. Followup and reporting actions required by this part will be taken based on these dates. (See § 268.5.)

(c) *Country designations.* For reporting purposes, grants and contingent liabilities will be identified with the country which receives the benefit. Loans and credits will be identified generally with the country of the obligor or, in the instance of official multinational organizations, with the institution name. When the project is located in, or goods are destined for another country or area, the latter country or area should be stated in the description of purpose. If a government

credit intermediary is the obligor, the transaction should be identified with the country where the project is located or the goods are destined.

(1) *United States.* "United States" shall mean the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Canal Zone, Guam, Midway Island, U.S. Virgin Islands, and Wake Island.

(2) *Foreign country designations.* Country designations other than the "United States" shall be consistent with the standardized names and codes contained in the Military Assistance and Sales Manual (MASM).

(3) *Official Multinational Organization.* For reporting purposes, "Official Multinational Organization" shall mean any international or regional organization (or affiliated agency thereof) created by treaty or convention between sovereign states.

(d) *Dollar equivalents of foreign currency.* Represents dollar equivalent of all foreign currency amounts disbursed and still outstanding, undisbursed balances, and arrearages of principal and interest. They shall be computed at the reporting rate prescribed by Treasury Department Circular No. 930 for balances as of the end of the reporting period. The dollar equivalents of all other reportable amounts shall be the summation of individual transactions computed at the reporting rate prescribed for the period in which the transactions occurred.

(e) *Foreign indebtedness.* "Foreign indebtedness" means financial obligations owed to the U.S. Government by the following entities in connection with DoD activities.

(1) Any individual, including a citizen of the United States (excluding U.S. military members and U.S. Government employees) domiciled outside the United States.

(2) Any partnership, association, corporation, or other organization created or organized under the laws of a foreign country, excepting branches or agencies thereof located in the United States.

(3) Any branch, subsidiary, or allied organization within a foreign country of a partnership, association, corporation, or other organization created or organized under the laws of a foreign country or the United States.

(4) Any government of a foreign country and any subdivision, agency, or instrumentality thereof, including all foreign "Official" institutions, even though located in the United States.

(5) Any private relief, philanthropic, or other organization of a multinational or regional character with headquarters abroad.

(6) Any official multinational organization, defined as any international or regional organization (or affiliated agency thereof) created by treaty or convention between sovereign states.

(f) *Indebtedness.* "Indebtedness" within the context of this part refers to financial obligations to make payment(s) to the U.S. Government in accordance with contractual or other arrangements. Such obligations generally arise from (1) the disbursements of cash to be repaid at a future time (with or without interest), (2) the extension of credit (by formal agreement or an open book account) in connection with the sale of products, property, or services, (3) the formal deferral of interest collection, (4) the purchase or repurchase of obligations that have been insured or guaranteed by the U.S. Government, and (5) payments by the U.S. Government in cases of default on insured or guaranteed loans and other investments when the U.S. Government acquires a debt instrument from the insured.

(g) *Long-term loans and credits.* "Long-term loans and credits" include any indebtedness under which the original payment terms provided for payment within a period of time exceeding 1 year after delivery or performance.

(h) *Official obligor.* "Official obligors" are debtors or guarantors who are:

(1) Central governments or their departments (ministries) or components, whether administrative or commercial.

(2) Political subdivisions such as states, provinces, departments, and municipalities.

(3) Foreign central banks.

(4) Other institutions (such as corporations, development banks, railways, and utilities) when (i) the budget of the institution is subject to the approval of the government, or (ii) the government owns more than 50 percent of the voting stock or more than half of the members of the board of directors are government representatives, or (iii) in the case of default the government or central bank would become liable for the debt of the institution.

(5) Any official multinational organization.

(i) *Private obligor.* "Private obligors" are all debtors or guarantors who are not defined as "official obligors."

(j) *Program.* Program is the law, international treaty, appropriation, or other authority under which the loans or credits are extended, or the accounts receivable arise. When a narrative program designation is required, commonly used terms should be used, e.g., Arms Export Control Act, Logistical Support, and Military Assistance Advisory Groups.

(k) *Short-term loans and credits.* "Short-term loans and credits" include any indebtedness under which the original payment terms provided for payment within a period from 90 days to and including 1 year after delivery or performance.

(l) *Time conventions.* The terms 30, 60 and 90 days should be interpreted to mean 1, 2, and 3 calendar months, respectively. That is, the period February 6 through May 5 would be considered to be 90 days. For example, in calculating amounts "due and unpaid" 90 days or more as of December 31 the amounts due before October 1 and remaining unpaid as of December 31 would be reportable. However, amounts due as of October 1 but remaining unpaid at December 31 would not be reportable.

[FR Doc. 78-7144 Filed 3-16-78; 8:45 am]

[6820-35]

Title 45—Public Welfare

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1622—PUBLIC ACCESS TO MEETINGS UNDER THE GOVERNMENT IN THE SUNSHINE ACT

AGENCY: Legal Services Corporation.

ACTION: Final Regulation.

SUMMARY: The Government in the Sunshine Act, 5 U.S.C. Section 522b, requires certain agencies of the United States to hold open meetings, subject to prescribed exceptions, when agency members jointly dispose of its business. Although the Legal Services Corporation is not a federal agency, Section 1004(g) of the Legal Services Corporation Act applies the Sunshine Act's provisions to the Corporation and the state advisory councils appointed pursuant to Section 1004(f) of the Act. This Part was published previously for notice and comment. 43 FR 1807 (January 12, 1978). No major comments were received. The Corporation is, therefore, republishing Part 1622 to become effective 30 days hereafter.

EFFECTIVE DATE: April 17, 1978.

ADDRESS: Legal Services Corporation, 733 15th Street, NW., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Walters, 202-376-5113.

45 CFR Chapter XVI is amended by adding a new Part 1622, reading as follows:

Sec.

1622.1 Purpose and scope.
1622.2 Definitions.
1622.3 Open meetings.
1622.4 Public announcement of meetings.
1622.5 Grounds on which meetings may be closed or information withheld
1622.6 Procedures for closing discussion or withholding information.

Sec.
1622.7 Certification by the General Counsel.
1622.8 Records of closed meetings.
1622.9 Report to Congress.

AUTHORITY: Sec. 1004(g), Pub. L. 95-222, 91 Stat. 1619 (42 U.S.C. 2996c(g)).

§ 1622.1 Purpose and scope.

This Part is designed to provide the public with full access to the deliberations and decisions of the Board of Directors of the Legal Services Corporation, committees of the Board, and state Advisory Councils, while maintaining the ability of those bodies to carry out their responsibilities and protecting the rights of individuals.

§ 1622.2 Definitions.

"Board" means the Board of Directors of the Legal Services Corporation.

"Committee" means any formally designated subdivision of the Board established pursuant to § 1601.26 of the By-Laws of the Corporation.

"Council" means a state Advisory Council appointed by a state Governor or the Board pursuant to Section 1004(f) of the Legal Services Corporation Act of 1974, 42 U.S.C. § 2996c(f).

"Member" means a voting member of the Board or of a Council. Reference to actions by or communications to "members" means action by or communications to Board members with respect to proceedings of the Board, committee members with respect to proceedings of their committees, and council members with respect to proceedings of their councils.

"Meetings" means the deliberations of a quorum of the Board, or of any committee, or of a council, when such deliberations determine or result in the joint conduct or disposition of Corporation business, but does not include deliberations about a decision to open or close a meeting, a decision to withhold information about a meeting, or the time, place, or subject of a meeting.

"Quorum" means the number of Board or committee members authorized to conduct Corporation business pursuant to the Corporation's By-laws, or the number of council members authorized to conduct its business.

"General Counsel" means the General Counsel of the Corporation, or a person designated by the General Counsel, or a member designated by a council to act as its chief legal officer.

"Secretary" means the secretary of the Corporation, or a person designated by the Secretary, or a member designated by a council to act as its secretary.

§ 1622.3 Open meetings.

Every meeting of the Board, a committee, or a council shall be open in its entirety to public observation except as otherwise provided in § 1622.5.

§ 1622.4 Public announcement of meetings.

(a) Public announcement shall be made of every meeting. The announcement shall include: (1) The time, place, and subject matter to be discussed; (2) whether the meeting or a portion thereof is to be open or closed to public observation; and (3) the name and telephone number of the official designated by the Board, committee, or council to respond to requests for information about the meeting.

(b) The announcement shall be made at least seven calendar days before the meeting, unless a majority of the members determines by a recorded vote that Corporation business requires a meeting on fewer than seven days notice. In the event that such a determination is made, public announcement shall be made at the earliest practicable time.

(c) Each public announcement shall be posted at the offices of the Corporation in an area to which the public has access, and promptly submitted to the FEDERAL REGISTER for publication. Reasonable effort shall be made to communicate the announcement of a Board or committee meeting to the chairman of each council and each recipient of funds from the Corporation, and of a council meeting to each recipient within the same state.

(d) An amended announcement shall be issued of any change in the information provided by a public announcement. Such changes shall be made in the following manner:

(1) The time or place of a meeting may be changed without a recorded vote.

(2) The subject matter of a meeting, or a decision to open or close a meeting or a portion thereof, may be changed by recorded vote of a majority of the members that Corportion business so requires and that no earlier announcement of the change was possible.

An amended public announcement shall be made at the earliest practicable time and in the manner specified by § 1622.4 (a) and (c).

§ 1622.5 Grounds on which meetings may be closed or information withheld.

Except when the Board, committee, or council finds that the public interest requires otherwise, a meeting or a portion thereof may be closed to public observation, and information pertaining to such meeting or portion thereof may be withheld, if the Board, committee, or council determines that such meeting or portion thereof, or disclosure of such information, will more probably than not:

(a) Relate solely to the internal personnel rules and practices of the Corporation;

(b) Disclose matters specifically exempted from disclosure by statue (other than the Freedom of Information Act, 5 U.S.C. §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 types of matters to be withheld;

(c) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(d) Involve accusing any person of a crime, or formally censuring any person;

(e) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) Disclose investigatory records compiled for the purpose of enforcing the Act or any other law, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel.

(g) Disclose information the premature disclosure of which would be likely significantly to frustrate implementation of a proposed Corporation action, except that this subparagraph shall not apply in any instance where the Corporation has already disclosed to the public the content or nature of its proposed action, or where the Corporation is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(h) Specifically concern the Corporation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Corporation of a particular case involving a determination on the record after opportunity for a hearing.

§ 1622.6 Procedures for closing discussion or withholding information.

(a) No meeting or portion of a meeting shall be closed to public observation, and no information about a meeting shall be withheld from the public, except by a recorded vote of a majority of the members with respect to each meeting or portion thereof proposed to be closed to the public, or with respect to any information that is proposed to be withheld.

(b) Each matter, discussion of which is to be closed to public observation, and any information that is to be

withheld, shall be the subject of a separate vote, unless the matter or information is expected to involve a series of meetings. In such cases, the members may vote to close the discussion or withhold information about the same particular matter for a period of thirty days from the date of the initial discussion in the series of meetings.

(c) Whenever any person's interest may be directly affected by a matter to be discussed at a meeting, the person may request that a portion of the meeting be closed to public observation by filing a written statement with the Secretary. The statement shall set forth the person's interest, the manner in which that interest will be affected at the meeting, and the grounds upon which closure is claimed to be proper under § 1622.5. The Secretary shall promptly communicate the request to the members, and a recorded vote as required by § 1622.6(a) shall be taken if any member so requests.

(d) With respect to each vote taken pursuant to § 1622.6(a)–(c), the Corporation shall, within one business day, make publicly available:

(1) A written record of the vote of each member on the question;

(2) A full statement of any action closing a meeting or portion thereof, with reference to the specific exemption listed in § 1622.5, including a statement of reasons as to why the specific discussion comes within the cited exemption and a list of all persons expected to attend the closed meeting and their affiliation.

§ 1622.7 Certification by the General Counsel.

Before a meeting or portion thereof is closed, the General Counsel shall certify publicly whether the meeting may be closed to the public and shall state each relevant exemption. A copy of the certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, shall be retained by the Corporation.

§ 1622.8 Records of closed meetings.

(a) The Secretary shall make a complete transcript, or electronic recording adequate to record fully the proceedings of each meeting or portion thereof closed to the public, except that in the case of a meeting or any portion thereof closed to the public pursuant to paragraph (h) of § 1622.5, a transcript, a recording, or a set of minutes shall be made. Any such minutes shall describe all matters discussed and shall provide a summary of any actions taken and the reasons therefor, including a description of each member's views expressed on any item and the record of each member's vote on the question. All documents considered in connection with any action shall be identified in the minutes.

(b) A complete copy of the transcript, recording, or minutes required by § 1622.8(a) shall be maintained at the Corporation for a Board or committee meeting, and at the appropriate Regional Office for a council meeting, for a period of two years after the meeting.

(c) The Corporation shall make available to the public all portions of the transcript, recording, or minutes required by § 1622.8(a) that do not contain information that may be withheld under § 1622.5. A copy of those portions of the transcript, recording, or minutes that are available to the public shall be furnished to any person upon request at the actual cost of duplication or transcription.

(d) Copies of Corporation records other than notices or records prepared under this Part may be pursued in accordance with Part 1602 of these regulations.

§ 1622.9 Report to Congress.

The Corporation shall report to the Congress annually regarding its compliance with the requirements of the Government in the Sunshine Act, 5 U.S.C. § 552b, including a tabulation of the number of meetings open to the public, the number of meetings or portions of meetings closed to the public, the reasons for closing such meetings or portions thereof, and a description of any litigation brought against the Corporation under 5 U.S.C. § 552b, including any costs assessed against the Corporation in such litigation.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 78-7127 Filed 3-16-78; 8:45 am]

[7035-01]

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Service Order No. 1310]

PART 1033—CAR SERVICE

Certain Railroads Authorized To Transport Multiple-Car Grain Shipments of 270 Net Tons

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Service Order No. 1310).

SUMMARY: The grain tariffs of numerous midwestern railroads establish minimum weights of 1,000 net tons applicable to reshipments from storage-in-transit stations. Such tariff minima require the carrier to furnish 11 large capacity covered hoppers at one time to transport the shipment. Because of a severe shortage of such cars the carriers often require several days to accumulate sufficient cars to transport the shipment resulting in loss of car utilization and delays to shipments. Service Order No. 1310 reduces the tariff minima to 270 net tons which enable the traffic to be transported in 3-car-lots instead of 11-car-lots as at present.

DATES: Effective March 14, 1978. Expires May 31, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

SUPPLEMENTARY INFORMATION: At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 10th day of March, 1978.

The tariffs listed in this order require that a minimum weight of 1,000 net tons of grain be shipped from a storage-in-transit point, to be loaded into covered hopper cars subject to a per car minimum weight of 190,000 pounds. Compliance with these tariff provisions requires the carriers to furnish 11 jumbo covered hoppers for each such shipment from the storage-in-transit point. Because of an extreme shortage of covered hopper cars of this capacity, these railroads are unable to assemble the required number of cars without excessive car delay and loss of car utilization. To alleviate this condition reduced minimum weights of 270 net tons per shipment have been published, which require the use of only three such cars. These reduced minima are applicable only to shipments made from actual point of origin on or after the effective dates of their publication. Shipments presently in storage which originated prior to such dates remain subject to 1,000 net ton minimum weights when reshipped from the storage-in-transit point.

It is the opinion of the Commission that good cause exists to authorize the application of minimum weights of 270 net tons to such shipments regardless of the date the grain was shipped from origin; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than 30-days notice.

It is ordered, That:

§ 1033.1310 Service Order No. 1310. Certain Railroads Authorized To Transport Multiple-car Grain Shipments of 270 Net Tons.

(a) Multiple-car shipments of grain, grain sorghums or soybeans, reshipped

from a storage-in-transit point under the provisions of the tariff items named in section (b) of this order shall be subject to a minimum weight of 270 tons of 2,000 pounds. per shipment regardless of the date the grain was shipped from origin to the storage-in-transit point.

(b) *List of Tariffs, including supplements thereto or reissues thereof, subject to this order:*

Tariff No.	ICC No.	Item series No.
ATSF 5655-J	ICC 15193	329
BN 55-A	ICC 478	310
CMStP&P 18100-M.	ICC B-8480	560
CRI&P 33250-R	ICC C-13971	275
KCS 10-E	ICC 5509	680
MKT 8123-J	ICC 1831	290
MP 57-F	ICC 518	300
NW 915-C	ICC 10357	305
SLSF 5721-S	ICC A-1489	285
UP 3060-X	ICC 5818	430

(c) *Explanation of railroad abbreviations:*

ATSF—The Atchison, Topeka, and Sante Fe Railway Company

BN—Burlington Northern Inc.

CMStP&P—Chicago, Milwaukee, St. Paul and Pacific Railroad Company

KCS—Kansas City Southern Railway Company

MKT—Missouri-Kansas-Texas Railroad Company

MP—Missouri Pacific Railroad Company

NW—Norfolk and Western Railway Company

SLSF—St. Louis-San Francisco Railway Company

UP—Union Pacific Railroad Company

(d) *Other tariff provisions:*

All tariff provisions not specifically modified by this order shall remain in effect.

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

(f) *Effective date.* This order shall become effective at 12:01 a.m., March 14, 1978.

(g) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., May 31, 1978. (49 U.S.C. 1(10-17).)

It is furthered ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-7172 Filed 3-16-78; 8:45 am]

[7035-01]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER D—TARIFFS AND SCHEDULES

[Ex Parte No. 297 (Sub-No. 2)]

PART 1331—SECTION 5a APPLICATIONS

Notification of Rate Proposals Following Prior Independent Action

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Interstate Commerce Commission is adopting a rule that will prohibit motor common carrier rate bureaus from changing or cancelling rates established by independent action without first notifying the carriers participating in such rates of the action proposed and obtaining their written consent. The Commission is adopting this rule because it found in the course of the rulemaking proceeding that unconsented to changes and cancellations of rates established by independent action can and do occur, and that occurrences of this nature infringe the statutory right of independent action. The rule adopted here will prevent unconsented to changes in thse rates from occurring in the future.

DATE: The rule adopted here will take effect: June 15, 1978.

FOR FURTHER INFORMATION CANTACT:

Deputy Director Rosenak or Assistant Deputy Director Gobetz, Section of Rates, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423, 202-275-7693.

SUPPLEMENTARY INFORMATION: This proceeding was instituted by Order date June 24, 1977, and by notice in the Federal Register on July 8, 1977, 42 Federal Register 35175. The Commission, at the request of the Department of Justice, proposed a rule designed to curtail practices under which rates established by independent action were changed or cancelled without the alleged knowlede or consent of the carriers participating in the rates. The proposed rule reads as follows:

No rate bureau may publish any tariff which has the effect of changing or modifying any rate, term, or condition of an existing tariff, which rate, term or condition was the result of the exercise of independent action by a member of the rate bureau, unless the rate bureau shall have first notified such member that a proposed tariff will change or modify the rate, term or condition which resulted from that member's exercise of independent action and shall have obtained the member's written consent to the change or modification.

Public comment on the proposal revealed not only that unconsented to changes in and cancellations of motor carrier independent action rates can occur, but that they do occur. Changes of this nature are caused by the inadequacy of notice to carriers, docketing practices of rate bureaus, and carrier inattentiveness. These practices infringe upon the right of independent action. Comment also revealed that notice to shippers and other interested parties of proposals to change motor carrier and rail independent action rates is inadequate, and that motor carriers, shippers and other interested parties are often accorded an insufficient amount of time to reply to these proposals. These practices violate the right to notice and the right to be heard in the rate bureau setting.

With these problems in mind, the proposed rule would do three things: (1) require that motor carriers, shippers and other interested parties be accorded notice of proposals to change or cancel rates established by independent action, (2) require that these parties be allowed a minimum of fourteen days to reply in person or in writing to proposals to change or cancel independent action rates, and (3) require that motor carrier rate bureaus obtain the written consent of carriers before changing or cancelling independent action rates in which they are participating. In addition, the rule would define key terms such as "independent action", "adequate notice", "rate bureau", and "rate".

The rule would also make an exception. It would relieve rate bureaus from complying with the notice and consent requirements of the rule when proposing changes in independent action rates pursuant to a general rate increase or rate restructuring. The exception is made because general rate increases and rate restructurings, do not affect the efficiency of the right of independent action. Nor do they deprive carriers, shippers and other interested parties of the right to notice, because changes of this nature are widely publicized well before the fact.

Also, the rule would not take effect until June 15, 1978. The evidence of record and Commission knowledge of rate bureau operations indicates that rate bureaus will be able to comply with the rule if given sufficient amount of time to prepare to do so.

Thus, the rule will address genuine problems in current rate bureau practices detrimental to carriers, shippers and consumers without unduly hampering rate bureau operations and thus strike a proper balance between important but competing interests. It is for these reasons that that rule is adopted.

The rule promulgated here is issued under the authority of 49 U.S.C. §§ 5b, 5c, 12 and 304(a)(6), and was adopted formally at a General Session of the Interstate Commerce Commission held at its office in Washington, D.C. on the 7th day of March, 1978.

By the Commission, Commissioner Gresham concurring, Commissioner Stafford concurring in part and dissenting in part, and Commissioner Murphy dissenting.

H. G. HOMME, Jr.,
Acting Secretary.

Under 49 U.S.C. §§ 5b, 5c, 12, 304(a)(6), 49 C.F.R. Part 1331 is amended by adding a new § 1331.6, reading as follows:

§ 1331.6 Changing or cancelling rates established by independent action.

(a) *For purposes of this subsection the following definitions shall apply:* (1) "Independent action" is any action taken by a common carrier member of a rate bureau, on or after the date this rule takes effect, (i) To establish a rate, to be published in the appropriate rate bureau tariff, or to cancel a rate for that carrier's account, or (ii) To instruct the rate bureau that an existing rate (whether established by independent action or collective action), that is proposed to be changed or cancelled, be retained for that carrier's account and published in the appropriate bureau tariff, or (iii) To have published for its account in the appropriate rate bureau tariff a rate established by the independent action of another carrier. This definition applies regardless of the manner in which the carrier joins in the rate, as long as the rate published for the joining carrier's account is the same as the rate established by the other carrier under independent action. (2) "Adequate Notice" is notice which informs the carrier, shipper or other interested party for which it is intended (i) that a proposal has been made to change or cancel a rate established by independent action, (ii) of the rate proposed to be changed or cancelled, (iii) the proposed new rate if there is one, (iv) limitations on weight or other restrictions pertaining to the existing rate and the proposed rate, (v) the commodities moving under the rate, (vi) the relevant origin and destination points, (vii) the carriers participating in the rate proposed to be changed or cancelled, and (viii) the identity of the proponent of the change or cancellation. (3) A "rate bureau" is a rate making conference consisting of common carrier members operating under the provisions of an agreement approved by the Commission pursuant to section 5a or 5b of the Interstate Commerce Act, 49 U.S.C. § 5b, 5c. (4) The term "rate" refers to rates, fares, classifications, allowances or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto. (5) A "general rate increase", when the term is used in reference to a motor common carrier rate increase, is a proposed general adjustment of substantially all the rates published in a rate bureau's tariff or tarriffs. (6) A "general rate increase", when the term is used in reference to a railroad rate increase, is a proposed general increase in freight rates or charges for the account of substantially all common carriers by railroad in the United States or in any of the three primary ratemaking territories, namely, eastern, western, or southern. (7) A "rate restructuring", as the term is used in reference to motor carrier rates, is a proposed general adjustment of rates published in a rate bureau's tariffs with the objective of restructuring the rates on a wide range of traffic, involving both increases and reductions in rates.

(b) *Duty of adequate notice to shippers and other interested parties.* Motor carrier and railroad rate bureaus shall provide shippers and other interested parties (not including member carriers of the rate bureau), who have requested notice of proposed rate bureau action under the terms of the rate bureau's agreement, adequate notice of any proposal to change or cancel a rate established by independent action.

(c) *Opportunity to be heard.* Before the Committee or other group designated under the terms of a motor carrier or railroad rate bureau's agreement meets to consider a proposal to change or cancel a rate established by independent action (whether for the purpose of voting to accept or reject the proposal or to consider whether to recommend it to the rate bureau membership for a final vote), member carriers (in the case of motor carrier rate bureaus), shippers and other interested parties (in the case of motor carrier and rail rate bureaus) shall have no less than fourteen days (not counting the day notice of the proposal is sent to these parties) to respond to the notice to express their views to the appropriate committee or group in whatever manner they so chose, be it in writing, in person or by some other means.

(d) *Duty of adequate notice to motor carriers and to obtain their consent.* (1) When a proposal has been made under the collective ratemaking procedures of a motor common carrier rate bureau, or under the right of independent action, to change or cancel a rate established by independent action, all member carriers of the bureau participating in the rate that is proposed to be changed or cancelled shall be provided adequate notice of that proposal. (2) The change or cancellation shall not take effect or, as necessary, be published for the account of any member carrier participating in the rate if the carrier does not communicate to, and the rate bureau does not receive, that carrier's written consent to the change in or cancellation of the rate. Written consent must be freely given without any kind of direct or indirect pressure or coercion from any other carrier, shipper or other party. The requirement that written consent be communicated and received may not be waived by any carrier, shipper, officer of a rate bureau or other party. This rule applies notwithstanding the fact that a carrier of whom consent is required is in actual attendance or voting at a rate committee meeting or other meeting at which the proposal is considered.

(e) *General rate increases and rate restructuring.* The provisions set forth in paragraphs (b) and (d) above do not apply to proposals to change rates established by independent action where the proposal is made as part of a proposed general rate increase or rate restructuring, and notice to member carriers, shippers and other interested parties informs the reader in a conspicuous place that the proposal is made as part of a general rate increase or rate restructuring.

(f) *A rate established by independent action.* For purposes of this rule a rate established by independent action continues to be a rate established by independent action even after it has been changed pursuant to a general rate increase or rate restructuring of the type defined in paragraph (e). However, a rate established by independent action ceases to be a rate of that character for the account of any carrier participating in the rate that consents in writing pursuant to paragraph (d) to the proposed change in or cancellation of the rate. For example, where more than one carrier is participating in the rate, and the rate is proposed to be changed, the rate continues to be a rate established by independent action for the account of the carriers which do not consent to the change or cancellation, but ceases to be a rate of that type for the account of the carriers that give their consent pursuant to paragraph (d).

Commissioner Gresham, concurring: As indicated in my separate expressions in Rate Bureau Investigation, at 349 ICC 853-855 and 351 ICC 465, I did not join the majority in sanctioning

concealment of the identity of proponents of rate proposals. Therefore, I gladly join the majority in its ruling here to require public identification of the proponents of proposals which affect independent action rates. However, I hope that the Commission will not stop with this partial reversal of its prior position and that, in an appropriate proceeding, it will prescribe public identification of the proponents of all rate proposals.

Commissioner Stafford, concurring in part, dissenting in part:

I agree with the action taken by the majority, with the following exceptions.

I would make these rules applicable to all carriers subject to section 5a. Railroads are governed by a different section of the act, and their exclusion can be justified. The proposal is designed to prevent abuses; and, although those abuses do not seem to occur among water carrier and freight forwarder rate bureaus, the same rules should apply to all.

I would not require identification of the proponent of a rate change. The rationale expressed in Rate Bureau Investigation, 349 ICC 811, 831-832, is as valid with regard to independent action proposals as it is with any other.

Commissioner Murphy, dissenting: The majority would require the proponent carrier of a previous independent action to affirmatively seek its cancellation, would require an elaborate notification procedure and would lengthen the period in which comments could be submitted to rate bureau proposals. Given the axiom that the Commission's extraordinary and awesome powers under Section 5a or 5b are such that it could dictate the end result reached herein, the questions still to be answered are whether the action is necessary and wise. I am opposed to needless regulation.

Unfortunately, as admitted by the majority, the record is woefully inadequate. There appears to be no support for the proposal by the regulated industry and the evidence submitted by shippers and other organizations does not fill the void. I am in agreement with the majority that evidence submitted by any party may rightfully be relied upon to support an action. But such evidence must be adequate to support the decision. In my opinion, the evidence submitted herein does not justify the action taken.

The requirement that the proponent carrier of a prior independent action must affirmatively announce its request that the provision be canceled appears to be inappropriate. Apparently, the carriers and the rate bureaus may no longer rely on an expeditious method for processing a vote, i.e., "unless objections are received by a specified date the proposal will be deemed to be adopted." Allegedly, the need for the affirmative action (a consent thereto) is to protect the carriers. But this seems highly unusual especially where no carrier raises that issue or seeks that protection.

The elaborate notice requirements for changes in provisions established by independent action are such as to raise several questions, including the cost/benefit relationship of that approach. Apparently, no such study or review has been undertaken.

The regulations to be adopted would lengthen the period normally allowed for replies to rate bureau proposals from 7 to 14 days but without any adequate explanation therefor. Both Pub. L. 94-210 and the regulations in Ex Parte No. 297 provide for a maximum of 120 days in which the rate bureau must dispose of a proposal. The extension of the normal reply period from 7 to 14 days will obviously considerably shorten the period in which the proposal can be adequately handled. But again no serious consideration was given to that important factor.

The pernicious aspect of the proposed regulations relate to the designation of the proponent of the independent action. The Commission in Ex Parte No. 297 specifically rejected a similar proposal. The majority now would nullify that Finding No. 13. Peeling away the thin veneer of respectability attached to the proposed action herein reveals the iniquity thereof. The big shippers under the requirement for identification of the proponent will be able indirectly to control the actions of the carrier. I am unaware of any requirements under Section 5a or 5b that the shipper be given the right to vote in rate bureau matters. In fact, the Commission's policy as reflected in Finding No. 11 in Ex Parte No. 297 specifically prohibits such shipper activity, except with the prior approval of the Commission. The requirement for disclosure of the proponent carrier herein will obviously be contrary to the Commission policy with regard to shipper affiliates.

In summary, the weakenss of the evidence supporting the promulgation of the regulations herein leads inevitably to the conclusion that if this were a complaint proceeding with the burden of proof on the proponent, the complaint would be dismissed.

In light of the views expressed above, I respectfully dissent.

[FR Doc. 78-7173 Filed 3-16-78; 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

[3410-37]

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

[7 CFR Part 2858]

MOZZARELLA CHEESES

Study Draft United States Standards for Grades

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Poultry and Dairy Quality Division of the Food Safety and Quality Service, U.S. Department of Agriculture, has study drafts available for review and comments in its consideration of proposed U.S. Standards for Grades of Mozzarella Cheeses.

DATE: Comments must be received on or before July 1, 1978.

ADDRESS: Send requests for study drafts and comments to: Richard W. Webber, Assistant Chief, Dairy Section, Standardization Branch, Poultry and Dairy Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-7473.

FOR FURTHER INFORMATION CONTACT:

Same as under ADDRESS.

SUPPLEMENTARY INFORMATION: Even though Mozzarella cheeses are the leading varieties of all Italian cheeses produced in the United States, there are no official U.S. grade standards for these cheeses. Discussions with users and manufacturers of the cheeses have indicated the desirability of establishing grade standards for determining quality and use. Official voluntary U.S. grade standards for the four types of Mozzarella cheese would provide a uniform and nationally recognized system for identifying the quality of these cheeses to consumers and commercial users. If quality grade standards are established, manufacturers that are interested may identify packages of their Mozzarella cheese with the appropriate U.S. grade to inform consumers of the quality of cheese they are buying.

During the development of these draft standards, the Department conferred with various recognized experts in the manufacturing of Mozzarella cheeses to obtain technical advice. This information, together with technical data, knowledge, and experience within the Department, forms a basis for establishing these draft standards. The concepts and basis for using organoleptic grading procedures have been used for many years by the Department, colleges, universities, and the cheese industry to evaluate the quality of cheese.

The standards would be implemented on a voluntary basis and a charge made for the Department's grading services. When Mozzarella cheeses are officially graded, the regulations governing the inspection and grading services of manufactured or processed dairy products would be in effect. These regulations require all dairy ingredients and the finished product to be produced in a USDA approved plant. The regulations also provide for the use of official identification to indicate the U.S. grade on consumer packages. The U.S. grade would be determined on the finished Mozzarella cheese package.

This advance notice of proposed rulemaking is issued under the authority of the Agricultural Marketing Act of 1946.

(60 Stat. 1087, as amended; 7 U.S.C. 1621.)

Done at Washington, D.C., this 13th day of March 1978.

ROBERT ANGELOTTI,
Administrator.

[FR Doc. 78-7132 Filed 3-16-78; 8:45 am]

[3410-34]

Animal and Plant Health Inspection Service

[9 CFR Part 54]

PAYMENT OF INDEMNITIES

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations to increase the maximum indemnity which may be paid for sheep or goats destroyed because of scrapie, to provide for appraisals of such animals by special appraisers, and to clarify the regulations by defining or redefining certain terms used therein. These provisions are needed to insure that appraisals are made comparable to fair market values and that the regulations can be readily understood, and they are expected to result in improved cooperation with the scrapie eradication program by members of the sheep and goat industries.

DATE: Comments on or before May 16, 1978.

ADDRESS: Written comments to Deputy Administrator, USDA, APHIS, VS, Federal Building, Room 739, Hyattsville, Md. 20782.

FOR FURTHER INFORMATION CONTACT:

Dr. A. L. Klingsporn, USDA, APHIS, VS, Sheep, Goats, Equine, and Ectoparasites Staff, Room 739, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782, 301-436-8321.

SUPPLEMENTARY INFORMATION: The rates of Federal indemnities which may be paid for sheep or goats destroyed because of scrapie were last adjusted by an amendment of the regulations (9 CFR Part 54) on September 3, 1975 (40 FR 42739), from $25 to $40 per head for grade animals, and from $75 to $90 per head for purebred animals, and the provisions for salvage and use of carcasses of such animals for human consumption was eliminated at that time. Since that time, the market value of such animals has increased, and it now appears necessary to increase the rate of indemnities paid for sheep or goats affected with or exposed to scrapie to be comparable with fair market values. The present proposal would provide compensation to owners of sheep or goats destroyed because of scrapie in an amount not to exceed $300 per head. Further, to insure that appraisals are made in a fair and equitable manner, Veterinary Services would select and employ qualified appraisers. Provisions would also be added to establish the procedures to be followed if the owner of the sheep or goat disagrees with the value established by the Department's appraiser.

The proposed docket, in § 54.1, would provide definitions for the following words: Veterinary Services representative, State representative, Deputy Administrator, owner, State, animal, flock, source flock and infected flock. The terms "Veterinary Services representative," "State representative" and

"Deputy Administrator" would be added for the purpose of identifying the Federal and State officials involved in the payment of indemnity under this Part. The term "owner" would be added to establish who may be eligible for payment of indemnity under this Part. The term "State" would be added to indicate that such term applies to the 50 States, the Territories, and possessions of the United States, the District of Columbia and Puerto Rico, in accordance with the provisions of section 2 of the act of February 2, 1903, as amended (21 U.S.C. 111), and sections 3 and 11 of the Act of May 29, 1884, as amended (21 U.S.C. 114 and 114a, respectively). The term "animal" would be defined to limit the provisions in the Part to sheep and goats.

The term "flock" would be added for the purpose of labeling groups of animals which may be eligible for indemnity under this Part. Because of the risk that scrapie may be disseminated to animals through their intermingling, the term as proposed includes not only animals which are maintained on common ground, but would also include groups of animals geographically separated, but which have an interchange of animals. The term "infected flock" would be added to identify a flock in which an affected animal has been found by a Veterinary Services representative or a State representative. It appears that all of the animals in such flock would present a threat to disseminate scrapie. A definition of the term "source flock" would include a flock from which an animal was moved and within 18 months of the date of the movement, the animal showed clinical evidence of scrapie, or from which two or more animals were moved and subsequent to the movement, the animals showed clinical evidence of scrapie. Such a definition appears to be necessary to identify the flocks from which affected animals have moved and in which scrapie may be present. If one animal has moved from a flock and within 18 months such animal shows clinical signs of scrapie, we believe that scrapie is present in such flock. The period of 18 months has been proposed because it is believed that such period is a minimum incubation period for scrapie whereby such animal can carry the disease yet not show clinical evidence of scrapie. If two or more animals are moved from a flock and both animals show clinical evidence of scrapie, then we believe that scrapie is present in such flock.

The proposed docket would also delete definitions of the term "bloodline animal" because this term would no longer be used in any of the sections in the Part.

The proposed docket would also amend the definitions of "affected animal" and "exposed animal" contained in § 54.1. The definition of "affected animal" would be amended to clarify who will make the diagnosis of scrapie in order to identify an animal as an affected animal. The definition of "exposed animal" would be amended to indicate that such animals are classified on the basis of their contact with infected or source flocks and not the premises of such flocks. Additionally, the definition of "exposed animal" would be amended to include female progeny of an affected female animal and her first generation male progeny, the dam of an affected animal and the dam's first generation progeny, the first generation progeny of an exposed female animal moved from an infected or source flock, or the first generation progeny of an affected male animal. Study of scrapie in field outbreaks and the Field Trial Study, Mission, Tex., has demonstrated that such animals can and do develop and disseminate scrapie.

Further, certain editorial changes have been made for the purposes of clarification.

Accordingly, Part 54, Title 9, Code of Federal Regulations, would be amended in the following respects:

1. Section 54.1 would be amended to read:

§ 54.1 Definitions.

For the purpose of this part, the following words, names, and terms shall be construed, respectively, to mean:

(a) *Department.* The United States Department of Agriculture.

(b) *Veterinary Services.* The Veterinary Services unit of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

(c) *Deputy Administrator.* The Deputy Administrator for Veterinary Services or any other Veterinary Services official to whom authority has been delegated or may hereafter to delegated to act in his stead.

(d) *Veterinary Services representative.* A person employed by Veterinary Services in animal health activities who is authorized by the Deputy Administrator to perform the function involved.

(e) *State.* Any State or Territory or possession of the United States, the District of Columbia, or Puerto Rico.

(f) *State representative.* A person employed in livestock sanitary work of a State or a political subdivision thereof, and who is authorized by such State or political subdivision to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

(g) *Owner.* A person, partnership, company, or corporation who has legal or rightful title to animals whether or not they are subject to a mortgage.

(h) *Mortgage.* Any mortgage, lien, or other security or beneficial interest held by any person other than the one claiming indemnity.

(i) *Animal.* A sheep or goat.

(j) *Flock.* A group of animals maintained on common ground, or two or more groups of animals under common ownership or supervision, and geographically separated, but which have an interchange or movement of animals.

(k) *Affected animal.* An animal for which a diagnosis of scrapie has been made by a Veterinary Services representative or State representative.

(l) *Infected flock.* A flock in which an affected animal has been found by a Veterinary Services representative or a State representative.

(m) *Source flock.* A flock from which an animal was moved and within 18 months of the date of the movement, the animal showed clinical evidence of scrapie, or from which two or more animals were moved and subsequent to the movement, the animals showed clinical evidence of scrapie.

(n) *Exposed animal.* An animal, other than an affected animal, which is either in an infected or source flock, or which has been:

(1) Held, pastured or penned with an infected flock at anytime since the birth or introduction of the affected animal into such flock, or

(2) Held, pastured or penned with a source flock at any time since the birth or introduction of an affected animal into such flock, or

(3) Female progeny of an affected female animal and her first generation male progeny, or

(4) The dam of an affected animal and the dam's first generation porogeny, or

(5) The first generation progeny of an exposed female animal moved from an infected flock or source flock, or

(6) The first generation progeny of an affected male animal.

(o) *Destroyed.* Killed by slaughter or by such other means as may be authorized by the Deputy Administrator in an exceptional situation.

2. Section 54.3(a) would be amended to read:

§ 54.3 Appraisal of animals.

(a) Subject to the provisions of paragraph (b) of this section, affected animals and exposed animals for which indemnity is to be paid under this Part shall be appraised at their fair market value by an appraiser selected and employed by Veterinary Services in each of the Veterinary Services regions; except that, if the owner and State representative approve, such animals may be appraised by a Veterinary Services representative alone, or may be appraised jointly by a Veterinary Services representative and a State representative. Should the appraisal made by the appraiser employed by Veterinary Services be deemed inadequate

by the owner, the owner may select and employ his own appraiser who shall appraise the animals and consult with the Veterinary Services appraiser and attempt to agree on the appraisal value. If the two appraisers do not agree on the appraisal value of the animals, the two appraisers shall select a third appraiser who will be employed by Veterinary Services. The three appraisers shall attempt to agree upon an appraisal value for the animals. Any appraisal agreed upon by these three appraisers will be final.

* * * * *

3. Section 54.7 (a) and (b) would be amended to read:

§ 54.7 Destruction and disposition of animals.

(a) Indemnity for affected animals and exposed animals destroyed under this Part shall be paid only after Veterinary Services obtains the written agreement of the owner to accept from the United States compensation which shall be equal to two-thirds of the appraised value of each animal, not to exceed $300 per head.

(b) Affected animals and exposed animals shall be destroyed on the premises where held, pastured or penned at the time of appraisal; except that such animals may be moved for destruction to a location other than the premises where appraised when movement to such location is approved in advance by the State representative and Veterinary Services representative involved, and such animals are not to be processed for human food. The carcasses of the animals destroyed shall be disposed of by burial or incineration.

* * * * *

4. Section 54.8 would be amended to read:

§ 54.8 Payments to owners for animals destroyed.

(a) Owners of affected animals and exposed animals destroyed in accordance with this Part shall be paid an indemnity by the United States equal to two-thirds of the appraised value of each animal so destroyed, not to exceed $300 per head.

(b) Veterinary Services may indemnify owners up to the limitations specified in this Part whether or not the State participates in indemnity payment.

(c) Animals presented for appraisal as purebred shall be accompanied by their certificate of registry at the time of appraisal, or they shall be appraised as grades; except that, in the absence of such proof of purebreeding, the Deputy Administrator shall grant a reasonable time for the owner to obtain and present his certificate of registration to the Veterinary Services representative.

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 734, Hyattsville, Md., during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

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

Done at Washington, D.C., this 13th day of March 1978.

NOTE.—It is hereby certified that the economic and inflationary effects of this proposal have been carefully evaluated in accordance with Executive Order No. 11821.

J. K. ATWELL,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc. 78-7162 Filed 3-16-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[10 CFR Part 35]

HUMAN USES OF BYPRODUCT MATERIAL

Change in License Conditions for Certain Medical Licenses

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering amending its regulations (a) to permit physicians greater latitude, when they use certain low risk diagnostic radio- pharmaceuticals, by no longer designating authorized clinical procedures and (b) to delete from several licensing groups certain chemical forms not approved by FDA. The Commission believes that the use of these radiopharmaceuticals for diagnostic clinical procedures not yet approved by FDA entails low risk to the patient, provided the chemical and physical form, route of administration and the dosage range remain the same as specified in the radiopharmaceutical labeling.

DATES: Comment period expires May 16, 1978.

ADDRESSES: Written comments or suggestions for consideration in connection with the proposed amendment should be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Edward Poldolak, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, phone 301-443-6910.

SUPPLEMENTARY INFORMATION: In the most common type of license for the medical use of byproduct material, NRC restricts the physician's use of radiopharmaceuticals essentially to those clinical procedures approved by the Food and Drug Administration (FDA) in the product's labeling. The package insert, a part of the product labeling, has scientific, medical, legal and administrative significance. The purpose of the package insert is to provide the physician with specific information about the use of the radiopharmaceutical. This information, which is reviewed and approved by FDA, includes:

1. The chemical and physical form of the drug;
2. Recommended usual dose and usual dose range;
3. Indications and usage (clinical procedures);
4. Route of administration to which the labeling applies;
5. Contraindications; and
6. Warnings.

Under the so-called Group* medical licenses, NRC restricts the physician's choice of clinical procedures to FDA approved procedures. This is accomplished by listing in 10 CFR § 35.100 each radioisotope, the chemical and physical form of the radiopharmaceutical and the authorized clinical procedures. Each time FDA approves a new clinical procedure for a radiopharmaceutical listed in § 35.100, NRC must consider amending § 35.100 to include the new procedure.

The purpose of this proposed rule change is to delete the specification of the diagnostic clinical procedures from the lists of radiopharmaceuticals in Groups I, II and III of § 35.100. This would permit a physician to use these diagnostic radiopharmaceuticals for clinical procedures not included in the product labeling.

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*The most common types of NRC specific licenses for the medical uses of byproduct material are the Group medical licenses under § 35.14 that apply to those radioactive materials listed in § 35.100. The radioactive materials listed in § 35.100 are divided into six groups, each group having similar requirements for user training and experience, facilities and equipment, and radiation safety procedures. Groups I, II and III are lists of radiopharmaceuticals for diagnostic procedures; Groups IV and V are lists of radiopharmaceuticals for therapeutic procedures; and Group VI is a list of radioactive medical devices for both diagnostic and therapeutic procedures.

The use of an approved drug for indications that have not been approved in the product labeling has been discussed by FDA in a FEDERAL REGISTER announcement (40 FR 15392) concerning the "Labeling for Prescription Drugs Used in Man":

• • • the labeling is not intended either to preclude the physician's use of his best judgment in the interest of the patient or to impose liability if he does not follow the package insert. The (FDA) Commissioner clearly recognizes that the labeling of a marketed drug does not always contain all the most current information available to physicians relating to the proper use of the drug in good medical practice. Advances in medical knowledge and practice inevitably precede labeling revision by the manufacturer and formal label approval by the Food and Drug Administration. Good medical practice and patient interests thus require that physicians be free to use drugs according to their best knowledge and judgment. Certainly, where a physician uses a drug for a use not in the approved labeling, he has the responsibility to be well informed about the drug and to base such use on a firm scientific rationale or on sound medical evidence, and to maintain adequate medical records of the drugs use and effects, but such usage in the practice of medicine is not in violation of the Federal Food, Drug and Cosmetic Act.

The Commission believes that the use of radiopharmaceuticals listed in Groups I, II and III for diagnostic clinical procedures not yet approved by FDA entails low risk to the patient, provided the chemical and physical form, route of administration and the disage range remain the same as specified in the radiopharmaceutical labeling. Therefore, the Commission is also proposing to amend § 35.14 to require the physician to comply with the product labeling with respect to these three items, when he uses Groups I, II and III radiopharmaceuticals for clinical procedures not specified in the product labeling.

Because of the higher patient risk, the Commission will continue to restrict the uses of therapeutic radioactive drugs in Groups IV and V to clinical procedures approved by FDA in the product labeling. The uses of radioactive medical devices in Group VI will continue to be restricted to clinical procedures determined to be safe and effective by NRC in consultation with its Advisory Committee on the Medical Uses of Isotopes.

The Commission is also proposing to update the lists in Groups I, II and III by deleting certain chemical forms not approved by FDA. These chemical forms, such as iodopyracet, sodium diatrizoate and diatrizoate methylglucamine, were originally placed in the groups when the Atomic Energy Commission regulated the safety and efficacy of radiopharmaceuticals incorporating byproduct material. Since then, these chemical forms have been replaced by other products and, when the FDA took over the safety and efficacy function, the radiopharmaceutical manufacturers did not request FDA approval.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 35 is contemplated.

1. In § 35.14(b), add a new paragraph (6) to read as follows:

§ 35.14 Specific licenses for certain groups of medical uses of byproduct material.

• • • • •

(b) • • •

(6) For Groups I, II and III any licensee using byproduct material for clinical procedures other than those specified in the product labeling (package insert) shall comply with the product labeling regarding:

(i) Chemical and physical form;

(ii) Route of administration; and

(iii) Dosage range.

• • • • •

2. In § 35.100, paragraphs (a), (b) and (c) are revised to read as follows:

§ 35.100 Schedule A—Groups of medical uses of byproduct material.

(a) *Group I.* Use of prepared radiopharmaceuticals for certain diagnostic studies involving measurements of uptake, dilution and excretion. This group does not include imaging or localization studies.

(1) Iodine-131 as sodium iodide, iodinated human serum albumin, labeled rose bengal, triolein, sodium iodohippurate or sodium iothalamate;

(2) Iodine-125 as sodium iodide, iodinated human serum albumin, oleic acid or sodium iothalamate;

(3) Cobalt-58 as labeled cyanocobalamin;

(4) Cobalt-60 as labeled cyanocobalamin;

(5) Chromium-51 as sodium chromate or labeled human serum albumin;

(6) Iron-59 as citrate;

(7) Technetium-99m as pertechnetate; and

(8) Any byproduct material in a radiopharmaceutical and for a diagnostic use involving measurements of uptake, dilution or excretion for which a "Notice of Claimed Investigational Exemption for a New Drug" (IND) has been accepted by the Food and Drug Administration (FDA).

(b) *Group II.* Use of prepared radiopharmaceuticals for diagnostic imaging and localization studies.

(1) Iodine-131 as sodium iodide, iodinated human serum albumin, macroaggregated iodinated human serum albumin, colloidal (microaggregated) iodinated human serum albumin, rose bengal or sodium iodohippurate;

(2) Iodine-125 as sodium iodide or fibrinogen;

(3) Chromium-51 as human serum albumin;

(4) Gold-198 in colloidal form;

(5) Mercury-197 as chlormerodrin;

(6) Mercury-203 as chlormerodrin;

(7) Selenium-75 as selenomethionine;

(8) Strontium-85 as nitrate;

(9) Technetium-99m as pertechnetate, labeled sulfur colloid or macroaggregated human serum albumin;

(10) Ytterbium-169 as diethylenetriaminepentaacetic acid (Sn);

(11) Indium-113m as chloride;

(12) Any byproduct material in a radiopharmaceutical prepared from a reagent kit listed in paragraph (c)(4) of this section; and

(13) Any byproduct material in a radiopharmaceutical and for a diagnostic use involving imaging or localizing for which a "Notice of Claimed Investigational Exemption for a New Drug" (IND) has been accepted by the Food and Drug Administration (FDA).

(c) *Group III.* Use of generators and reagent kits for the preparation and use of radiopharmaceuticals containing byproduct material for certain diagnostic studies.

(1) Molybdenum-99/technetium-99m generators for the elution of technetium-99m as pertechnetate;

(2) Technetium-99m as pertechnetate for use with reagent kits for preparation and use of radio- pharmaceuticals containing technetium-99m as provided in paragraphs (c)(4) and (5) of this section;

(3) Tin-113/indium-113m generators for the elution of the indium-113m as chloride;

(4) Reagent kits for preparation of technetium-99m labeled:

(i) Sulfur colloid;

(ii) Iron-ascorbate-dietylenetriaminepentaacetic acid complex;

(iii) Diethylenetriaminepentaccetic acid (Sn);

(iv) Human serum albumin microspheres;

(v) Polyphosphates;

(vi) Macroaggregated human serum albumin;

(vii) Distannous etidronate complex;

(viii) Stannous pyrophosphate;

(ix) Human serum albumin; and

(5) Any generator or reagent kit for preparation and diagnostic use of a radiopharmaceutical containing byproduct material for which generator or reagent kit a "Notice of Claimed Investigational Exemption of a New Drug" (IND) has been accepted by the Food and Drug Administration (FDA).

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(Secs. 81, 161, Pub. L. 83-703, 68 Stat. 935, 948 (42 U.S.C. 2111, 2201); Sec. 201, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841).)

Dated at Washington, D.C., this 13th day of March 1978.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-7167 Filed 3-16-78; 8:45 am]

[7590-01]

[10 CFR Part 35]

REGULATION OF THE MEDICAL USES OF RADIOISOTOPES

Proposed Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) has under consideration the following proposed policy statement regarding NRC's future role in regulating the medical uses of radioisotopes. This NRC policy statement is intended to inform NRC licensees, other Federal and State agencies and the public of the Commission's general intention regarding the regulation of the medical uses of radioisotopes. It is expected that future NRC activities in the medical area, such as promulgation of new regulations and development of cooperative relationships with other Federal agencies, will follow this statement of NRC policy.

DATE: Comments are due on or before May 16, 1978.

ADDRESSES: Send comments and suggestions to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments may be examined in the: Nuclear Regulatory Commission Public Document Room, 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Mr. Edward Podolak, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301-443-6910.

SUPPLEMENTAL INFORMATION:

In 1976, NRC, with a view to possible changes, began reviewing its regulations regarding the medical uses of radioisotopes, originally promulgated by the Atomic Energy Commission (AEC). On April 21, 1977, NRC published a meeting notice in the FEDERAL REGISTER (42 FR 20691), inviting the public to comment on NRC's regulations concerning medical practices. The FEDERAL REGISTER notice and related public announcements stated that the purpose of the public meetings was to receive written and oral comments that the Commission could use in deciding future NRC policy in regulating the medical uses of radioisotopes and to provide a basis for possible future rulemaking. The notice requested comments on specific issues as follows:

To what extent should the protection of the patient be considered in NRC's regulation of the medical use of byproduct material? Areas of possible regulatory involvement by NRC in this area include:

1. Evaluation of physician's clinical qualifications,
2. Selection of patients for diagnostic or therapeutic procedures,
3. Selection of instruments to be used in performing diagnostic or therapeutic procedures,
4. Selection of radioactive drugs or devices to be used,
5. Selection of procedures to be performed,
6. Selection of dose level (quantity of radioactive material or radiation dose) to be used,
7. Proper measurements of the dose the patient receives,
8. Calibration of diagnostic equipment and dose-measuring instrumentation,
9. Qualifications of paramedical personnel, such as technologists, nurses, radiopharmacists and radiological physicists, and
10. Reporting to NRC, the patient and/or the patient's physician, misadministration of radioactive material or radiation from devices incorporating radioactive material.

In addition to the FEDERAL REGISTER notice and other public announcements, NRC directly contacted more than 30 physician groups, professional societies, public interest groups, and Federal agencies, the 25 NRC Agreement States and several non-Agreement States.

The meetings of NRC staff with the public and the Advisory Committee on Medical Uses of Isotopes were held on May 6, 1977, in Silver Spring, Maryland. The meeting record was held open for 70 days following the meeting for the receipt of written comments. Over 90 people participated in the public meetings and 33 comments were received for the record. Transcripts of the meetings and copies of the comments may be examined in the NRC Public Document Room at 1717 H Street NW., Washington, D.C.

I. PROPOSED POLICY STATEMENT

This NRC policy statement is intended to inform NRC licensees, other Federal and State agencies and the public of the Commission's general intention regarding the regulation of the medical uses of radioisotopes. It is expected that future NRC acitivites in the medical area, such as promulgation of new regulations and development of cooperative relationships with other Federal agencies, will follow this statement of NRC policy.

Based on past experience and the comments and advice of the public, other Federal agencies, the States and NRC's Advisory Committee on the Medical Uses of Isotopes, the Commission has developed the following policy statement to guide its regulation of the medical uses of radioisotopes:[1]

1. The NRC will continue to regulate the medical uses of radioisotopes as necessary to provide for the radiation safety of workers and the general public.

2. The NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate.

3. The NRC will minimize intrusion into medical judgments affecting patients and into other areas traditionally considered to be a part of the practice of medicine.

II. RATIONALE

The NRC and its predecessor the Atomic Energy Commission have regulated the medical uses of radioisotopes since 1946. AEC recognized that physicians have the primary responsibility for the protection of their patients and designed its regulations accordingly. The physicians were required to be licensed by the State, and their applicable training and experience were evaluated in consultation with the Advisory Committee on the Medical Uses of Isotopes. This regulation has been generally oriented toward assisting qualified physicians in discharging their responsibilities to patients. However, regulation by AEC/NRC has at one time or another encompassed nearly every aspect of the delivery of radioisotope medical services to patients. The broadest regulation occurred between 1962 and 1975, when the Food and Drug Administration (FDA) exempted from its requirements for new drugs all radiopharmaceuticals regulated by

[1]The NRC licenses radioisotopes in three categories: byproduct, source and special nuclear material. The NRC does not regulate naturally occurring or accelerator produced radioisotopes. The term byproduct material means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material. The term source material means (1) uranium, thorium, or any combination thereof, in any physical or chemical form, or (2) ores which contain by weight one-twentieth of one percent (0.05 percent) or more of (i) uranium, (ii) thorium, or (iii) any combination thereof. Source material does not include special nuclear material. Special nuclear material means (1) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, or (2) any material artificially enriched by any of the foregoing, but does not include source material.

AEC. During this period AEC regulated the radiation safety of workers and the general public and the safety and efficacy of radioactive drugs and devices with respect to patients. AEC regulation included production of the radioisotope, manufacture of the final radioactive drug product or device, distribution, use and disposal of the products. In 1975, the FDA terminated the exemption for radiopharmaceuticals, stating that it would now regulate the safety and efficacy of radioactive drugs with respect to patients. (As noted later in this statement, FDA does not regulate the physician's routine use of radiopharmaceuticals.) At the same time, NRC withdrew from regulating radioactive drug safety and efficacy, stating that it would regulate the radiation safety of the workers and the public. The 1976 Medical Device Amendments to the Food, Drug and Cosmetic act extended FDA's authority over medical devices (including devices containing radioactive materials) in a way similar to its authority over drugs.

NRC's authority to regulate domestically the medical uses of byproduct material is found in the Atomic Energy Act of 1954, as amended. For example, section 81 of that Act authorizes NRC "to issue general or specific licenses to applicants seeking to use byproduct material for * * * medical therapy * * *." Section 81 directs NRC to regulate the manufacture, production, transfer, receipt in interstate commerce, acquisition, ownership, possession, import and export of byproduct material. Finally, Section 81 also directs that:

> The Commission shall not permit the distribution of any byproduct material to any licensee, and shall recall or order the recall of any distributed material from any licensee, who is not equipped to observe or fails to observe such safety standards to protect health as may be established by the Commission or who uses such material in violation of law or regulation of the Commission or in a manner other than as disclosed in the application therefor or approved by the Commission.

Commission regulations, for the most part set forth in 10 CFR Parts 30 through 36, were promulgated to carry out the broad regulatory scheme envisaged by section 81. For example, Part 35 establishes regulations specific to human uses of byproduct material. FDA's statutory authority (Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. 301 et seq.) does not diminish NRC's authority. Where NRC's and FDA's authorities overlap, the respective authorities can be harmonized by interagency agreement.

The central question in the April 21, 1977, FEDERAL REGISTER notice is a question of policy not authority, namely:

To what extent should the protection of the patient be considered in NRC's regulation of the medical use of byproduct material?

From the standpoint of authority, it is clear that NRC can regulate the medical uses of byproduct material to protect the health and safety of users of this material, for instance, patients. In licensing the possession and use of byproduct material, NRC establishes limits within which physicians exercise professional discretion. From the standpoint of policy, these limits depend upon how NRC views the potential hazard to the patient's health and safety in the uses of the byproduct material. The greater the potential hazard to a patient from the byproduct material or its use by a physician, the more NRC may elect to circumscribe areas that might otherwise be regarded as within the discretion of the physician.

The first part of NRC's policy statement indicates that NRC will continue to regulate the medical uses of radioisotopes as necessary to provide for the radiation safety of workers and the general public.[1]

This is the traditional regulatory function of NRC for all uses of byproduct, source and special nuclear material. It is a regulatory role that was not questioned by any of the commenters but, rather, it was consistently recognized as a necessary role in the medical uses of radioisotopes.

NRC's regulation of the radiation safety of workers and the general public in the medical uses of radioisotopes is relinquished by NRC to Agreement States; does not overlap with FDA's activities; is in harmony with regulation by the Department of Transportation, Social Security Administration and the Joint Commission on Accreditation of Hospitals; and dovetails with Occupational Safety and Health Administration regulation of the work-place for the use of naturally-occurring and accelerator-produced radioactive materials.

The second part of NRC's policy statement indicates that NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate. As noted before, NRC has the authority to regulate the radiation safety of patients.

The NAS-BEIR[2] report discusses limiting the exposure of the population to medical applications of ionizing radiation. That report, which includes all medical uses of ionizing radiation, shows an average dose rate from radiopharmaceuticals of 1 mrem/year and an average dose rate from diagnostic radiology of 72 mrem/year in 1970.

The following quotation is from the NAS-BEIR report:

> In the foreseeable future, the major contributors to radiation exposure of the population will continue to be natural background with an average whole body dose of about 100 mrem/year, and medical applications which now contribute comparable exposures to various tissues of the body. Medical exposures are not under control or guidance by regulation or law at present. The use of ionizing radiation in medicine is of tremendous value but it is essential to reduce exposures since this can be accomplished without loss of benefit and at relatively low cost. The aim is not only to reduce the radiation exposure to the individual but also to have procedures carried out with maximum efficiency so that there can be a continuing increase in medical benefits accompanied by a minimum radiation exposure.

NRC will act to help ensure that radiation exposure to patients is as low as is reasonably achievable, consistent with competent medical care and with minimal intrusion into medical judgments. NRC will not exercise regulatory control in those areas where, upon careful examination, it determines that there are adequate regulations by other Federal or State agencies or well administered professional standards. Wherever possible, NRC will work closely with Federal and State agencies and professional groups in designing new voluntary guidance for practitioners to limit unnecessary patient radiation exposure. However, there are specific areas discussed in Section III of this policy statement where NRC will regulate the radiation safety of patients to help minimize unnecessary patient exposure.

The third part of NRC's policy statement indicates that NRC will minimize its intrusion into medical judgments affecting the patient and into other areas traditionally considered to be a part of the practice of medicine. The Commission recognizes that physicians have the primary responsibility for the protection of their patients. The Commission believes that basic decisions concerning the diagnosis and treatment of disease are a part of the physician-patient relationship and are traditionally considered to be a part of the practice of medicine. NRC regulations are predicated on the assumption that properly trained and adequately informed physicians will make decisions in the best interest of their patients.

The regulations try to find a balance between adequate controls and avoidance of undue interference in medical judgments. A consequence of too much regulation could be poorer health care delivery to patients. A con-

[1] The term general public in this statement specifically excludes patients.

[2] National Academy of Sciences Advisory Committee on the Biological Effects of Ionizing Radiations (NAS-BEIR) report. The Effects on Populations of Exposure to Low Levels of Ionizing Radiation. National Academy of Sciences—National Research Council, Washington, D.C. (1972).

sequence of leaving to physicians the majority of the decisions concerning their patients is that the physicians will make mistakes. The tightest regulation of physicians' decisions by Federal, State and professional groups will not be able to prevent future incidents in the medical uses of radioisotopes.

The Commission recognizes that FDA regulates the manufacture and interstate distribution of drugs, including those that are radioactive. FDA also regulates the investigational and research uses of drugs as well as the specific guidance on doses and procedures found in the product labeling. However, FDA does not have the authority to restrict the routine use of drugs to procedures (described in the product labeling) FDA has approved as safe and effective. Indeed, NRC is the only Federal Agency that is currently authorized to regulate the routine use of radioactive drugs from the standpoint of reducing unnecessary radiation exposure to patients.

The Commission believes that the diagnostic use of radioactive drugs is, in most cases, clearly an area of low radiation risk to patients. Therefore, NRC will not control physician's prerogatives on patient selection, instrument selection, procedure selection, drug selection and dose level for most diagnostic uses of radioisotopes. For all therapeutic uses of radioactive drugs, and in certain diagnostic uses—for example, the use of phosphorus-32 for localization of eye tumors—the risk to patients is not low. The risk of tissue or organ damage (or even death) is inherent in the use of therapeutic levels of radioactive drugs. NRC will continue to restrict the uses of therapeutic and certain diagnostic radioactive drugs to the indicated procedures that have been approved by FDA. The NRC will not control the physicians' prerogatives on patient selection and instrument selection for therapy procedures, because these procedures are so specialized and patient specific.

Congress recently gave FDA authority to regulate medical devices, similar to FDA's authority to regulate drugs, but with additional authority to restrict the routine use of medical devices as may be necessary to provide reasonable assurance of their safety and effectiveness. FDA has not yet had sufficient time to implement its full authority to regulate medical devices containing byproduct, source or special nuclear material. Therefore, NRC will continue to restrict physician's uses of these medical devices, both for diagnosis and therapy, to those procedures that NRC has determined (in consultation with its Advisory Committee on the Medical Uses of Isotopes) to be safe and effective.

The Commission does not consider equipment calibration, qualifications of paramedical personnel or reporting to NRC misadministrations of radioactive material to be exclusively the practice of medicine or a part of physician-patient relationships. As described in detail in Section III, the Commission intends to regulate these areas of patient radiation safety where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate.

III. NRC Position on Specific Issues

The following represent the Commission's position on the specific issues raised in the April 21, 1977, Federal Register announcement (42 FR 20691):

1. Evaluation of Physicians' Clinical Qualifications

NRC has always required that licensees be qualified by training and experience in the handling of radioactive material from the standpoint of radiation safety of workers and the general public.

The Commission believes that it is necessary to continue to evaluate physicians' clinical qualifications prior to issuance of NRC licenses. At this time there is no alternative method of determining if a physician, not certified by the American Board of Nuclear Medicine or the American Board of Radiology, is competent to use byproduct material. However, the Commission also believes that, as this field of medicine continues to mature, other alternatives will replace the NRC evaluation of clinical qualifications.

NRC has for several years accepted certification by the American Board of Nuclear Medicine and the American Board of Radiology as sufficient evidence of clinical competence in the fields of nuclear medicine and radiation therapy, respectively. It has recently determined that certification by the American Board of Radiology in Diagnostic Radiology, with Special Competence in Nuclear Radiology, is sufficient evidence of clinical competence in nuclear imaging procedures.

Based on specific assessments in consultation with its Advisory Committee on the Medical Uses of Isotopes, NRC will continue to expand its use of the various board certifications as satisfactory evidence of adequate clinical training and experience for the medical uses or radioisotopes. NRC will also work closely with the professional societies to assist them in developing suitable permanent alternatives to NRC's evaluation of physicians' clinical qualifications.

2. Selection of Patients for Diagnostic or Therapeutic Procedures

NRC currently evaluates a physician's clinical qualifications to use radioisotopes on humans. One NRC requirement is that the physician's training include "supervised examination of patients to determine the suitability for radioisotope diagnosis and recommendation on dosage to be prescribed."

The Commission recognizes that the selection of patients for diagnostic or therapeutic procedures is basically a matter of medical judgment. Diagnostic procedures have a low patient risk and therapeutic procedures are specialized and patient specific. Radioactive drug manufacturers provide guidance on patient selection and contraindications in the product labeling. Supplemental voluntary guidelines on limiting patient radiation exposure, including the standpoint of patient selection, are available in the literature. The contribution to unnecessary patient exposure from improper selection of patients is believed to be small. Therefore the Commission does not anticipate the need to limit, to any major extent, the physician's discretion in selection of patients. Because the NRC does not evaluate physician qualifications for the general license, the Commission will continue its minor restriction in the general medical license [10 CFR 35.31(c)(4)] prohibiting administrations of radiopharmaceuticals to a woman with confirmed pregnancy or to persons under 18 years of age. This restriction does not affect specific licensees.

3. Selection of Instruments To Be Used in Performing Diagnostic or Therapeutic Procedures

NRC evaluation of a physician's qualifications includes an evaluation of training in radiation physics and instrumentation.

The selection of instruments for performing diagnostic or therapeutic procedures is, like patient selection, basically a matter of medical judgment. There are also voluntary guidelines available on the selection, calibration and maintenance of instrumentation. Again, diagnostic procedures have low patient risk and therapeutic procedures are specialized and patient specific. NRC does not currently restrict selection of instruments and does not anticipate the need for doing so in the future. The Commission recognizes that FDA will regulate the investigational and research uses of medical devices under its new legislation, the Medical Device Amendments of 1976 (Pub. L. 94-295). The Commission also recognizes that these amendments give FDA new authority to restrict the routine use of medical devices under such conditions as may be necessary to provide reasonable assurance of their safety and effectiveness.

4. Selection of Radioactive Drugs or Devices To Be Used

The NRC now restricts a physician's selection of radioactive drugs by limit-

ing the distribution of the radioactive drugs to those products meeting FDA requirements. The physician is thus restricted to using radioactive drugs subject to an FDA-approved "Notice of Claimed Investigational Exemption for a New Drug" (IND) or an FDA-approved "New Drug Application" (NDA). NRC regulates the manufacture and installation of teletherapy devices as well as the integrity testing of these and other radioactive medical devices during use. However, NRC does not now require that medical devices containing radioactive material meet FDA requirements.

The Commission believes that it is necessary to continue its restrictions on the availability of radioactive drugs to those that meet FDA requirements. NRC will study and assess with FDA the necessity for a similar NRC requirement for radioactive medical devices.

In those cases where several radiopharmaceuticals have been approved by FDA for the same procedure, the Commission does not plan to restrict a physician's decision regarding which agent to use. The Commission considers the basic decision on drug or device selection to be a traditional part of medical practice.

The Food, Drug and Cosmetic Act differentiates between pharmacy and manufacture. However, no clean line has been established to determine when a nuclear pharmacy has gone beyond the ordinary practice of pharmacy (compounding and dispensing) and has become a manufacturer. The FDA is drafting guidelines that will define all of those operations (of nuclear pharmacies) connected with the preparation of radioactive drugs which will be regarded as manufacture (and, therefore, subject to FDA new drug requirements) and not part of the practice of pharmacy. In the absence of FDA guidelines, the NRC licenses nuclear pharmacies to distribute only those products that they have prepared from FDA-approved radio- pharmaceuticals or reagent kits.

5. SELECTION OF PROCEDURES TO BE PERFORMED

NRC evaluates a physician's clinical qualifications. His training includes studies, under a preceptor, of case histories to establish the most appropriate diagnostic or therapeutic procedures, limitations, contraindications, and so forth.

The Commission recognizes that the selection of procedures is basically a matter of medical judgment. The Commission does not anticipate the need to limit, to any major extent, the physician's discretion in the selection of clinical procedures.

The Commission recognizes that FDA does not restrict the routine use of NDA-approved drugs to those procedures for which there is substantial evidence of safety and effectiveness, that is, to those procedures approved in the drug labeling. According to FDA's statement on drug labeling:

> The FDA Commissioner clearly recognizes that the labeling of a marketed drug does not always contain all the most current information available to physicians relating to the proper use of the drug in good medical practice. Advances in medical knowledge and practice inevitably precede labeling revision by the manufacturer and formal labeling approval by the Food and Drug Administration.
>
> Good medical practice and patient interests thus require that physicians be free to use drugs according to their best knowledge and judgment. Certainly, when a physican uses a drug for a use not in the approved labeling, he has the responsibility to be well-informed about the drug and to base such use on firm scientific rationale or sound medical evidence, and to maintain adequate medical records of the drugs use and effects, but such usage in the practice of medicine is not in violation of the Federal Food, Drug and Cosmetic Act.

Basically, NRC issues two types of licenses to medical institutions for the human uses of byproduct material, the medical license of broad scope and the medical license of limited scope.

Broad medical licenses authorize multiple quantities and types of byproduct material for unspecified uses and are issued to institutions that (1) have had previous experience operating under a limited medical license and (2) are engaged in medical research as well as routine diagnosis and therapy using radioisotopes. The programs under the broad medical license operate under the supervision of a medical isotopes committee. No physicians are named as individual users on the license, nor are radioisotopes limited to specific clinical procedures.

Limited medical licenses specify the radioisotopes and the clinical procedures that may be performed by physicians named on the license. Under limited medical licenses the institutional licensee must have a medical isotopes committee and the physicians named on the institution's license conduct their programs with the approval of that committee. Under limited medical license the authorized diagnostic and therapeutic radioactive drugs and the authorized clinical procedures are listed in the NRC regulation 10 CFR § 35.100, "Schedule A—Groups of medical uses of byproduct material."[6]

The authorized clinical procedures listed in the groups are procedures approved by FDA in the drug labeling. Since FDA does not restrict the physician to clinical procedures listed in the labeling, NRC regulations are more restrictive than FDA regulations.

Elsewhere in this issue of the FEDERAL REGISTER is a proposed rule that would delete the specification of the clinical procedure from the lists of the diagnostic radioactive drugs in § 35.100. However, this proposed rule would place limitations on a drug's use for prcedures not specifiifed in the package insert.

As noted in Section II of this policy statement, the radiation risk[7] to the patient from most diagnostic nuclear medicine procedures is low, while the risk is significant from misuse of therapeutic levels of radioactive drugs. Those few diagnostic procedures where the risk to the patient is high are not listed in K 35.100 but are the subject of specific license authorizations and will continue to have the clinical procedure specified.

6. SELECTION OF DOSE LEVEL (QUANTITY OF RADIOACTIVE MATERIAL OR RADIATION DOSE) TO BE USED

As noted in Item 2, selection of patients, the physician's training must include supervised experience in recommending proper dosages for specific patients.

The Commission recognizes the selection of dose level is basically a matter of medical judgment. The package inserts for radioactive drugs include the recommended usual dose and usual dosage range. Because of the many variables that determine the most effective dosage for both the diagnostic and therapeutic use of radioisotopes, the NRC does not now regulate, nor does it anticipate the necessity of restricting in the future, the physician's selection of dose level.

7. PROPER MEASUREMENT OF THE DOSE THE PATIENT RECEIVES

The Commission believes that proper measurement of the radioactive drug dosage, or radiation dose in the case of therapy, helps to ensure that the patient receives what the physician has prescribed and thus helps minimize unnecessary radiation exposure to patients. NRC now requires most licensees, particularly those who prepare radioactive drugs from radioisotope generators or reagent kits, to measure the dosage prior to administration. This requirement is now imposed through a license condition. NRC will study the merits of amending its regulations to require measurement of all diagnostic and therapeutic doses of radio- pharmaceuticals, regardless of origin.

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[6] Radioactive materials in § 35.100 are divided into six groups, each group having similar requirements for user training and experience, facilities and equipment, and radiation safety procedures.

[7] The risk to a patient from a false positive or a false negative diagnosis through the use of a drug for a purpose not fully investigated and specified on the label would be expected to be greater than it is for a labeled use but this risk is difficult to quantify.

NRC currently has under consideration a proposed rule (42 FR 25743) that would require annual calibration and monthly checks of teletherapy units. This rule has received many public comments; the comments will be analyzed and the rule modified, if warranted. Based on the disposition of this proposed rule on teletherapy calibration, NRC may propose a similar rule for the periodic calibration of brachytherapy sources.

8. CALIBRATION OF DIAGNOSTIC EQUIPMENT AND DOSE MEASURING INSTRUMENTATION

The Commission believes that the calibration of diagnostic equipment and dosage measuring devices helps ensure that the patient receives what the physician prescribes and thus helps minimize unnecessary radiation exposure to patients. NRC presently requires licensees who prepare radioactive drugs from radioisotope generators and reagent kits to describe in the license applications a method for calibration of their dose measuring devices. NRC also provides an acceptable method for calibrating dose calibrators in "A Guide for Preparation of Applications for Medical Programs" (NUREG-0338 Rev. 1 November 1977) that can be obtained by writing to the Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, Nuclear Regulatory Commission, Washington, D.C. 20555.

NRC presently does not have any requirements concerning the calibration of diagnostic equipment. Because of the extensive experience of FDA's Bureau of Radiological Health and the new authority of FDA's Bureau of Medical Devices, NRC will collaborate with them in their development of voluntary guidelines for the routine calibration of diagnostic equipment. At the same time, NRC will study the merits of proposing mandatory requirements.

9. QUALIFICATIONS OF PARAMEDICAL PERSONNEL, SUCH AS TECHNOLOGISTS, NURSES, RADIOPHARMACISTS AND RADIOLOGICAL PHYSICISTS

On March 9, 1973, AEC published (38 FR 6399) a proposed amendment to its regulations in 10 CFR Part 35 that would (1) define the activities that may be delegated by physicians and those that may not, (2) require physicians to determine that paramedical personnel have been properly trained, and (3) require medical licensees to report to the Commission and to the patient misadministrations of radioactive material.

The Commission recognizes that there are several organizations currently involved in developing or providing minimum standards, guidelines or certification for technician training. These programs are administered by State, Federal and private agencies including: the Health Services Administration (Medicare and Medicaid DHEW), the Bureau of Radiological Health (FDA/DHEW), the Joint Commission on Accreditation of Hospitals (JCAH), the American Registry of Radiological Technologists (ARRT), the Registry of Medical Technologists (RMT) and the new certification board by the Technologists Section of the Society of Nuclear Medicine.

The Commission also recognizes that the majority of paramedical (allied health) personnel using radioactive material are not covered by these programs. Rather they are trained on-the-job, are not certified; and many do not have their training documented. However, the introduction of a relatively less comprehensive NRC program, such as that in the 1973 AEC proposal, could undermine the efforts of voluntary organizations or those Federal or State agencies relying on more comprehensive guidelines.

In the near future, NRC will publish a FEDERAL REGISTER announcement withdrawing the 1973 AEC proposal and substituting an NRC proposed misadministration reporting requirement. That future announcement will discuss more thoroughly the reasons for withdrawal of the AEC proposal and substitution of the NRC proposal. NRC is studying the various allied health certification programs currently in effect or being drafted by other Federal, State and professional groups. If the coverage provided by these programs is not adequate to protect the patient from unnecessary radiation exposure, NRC will work with these groups to develop a new NRC proposed rule for the training of allied health personnel.

10. REPORTING OF MISADMINISTRATION OF RADIOACTIVE MATERIAL OR RADIATION FROM DEVICES INCORPORATING RADIOACTIVE MATERIAL

As describe in Item 9, in 1973 AEC published a proposed rule that would require licensees to report misadministrations of radiopharmaceuticals or radiation from byproduct material to the Commission and to the patient or a responsible relative whenever the misadminsitration could cause a "demonstrably adverse effect on the patient." Ninety-eight comment letters were received, most objecting to the proposal for reporting to the patient. Reasons given for objection to the requirement for reporting misadministrations to the patient were: (1) such reports would constitute self-incrimination, (2) such reports would invite or increase unwarranted malpractice suits, (3) this would place the government as a third party in the physician-patient relationship, (4) this is a matter of medical ethics, and (5) there are no comparable requirements for any other drug or physicians in any other field of medicine.

The purpose of a misadministration reporting requirement is to allow NRC to investigate the incident, evaluate the corrective action taken by the licensee to minimize the chance for recurrence, and, if other licensees could make the same errors, begin generic corrective action which would, as a minimum, inform other licensees of the potential problem.

As also noted in Item 9, in the near future NRC plans to publish, in the FEDERAL REGISTER a new proposed rule for misadministration reporting. The new NRC proposal will address: (1) the types of misadministrations to be reported, (2) the substance and timing of the reports, and (3) the recipients of misadministration reports, for example, the referring physician and possibly the patient or a responsible relative, as well as NRC.

IV. PUBLIC AND ADVISORY COMMITTEE COMMENTS

The NRC staff met with the public on the morning of May 6, 1977, and with its Advisory Committee on the Medical Uses of Isotopes in an afternoon public meeting on the same day. The members of the Advisory Committee were the chairman, Mr. Richard E. Cunningham, Deputy Director of the Division of Fuel Cycle and Material Safety of NRC's Office of Nuclear Material Safety and Safeguards; Dr. James Quinn from Northwestern Memorial Hospital; Dr. Joseph Workman from Duke University Medical Center; Dr. David Kuhl from the University of California, Los Angeles; Dr. Henry Wagner from John Hopkins Medical Institution; Dr. Edward Webster from Massachusetts General Hospital; and Dr. Frank DeLand from the University of Kentucky. Two consultants to NRC, Captain William Briner from Duke University Hospital and Dr. Peter Almond from the M. D. Anderson Hospital, also attended.

The comments from members of the public can be classified broadly in two categories. In the first category, the physicians, physicians' groups, pharmacists' groups and industry comments range from statements that "present regulations are sufficient" to the "the NRC should not regulate the use of radioisotopes in medicine at all." Many of the comments in this category stated that FDA regulates the safety and efficacy of drugs and that NRC should withdraw from this area and regulate only the radiation safety of workers and the general public.

In the second category, NRC Agreement and non-Agreement State radiation control agencies' comments range from statements that "present regulations are sufficient" to "much stronger regulation is necessary."

Many of the comments in this category note that FDA does not regulate the routine uses of drugs and devices and, therefore, NRC should regulate to ensure that the patient is protected from unnecessary radiation exposure.

In the area of NRC's evaluation of a physician's clinical qualifications, both categories of commenters recommend greater use by NRC of board certifications. Physicians and the industry in general appear to be interested in maintaining NRC evaluation as a means of entry into the field. They feel that if NRC withdrew from evaluating physician's clinical qualifications, the institutions or States would require specialty board certification. They state that there are not enough board certified physicians to fill the demand for services and that board certification is not necessary for many of the radioisotope procedures. The State radiation control agencies believe that NRC's evaluation of physician clinical qualifications is necessary to protect the patient. They feel that if NRC withdraws there will be a regulatory gap. Some States suggest that a physician's qualifications should be reviewed periodically, for example, every five years, to determine that he is keeping abreast of this rapidly changing field.

The general sense of NRC's Advisory Committee on the Medical Uses of Isotopes was that NRC should continue, at least for the immediate future, to examine physicians' clinical qualifications and should make greater use of the various types of board certification or registration, as evidence of adequate qualifications to practice in the areas of nuclear medicine and radiation therapy.

On the question of selection of patients, instruments, radioactive drugs or devices, procedures and dose level, the State radiation control agencies believes that NRC should not regulate the selection of patients or instruments. However, the States believe that licenses should specify the permitted radioactive materials and procedures and should require adherence to instructions and dose schedules in FDA-approved package inserts. The physicians and the industry believe that decisions on selection of patients, instruments, radioactive drugs or devices, procedures and dose levels are medical decisions and traditionally a part of the practice of medicine. They commented that NRC should not regulate these areas. Some argued that NRC has no authority to regulate in these areas since Congress gave FDA the authority to regulate the safety and efficacy of all drugs and medical devices.

The Advisory Committee on the Medical Uses of Isotopes does not have a consensus on this issue. The majority of the committee feels that NRC should not restrict the physician to those diagnostic procedures that have been approved by FDA in the labeling. One member believes that NRC should continue this restriction or that some arrangement should be made similar to the in-house institution committee review under an NRC Broad Medical License.

Regarding proper measurement of the dose the patient receives, the States urge NRC to expand the present licensing requirement for measurement of doses of radioactive drugs prepared from radionuclide generators, to cover all doses of radioactive drugs regardless of how they are prepared. On the related question of the calibration of diagnostic equipment and dose measuring instrumentation, the States favor NRC activity aimed at limiting patients exposures but recommend that NRC coordinate its activities with FDA's Bureau of Radiological Health and other professional and scientific groups.

The category of physicians, physician groups, and so on, varies in its comments regarding measurement of dose and calibration of diagnostic instrumentation and dose-measuring instrumentation. Several commenters state emphatically that NRC has no business regulating in this area. Many of them state as their reason the new authority of FDA's Bureau of Medical Devices and the recent activities of FDA's Bureau of Radiological Health in developing voluntary quality control guidelines. Several other commenters state that NRC activities in this area are both welcome and necessary to limit unnecessary patient exposures. Similar to the States' comments, some of these latter commenters recommend NRC cooperation with FDA's Bureau of Radiological Health and other professional and scientific groups active in developing guidelines for dose measurement and instrument calibration.

The consensus of the Advisory Committee on the Medical Uses of Isotopes is that NRC would do well to concentrate its activities on assurances that the patient receives the proper dose prescribed by the physician. The Advisory Committee can see no reason why radioactive drug doses should not be measured by well-calibrated instrumentation prior to administration to the patient. On the other hand, the Advisory Committee is not enthusiastic about the idea of NRC requiring the calibration of diagnostic instrumentation. The existence of guidelines in this area and the market pressures on manufacturers to provide quality instrumentation are two examples that it discussed.

On the question of the qualifications of paramedical personnel, the physician-industry category is virtually unanimous in its opposition to NRC requirements. The pharmacy, radiopharmacist and technologist groups are particularly against NRC granting credentials to paramedical personnel citing the numerous certifications and activities of other Federal and State agencies, as well as claiming lack of NRC authority to regulate in this area. The physician groups cite the fear that the number of certified technologists will fall far short of the need for these personnel.

The sense of the Advisory Committee is that existing certifications cover paramedical qualifications and hospitals look rather carefully at these. They feel that, in the final analysis, physicians are responsible for their patients and, therefore, are responsible for the qualifications of paramedical personnel working under their direction in caring for patients. With the exception of physicist's qualifications for calibration of radiation therapy, the Advisory Committee does not recommend that NRC become involved in regulating the qualifications of paramedical personnel.

The States consider misadministration reporting necessary in order to limit unnecessary radiation exposure to patients. They point out that with reports of misadministrations of byproduct material or radiation from byproduct material, NRC will be able to investigate the incident, determine if the corrective action is adequate and, if the problem could occur at other institutions, notify other licensees.

Physicians and physician groups are, in general, opposed to NRC requiring reports of misadministrations. They cite the low number of misadministrations of radioactive material to date combined with the fear of malpractice suits and the already high insurance premiums as the principal reasons for opposing misadministration reporting. They point out that most misadministrations of diagnostic levels of radiopharmaceuticals do not harm the patient and are similar to misadministrations of other drugs. They state that medical institutions and the medical profession have procedures for dealing with misadministrations. Several commenters question NRC's authority to require such reports, stating that this is within the traditional practice of medicine and such a reporting requirement would be unique in all of medical practice. Several commenters do not object to keeping records of misadministrations for on-site examination by NRC inspectors, but these commenters feel that more harm than good would result from making such reports directly to NRC, where they would become a part of the public record.

The Advisory Committee on the Medical Uses of Isotopes does not have a consensus on the issue of misadministration reporting. The members who

commented are against requiring reports of those misadministrations having no demonstrable health effects on the patient.

One general comment occurred several times during the morning and afternoon meetings and in many of the public comments. It concerns the need for uniformity in Federal, State and private regulation of the medical uses of radioisotopes. Several commenters call for uniformity between NRC and State regulations, but most focus on the discrepancy between the regulation of byproduct material and the regulation of naturally-occurring and accelerator-produced radioactive materials and accelerator therapy. One commenter discusses this discrepancy with regard to therapy. This commenter expresses his concern that regulatory considerations have come to play an important part in decision making, particularly in matters where the decision is for a choice among near equals. Specifically, he is concerned that the competition between cobalt-60 and electron accelerator teletherapy may be influenced, not from differences in hazards, but because NRC regulates cobalt-60 teletherapy units and does not regulate electron accelerator units. He feels that physicians may choose the least regulated alternative in order to have more time available for the patient-oriented demands of their practice. He suggests that NRC should cooperate with those agencies that can regulate accelerator teletherapy, so that these competing alternatives receive more uniform regulation. He further suggests that any increase in the regulation of one alternative would be counterproductive to public health and safety.

V. Conclusion

This proposed policy statement on NRC's regulation of the medical uses of radioisotopes is published with the expectation that public comment will improve the ultimate Commission decision. To that end, it would be helpful if responses include the reasons for a particular point of view or recommendation.

Dated at Washington, D.C., this 13th day of March 1978.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

[FR Doc. 78-7168 Filed 3-16-78; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

[12 CFR Parts 207, 220, 221]

[Regs. G, T, U; Docket No. R-0147]

OTC LIST REQUIREMENTS

Proposed Rule

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: These proposed amendments to the Supplements to Regulations G, T and U will require that dealers must submit bona fide bids and offers for an OTC stock to an automated quotation system if they are to be counted as market-makers in that stock for the purpose of being included on the Board's List of OTC Margin Stocks. The minimum market maker requirements for a stock to be included on the List under the present rule recognizes those dealers who make "regularly published bona fide bids and offers for such stock." When the List was first published by the Board in 1969 the "pink sheets" of the National Quotation Bureau were the only consistent source of the required price information. Since that time an automated quotation system, the National Association of Security Dealers Automated Quotations (NASDAQ), has been developed to a point where price information on all stocks on the Board's list can now be obtained from it. The Board is presently using data from both the "pink sheets" and NASDAQ for its surveys.

The proposed amendment will eliminate the necessity of reviewing data from the "pink sheets" most of which is considered duplicative and reduce staff review and computer time.

DATE: Comments must be received on or before April 14, 1978.

ADDRESS: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT:

Laura Homer, Chief Attorney, Securities Regulation, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2781.

SUPPLEMENTARY INFORMATION: The Board proposes to amend the Supplements to Regulations G, T and U (12 CFR Parts 207, 220 and 221) to eliminate the necessity of reviewing data from the "pink sheets" when surveying stocks for inclusion on the Board's List of OTC margin Stocks. Most of the data is now duplicative of material from NASDAQ, and reviewing it requires an expenditure of staff and computer time no longer deemed necessary to complete the analysis required in surveying the stocks eligible for the Board's List. Further, an analysis of available price information indicates that NASDAQ is the most convenient and complete source of bid and offer data for more actively traded OTC stocks in addition to supplying other needed data which are unavailable from the "pink sheets." The proposed amendments will permit the Board to use survey data from NASDAQ only.

Accordingly, pursuant to sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78 g and w) the Board proposes to amend 12 CFR Parts 207, 220, and 221 as follows:

PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS, BROKERS, OR DEALERS

1. Section 207.5(d)(2) and 207.5(e)(2) of Part 207, Securities Credit by Persons other than Banks, Brokers or Dealers, would be amended as follows:

§ 207.5 Supplement.

* * * * *

(d) *Requirements for inclusion on List of OTC margin stock.* * * *

(2) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts, or the stock is registered on a securities exchange that is exempted by the Securities and Exchange Commission from registration as a national securities exchange pursuant to section 5 of the Securities Exchange Act of 1934 (15 U.S.C. 78e).

* * * * *

(e) Requirements for continued inclusion on List of OTC margin stock.

* * * * *

(2) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts, or the stock is registered on a securities exchange that is exempted by the Securities and Exchange Commission from registration as a national securities exchange pursuant to section 5 of the Securities Exchange Act of 1934 (15 U.S.C. 78e).

PART 220—CREDIT BY BROKERS AND DEALERS

2. Section 220.8(h)(2) and 220.8(i)(2) of Part 220, Credit by Brokers and

Dealers, would be amended as set forth below:

§ 220.8 Supplement.

* * * * *

(h) *Requirements for inclusion on List of OTC margin stock.* * * *

(2) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts, or the stock is registered on a securities exchange that is exempted by the Securities and Exchange Commission from registration as a national securities exchange pursuant to section 5 of the Securities Exchange Act of 1934 (15 U.S.C. 78e).

* * * * *

(i) *Requirements for continued inclusion on List of OTC margin stock.* * * *

(2) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts, or the stock is registered on a securities exchange that is exempted by the Securities and Exchange Commission from registration as a national securities exchange pursuant to section 5 of the Securities Exchange Act of 1934 (15 U.S.C. 78e).

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCKS

3. Section 221.4(d)(2) and 221.4(e)(2) of Part 221, Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks, would be amended as follows:

§ 221.4 Supplement.

* * * * *

(d) *Requirements for inclusion on List of OTC margin stock.* * * *

(2) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts, or the stock is registered on a securities exchange that is exempted by the Securities and Exchange Commission from registration as a national securities exchange pursuant to section 5 of the Securities Exchange Act of 1934 (15 U.S.C. 78e).

* * * * *

(e) *Requirements for continued inclusion on List of OTC margin stock.* * * *

(2) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts, or the stock is registered on a securities exchange that is exempted by the Securities and Exchange Commission from registration as a national securities exchange pursuant to section 5 of the Securities Exchange Act of 1934 (15 U.S.C. 78e).

To aid in consideration of this matter by the Board, interested persons are invited to submit relevant data, views, comments, or arguments. All material should include the docket number R-0147. Such material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

By order of the Board of Governors, March 13, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-7204 Filed 3-14-78; 5:10 pm]

[6320-01]

CIVIL AERONAUTICS BOARD

[ERD-348; SPDR-64; Docket No. 32242; Dated: March 14, 1978]

[14 CFR Parts 207, 208, 212, 214, 371, 372a, 373, 378, 378a]

CHARTER AIR TRANSPORTATION

Proposed Rulemaking

AGENCY: Civil Aeronautics Board.

ACTION: Proposed rules.

SUMMARY: The Board is proposing a comprehensive revision of the regulations governing charter air transportation, in light of experience gained under existing charter rules and in response to recent fare discounts of scheduled airlines. The proposed amendments would replace several different charter forms with one simplified "Public Charter," which would not require advance payment for seats or formation of a group of any specified size, and would allow one-way as well as round-trip travel. The goal of the proposal is to make low-cost air travel more accessible to the general public by removing costly and unnecessary charter restrictions.

DATES: Comments by: April 26, 1978. Reply comments by: May 16, 1978. Comments and other information received after these dates will be considered by the Board only to the extent practicable. Requests to be put on the Service List by: March 27, 1978. The Docket section prepares the Service List and sends it to each person listed, who then serves his comment on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 32242, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711 as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Robert W. Kneisley, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION:

I

For the last several years the Board has been engaged in an intensive review and modification of the regulations governing charter air transportation. Throughout this period it has been faced with two sometimes conflicting objectives. On one hand, a charter regime should be sufficiently free of restrictions to enable charter services to meet the growing demand for low-cost bulk transportation by the American public, particularly economy-minded vacation travelers. At the same time, however, the Board has a statutory obligation to maintain a distinction between charter and regularly scheduled, individually ticketed services.

In reconciling these objectives over the years the Board has developed a number of new types of charters on an experimental basis, each designed to make charter service more accessible to the traveling public. At one time, opportunities for charter travel were limited almost exclusively to members of so-called "affinity groups," organizations qualified to charter aircraft on behalf of their membership. The vast majority of American travelers, who were not members of such organizations, were thus compelled to satisfy their air transportation needs either by traveling on much higher-priced scheduled services, or by risking participation in charter flights organized in violation of the Board's regulations. Despite these constraints charter traffic grew rapidly in the 1950's and 1960's,[1] chiefly because of a rising demand for economical vacation travel and widespread disregard of the affinity requirements. Thus, it became increasingly clear that the growing public demand for low-cost air transportation could not be satisfied by lawful affinity group flights.

Because of the limitations of the affinity charter the Board began in the

[1] From 1955 to 1969, charter revenues of the nation's certificated air carriers grew at an average annual rate of 22 percent and increased more than 12-fold. During the same period the total transport revenues of those carriers increased by a factor of 5.4. CAB Handbook of Airline Statistics and Air Carrier Financial Statistics.

late 1960's and early 1970's to authorize new forms of charters which would be available to the general public on a nondiscriminatory basis. In doing so, however, the Board felt constrained to impose numerous restrictions and conditions,[2] not only to maintain a legally sufficient distinction between charter and scheduled operations, but to protect scheduled carriers from the threat of excessive diversion of traffic to the new services. Consequently, the early nonaffinity charter rules were designed to limit participation to travelers who could conform their plans to rigorous travel restrictions and who thus would not constitute a significant proportion of the scheduled carriers' business. The restrictions proved so onerous, however, that the first public-sale charters never achieved the success the Board had hoped in bringing low-cost air travel within the broad reach of the American public.[3]

The Board's more recent attempts to develop viable public charter forms have met with greater success. In 1975 the Board authorized the One-stop-inclusive Tour Charter (OTC), as a vacationer's "tour package" less onerous than the ITC, in that only one tour stop is required. A year later, the Board developed the Advance Booking Charter (ABC) as an air-only charter service for travelers who do not want to purchase ground accommodations along with air transportation. Since these less restrictive charters became available, charter traffic as a whole continued to grow and shifted markedly from affinity groups to individual passengers drawn from the general public.[4]

In sum, publicly available charter service has grown to the point where it is now an essential part of the nation's air transportation system. It has brought opportunities for low-cost air travel to millions of Americans, without regard to a traveler's membership in particular clubs or organizations. At the same time, supplemental carriers and charter operators have taken the lead in fostering price competition in the air transportation industry. The competitive spur of charters has held scheduled fares in check in a number of markets and has induced a broad variety of discount and promotional fares in competitive response.

II

In order to preserve and expand the opportunities for low-cost travel, the Board must continue to reexamine its charter regulations in accordance with experience and changing circumstances. In light of our experience under the existing rules, and in response to changes in the competitive environment, we have tentatively concluded that our public charter rules remain unnecessarily restrictive and should now be liberalized. At the same time, we believe that a relaxation of charter restrictions will neither jeopardize the integrity of scheduled airline service nor impair the legality of the regulations.

A number of circumstances lead us to those conclusions. Most importantly, there is evidently still a substantial public demand for low-cost air transportation, which it is economically feasible to satisfy through the use of charters.[5] While the Board's regulatory scheme is only one of several factors affecting charter service, it cannot be disputed that more liberal charter rules will be conducive to a further expansion of economical travel opportunities. The relaxation of these rules in the past few years has led to a growth in charter traffic, and we have no reason to believe that pattern should now change. While the ABC and OTC rules are more liberal than their predecessors, they too contain restrictions and conditions originally designed to protect scheduled carriers from diversion, but which now limit the charter market unnecessarily and create inefficiency in charter operations. A relaxation of these restrictions should genuinely benefit the traveling public, not only by reducing the costs and therefore the prices of charter operations, and making low charter prices more widely and conveniently available, but also by assuring and strengthening the continued competitive check of a vigorous charter industry on regular fares.

Secondly, the massive and ruinous diversion regularly predicted by scheduled carriers each time the Board has considered a more liberal charter rule has never materialized. While it is undoubtedly true that many charter passengers might have traveled on scheduled service if lower-priced charters were not available, there has been no showing that scheduled service has been seriously impaired as a result of charter competition. As we recently stated in a similar context:

> The question, in our mind, is not whether diversion takes place, but whether as a result scheduled service on particular routes is reduced to the point that it no longer services the convenience of the public that wishes to use it.[6]

No evidence of such a reduction of service has ever been presented to the Board. Moreover, a demonstration of such substantial diversion in certain markets in the future would not, in our judgment, impair the validity of the charter rules. Those rules will continue to contain special post hoc review procedures which empower the Board to impose limitations on the number of charter flights which may be operated between particular points upon a showing that charter operations in those markets are detrimental to the public interest. Identical provisions were included in the ABC and OTC rules as precautionary measures for the protection of scheduled service, yet no scheduled carrier has ever sought such relief from ABC operations and only one petition was filed with respect to OTC's.[7]

In fact, the sheduled carriers themselves have always been free to share in charter operations. Historically, the lion's share of charter traffic has moved on scheduled carriers,[8] and we know of no reason why this pattern should change under more liberal charter rules. The scheduled carriers have a number of advantages over

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[2] The first nonaffinity charter, the Inclusive Tour Charter (ITC), requires a seven-day minimum stay and the purchase of ground accommodations which include overnight stays at three or more points at least 50 miles apart. The Travel Group Charter (TGC), authorized in 1972, does not require purchase of a ground package but requires seats to be purchased at least 60 days before departure and features a complex pricing formula designed to ensure prorating of the charter cost among participants; TGC passengers thus risk substantial price increases after becoming contractually committed.

[3] In 1973, for example, public charters (ITC's and TGC's) carried only 13 percent of all charter passengers on U.S.-originating domestic and international flights, while affinity charters accounted for 49 percent. (The remaining 38 percent were accounted for primarily by single entity charters). Source: Form 41, Schedule T-6.

[4] In third quarter 1977, public charters, principally ABC's and OTC's carried 67 percent of U.S.-originating charter passengers, while affinities carried only 12 percent. Total third quarter 1977 charter traffic increased 23 percent over that in third quarter 1976. Source: Form 41, Schedule T-6.

[5] Although charter traffic has grown over the years, on an overall basis these operations still do not constitute a large portion of the total air transportation system. In the twelve months ended September 30, 1977, charter passengers accounted for only 3.4 percent of all passengers enplaned by certificated carriers, and 10.9 percent of total revenue-passenger-miles flown. In the same period charter passenger revenues constituted only 4.6 percent of the total certificated industry transport revenues. CAB Air Carrier Traffic Statistics and Airline Industry Economic Report, September 1977. It seems clear that the relatively small number of charter passengers is due at least in part to the regulatory restrictions imposed on charter services.

[6] Notice of Proposed Rulemaking SPDR-56, 42 FR 12066, March 2, 1977.

[7] 14 CFR §§ 371.5, 378a.5.

[8] That application, from a foreign air carrier operating in a fifth-freedom market, was denied in Order 76-4-46, April 12, 1976.

[8] In the twelve months ended September 30, 1977, scheduled airlines carried 66 percent of all charter passengers and accounted for 56 percent of the charter revenue-passenger-miles flown by certificated carriers. CAB Air Carrier Traffic Statistics, September 1977.

their supplemental competitors—in market identity, aircraft availability, and ground facilities—that should enable them to remain formidable competitors in the charter market. In our judgment, therefore, it would be unrealistic to conclude that a relaxation of charter regulations will seriously endanger the economic health of the nation's scheduled airlines.

Finally, the competitive environment affecting charters has changed profoundly since the OTC and ABC rules were adopted. During the past year the Board has chosen not to restrict scheduled carriers from introducing a number of deeply discounted fares, many of them in prime charter markets. In response to the threat of injury these fare reductions posed to charter services and supplemental air carriers we liberalized the charter rules on an interim basis, pending completion of this longer range proceeding.[10]

Whether or not these low scheduled fares will actually drive charters out of certain markets, or irreparably damage the supplementals—notwithstanding more liberal charter rules—is still uncertain. However, it is clear at the very least that the charter industry should not be hobbled by burdensome conditions and restrictions which were imposed for the protection of scheduled carriers under wholly different circumstances. In the past, a central assumption underlying the development of our charter regime has been that the full-planeload economics of charters enables a charter seat to be priced substantially lower than a seat on competing scheduled service. With that understanding the Board understandably concluded that restrictive conditions for charters were necessary in order to prevent undue diversion of scheduled traffic and a blurring of the distinction between charter and individually ticketed service. Yet in offering the deep discount fares, scheduled carriers have revealed a number of inherent price and service advantages over charters in competing for discretionary travelers. Many of the discount fares are based on the low marginal costs of filling what would otherwise be empty seats on existing flights, while charter operators must set prices on the basis of the average costs for all seats. As a result, discount scheduled fares are often in the same range as competing charter prices. Yet scheduled carriers have substantially greater market identity than charter operators and can offer greater convenience and flexibility in scheduling and accommodating passengers.

While we do not intend to insulate the charter industry from the competition of scheduled service, neither do we wish to handicap it with outdated and unnecessary regulations. We therefore believe that the proper response to the competitive threat to charters from the discount scheduled fares is not to restrain scheduled carriers from competing vigorously for price-conscious travelers, but instead to remove from our charter rules the restrictions which inhibit the charter industry from mounting an effective competitive response. The combination of low scheduled fares and a less restrictive charter regime should encourage healthy and active price competition among carriers and provide the public with a wider choice of economical travel opportunities.

As a final matter, we should emphasize that adoption of the rules proposed here would be within our statutory power. as the courts have long recognized, Congress deliberately did not define the term "charter" and the Board is free to evolve a definition in accordance with experience and changing circumstances, "as long as the integrity of scheduled service traffic is not vitiated."[11] Rules and restrictions developed in the past, under different economic conditions and without the benefit of recent experience, cannot be considered immutable. In order to serve the public interest in low-cost travel, the Board has both the power and the obligation to experiment with different types of charters.[12]

It is established law that no single restriction is essential to the legality of a charter rule, so long as all the characteristics of the rule, taken together, distinguish the charter from individually-ticketed scheduled service. The proposed Public Charter rule contains several distinguishing features, including a number of risks and conditions not normally associated with travel on regularly scheduled service: charters seats may be sold only by charter operators independent from the direct air carrier; a charter may be canceled on grounds which would not justify cancellation of scheduled flights, e.g. because of inadequate participation or other contingencies set forth in the operator's contract; once contractually committed, participants may not change or cancel reservations without risk of charge or forfeiture of deposits; when purchasing round-trip transportation, participants must identify the return flight in advance. These and other characteristics of the rules will, in our judgment, adequately separate charter from scheduled traffic. Charter travel will continue to be suitable only for price-sensitive travelers who can accept the inherent risks and conditions of this form of transportation. Business travelers and others who require both certainty and flexibility in their travel arrangements will, on the whole, tend to find charters unsuitable and will continue to use scheduled service for their air transportation needs.

III

The restrictions contained in our rules inhibit the marketability of charters in two basic ways. Some directly raise the charter operator's costs of doing business, and in turn are reflected in the price charged to the public. For example, the requirement for a minimum group size frequently causes seats allocated to one group to remain empty despite demand for them by members of another group; the cost of the unfilled seats must be borne by the operator and ultimately by charter participants. Other restrictions, such as advance seat purchase and group travel requirements, are imposed more directly upon individual passengers, and exclude from the market travelers who cannot comply with the stated conditions. Our action here is intended to ameliorate both kinds of restrictions, so as to enable charter operators not only to reduce operating costs but to offer less restricted services, which will appeal to a larger segment of the traveling public.

We are proposing a new, simplified "Public Charter," patterned after the ABC[13] but less restrictive in a number of respects. Like the ABC, the Public Charter would be sold to the general public by an independent charter operator; the charter price may, but need not, include the cost of tour or ground accommodations; and the rule would not specify any minimum charter price. It would differ from the ABC in that no minimum group size would be specified, one-way as well as round-trip travel would be allowed, ad-

[10] The principal amendments made at that time were (1) reduction of the ABC advance purchase period to 15 days, (2) allowance of 15 percent fill-up sales on ABC's, (3) elimination of minimum-stay requirements for ABC's and OTC's, and (4) reduction of the ABC, OTC and ITC minimum charter group size to 20. Regulations SPR-142, 143, 144, and ER-1032, 1033, 1034, and 1035, 42 FR 65487 et seq., December 30, 1977. Judicial review of these amendments is now pending in *American Airlines, et al.* v. *C.A.B.*, C.A.D.C. No. 78-10009, filed January 3, 1978.

[11] *Trans World Airlines, Inc.* v. *C.A.B.*, 543 F. 2d 771 at 774 (2d Cir. 1976).

[12] Id. at 775. See also *Pan American World Airways, Inc.* v. *C.A.B.*, 517 F. 2d 734, 746 (2d Cir. 1975); *Saturn Airways, Inc.* v. *C.A.B.*, 483 F. 2d 1284 (D.C. Cir. 1973); *American Airlines, Inc.* v. *C.A.B.*, 348 F. 2d 349 (D.C. Cir. 1965).

[13] Since the Public Charter rule is essentially an amendment of the ABC rule, it would appear in 14 CFR Part 371, which would be redesignated accordingly. All existing provisions of Part 371 would remain unchanged except where specified in the proposed rules.

vance purchase for seats would not be required, and discount pricing would be permitted.

ELIMINATION OF MINIMUM GROUP-SIZE REQUIREMENT

Generally speaking, our present charter rules require a group of a specified minimum size to travel together on both legs of a round-trip itinerary. One practical effect of these group travel requirements has been to limit the number and variety of itineraries offered, since each different itinerary is considered a separate charter or tour subject to the minimum group-size requirement. As a result, the vast majority of charters offered have been designed for groups of conventional vacation travelers, who generally plan trips of short duration on fixed dates. Travelers who cannot conform their plans to those of an available group are unable to take advantage of this kind of transportation. For example, ABC programs are typically limited to trips of one, two, or three weeks' duration to a single destination point; vacationers who desire to visit more cities, travel on slightly different dates, or travel for extended periods of time tend to find ABC's unsuitable.[14]

The minimum group-size requirement also introduces needless inefficiency into charter operations. The minimum number of seats (until the interim liberalization, the number was 40 for all types of charters) must be allocated to each group and can be filled only by participants in that group.[15] If a charter or tour attracts fewer than the minimum number of participants, the organizer must either cancel the charter or operate it with empty seats, even if there is a willing purchaser on a different itinerary who would gladly pay for the available seat. In either case the public bears the cost of this wasteful restriction. Cancellation of the charter disrupts the plans of those who do subscribe, and sometimes results in cancellation of an entire flight on which other groups are to be carried. On the other hand, if the charter is operated, the cost of the empty seats is ultimately absorbed by the paying customers.

The rigidity and inefficiency of the group travel requirements become more apparent when contrasted with the travel flexibility offered by many of the new discount scheduled fares. The Super-Apex and the Super-Saver, for example, allow the passenger complete freedom to select departure and return dates within stated minimum and maximum stays, without regard to any group travel requirement. Other low-fare services permit one-way travel, e.g., Laker Skytrain in the New York-London market, the North Atlantic standby fare, and the New York-Florida Aero-Bus and No-Frills fares. In addition, since these fares are not dependent on the formation of a group, they may not be canceled for lack of participation or other contingencies which commonly justify cancellation of charters.

In the interim liberalization, we had proposed to permit intermingling among ABC groups as a means of reducing this inflexibility. Under that proposal ABC operators would still have been required to form groups of a specified size on the outbound leg of a round-trip itinerary, but participants would have been permitted to return apart from their original group on any available return flight of the operator. However, several charter operators and other parties argued that intermingling of groups would raise administrative and marketing problems, and would be ineffective by itself in significantly reducing the rigidly of charter transportation.

We now believe that a better way to introduce flexibility is to eliminate the minimum group-size requirement altogether. Removal of the group-size restriction would achieve much the same goal as intermingling, since round-trip travel with a group would no longer be required. In addition, the charter organizer would not have to form groups of any specified size even on the outbound flight, but would be free to fill contracted space as demand dictates.

In an earlier review of the group-size requirement,[16] we raised the possibility of adopting a more restrictive group-size requirement (i.e., require larger groups) for split charters involving two or more operators, as distinguished from a charter where the entire aircraft capacity is contracted by a single operator for use of two or more groups. The stated rationale for such a distinction was that since the danger of cancellation of split charter flights tends to increase with the number of charterers sharing capacity, a reduction of the minimum group size might result in a greater incidence of cancellations, by allowing aircraft capacity to be split into smaller units among more charterers. However, we tentatively believe that no such distinction—at least in terms of group size[17]—need be made. it seems to us that a uniform relaxation of the group-size restriction might just as well lessen the probability of flight cancellation on multi-operator split charters, since each charterer would no longer be subject to the wasted-seat costs of the minimum-40 rule, and thus might be less likely to default. Moreover, elimination of the minimum group size does not necessarily mean that the average number of charterers involved in a split charter would increase. The direct carrier obviously does not wish to create for itself an unnecessary risk of flight cancellation, and thus may find it prudent to deal only with a small number of operators when contracting for a split charter. Finally, the multi-operator split charter appears to serve today as a business opportunity for small charter operators, who might be unduly disadvantaged if subjected to more stringent group travel requirements than their larger competitors. Nevertheless, we invite further comment on this question in light of the discussion above and we will reconsider our tentative determination before adopting final rules.

As a final matter, we are concerned that a relaxation of the group travel requirements, while justified on the grounds above, might nonetheless have the unintended consequence of jeopardizing the security of the return transportation on round-trip charter flights. When participants travel together as a group, the charter organizer knows well in advance (before departure of the outbound flight) that those passengers will be returning as a group, and can plan return transportation accordingly. If passengers are al-

[14] For example, students, teachers, retired persons, and "ethnic travelers," who sometimes travel for long periods at a time, have difficulty finding suitable charter arrangements. The Board has recently received two rulemaking petitions seeking authorization of special types of charter to suit the long-term travel needs of students and teachers. Disposition of the petitions is discussed in Part V, infra.

[15] Although the requirement was originally expressed in terms of participants, in 1971 the rules were amended to require only that 40 or more seats be contracted by each group, in order to avoid mandatory cancellation when fewer than 40 persons actually subscribe. In the latter case, however, 40 seats must still be allocated to an undersold group and empty seats cannot be filled by members of any other charter group. In this sense, "group" means any distinguishable charter itinerary; thus a one-week ABC from New York to London is considered a separate charter group from a two-week ABC between the same points departing on the same day. These restrictions have been uniformaly applied to all split charters, even when a single organizer contracts for the entire capacity of the aircraft for the use of two or more different groups. The Board solicited comment on the advisability of modifying or eliminating the minimum group-size requirement in Advance Notice of Proposed Rulemaking EDR-329/SPDR-59, 42 FR 38186, July 27, 1977, Docket 30766. This notice now terminates Docket 30766.

[16] Advance Notice EDR-329/SPDR-59 at p. 4, 42 FR 38187.

[17] An alternative to imposing a minimum group-size on split charters would be to require a minimum number of seats (e.g. 10, 20, or 40) to be contracted by each charterer, for resale without restriction on group allocation. Such a requirement would limit the number of charterers involved in split charters, but would avoid the forced inefficiencies of the minimum group-size requirement.

lowed to select individual itineraries, the organizer may not be able to plan return trips with the same certainty, particularly for long-term travelers whose return flights are not fully subscribed by the flight date. Notwithstanding our regulations requiring charter operators to obtain binding commitments for air transportation and prohibiting late cancellation of charters for insufficient participation, the possibility arises—at least theoretically—that passengers could be stranded without return transportation because of unauthorized cancellations or defaults by tour operators in mid-program. Whether or not the stranded passenger is ultimately successful in obtaining a refund, he would be seriously inconvenienced in the meantime and might be forced to pay for more expensive substitute transportation.

For that reason we have tentatively decided to prohibit the sale of round-trip Public Charters with open returns, i.e., the operator would not be permitted to sell return transportation for which the purchaser does not designate a particular flight. Open returns may exacerbate the uncertainty of planning round-trip flights under non-group travel, and the need for this travel feature is reduced considerably by our proposals to allow one-way ABC's and an unrestricted choice of return flights. In addition, the absence of fixed return flights would very likely make proper escrow accounting impossible and facilitate misappropriation of passengers' funds. [18]

We ask the assistance of the public in evaluating the magnitude of, and additional remedies for, the potential consumer problems posed by non-group travel. Is the likelihood of passenger strandings great enough to outweigh the consumer benefits from relaxed group travel requirements, or is the problem illusory because the majority of charter passengers will continue to travel in predictable group movements? If the problem is not illusory, what steps should the Board take to guard against it? [19]

One-Way Charters

Our proposal to permit one-way charters is, like the abolition of the group size, designed to broaden the charter market and reduce operators' costs. One-way travel is desirable not only to travelers who truly want transportation in only one direction, but also to "delayed-return" passengers who desire round-trip transportation but cannot or prefer not to make arrangements for a return trip until some time after departure of the outbound flight. [20] It may be that such travelers are not numerous enough to support a regular program of one-way flights, but, as several charter operators pointed out in the interim proceeding, one-way charters could be used effectively in connection with round-trip programs. One-way flights could be operated in lieu of ferry flights which now must be made at the beginning or end of many ABC programs, and empty seats on round-trip charters could be offered to one-way passengers as fill-up traffic. Elimination of the round-trip requirement may also enable charters to be more competitive with the many discount scheduled fares that allow one-way travel.

Elimination of Advance-Purchase Period

In the interim liberalization of the ABC rule we reduced the advance-purchase period to 15 days and permitted 15 percent fill-up sales (in addition to the preexisting 15 percent substitution allowance for canceling participants). These changes were made to enable ABC operators to compete more effectively for travelers who cannot or prefer not to make firm travel arrangements several weeks in advance.

We continue to believe that an advance-purchase requirement tends to reduce the appeal of charter travel. However, if the only inhibiting effect of an advance-payment rule were the inconvenience caused to short-notice travelers, we might not need to change our interim 15-day advance-purchase requirement; most discretionary travelers could normally be expected to make travel plans two weeks or more in advance, particularly on the typical long-haul charter flights. Yet the advance-purchase requirement imposes other costs as well. ABC operators must compile and file certified lists of advance-booking passengers with the direct carrier and the Board, and the carriers must use the lists to verify the identity of prelisted passengers and see to it that the limits on fill-up sales and substitutions are not exceeded. These clerical tasks are not insignificant, and it is reasonable to assume their costs are ultimately reflected in higher ABC prices. Moreover, the value of the passenger list as an enforcement tool has been eroded recently with the increased incidence of charter flights split among several charter groups, some of which (e.g., OTC groups) are not subject to an advance-purchase requirement and for which no passenger lists are necessary. In those instances the use of the passenger list only for certain participants is likely to cause confusion at boarding, since charter passengers are often unaware of the specific type of charter they have purchased and cannot readily be distinguished by the direct carrier.

Elimination of the advance-purchase requirement could, however, have an adverse impact on consumers in two respects. It might lead to last-minute charter cancellations, since the operator would no longer have to commit itself to operation by the cutoff date for advance sales. [21] Second, it would reduce the operator's incentive to arrange substitutions for canceling passengers, since additional sales could be made instead; as a result, more participants would face high cancellation fees, which range up to 100 percent of the charter price. If either of these problems materializes, the "liberalization" of the charter rules could be self-defeating, by discouraging charter participation. The Board is therefore proposing new rules to avoid that possibility.

To avoid last-minute cancellations, charter operators would be required to notify participants in writing of a charter cancellation no later than 15 days [22] before scheduled flight departure; the direct air carrier, in turn, would be required to notify the operator of a cancellation no later than 30 days before departure. The operator would also be required to give notice of cancellation to participants within 15 days, in order to prevent an operator from indefinitely concealing a cancellation known far in advance of the departure date. Exceptions to these notice requirements would be allowed

[18] In that connection we are clarifying our charter depository requirements to stress that if the minimum group-size requirement were eliminated, the depository bank would still be required to maintain a separate accounting for each charter group, i.e., all participants following the same itinerary. See proposed § 371.31(b)(2)(vii)

[19] E.g., should the Board require the direct carrier operating an outbound charter flight to insure the return of those passengers at no extra charge in the event of failure or unauthorized cancellation by the charter operator?

[20] Consistent with our determination to prohibit the sale of open returns, however, the purchaser of a one-way charter seat would pay only for the one-way transportation and not for an unspecified return flight.

[21] It was for this reason, and the occurrence of late cancellations on ITC's (for which no advance purchase is required), that the Board imposed a 15-day noncancellation requirement on OTC's when it recently eliminated the OTC advance purchase restriction.

[22] All time periods for these notice requirements would be measured by calendar days, and we are proposing to revise 14 CFR § 371.6, *Computation of time*, so that Saturdays, Sundays, and holidays would be counted. This revision would also apply to the computation of the 15-day period for premarketing review of charter prospectuses (14 CFR § 371.25(a)); thus charter operators would no longer have to delay advertising and selling new charter programs more than 15 days after filing of the prospectus when the 15th day falls on a weekend or holiday.

only for cancellations due to circumstances beyond the operator's or carrier's control. We would thus reverse our current policy of prohibiting beyond a certain date only those cancellations caused by inadequate participation. That distinction is rather easily evaded in practice, and is not understandable to most consumers in any event.

The intent of these rules is to eliminate the distress and inconvenience caused by late flight cancellations, without placing unreasonable or costly burdens on charter operators and direct carriers. We tentatively believe that the proposed requirements would not be unduly onerous on the charter industry, since firm commitments for operation of charter flights are normally made more than 15 days before departure under present circumstances. This is due in part to the typical operator-carrier contractual agreement governing flight cancellations, whereby the operator must pay a cancellation charge which rises as the departure date approaches.[23] Another contributing factor is the Board requirement that full payment for split charters be made by each charterer to the direct carrier no later than 30 days before flight departure; thus, any default by one or more charterers—or cancellation of the entire split charter—is known at least 30 days before departure. Therefore it appears that the requirement for 15 days notice of cancellation to participants would not impose significant new costs on charter operations, but would simply assure that a reasonable warning is given to enable participants to change plans or make alternate transportation arrangements without last-minute disruption. The requirement that direct carriers notify charter operators of cancellation at least 30 days before departure would likewise allow the operator 15 days to secure an alternate booking before having to inform participants of the cancellation.

We recognize, of course, that it would be unwise to impose a "consumer protection" requirement that is so burdensome on the charter industry that it limits unduly the price/service options available to charter travelers. We recognize further that many existing tariff provisions and service features applying to scheduled services impose uncertainty on travelers in return for lower rates. If our tentative assessment of the costs of the proposed notice rules is incorrect—and significant cost savings are possible by offering a charter which may be canceled up to the last moment—then it may be preferable for the Board not to place any restriction on the time of cancellation but instead to require only full and clear disclosure of the operator's cancellation policy, and allow participants to select whatever charter offerings best suit their needs for price and certainty of travel.[24a] Therefore, we specifically solicit comment on the costs and benefits to consumers from our proposed notice rules and any suggested alternatives, such as the one above.

With regard to the question of passenger substitutions, we are proposing to require charter operators to refund the monies of a canceling participant (less any administrative fee) whenever the participant provides the operator or its sales agent with a substitute.[24] This right of self-substitution appears to be fair to both participants and operators. The canceling passenger would be relieved of his contractual obligations only upon finding another person willing to undertake them, and the operator could not complain that a potential new sale was lost, since the participant rather than the operator made the effort to find the new passenger.

We recognize, however, that the self-substitution procedure will be of no value to participants who cannot secure substitues, and we invite suggestions for additional remedies. Comment is specifically solicited on the following two possibilities: (1) Imposition of a ceiling, e.g. $50, on the fee charged canceling participants; and (2) increasing the allowable administrative fee for effecting substitutions from $25 to $50. In the past the Board has refrained from imposing a ceiling on passenger cancellation penalties largely because the lengthy charter advance-purchase requirement then applicable would have inhibited resale of canceled seats; under those circumstances a regulatory limit on cancellation fees might have placed an undue business risk on the operator, leading to increased charter prices for all participates. If the advance-purchase requirement were eliminated, however, a maximum cancellation fee might not have those undesirable consequences.[25] An increase in the substitution fee would follow a different approach to the question of passenger cancellations, by increasing the operator's incentive to arrange substitutions. In addressing either of these alternatives, however, it should also be borne in mind that trip cancellation insurance will continue to be available to charter participants, and passenger cancellations might well decrease under the new rules, since charter bookings could be made closer to departure dates.

Discount Pricing on Charters

A number of charter operators have recently sought to offer reduced ABC prices for children. Although the specific issue of differential pricing did not arise when the ABC rule was adopted, the Board did include in the rule a provision that

> [w]here the contract is for air transportation only, or where each charter participant receives, or is eligible to receive, the same ground accommodations and services, the contract between the charter operator and the charter participants shall be the same . . . .[26]

The purpose of that provision is to prohibit discrimination in the sale of ABC's, and the staff has correctly interpreted it to preclude the offering of discounts to children.[27]

The charter operators who have requested authority to offer children's discounts may be correct in asserting that the unavailability of those discounts has discouraged some families from traveling on ABC's, especially in view of the fact that special rates for children are available on some of the fares with which ABC's compete, e.g. Super-Saver and Super-Apex. Children's discounts have always been permitted on OTC's and ITC's by virtue of the minimum pricing schemes for those charters,[28] and we now believe our policy should be changed to permit similar discount pricing for this new liberalized charter.

We are also taking this opportunity to reexamine the regulatory approach to charter discount pricing generally. We tentatively believe that no restric-

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[23] Such cancellation fees commonly increase on the 30th or 15th day before departure. See, for example, charter cancellation tariffs of Trans World Airlines (Charter Tariff No. CH-3, 8th revised page 17-E) and Pan American World Airways (Charter Tariff No. CH-6, 22nd revised page 5-B).

[24a] We note that our proposal to allow greater discount pricing in selling charters may provide charter operators with another method to attract the price-conscious, risk-taking traveler. The operator could offer "conditional" or "standby" seats at reduced prices, so that buyers would voluntarily accept a greater risk of being denied boarding in exchange for the lower price.

[24] The participant would be entitled to a refund whether or not the operator chose to accept the substitute participant. In addition, the participant's right to refunds in the event of a substitution arranged by the operator would remain unchanged.

[25] The Board recently suspended a discount scheduled fare because of its high cancellation fees; the suspension was vacated when the cancellation provision was modified. Order 78-1-133, January 31, 1978.

[26] 14 CFR § 371.30.

[27] See, for example, the November 7, 1977 letter from Acting General Counsel Gary J. Edles to Mr. Howard S. Boros on this subject.

[28] See 14 CFR 378.2(b)(4) and 378a.10(g)(2).

tion should be imposed on charter pricing other than the prohibition in the Federal Aviation Act against "unjust discrimination," [29] and we are proposing to amend 14 CFR 371.30 accordingly. It may well be that innovative discount pricing by charter operators—within the statutory limits—will promote a healthy competition in the charter industry and provide a wider selection of travel opportunities to price-sensitive charter travelers. Moreover, since we do not regulate the level of charter prices—leaving that regulation instead to the competitive market—there seems to be little reason for detailed regulation of their structure. A charter operator that offers discounts freely—for example to children—will, other things being equal, be forced to charge somewhat higher "full fares." In the presence of competition for the patronage of price-conscious travelers, that operator will have strong incentives not to overdo such offers, and the payers of full charter fares will have other charter operators to turn to if the non-discounted prices of a particular operator are driven too high by the offer of large numbers of discounts. At any rate, we specifically invite comment on the economic and legal considerations of this proposal.

IV

In the past few years, as the Board has authorized new types of charters [30] it has also come to recognize the importance of eventually simplifying its charter regime. A less complicated and duplicative regulatory system should lead to a better understanding of charter regulations by the industry and the traveling public, and would simplify the Board's administration and enforcement of those regulations. Of course, the Board also recognizes that any simplification of the charter rules should be made in a manner which will not diminish the availability of charter travel to any segment of the public.

If we ultimately adopt the Public Charter rule as proposed, many of the existing, more restrictive charter types would become unnecessary and could be eliminated without diminishing the opportunities for charter travel. Therefore, in the interest of simplification, we are proposing to eliminate the Inclusive Tour Charter, Travel Group Charter, Study Group Charter, One-stop-inclusive Tour Charter, Special Event Charter, Advance Booking Charter, and affinity group charter rules. [31] Retention of the ITC, TGC, OTC, and ABC rules would clearly be anomalous since the Public Charter—whether sold as an air-only service or as part of a "tour package"—would be less restrictive than those charters in every essential respect. The distinctive characteristics of the SGC rule—that educational institutions operating charters for foreign study programs need not comply with the normal bonding, contract, and prospectus regulations—would be retained by incorporating a simplified exception into the Public Charter rule (see proposed §§ 371.2 and 371.15). An exception would also be made for charters to "special events" (proposed § 371.16) to allow sales to begin before the expiration of the 15-day premarketing review period in cases where the charter cannot be organized soon enough to comply with normal filing procedures; thus the only remaining advantage to charter operators of the present SEC rule would be incorporated into the Public Charter rule.

The affinity group charter rules have long been recognized as unsatisfactory, for two major reasons. First, eligibility for affinity charters is both arbitrary and discriminatory, in that only "bona fide" members of charter-worthy organizations are lawfully permitted to participate. Thus, until the recent development of viable public alternatives, the great majority of travelers, who were not members of organizations that offered charter programs, were virtually excluded from charter transportation.

Second, the affinity rules have proven inherently difficult to enforce and injurious to participants on many occasions. Organizers of affinity charters are subject to none of the consumer protection requirements of the public-sale charters: the charterer is not required to enter into contracts with participants setting forth various rights and liabilities of the parties, and the money paid by affinity participants is not protected by surety bond/escrow account arrangements. Moreover, the affinity membership rules are rather easily evaded, by either falsifying documents or simply ignoring Board regulations. As a result the affinity charter has often been employed as a subterfuge for the sale of charter transportation to the general public without the financial security and consumer protection required by the Board's public charter regulations. This climate of abuse and illegality in the marketing of affinity charters has led to a long history of insolvencies, misallocation of customers' deposits, and strandings of passengers abroad. [32]

Despite the well-known problems of these charters, the Board has reluctantly tolerated the affinity rules for lack of a proven alternative form of charter open to the general public. Since affinity charters are relatively unrestricted—one-way travel is permitted, and there are no requirements for advance payment, tour purchase, or minimum length of stay—it was feared that their premature elimination might diminish the availability of charter service. After the adoption of the ABC and OTC rules, however, affinity traffic declined sharply, even before the recent liberalization of those rules. Under the further liberalization proposed here, the basic Public Charter travel conditions would match those of affinities, so that abolition of the affinity charters would not reduce the opportunity for charter travel by any segment of the public. At the same time, charter participants, including members of affinity organizations, could travel with the knowledge that their funds and travel arrangements are protected by more stringent, effective and enforceable requirements. [33]

We must emphasize, that, by eliminating the affinity charter rules, we do not intend to foreclose members of any groups or organizations from access to low-cost charter service. While we expect that the liberalized Public Charter rule will afford ample opportunity for the vast majority of the traveling public to participate in economical charter transportation, there may be some small, closely knit groups for which compliance with the Public Charter's consumer protection provisions is both difficult and unnec-

[29] Section 404(b) of the Federal Aviation Act of 1958, as amended. This provision has explicitly been made applicable to charter operators in 14 CFR 371.26.

[30] There are now seven types of "Special Regulation" passenger charters, i.e., those which may be sold only by indirect air carriers independent from the direct carrier: the Advance Booking Charter, Overseas Military Personnel Charter, Travel Group Charter, Study Group Charter, Inclusive Tour Charter, One-stop-inclusive Tour Charter, and Special Event Charter. See 14 CFR Parts 371, 372, 372a, 373, 378 and 378a, respectively. In addition, three types of "General Regulation" charters may be operated by persons or organizations not considered to be engaged in air transportation: The pro rata of affinity charter, single entity charter, and "mixed" charter. See 14 CFR Parts 207, 208, 212, and 214.

[31] We would permit operation of any ITC, TGC, SGC, OTC, or ABC pursuant to a prospectus filed before the effective date of final rules in this proceeding. We would allow operation of affinity charters pursuant to contracts executed and filed with the Board by that same date, but only until December 31, 1978.

[32] See, for example, *C.A.B. v. Carefree Travel, Inc.*, 513 F. 2d 375 (2d Cir. 1975) and *Travel Agents Registration*, S. Rep. No. 93-458 (Senate Committee on Commerce), 93rd Cong., 1st Sess. 4-6 (1973).

[33] As a technical matter, elimination of the affinity rules would also entail elimination of the "mixed" charter, which is essentially the same as the affinity charter except that the chartering organization or other entity bears part of the charter cost. Such charters are rarely operated, and many of those are authorized by waiver.

essary. Therefore, the Board would consider granting waivers of the Public Charter's prospectus, bonding, and contract requirements upon a showing of special circumstances, such as the hardship or infeasibility of operating a charter by any other means.[34] We also invite comment and suggestions from the public on any other means of insuring that the availability of charter service is not denied to any members of the traveling public under our new rules.

V

Since the proliferation of discount scheduled fares began several months ago, the Board has received several petitions for rulemaking from charter operators and supplemental carriers seeking relaxation of various restrictions in our charter rules and authorization of new types of charters. The Board announced in the interim rulemaking that the petitions would be addressed in this proceeding, so that they could be considered simultaneously and in the context of a long-range reformation of the charter regulations.

The following petitions were filed:

In Docket 31048, by petition filed June 27, 1977, Nationwide Leisure Corporation seeks amendment of the ABC rule to permit the sale of 40 to 80 ABC seats within six hours of departure on international charter flights.

In Docket 31092, by petition filed July 6, 1977, Trans International Airlines seeks amendment of the ABC, OTC, and ITC rules to permit charter operators to make one-way fill-up sales up to 40 percent of aircraft capacity.

In Docket 31176, by petition filed July 22, 1977, The Educational Cooperative seeks adoption of a new charter rule authorizing "International Student Charters," which would be operated on a one-way basis without mandatory advance booking, and for which only full-time students up to the age of 30, and their spouses, dependent children, and group leaders would be eligible.

In Docket 31313, by petition filed August 24, 1977, Duncan Tours, Inc., seeks reduction of the ABC advance-purchase requirement to 7 days for non-European ABC's.

In Docket 31317, by petition dated Agust 26, 1977, three member carriers (Overseas National Airways, Trans International Airlines, and World Airway) of the National Air Carrier Association seek amendment of the ABC rule to permit one-way ABC's, to reduce the advance-purchase requirement to 15 days, to allow substitutions and fill-up sales of 25 percent of the seats chartered, and to reduce the minimum group size on transatlantic ABC's to 10 seats.

In Docket 31325, by petition filed August 30, 1977, the Council on International Educational Exchange seeks adoption of a new regulation establishing a "Student/Teacher advance-booking charter," which would be subject to a 15-day advance-purchase requirement, could be operated on a one-way or round-trip basis, and for which only full-time students, teachers, and their immediate families would be eligible.

In Docket 31399, by petition filed September 15, 1977, the Council on International Educational Exchange seeks amendment of the Study Group Charter rule to reduce the minimum group size to 10 seats.

In Docket 31475, by petition filed October 4, 1977, Air Charter Tour Operators of America seeks authority to operate an "Air Charter" in certain transatlantic markets, which would consist of a chartering of the entire capacity of an aircraft and would have no requirements for advance purchase of seats, ground arrangements, minimum price, minimum stay, or round-trip travel.

In Docket 31483, by petition filed October 5, 1977, Nationwide Leisure Corporation seeks amendment of the OTC rule to allow the sale of OTC seats at a 30 percent discount to OTC participants who await confirmation of reservations until 72 hours before departure.

The Board has carefully considered each of the rulemaking petitions and all responsive pleadings. We have determined to deny the relief requested in the petitions except to the extent consistent with the rules we are now proposing.[35] Many of the petitioners' requests have been mooted by the interim rules, and most other requests would be granted by adoption of the rules now proposed. With regard to the two petitions for establishment of special charter types for students and teachers, we believe that the travel needs of those persons can be met amply by charters operating under the liberalized rules proposed in this notice. Therefore we find no compelling reason to authorize new forms of charters which would be made available only to certain limited groups, especially in view of our determination to simplify the charter regulatory scheme.

Finally, the Board is announcing that it will adopt final rules in this proceeding by July 25, 1978. The earlier completion date of March 23, 1978, announced in Order 77-11-126, November 23, 1977, was set before the interim charter liberalization was completed and the scope of this proceeding was determined. Because of the breadth of this rulemaking, and the importance of obtaining public comment on these issues, it is necessary to extend the commitment date. Because of the importance of completing this proceeding without unnecessary delay, however, the Board does not expect to grant requests for extension of the public comment periods.

O'MELIA, MEMBER, CONCURRING

I concur with the decision to issue this Notice of Proposed Rulemaking, but I cannot commit myself to the tentative findings embodied in it until I have had an opportunity to review the comments. Moreover, I believe several caveats should be voiced at this time.

First, the Board's obligation to insure the integrity of scheduled service is one that cannot be taken lightly. The distinguishing features adduced as adequate to separate charter from scheduled service are probably very close to the irreducible minimum. I certainly hope that in our efforts to achieve a progressive program of charter liberalization we have fulfilled our statutory duty to maintain that distinction. Careful attention must be given to the comments addressing this issue.

Second, as I stated with respect to SPDR-61, we cannot be unmindful of the legitimate preoccupations of other governments. I continue to adhere to my belief that we should pursue wherever possible agreements based upon the charterworthiness rules of the country of origin. I hope that interested foreign governments will take advantage of the opportunity presented by this Proposed Notice to address the legal and economic implications of these changes. As was the case with SPDR-61, it is important that we make a point of inviting comments from foreign countries, particularly our European neighbors, on these proposed changes. If we are to be successful in promoting opportunities for low cost travel, it is incumbent on us to demonstrate a sensitivity to these international considerations.

Lastly, I cannot help but note that while the Board is proceeding to liberalize a wide variety of types of charters, it has not proposed any equivalent relaxation of restrictions for Part 372, Overseas Military Personnel Charters. I believe that the Board should consider, as a matter of general equity, comparable relief for this class of consumers.

(S) RICHARD J. O'MELIA.

PROPOSED RULE

Accordingly, the Board hereby proposes to amend 14 CFR Parts 207, 208,

[34] We do not, by this statement, intend to allow all affinity-type organizations to operate "affinity" charters in the future. A waiver of the consumer protection provisions of the Public Charter rule would be made only where special or unusual circumstances warrant a departure from the normal provisions and a waiver is in the public interest. See 14 CFR § 371.3.

[35] Therefore, this notice terminates Dockets 31048, 31092, 31176, 31313, 31317, 31325, 31399, 31475, and 31483.

212, 214, 371, 372a, 373, 378, and 378a as set forth below.

PART 207—CHARTER TRIPS AND SPECIAL SERVICES

§ 207.1 [Amended]

1. Section 207.1, *Definitions*, would be amended by deleting the definitions of "Charter organization," "Mixed charter," and "Pro rata charter."

§ 207.9 [Amended]

2. Paragraphs (a), (c), and (d) of § 207.9, *Records and record retention*, would be deleted and reserved.

3. Paragraph (b) of § 207.11, *Charter flight limitations*, would be amended by deleting and reserving subparagraphs (2), (5), (7), (8), and (9).

4. Paragraph (c) of § 207.11 would be amended by deleting and reserving subparagraphs (2), (3), (5), (6), and (7), and by revising the proviso following subparagraph (8) to read as follows:

§ 207.11 Charter flight limitations.

* * * * *

(c) * * *

* * * * *

(8) * * *

Provided, That paragraph (c) shall not be construed to apply to movements of property.

§ 207.13 [Amended]

5. Paragraph (c) of § 207.13, *Terms of service*, would be deleted.

§ 207.15 [Reserved]

6. Section 207.15, *Payments, gratuities, and donations*, would be deleted and reserved.

§ 207.16 [Amended]

7. Paragraph (b) of § 207.16, *Waiver*, would be deleted.

Subpart B (§§ 207.20—207.47) [Reserved]

8. Subpart B, *Provisions Relating to Pro Rata Charters*, would be deleted and reserved.

Subpart D (§ 207.60) [Deleted]

9. Subpart D, *Provisions Relating to Mixed Charters*, would be deleted.

Statement of Supporting Information [Amended]

10. Part II of the Statement of Supporting Information would be deleted.

PART 208—TERMS, CONDITIONS, AND LIMITATIONS OF CERTIFICATE TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

§ 208.13 [Amended]

1. Section 208.3, *Definitions*, would be amended by deleting and reserving paragraphs (h), (j), and (n).

§ 208.3a [Amended]

2. Paragraph (b) of § 208.3a, *Waiver*, would be deleted.

§ 208.4 [Reserved]

3. Section 208.4, *Particular records*, would be deleted and reserved.

4. Paragraph (b) of § 208.6, *Charter flight limitations*, would be amended by deleting and reserving subparagraphs (2), (4), (5), (7), and (8).

5. Paragraph (c) of § 208.6 would be amended by deleting and reserving subparagraphs (2), (3), (4), (6), and (7), and by revising the proviso following subparagraph (8) to read as follows:

§ 208.6 Charter flight limitations.

* * * * *

(c) * * *

* * * * *

(8) * * *

Provided, That paragraph (c) shall not be construed to apply to movements of property.

§ 208.32 [Amended]

6. Paragraph (f) of § 208.32, *Tariffs and terms of service*, would be deleted.

§ 208.35 [Reserved]

7. Section 208.35, *Payments, gratuities, and donations*, would be deleted and reserved.

Subpart C (§§ 208.200—208.217) [Reserved]

8. Subpart C, *Provisions Relating to Pro Rata Charters*, would be deleted and reserved.

Supbart E (§ 208.400) [Deleted]

9. Subpart E, *Provisions Relating to Mixed Charters*, would be deleted.

Statement of Supporting Information [Amended]

10. Part II of the Statement of Supporting Information would be deleted.

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

§ 212.1 [Amended]

1. Section 212.1, *Definitions*, would be amended by deleting the definitions of "Charter organization," "Inclusive tour charter trip," "Mixed charter," and "Pro rata charter."

§ 212.7 [Amended]

2. Paragraph (a) of § 212.7, *Records and record retention*, would be amended by deleting subparagraphs (3), (4), and (5).

3. The proviso following paragraph (b) of § 212.7 would be deleted.

4. Paragraph (a) of § 212.8, *Charter flight limitations*, would be amended by deleting and reserving subparagraphs (2), (5), (7), (8), and (9).

5. Paragraph (b) of § 212.8 would be amended by deleting and reserving subparagraphs (2), (3), (5), (6), and (7), and by revising the proviso following subparagraph (8) to read as follows:

§ 212.8 Charter flight limitations.

* * * * *

(b) * * *

* * * * *

Provided, That paragraph (b) shall not be construed to apply to movements of property.

§ 212.10 [Amended]

6. Paragraph (c) of § 212.10, *Terms of service*, would be deleted.

§ 212.12 [Reserved]

7. Section 212.12, *Payments, gratuities, and donations*, would be deleted and reserved.

§ 212.13 [Amended]

8. Paragraph (b) of § 212.13, *Waiver*, would be deleted.

Subpart B (§§ 212.20—212.47) [Reserved]

9. Subpart B, *Provisions Relating to Pro Rata Charters*, would be deleted and reserved.

Subpart D (§ 212.60) [Deleted]

10. Subpart D, *Provisions Relating to Mixed Charters*, would be deleted.

Statement of Supporting Information [Amended]

11. Part II of the Statement of Supporting Information would be deleted.

PART 214—TERMS, CONDITIONS, AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS AUTHORIZING CHARTER TRANSPORTATION ONLY

§ 214.2 [Amended]

1. Section 214.2, *Definitions*, would be amended by deleting and reserving paragraphs (c), (e), and (i).

§ 214.3 [Amended]

2. Paragraph (b) of § 214.3, *Waiver*, would be deleted.

§ 214.6 [Amended]

3. Paragraph (a) of § 214.6, *Record retention*, would be amended by delet-

ing and reserving subparagraphs (2) and (5).

§ 214.7 [Amended]

4. Paragraph (a) of § 214.7, *Charter flight limitations*, would be amended by deleting and reserving subparagraphs (2), (3), (5), and (6).

5. Paragraph (b) of § 214.7 would be amended by deleting and reserving subparagraphs (2), (3), (5), and (6), and by deleting the second proviso following subparagraph (7).

Subpart A (§§ 214.10—214.37) [Reserved]

6. Subpart A, *Provisions Relating to Pro Rata Charters*, would be deleted and reserved.

Subpart C (§ 214.50) [Deleted]

7. Subpart C, *Provisions Relating to Mixed Charters*, would be deleted.

Statement of Supporting Information [Amended]

8. Part II of the Statement of Supporting Information would be deleted.

PART 371—ADVANCE BOOKING CHARTERS

1. All references in Part 371 to the terms "Advance Booking Charter," and "ABC" would be deleted and replaced by the term "Public Charter."

2. Section 371.2 would be amended by deleting the definitions of "Advance booking charter" and "European charter," by revising the definitions of "Charter participant" and "Charter group," and by adding the definitions of "Educational institution," "Foreign educational institution," and "Public Charter" to read as follows:

§ 371.2 Definitions.

* * * * *

"Charter group" means an aggregate of persons assembled by a charter operator or a foreign charter operator for the purpose of participation on a single itinerary in a public charter.

* * * * *

"Charter participant" means a member of a charter group.

* * * * *

"Direct air carrier" * * *

"Educational institution" means a bona fide school or college which (1) maintains a full-time salaried faculty on a year-round basis; (2) maintains a permanent educational plant, including classrooms and a library; (3) maintains a greater enrollment of students in noncharter programs than in charter programs; (4) receives no more than 10 percent of its total revenues from payments for charter flights and related ground accommodations; (5) is empowered to grant college degrees or secondary school diplomas by the Government of one of the 50 States, the District of Columbia, or a U.S. territory or possession, and offers a full course of study meeting all the requirements for such degree or diploma; and (6) is so constituted in the utilization of capital, physical plant and personnel as to be primarily engaged in the educational process when viewed against all other activities or businesses.

"Foreign charter operator" * * *

"Foreign educational institution" means an educational institution located in a foreign country which is (1) empowered to grant college degrees or secondary school diplomas by the government of that foreign country, and (2) operated as a school on a year-round basis.

"Itinerary" * * *

"Public Charter" means a one-way or round-trip charter to be performed by one or more direct air carriers, which is arranged and sponsored by a charter operator and which meets the requirements set forth in Subpart B of this part.

"Round-trip" * * *

3. Section 371.6 would be revised to read as follows:

§ 371.6 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is to be included.

4. Section 371.10 would be amended by deleting and reserving paragraph (b) and revising paragraph (c) to read as follows:

§ 371.10 Public Charter general requirements.

* * * * *

(c) If the charter is on a round-trip basis, the departing flight and returning flight need not be performed by the same direct air carrier.

* * * * *

5. Section 371.11 would be revised to read as follows:

§ 371.11 Payment to direct air carrier(s)

The direct air carrier(s) shall be paid in full for the cost of the one-way or round-trip charter transportation prior to the scheduled date of flight departure, as provided for in the basic charter regulations applicable to the direct air carrier(s) under Parts 207, 208, 212, and 214 of this chapter, as the case may be.

6. A new § 371.11a would be added as follows:

§ 371.11a Cancellation by charter operator and notice to participants.

(a) The charter operator may not cancel a charter for any reason (including insufficient participation) except for occurrences entirely beyond its control (acts of God, etc.), less than 15 days before the scheduled date of departure of the outbound trip.

(b) If the charter operator cancels a charter, the operator must so notify each participant in writing within 15 days of the cancellation but in any event no later than 15 days before departure of the outbound trip.

7. A new § 371.11b would be added as follows:

§ 371.11b Cancellation by direct air carrier and notice to charter operator.

(a) The direct air carrier may not cancel a charter for any reason except for circumstances entirely beyond its control (act of God, etc.), less than 30 days before the scheduled date of departure of the outbound trip.

(b) If the direct air carrier cancels a charter, the carrier must so notify the charter operator in writing not later than the close of business on the next business day but in any event no later than 30 days before the scheduled departure of the outbound trip.

8. Section 371.12 would be redesignated and revised to read as follows:

§ 371.12 Prohibition on sale of round trips with open returns.

The charter operator shall not accept any participant's payment for return transportation unless the participant has specified a particular return flight.

9. Section 371.14 would be revised to read as follows:

§ 371.14 Substitution for charter participants.

Substitutes may be arranged for charter participants at any time preceding departure. Participants who provide the charter operator or its sales agent with a substitute participant, or who are substituted for by a participant found by the operator, shall receive a refund of all monies paid to the operator, except that the operator may reserve the right to retain an administrative fee not to exceed $25 for affecting the substitution.

10. A new § 371.15 would be added as follows:

§ 371.15 Charters conducted by educational institutions.

This section shall apply only to charters conducted by educational institutions for charter groups comprised of bona fide participants in a formal academic course of study of at least 4 weeks' duration that is conduct-

ed at one or more foreign educational institutions and includes a minimum of 15 hours of classroom instuction per week. The charter group may also include a student participant's immediate family (household members who are either married to or minor dependents of the student participant). Except as modified below, all terms and conditions of this part applicable to the operation of Public Charters shall apply to operations under this section.

(a) An educational institution conducting such a charter shall submit to the Board (Supplementary Services Division, Bureau of Pricing and Domestic Aviation) a statement, signed by its president, certifying that it meets the definition of "educational institution" set forth in § 371.2.

(b) An educational institution conducting such a charter need not comply with the requirements of §§ 371.25, 371.28, and 371.31.

11. A new § 371.16 would be added as follows:

§ 371.16 Charters for special events.

This section shall apply to charters that cannot reasonably be organized sufficiently far in advance of the date of a special event to be operated in compliance with § 371.25 of this part. "Special event" means a significant specific event, including events of a sporting, social, religious, educational, cultural, or political nature. In determining whether any given event shall be considered a special event for purposes of this section, the Board will consider, along with other relevant factors, how long in advance of the date of the event: the event was publicly known, the participants in the event could be ascertained, and the significance of the event became publicly recognized.

Except as modified below, all terms and conditions of this part applicable to the operation of Public Charters shall apply to operations under this section.

(a) The charter operator shall include with its prospectus a description of the event, including information necessary to determine the eligibility of the event.

(b) The charter group shall be comprised solely of persons having the common purpose of attending the special event.

(c) The 15-day waiting period specified in § 371.25(a)(1) of this part shall not apply to operations under this section to the extent that it would prohibit advertising or sale of the charter after the Board has notified the charter operator that advertising or sale may begin.

12. Section 371.25 would be amended by deleting paragraphs (c) and (d) and revising paragraph (b) to read as follows:

§ 371.25 Operating authorization of charter operators.

* * * * *

(b) Not later than the scheduled date of departure, the charter operator shall transmit to the direct air carriers(s) a statement of the charter operator affirming that each participant has entered into a contract with the operator as provided in this part.

13. Section 371.30 would be revised to read as follows:

§ 371.30 Contract between charter operator and charter participants.

Where each charter participant receives, or is eligible to receive, the same air transportation and ground accommodations and services, the contract between the charter operator and the charter participants shall be the same, except that this paragraph shall not be construed to prohibit differences in charter prices that are consistent with § 371.26 of this part.

Contracts between charter operators and charter participants shall include provisions specifically stating:

(a) * * *

(b) * * *

(c) That the charter operator may not cancel the charter less than 15 days before the scheduled departure of the trip, except for circumstances entirely beyond the operator's control, and that the operator must notify each participant in writing within 15 days of a cancellation but in any event not later than 15 days before the scheduled departure date;

(c-1) The right to refunds in the event of cancellation of the charter and the procedure for obtaining such refunds;

(d) The right to refunds in the event of the participant's change of plans and the procedure for obtaining such refunds, including notice that any participant who wishes to cancel will receive a full refund (less any applicable administrative fee, not to exceed $25) upon providing a substitute participant to the charter operator or its sales agent, or upon being substituted for by a participant found by the charter operator.

* * * * *

14. Subparagraph (b)(2)(vii) of § 371.31 would be revised to read as follows:

§ 371.31 Surety bond and depository agreement.

* * * * *

(b) * * *

(2) * * *

(vii) The bank shall maintain a separate accounting for each charter group;

§ 371.41 [Reserved]

15. Section 371.41, *Direct air carrier to identify enplanements,* would be deleted and reserved.

16. Section 371.44 would be revised to read as follows:

§ 371.44 Record retention.

A direct air carrier shall retain the information transmitted to it pursuant to § 371.25 at its principal office within the United States for a period of two years, except that if the direct air carrier does not maintain an office in the United States, it shall return the documents transmitted to it pursuant to § 371.25 to the Bureau of Enforcement within 7 days of performing the flight to which those documents pertain.

Appendix A [Reserved]

17. Appendix A would be deleted and reserved.

Part 372a [Deleted]

Part 372a, *Travel Group Charters,* would be deleted.

Part 373 [Reserved]

Part 373, *Study Group Charters by Direct Air Carriers and Study Group Charterers,* would be deleted.

Part 378 [Reserved]

Part 378, *Inclusive Tour Charters,* would be deleted and reserved.

Part 378a [Deleted]

Part 378a, *One-stop-inclusive Tour Charters,* would be deleted.

(Secs. 101(3), 204, and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 771; 49 U.S.C. 1301, 1324, 1386.)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-7199 Filed 3-16-78; 8:45 am]

[6320-01]

[14 CFR Part 221]

[EDR-337A; Docket No. 31551; Dated March 9, 1978]

CONSTRUCTION, PUBLICATION, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Termination of Rulemaking

AGENCY: Civil Aeronautics Board.

ACTION: Termination of rulemaking.

SUMMARY: The Board has decided against requiring air carriers to state on all interstate live-animal airbills that it is illegal for carriers to put terms and conditions on shipments unless those terms and conditions are

in effective tariffs on file with the Board.

DATE: March 9, 1978.

FOR FURTHER INFORMATION CONTACT:

John Freeman, Office of the General Counsel, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5792.

SUPPLEMENTARY INFORMATION: In EDR-337 (42 FR 56621, October 27, 1977) we proposed to require a notice on domestic live-animal airbills saying that it is illegal for carriers to put terms and conditions on shipments unless those terms and conditions are in effective tariffs on file with the Board. We do not plan to make that proposal final, and we are terminating this proceeding.

The airbill notice requirement was first suggested in the initial decision in our recent investigation of the carriers' rules and practices for carrying live animals.[1] Judge Argerakis thought the notice was justified and desirable because, in the past, carriers had been enforcing various conditions on live animal shipments without including those conditions in their tariffs. Typically, the conditions (e.g., refusal to carry a certain type or size of animal) would be published in an unofficial reference such as the "Air Cargo Guide," and would escape Board scrutiny.

The above problem had previously come to our attention in an investigation of premium rates for live animals and birds.[2] In that case, the Board found certain tariff rules unlawful, and in addition we ordered the carriers to comply fully with tariff-filing requirements. As a result, the carriers filed a number of live-animal rules that had not previously been in their tariffs, and, after complaints from various shippers, the Board investigated those rules.[3]

After the hearing closed and briefs were filed, Judge Argerakis concluded that there is no positive way to determine that the carriers have discontinued burdening shippers and commerce with terms and conditions of shipments that are not included in validly filed tariffs. I.D., pp. 23-24. He cited two contemporaneous examples where the Air Cargo Guide Supplement contained extra-tariff restrictions on shipping various animals, and he decided affirmative steps were necessary to obtain compliance with the tariff filing requirements of the Act and the Board's regulations.

On review of the initial decision, the Board tentatively agreed with the judge that an airbill notice was necessary, and we instituted this rulemaking to allow interested persons to comment on the issues. All of the comments oppose the proposed notice.[4] They raise several distinct objections to it: (1) The notice is unnecessary because it addresses a practice the Board has already prohibited; (2) the notice duplicates language already on the waybill stating that applicable tariffs govern the shipper/carrier relationship; (3) there is no reason to believe that the practice at issue continues; (4) even if that practice does continue, the proposed rule would effectively require a notice on all waybills (because it is not practical to have different waybills for animal and nonanimal shipments), and there is no predicate for requiring a notice on nonanimal waybills; (5) the notice will not be effective because it will be lost among other items and because the inexperienced shipper who needs the information will probably be turned away on the phone without seeing an airbill; and (6) the notice could raise the cost of shipping animals. As an alternative the comments suggest case-by-case enforcement of the tariff filing requirement or freight station signs.

While we do not necessarily agree with all of the objections cited above, we do conclude that the proposed waybill notice could cause expense and confusion that outweigh any potential benefits it might have. We are skeptical of the benefits for several reasons. First, several years have passed since the practice at issue was first documented, and, now that the legality of various acceptance practices for live animal shipments has been resolved in Docket 26310 and in United States Department of Agriculture proceedings, the carriers are more certain about the content and scope of the rules that must be in their tariffs. Therefore, there is less reason for them to continue to impose unofficial restrictions outside the tariff-filing procedure. The more time passes since the carriers made a regular practice of imposing unofficial restrictions, the less the need for the proposed remedial action.

Second, the existing airbill is cluttered with a variety of information. Each additional notice detracts from the effect of other information, and we must balance the benefit from the notice against that effect. This is particularly important if, as some carriers suggest, economic factors dictate a single airbill for all shipments, and the alleged benefits from the required notice are directed solely to animal shippers.[5]

Finally, we are not convinced that a legalistic notice printed on the airbill will be effective. Uninformed shippers are not likely to realize their rights as a result of the notice, and other shippers do not need it. Effective enforcement of the applicable regulation is a better way to ensure that carriers' tariffs are complete.

For all of the reasons discussed above we no longer plan to impose a notice requirement along the lines of the one suggested in EDR-337, and we are terminating the proceeding in Docket 31551.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[6]
Secretary.

[FR Doc. 78-7141 Filed 3-16-78; 8:45 am]

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[1] "Rules and Practices Relating to the Acceptance and Carriage of Live Animals in Domestic Air Freight Transportation," Docket 26310, Initial Decision of Administrative Law Judge Alexander N. Argerakis, issued February 7, 1977.

[2] "Investigation of the Premium Rates for Live Animals and Birds," Docket 21474; Orders 73-6-103, 73-8-68.

[3] Orders 74-1-79; 74-7-26.

[4] Comments were filed by: The Air Freight Forwarders Association; American Airlines; Delta Air Lines; Flying Tiger Line; Northwest Airlines; Trans International Airlines; Trans World Airlines; Pet Industry Parties; Piedmont; and Primate Imports Corp.

[5] Of course, the notice applies equally to animal and nonanimal shipments, but there is no showing in this proceeding of any need for a notice on nonanimal shipments.

[6] All Members concurred.

[4110-03]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR PART 131]

[Docket No. 78P-0059]

SOUR HALF-AND-HALF DRESSING

Proposal To Repeal Standard of Identity

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This proposal would repeal the standard of identity for sour half-and-half dressing. It has been determined that the standard could mislead consumers.

DATES: Comments by April 17, 1978; it is proposed that the final rule based on this proposal be effective on the date of its publication in the FEDERAL REGISTER.

ADDRESS: Written comments to the Hearing Clerk (HFC-20), Food and Drug Administration, Department of Health, Education, and Welfare, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Eugene T. McGarrahan, Bureau of

Foods (HFF-415), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1155.

SUPPLEMENTARY INFORMATION: As a result of a petition filed by the Milk Industry Foundation, 1910 17th Street NW., Washington, D.C. 20006, the Food and Drug Administration proposed, in the FEDERAL REGISTER of August 2, 1973 (38 FR 20627), to establish definitions and standards of identity for sour cream, sour half-and-half, acidified sour cream, and acidified sour half-and-half. In the same FEDERAL REGISTER, the Commissioner of Food and Drugs, on his own initiative, also proposed to establish separate standards of identity for sour cream dressing (21 CFR 131.164) and sour half-and-half dressing (21 CFR 131.189). Final regulations ruling on these proposals were published in the FEDERAL REGISTER of May 7, 1974 (39 FR 15993). One objection requesting a hearing was received opposing the adoption of the standard for sour cream dressing.

The Commissioner confirmed all the final regulations established in the May 7, 1974 FEDERAL REGISTER except the standard of identity for sour cream dressing (21 CFR 131.164), which was stayed pending a public hearing to be scheduled at a later date. Upon reconsideration of the entire matter, the Commissioner concluded that the use of the words "sour cream" in the name of a product that would not be required to contain sour cream (as defined in 21 CFR 131.160) could be misleading to the consumer. Accordingly he has decided to revoke the standard of identity for "sour cream dressing" (21 CFR 131.164). The regulation revoking the standard for sour cream dressing is published elsewhere in this issue of the FEDERAL REGISTER.

Although there were no objections to the standard for sour half-and-half dressing, the rationale for revoking the standard for sour cream dressing is equally applicable here. The original intent of the standard for sour half-and-half dressing was that the use of the word "dressing" in the name of the food would indicate to consumers that there was a difference between sour half-and-half and sour half-and-half dressing, i.e., that sour half-and-half dressing could be fabricated from ingredients other than milk and cream. The Commissioner notes that "sour half-and-half" is required to be made from "half-and-half," which is defined in 21 CFR 131.180 as a food consisting of a mixture of milk and cream. He concludes that use of the words "sour half-and-half" in the name of a product that would not be required to contain sour half-and-half could be misleading to the consumer. Therefore, on his own initiative, the Commissioner hereby proposes to repeal the standard of identity for sour half-and-half dressing, 21 CFR 131.189.

The Commissioner has considered the environmental effects of the issuance or amendment of food standards and has concluded in § 25.1(d)(4) (21 CFR 25.1(d)(4)), that food standards are not major agency actions significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

§ 131.189 [Revoked]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes that Part 131 be amended by revoking § *131.189 Sour half-and-half dressing.*

Interested persons may, on or before (April 17, 1978, submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this proposal will not have a major economic impact as defined by Executive Order 11821 (amended by Executive Order 11949) and OMB Circular A-107. A copy of the economic impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Dated: March 13, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-7075 Filed 3-16-78; 8:45 am]

[1505-01]

[21 CFR Parts 182, 184]

[Docket No. 77N-0311]

BILE SALTS AND OX BILE EXTRACT

Gras Status

Correction

In FR Doc. 78-2406 appearing on page 4062 in the issue of Tuesday, January 31, 1978, on page 4064 in the 3rd column, the next to the last line should read, "(§§ 182.4029, 182.4037, 182.4053, and . . .".

[1505-01]

[21 CFR Part 320]

[Docket No. 77N-0425]

TRICYCLIC ANTIDEPRESSANTS

Proposed Bioequivalence Requirement

Correction

In FR Doc. 78-4136 appearing at page 6965 in the issue for Friday, February 17, 1978, the following corrections are made:

1. In the fourth paragraph in the third column on page 6965, the last line now reading, "March 20, 1978," should read, "30 days after its date of publication in the FEDERAL REGISTER."

2. In the last paragraph in the third column on page 6967, the last line now reading, "March 20, 1978," should read, "30 days following its date of publication in the FEDERAL REGISTER."

[4510-26]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[29 CFR Part 1910]

[Docket No. H-111]

OCCUPATIONAL EXPOSURE TO ETHYLENE DIBROMIDE

Request for Comments and Information

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Request for Comments and Information.

SUMMARY: This notice requests comments and information on ethylene dibromide (EDB), a chemical used as a gasoline additive, as a chemical intermediate, as a fumigant nematocide, and as a specialty solvent for resins, gums and waxes. The present OSHA standard for employee exposure to EDB is found in 29 CFR 1910.1000, Table Z-2 and limits exposure to 20 parts of EDB per million parts of air as an 8-hour time weighted average. On August 26, 1977, OSHA received a criteria document from the National Institute for Occupational Safety and Health (NIOSH) indicating that the present standard for EDB may not be

sufficiently protective of exposed employees. OSHA is therefore seeking information on EDB uses and production technology, health effects, medical surveillance, employee exposure data, respiratory protection, and technological and economic aspects of controlling employee exposure to EDB. OSHA is also requesting views on the appropriate regulatory response to the NIOSH recommendations.

DATE: The information requested in this notice must be submitted on or before May 16, 1978.

ADDRESS: The information requested in this notice should be submitted to the Docket Officer, Docket H-111, Room S6212, U.S. Department of Labor, Occupational Safety and Health Administration, Third Street and Constitution Avenue NW., Washington, D.C., 20210, 202-523-7894.

FOR FURTHER INFORMATION CONTACT:

Ms. Flo Ryer, Office of Special Standards Programs, Room N3663, Occupational Safety and Health Administration, Third Street and Constitution Avenue NW., Washington, D.C., 20210, 202-523-7174.

SUPPLEMENTARY INFORMATION: Ethylene dibromide (CAS No. 106-93-4), also referred to as 1,2-dibromoethane or EDB, is a clear, colorless liquid at room temperature with a distinctive, mildly sweet odor. Production of EDB in the U.S. during 1975 has been estimated to be about 550 million pounds. The majority (about 85 percent) of EDB produced in this country is used as an additive in leaded gasoline. EDB is also used as a fumigant pesticide on some vegetables, fruits and grains. Over 100 pesticides registered with the Environmental Protection Agency contain this compound. NIOSH estimates that approximately 9,000 employees (manufacturing, formulating, fumigating) are potentially exposed to EDB in the workplace. Additionally, approximately 660,000 workers have potential exposure to EDB in the retail sale and dispensing of gasoline and other motor fuels.

The National Institute for Occupational Safety and Health (NIOSH), U.S. Department of health, Education and Welfare, has recently submitted to the Secretary of Labor, pursuant to section 22 of the Occupational Safety and Health Act of 1970 (84 Stat. 1612; 29 U.S.C. 671), criteria for a recommended standard on occupational exposure to ethylene dibromide. The Directorate of Health Standards Programs, Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, is studying the criteria received from NIOSH, as well as other publications on the health effects of exposure to EDB. Although human data relevant to occupational exposure to EDB is very limited, numerous animal studies show that EDB is capable of eliciting a wide variety of toxic effects. These effects include sterility, mutagenicity, degeneration of the kidney, liver and spleen, severe skin irritation, and CNS depression. The available literature also suggests that EDB may also be carcinogenic and teratorgenic in animals.

Occupational exposure to EDB is currently limited by the Occupational Safety and Health Administration (OSHA) to an 8-hour time-weighted average of 20 ppm (20 parts of EDB per million parts of air), a ceiling concentration of 30 ppm, and a peak concentration of 50 ppm for 5 minutes during an 8-hour work shift as found in Table Z-2 of 29 CFR 1910.1000.

COMMENTS AND INFORMATION REQUESTED: OSHA has concluded that a comprehensive occupational health standard may be needed to protect employees from the harmful effects of exposure to EDB. Consequently, OSHA hereby requests all interested persons to submit comments and information relating to the necessity of revising the present occupational standard for EDB as found in Table Z-2 of 29 CFR 1910.1000. OSHA's decision on the appropriateness of commencing a rulemaking proceeding will be based on all comments and information received.

Interested persons are urged to submit written data, views, and arguments concerning a standard for occupational exposure to EDB. Comments are requested for the following general areas:

1. Whether the criteria document adequately demonstrates the need for changing the current regulation of employee exposure to EDB.

2. What benefits are expected to result from the regulation, i.e., what mortality and morbidity are associated with current exposures, and to what extent would they be reduced by the recommended standard.

3. Description of current engineering and work practice controls for major affected processes/industries.

4. What is the technological and economic feasibility of the NIOSH recommendations (e.g., control measures, methods of measurement)?

5. Are affected industries and employee groups, number of employees exposed and conditions of exposure correctly described in the criteria document?

6. What are the environmental impacts of the recommended standard?

In addition to the general issues, listed above, OSHA also requests comments and information on the following specific issues raised by the NIOSH recommendations for a standard for occupational exposure to EDB:

(1) *Scope of an occupational health standard for EDB.* The number of employees potentially exposed to EDB during its manufacture and formulation has been estimated by NIOSH to be around 9,000. EDB is extensively used as and additive to gasoline and over 600,000 gasoline station attendants may be occupationally exposed to EDB. OSHA seeks comments and information on whether employees engaged in the transportation, distribution and sale of gasoline are potentially at risk to the effects of EDB. In addition, OSHA requests information on whether other employee groups, not considered above, are potentially exposed to EDB.

(2) *Permissible exposure limit.* NIOSH has stated:

> In considering the alkylating capability of ethylene dibromide and the potential adverse effects on the organism which may result, expecially at the subcellular level, NIOSH recommends that the occupational exposure limit for ethylene dibromide be reduced to a ceiling concentration of 1.0 mg/cu m (0.13 ppm) for any 15-minute sampling period. This represents a reduction to one-two-hundred and thirtieth of the current federal ceiling limit for ethylene dibromide and is a level at which an employee would inhale a maximum of about 686 mg/kg of ethylene dibromide during a 40-year working lifetime, which is substantially below that total dose known to induce adverse effects in experimental animals. (Criteria Document, p. 158).

OSHA requests comments and information on whether the NIOSH recommended exposure limit is sufficiently protective.

(3) *Employee exposure data.* OSHA requests detailed information on employee exposures to EDB. Information in the following areas is especially desired:

(a) Description of processes involved, and measured levels of employee exposure;

(b) Analytical and sampling methods used and evidence of their precision and accuracy; and

(c) Number of workers exposed.

(4) *Health effects of exposure to EDB.* Exposure to EDB can adversely affect a considerable number of biological organ systems in both animals and humans. According to NIOSH, respiratory tract irritation, irritation of the skin and eyes, gastrointestinal disturbances, and damage to the liver, kidneys, spleen, and lungs are the predominant effects of ethlyene dibromide exposure. Several animal studies have shown the potential of EDB to induce reproductive abnormalities, such as reduced sperm count and spermatozoic anomalies. The mutagenic potential of EDB has been demonstrated in both animals and plants. Likewise, carcinogenesis and teratogenesis have been produced in rats and mice by EDB in a number of studies. OSHA seeks comments and further infromation on the health effects resulting from exposure to EDB and on the

risk such exposure may pose to the worker.

(5) *Medical surveillance.* OSHA requests comments on the appropriateness of the NIOSH recommended medical surveillance protocol for EDB. In addition to comments relating to the adequacy and frequency of this recommended protocol, OSHA requests comments and information on other medical tests and/or procedures having diagnostic value for the detection of health effects resulting from EDB exposure.

(6) *Work practices.* In the criteria document, NIOSH details work practices for ethylene dibromide, including emergency procedures, control of airborne ethylene dibromide, general procedures for handling ethylene dibromide, ethylene dibromide hazard areas, storage of ethylene dibromide and spills, leaks, and waste disposal. OSHA requests comments as to the adequacy of the recommendations.

The NIOSH criteria document, including the 118 references relied upon therein, and comments on the document from the NIOSH review consultants (Tab Document) are available for review and copying at the OSHA Technical Data Center, Room S6212, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, D.C. 20210.

Interested persons are invited to submit written data, views, and comments with respect to the foregoing issues. All communications should be submitted in quadruplicate, by May 16, 1978, to the Docket Officer, Docket H-111, Room S6212, U.S. Department of Labor, Third and Constitution Avenue NW., Washington, D.C. 20210, 202-523-7894. All timely written submissions, as well as other information gathered by the agency, will be considered in any action taken.

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, D.C. 20210.

(Sec. 6, Pub. L. 91-596, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911; Secretary of Labor's Order No. 8-76 (41 FR 25059).)

Signed at Washington, D.C., this 13th day of March 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-7169 Filed 3-16-78; 8:45 am]

[4110-83]

Public Health Service

[42 CFR Parts 122, 123]

HEALTH SYSTEMS AGENCIES AND STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES

Proposed Rulemaking

AGENCY: Public Health Service, HEW.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Assistant Secretary for Health proposes changes in the criteria which State health planning and development agencies (SHPDAs) and health systems agencies (HSAs) must use for certificate of need and other reviews of proposed new institutional health services. These proposed changes are required because of a recent amendment to the Public Health Service Act ("the Act"). The amendment requires that the review criteria used by HSAs and SHPDAs which consider the special needs and circumstances of health maintenance organizations be consistent with the standards and procedures these agencies must follow in reviewing and commenting on applications for financial assistance for health maintenance organizations under Title XIII of the Act. The following proposed amendments to 42 CFR Part 122, Subpart D, and 42 CFR Part 123, Subpart E, are intended to ensure that the review criteria are consistent with those standards and procedures as set forth in a Notice of Proposed Rulemaking recently published in the FEDERAL REGISTER.

DATES: Comments received on or before May 16, 1978, will be considered in the preparation of the final regulations.

ADDRESS: Interested persons may submit written comments on the proposed regulations to the Director, Bureau of Health Planning and Resources Development, Health Resources Administration, Center Building, Room 6-22, 3700 East-West Highway, Hyattsville, Md. 20782. The comments will be available for public inspection at the above address between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Harry P. Cain II, Ph.D., Director, Bureau of Health Planning and Resources Development, 3700 East-West Highway, Center Building, Room 6-22, Hyattsville, Md. 20782, 301-436-6850.

SUPPLEMENTARY INFORMATION: Section 1532(c)(8) of the Public Health Service Act ("the Act") provides that criteria developed by health systems agencies and State health planning and development agencies for conducting reviews under section 1513 (e), (f), and (g) and section 1523 of the Act, respectively, shall include consideration of "the special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII" of the Act ("Health Maintenance Organizations").

Section 117(a) of the Health Maintenance Organization Amendments of 1976, Pub. L. 94-460, amended section 1532(c) of the Act by adding the requirement that "The criteria established by any health systems agency or State Agency under paragraph (8) shall be consistent with the standards and procedures established by the Secretary under section 1306(c) of this Act." The Assistant Secretary for Health has also issued a Notice of Proposed Rulemaking which would in part amend 42 CFR Part 110, Subpart B, at § 110.204, by setting forth revised standards and procedures under section 1306(c) of the Act. (43 FR 11472.) Set forth below are proposed amendments to 42 CFR Part 122, Subpart D, and 42 CFR Part 123, Subpart E, relating to certificate of need and other reviews of proposed new institutional health services, which articulate the special needs and circumstances of HMOs for which assistance may be provided under Title XIII and which are designed to ensure that review criteria developed under Section 1532(c)(8) are consistent with the standards and procedures found at § 110.204.

Public comment and recommendations are invited on the proposed amendments to Parts 122 and 123. The Secretary is soliciting information particulary on whether and how State certificate of need laws will be affected by these proposed changes, so that he can determine whether there should be a delay in the effective date of the final regulations. In particular, the Secretary requests comments on whether existing State statutes will need to be amended and, if so, how much time would be required to do so.

Set forth below is an analysis of the amendments proposed for specific sections of Parts 122 and 123:

SECTIONS 122.301 AND 123.401, DEFINITIONS

Sections 122.301(d) and 123.401(d): The Secretary is proposing to define the term "health maintenance organization for which assistance may be provided under Title XIII," in order to provide a basis for determining whether a health maintenance organization

is entitled to special consideration in certificate of need reviews and other reviews of proposed new institutional health services.

SECTIONS 122.304 AND 123.404, NEW INSTITUTIONAL HEALTH SERVICES SUBJECT TO REVIEW

Under present regulations, States may require certificate of need reviews for feasibility studies and planning activities for all covered health care facilities and HMOs, although § 123.404 does not require certificates of need for such activities which entail expenditures of $150,000 or less. The Secretary is proposing to amend these sections to require that State certificate of need programs may not include review of HMO feasibility studies funded under section 1303 of the Act and planning activities funded under section 1304 of the Act which, respectively, involve expenditures of $200,000 or less. The Secretary is concerned that if certificate of need review of HMO planning activities were permitted, health planning agencies would be making certificate of need determinations too early in the development of HMOs. This would result in certificates of need being granted to HMOs which are subsequently found to be not practicable or otherwise not in compliance with applicable standards. In addition, any single grant or loan guarantee made under section 1304 for an HMO planning project is limited to $200,000. Further, grants for feasibility studies under section 1303 precede planning activity grants and any single feasibility grant is limited under section 1303(e)(1) to $75,000. In light of this, the Secretary is proposing that expenditures of $200,000 or less for HMO feasibility studies funded under section 1303 or planning activities funded under section 1304 do not constitute "substantial expenditures * * * in preparation for the development of new institutional health services" within the meaning of section 1523(a)(4) of the Act.

Under this proposed amendment, entities assisted under section 1304(a) of the Act would in effect be required to submit an application for a certificate of need during, rather than prior to, their planning activities project periods. The planning projects of proposed or existing HMOs not so assisted would still be required to be covered if they involve expenditures in excess of $150,000 (or such lesser amount as the State may specify).

SECTIONS 122.306 AND 123.407, PROCEDURES FOR REVIEW

Sections 122.306(a)(2) and 123.407(a)(2): The Secretary is proposing to amend these sections to require that in the case of an HMO no SHPDA review shall take longer than 90 days from the date the application is received. Additionally the SHPDA, in establishing the review schedule for the HSA, would not be permitted to extend the HSA review time more than 60 days beyond the application receipt date. These modifications are necessary for national uniformity and consistency with Federal time frames for review of Title XIII grant applications and to ensure tha HMOs for which assistance may be provided under Title XIII receive special consideration in certificate of need reviews. In addition, delayed review may have serious adverse effects on developing HMOs, which typically have few sources of private funds.

Sections 12.306(a)(5) and 123.407(a)(5): The Secretary is proposing to amend these sections to require that written findings which state the basis for any final HSA recommendation and SHPDA decision regarding an HMO proposal be sent to the appropriate regional office of the Department at the same time they are sent to the person proposing the new institutional health service. Because of the special interest of Congress in the development of HMOs, it is necessary for HEW regional offices to have up-to-date information on health planning agency decisions with respect to proposals by HMOs.

SECTIONS 122.308 AND 123.409, CRITERIA FOR HSA AND STATE AGENCY REVIEW; § 122.310 AND § 123.411, Health Maintenance Organizations: Required findings.

As noted above, section 117(a) of Pub. L. 94-460 amended section 1532(c) of the Act to require that the criteria established under Section 1532(c)(8) of the Public Health Service Act shall be consistent with the standards and procedures established by the Secretary under Section 1306(c) of the Act. Lengthy discussions have been held in the Department regarding how best to implement this provision in order to assure special consideration for HMOs eligible for assistance under Title XIII while at the same time maintaining the integrity of the health planning process established by Pub. L. 93-641. The Secretary wants to ensure that HMOs receive the encouragement and special consideration the Congress intended when it made the development of group practices and HMOs a national priority in section 1502(3) of the Act, and he is concerned that HMOs will encounter arbitrary obstacles under regulatory programs such as certificate of need review. Reports of arbitrary health planning agency recommendations on proposals of some developing HMOs have been received. Therefore, he has considered totally restricting HSAs and SHPDAs in the development and application of project review criteria for HMOs. Under this approach, the Department would develop a closed set of criteria which health planning agencies would not be permitted to vary, reduce or add to.

The Secretary believes that strong National Guidelines on HMOs, which planning agencies must address in the health systems plans or State health plans, will reinforce the provision of special consideration for HMOs, since project decisions are expected, in the main, to be consistent with these National Guidelines. However, he was also aware that this consistency may not occur immediately and that, for the near future, the opportunity remains for arbitrary decisions by health planning agencies. Therefore, the Secretary has also considered proposing that agencies be permitted to develop specific HMO criteria just as they must for other covered categories of review but at the same time expanding § 123.411, "Health Maintenance Organizations, required findings," so as to provide that agencies may not deny a certificate of need on the basis of certain factors which have been the basis of past arbitrary agency findings on HMO project grant proposals.

The Secretary has decided to take a middle course between these two positions. Therefore, he proposes to amend §§ 122.308 and 123.409 by setting forth the factors comprising the special needs and circumstances of HMOs for which assistance may be provided under Title XIII which HSAs and SHPDAs must consider in developing review criteria. The Secretary also recognizes that HSAs and SHPDAs may desire to use additional factors which may be appropriate to reviews of HMOs. Therefore, these agencies may submit to the Secretary proposals for additional factors, which the Secretary will approve if he finds them to be consistent with the purpose of Title XIII. The Secretary is also proposing to amend §§ 122.310 and 123.411 so as to permit HSAs and SHPDAs to recommend against or deny, respectively, certificates of need for HMOs eligible for Title XIII assistance only upon the basis of a determination that the special needs and circumstances of such HMOs, as set forth in §§ 122.308 and 123.409, do not merit approval. Under the proposed amendments to §§ 122.310 and 123.411 such a determination must be that the new institutional health service proposed to be provided by an HMO is (a) not needed by the enrolled or reasonably anticipated new members of the HMO, or (b) is available from non-HMO providers in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO, or (c) is not needed under criteria based on additional factors approved by the Secretary. This

approach is consistent with the amendments being proposed under section 1306(c) of the Act to § 110.204.

The Secretary is further proposing, with respect to in-patient facilities proposed to be provided by HMOs for which assistance may be provided under Title XIII, to amend §§ 122.310 and 123.411 so as to require that HSAs shall recommend denial of and State Agencies shall deny certificates of need for such facilities where, in addition to making one of the determinations listed above, the agency also determines that the HMO's members will not utilize at least 75 percent of the proposed facility's projected annual in-patient days. This last determination is consistent with the general approach of the Administration's proposed Hospital Cost Containment legislation, H.R. 6575, which excepts from the definition of "hospitals" which are subject to the cost-containment provisions those hospitals which serve primarily patients of HMOs.

Accordingly, it is proposed that 42 CFR Parts 122 and 123 be amended as set forth below.

NOTE.—The Department of Health, Education, and Welfare 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 1, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: March 2, 1978.

HALE CHAMPION,
Acting Secretary.

PART 122—HEALTH SYSTEMS AGENCIES

1. Part 122 of Title 42, CFR, is amended by revising Subpart D to read as follows:

Subpart D—Procedures and Criteria for Review of New Institutional Health Services

Sec.
122.301 Definition.
122.302 Purpose and applicability.
122.303 General.
122.304 New institutional health services subject to review.
122.305 Adoption and public notice of review procedures and criteria.
122.306 Procedures for health systems agency review.
122.307 Exceptions to use of procedures.
122.308 Criteria for health systems agency review.
122.309 Inpatient facilities; required findings.
122.310 Health maintenance organizations; required finding.

AUTHORITY: Sec. 215, 58 Stat. 690 (42 U.S.C. 216); sec. 1532 of the Public Health Service Act, 88 Stat. 2251-53 (42 U.S.C. 300n-1).

§ 122.301 Definitions.

In addition to the terms defined in subpart A of this Part, as used in this subpart:

(a) The term "to develop," when used in connection with health services, means to undertake those activities which on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, as defined under applicable State law, in relation to the offering of such a service.

(b) The term "health care facility" is defined under section 1531(5) of the Act to have the same meaning as such term as in regulations prescribed under section 1122 of the Social Security Act. Such regulations (42 CFR 100.102(e)) define the term "health care facility" as including hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facilities, kidney disease treatment centers, including freestanding hemodialysis units, intermediate care facilities, and ambulatory surgical facilities, but does not include Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ Scientist, Boston, Massachusetts. Such regulations also provide that:

(1) The term "hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such terms do not include psychiatric and tuberculosis hospitals.

(2) The term "psychiatric hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.

(3) The term "tuberculosis hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supevision of a physician, medical services for the diagnosis and treatment of tuberculosis.

(4) The term "skilled nursing facility" means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(5) The term "intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physicial condition require health related care and services (above the level of room and board).

(6) The term "ambulatory surgical facility" means a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization.

Such term does not include the offices of private physicians or dentists, whether for individual or group practice.

(c) The term "health maintenance organization" is defined under section 1531(5) of the Act to have the same meaning as such term has in regulations prescribed under section 1122 of the Social Security Act. Such regulations (42 CFR 100.102(f)) define the term "health maintenance organization" to mean a public or private organization, organized under the laws of any State, which

(1) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physican services, hospitalization, laboratory, X-ray, emergency and preventive services, and out-of-area coverage;

(2) Is compensated (except for copayments) for the provision of the basic health care services listed in paragraph (c)(1) of this section to enrolled participants on a predetermined periodic rate basis; and

(3) Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(d) The term "health maintenance organization for which assistance may be provided under Title XIII" means a health maintenance organization which the Secretary determines, upon the basis of an application and the submission of any information and assurances which he finds necessary, may be eligible for assistance under Title XIII of the Act.

(e) The term "health services" means clinically related (i.e., diagnostic, treatment, or rehabilitative) services, and includes alcohol, drug abuse, and mental health services.

(f) The term "institutional health services" means health services provided in or through health care facilities or health maintenance organizations and includes the entities in or through which such services are provided.

(g) The term "to offer," when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.

(h) The term "person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies) a State, or a political subdivision or instrumentality (including a municipal corporation) of a State.

§ 122.302 Purpose and applicability.

Section 1513(f) of the Public Health Service Act requires each health systems agency, in order to assist State Health planning and development agencies in carrying out their functions under paragraphs (4) and (5) of section 1523(a), to review and make recommendations to the appropriate State Agency respecting the need for new institutional health services proposed to be offered or developed in the health service area of such health systems agency. Section 1523(a) of the Act requires that in performing its review functions under section 1513(f) of the Act or in conducting any other reviews of proposed health services, each health systems agency shall follow procedures and apply criteria developed and published by the health systems agency in accordance with regulations of the Secretary. This subpart sets forth the minimum procedures and criteria to be utilized by health systems agencies in conducting such reviews and the manner in which such procedures and criteria shall be developed and published.

§ 122.303 General.

Except as provided in § 122.307, each health systems agency shall utilize review procedures and criteria which meet the requirements of §§ 122.306 and 122.308, respectively, when conducting reviews of new institutional health services and other reviews of proposed health services. The public shall be given notice of such review procedures and criteria in accordance with the requirements of § 122.305. In addition, in the case of any proposed new institutional health service for the provision of health services to inpatients, the health systems agency shall comply with the requirements of § 122.309; in the case of any proposed new institutional health service proposed for a health maintenance organization, the health systems agency shall comply with the requirements of § 122.310.

§ 122.304 New institutional health services subject to review.

(a) All new institutional health services proposed to be offered or developed within the health service area of the health systems agency shall be subject to review under this subpart. For purposes of this subpart, "new institutional health services" shall include:

(1) The construction, development, or other establishment of a new health care facility or health maintenance organization;

(2) Any expenditure by or on behalf of a health care facility or health maintenance organization in excess of $150,000 (or such lesser amount as the State may specify) which, under generally accepted accounting principles consistently applied, is a capital expenditure, except that this subpart shall not apply to expenditures for (i) site acquisitions; (ii) acquisitions of existing health care facilities and health maintenance organizations; or (iii) expenditures solely for the termination or reduction of beds or of a health service; unless included by the State in its scope of coverage. Where a person makes an acquisition by or on behalf of a health care facility or health maintenance organization under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be deemed a capital expenditure subject to review.

(3) A change in the bed capacity of a health care facility or health maintenance organization which increases the total number of beds (or distributes beds among various categories, or relocates such beds from one physical facility or site to another) by more than forty beds or more than twenty-five percent of total bed capacity as defined by the State, whichever is less, over a two-year period.

(4) Health services, except home health services, which are offered in or through a health care facility or health maintenance organization and which were not offered on a regular basis in or through such health care facility or health maintenance organization within the twelve month period prior to the time such services would be offered.

(b)(1) Any expenditure by or on behalf of a health care facility or health maintenance organization in excess of $150,000 (or such lesser amount as the State may specify) made in preparation for the offering or development of a new institutional health service and any arrangement or commitment made for financing the offering or development of the new institutional health service shall be subject to review under this subpart, except that the health systems agency may not review expenditures amounting to $200,000 or less for feasibility surveys for health maintenance organizations which are funded under section 1303 of the Act or expenditures amounting to $200,000 or less for planning of health maintenance organizations which are funded under section 1304 of the Act. (2) Nothing in this subpart shall preclude a health systems agency from recommending that a State Agency grant a certificate of need which permits expenditures only for predevelopment activities, but does not authorize the offering or development of the new institutional health service with respect to which such predevelopment activities are proposed. Expenditures in preparation for the offering of a new institutional health service shall include expenditures for architectural designs, plans, working drawings, and specifications. Such expenditures may also include those for site acquisition and preliminary plans, studies, and survey, if these are included by the State Agency in its definition of predevelopment activities, but may not include expenditures for health maintenance organization activities described in subparagraph (1) of this paragraph.

§ 122.305 Adoption and public notice of review procedures and criteria.

(a) Each health systems agency shall adopt and review and revise as necessary, review procedures and criteria in accordance with the requirements of this subpart prior to its review of new institutional health services and in accordance with its Designation Agreement.

(b) Before adopting the review procedures and criteria required by this subpart or any revisions of such procedures and criteria, the health systems agency shall give interested persons an opportunity to offer written comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt, as follows:

(1) The health systems agency shall distribute copies of its proposed review procedures and criteria, and proposed revisions thereof, to the agencies, institutions and associations with which the agency must coordinate its activities pursuant to section 1513(d) of the Act and its designation agreement, to units of general local government within its health service area, to the State Agency and Statewide Health Coordinating Council of each State in which all or any part of the agency's health service area is located, and to health systems agencies designated for contiguous health service areas, and to any agency which establishes rates for health care facilities or health maintenance organizations in its health service area.

(2) The health systems agency shall publish, in one or more newspapers of general circulation in its health services area, a notice stating that review procedures and criteria, or revisions thereof, have been proposed for adoption and are available at specified addresses for inspection and copying by interested persons.

(3) A health systems agency may request from the Secretary an exception to the requirement of § 122.305(b)(2). Such request shall be in writing, shall contain a detailed explanation of the reasons for the request and of the sub-

stitute publication procedures that the agency intends to follow if the exception is approved. The Secretary may grant such an exception if he determines that the proposed substitute procedures are less costly or more effective and do not adversely and substantially affect the rights of persons affected by the subject reviews.

(c) Each health systems agency shall distribute copies of its adopted review procedures and criteria, and any revisions thereof, to the agencies and organizations specified in paragraph (b)(1) of this section and to the Secretary, and shall provide such copies to other persons upon request.

§ 122.306 Procedures for health systems agency review.

(a) The procedures adopted and utilized by a health systems agency for conducting the reviews covered by this subpart shall include at least the following:

(1) Written notification to affected persons of the beginning of a review, which shall include notification of the proposed schedule for a review, of the period within which a public hearing during the course of the review may be requested by persons directly affected by the review as defined in paragraph (a)(7) of this section, and of the manner in which notification will be provided of the time and place of any hearing so requested. For purposes of this subparagraph, "affected persons" include, at a minimum, the person whose proposal is being reviewed, the State Agency for each State in which all or any part of the agency's health service area is located, health systems agencies serving contiguous health service areas, health care facilities and health maintenance organizations located in the health service area which provide institutional health services, any agency which establishes rates for health care facilities or health maintenance organizations in its health service area, and those members of the public who are to be served by the proposed institutional health services. For purposes of this subpargraph, the date of "notification" is the date on which the notice is sent or the date on which the notice appears in a newspaper of general circulation, whichever is later. Written notification to members of the public may be provided through newspapers of general circulation in the area and public information channels; notification to all other affected persons shall be by mail (which may be as part of a newsletter).

(2)(i) With respect to reviews of proposed new institutional health services pursuant to section 1513(f) of the Act, schedules for reviews which provide that no such review shall take longer than the period specified in accordance with 42 CFR 123.407(a)(2) by the State Agency of the State in which the new institutional health service is proposed to be offered or developed, except that in the case of reviews under section 1122 of the Social Security Act, schedules for reviews shall be in accordance with 42 CFR 100.106, which govern the State Agency's procedures for review under section 1122 agreements.

(ii) With respect to other reviews of proposed health services, schedules for reviews which provide that no review shall, to the extent practicable, take longer than 90 days from the date of notification made in accordance with pararaph (a)(1) of this section to the date of the written findings made in accordance with paragraph (a)(5) of this section.

(3) Provision for persons subject to a review to submit to the health systems agency in such form and manner, and containing such information, as the agency shall prescribe and publish, such information as the agency may require concerning the subject of such review. Such information requirements may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed; *Provided*, That the health systems agency may require no information of a person subject to a review which is not prescribed and published as being required.

(4) Submission of periodic reports by providers of health services and other persons subject to health systems agency review under this subpart respecting the development of proposals subject to review.

(5) Provision for written finds (including, as appropriate, the findings required under §§ 122.309 and 122.310 which state the basis for any final decision or recommendation made by the health systems agency. The health systems agency may make its recommendations conditional if the established State program does not prohibit such a procedure. Such findings shall be sent to the person proposing the new institutional health service and to the State Agency for the State in which the new institutional health service is proposed to be offered or developed, and shall be available to others upon request. In the case of a new institutional health service proposed by a health maintenance organization, these written findings shall also be sent to the appropriate Regional Office of the Department of Health, Education, and Welfare at the time these are sent to the person proposing the new institutional health service.

(6) Notification, upon request, of providers of health services and other persons subject to health systems agency review under this subpart of the status of the agency review of the proposals subject to review, findings made in the course of such review, and other appropriate information respecting such review.

(7) Provision for public hearing in the course of agency review if requested by one or more persons directly affected by the review. The agency must provide for a reasonable period from the date of written notification of the beginning of a review (see paragraph (a)(1) of this section) within which a public hearing during the course of the review may be requested by persons directly affected by the review. The agency may not impose fees for such a hearing. For purposes of this subparagrah, "persons directy affected" by the review include, at a minimum, the person whose proposal is being reviewed; members of the public who are to be served by the proposed new institutional health services; health care facilities and health maintenance organizations located in the health service area of the agency which provides services similar to the proposed services under review; health care facilities and health maintenance organizations which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide such similar services in the future, either through the filing of a letter of intent or by adoption of a plan; and any agency which establishes rates for health care facilities or health maintenance organizations located in the health service area in which the service is proposed to be offered or developed. Where such a hearing is requested, the agency shall, prior to such hearing, provide notice of such hearing, in accordance with its procedure adopted pursuant to paragraph (a)(1) of this section. The procedure for a hearing must provide an opportunity for any person to present testimony.

(8) Provision, that any person may, for good cause shown, request in writing a public hearing for purposes of reconsideration of a health systems agency decision. The agency may not impose fees for such a hearing. For purposes of this subparagraph, an agency recommendation pursuant to section1513(f) is not a decision. A request for a public hearing shall be deemed by the health systems agency to have shown good cause if it (i) present significant relevant information not previously considered by the health systems agency, (ii) demonstrates that there have been significant changes in factors or circumstances relied upon by the health systems agency in reaching its decision, (iii) demonstrates that the health systems agency has materially failed to follow its adopted procedures in reaching its decision, or (iv) provides such other basis for a public hearing as the health systems agency determines constitutes good cause. To be effective, a request for such a hearing shall be re-

ceived within 30 days of the health systems agency decision, and the hearing shall commence within 30 days after the receipt of the request; except that where any different time period for such procedures are established by State law governing the practices and procedures of the health systems agency, the latter shall govern. Notification of such a public hearing shall be sent, prior to the date of the hearing, to the person requesting the hearing and to the person proposing the new health service, and shall be sent to others upon request. The health systems agency shall make written findings which state the basis for its decision within 45 days after the conclusion of such hearing, except that where any different time period is required by State law governing the practices and procedures of administrative agencies, the latter shall govern. A decision of the health systems agency following a public hearing under this subparagraph shall be considered a decision of the health systems agency for purposes of subparagraphs (5), (6), and (9) of this paragraph.

(9) Preparation and publication, at least annually, of reports by the health systems agency of the reviews being conducted (including a statement concerning the status of each such review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and decisions made in the course of such reviews.

(10) Access by the general public to all applications reviewed by the health systems agency and to all other written materials pertinent to any agency review.

(11) In the case of construction projects, submission to the health systems agency by the persons proposing such projects of letters of intent in such detail and in such form as may be necessary to inform the agency of the scope and nature of the projects at the earliest possible opportunity in the course of planning of such construction projects.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(c) The procedures shall provide that the requirements of Paragraph (a)(1) of this section shall be deemed satisfied if the State Agency, in providing notice of the beginning of the review in accordance with 42 CFR 123.407(a)(1), provides the information described in paragraph (a)(1) of this section.

(d) The Procedures may provide that the requirements of subparagraphs (3), (4), or (11) of paragraph (a) of this section shall be deemed satisfied if the State Agency has provided for the corresponding procedure found at 42 CFR 123.407(a) (3), (4), or (14).

§ 122.307 Exceptions to use of procedures.

After following the procedure set forth in § 122.305(b), an agency may, with respect to any type or group of reviews, request from the Secretary an exception to the requirement of § 122.303 that it utilize review procedures which meet the requirements of § 122.306. Such request shall be in writing, shall contain a detailed explanation of the reasons for the request and of the substitute review procedures that the agency intends to follow if the exception is approved, and shall be accompanied by copies of all written comments submitted under § 122.305(b) to the agency with respect to the request for an exception. The Secretary may grant such an exception if he determines that the proposed substitute procedures are less costly or more effective, are consistent with the purposes of the Act, and do not adversely and substantially affect the rights of persons affected by the subject review. The health systems agency shall distribute copies of substitute procedures approved by the Secretary in accordance with the requirements of § 122.305(c)

§ 122.308 Criteria for health systems agency review.

(a) The health systems agency shall adopt, and utilize as appropriate, specific criteria for conducting the reviews covered by this subpart. The criteria shall include at least the general considerations listed below, but in the case of health maintenance organizations for which assistance may be provided under Title XIII the considerations shall be limited to those set forth in subparagraph (10).

(1) The relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan adopted pursuant to section 1513(b) (2) and (3), respectively, of the Act.

(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing such services.

(3) The need that the population served or to be served by such services has for such services.

(4) The availability of less costly or more effective alternative methods of providing such services.

(5) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health service.

(6) The relationship of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided.

(7) The availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services.

(8) The relationship, including the organizational relationship, of the health services proposed to be provided to ancilary or support services.

(9) The special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers.

(10) The special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the Act. Such needs and circumstances shall be limited to:

(i) The needs of enrolled members and reasonably anticipated new members of the health maintenance organization or proposed health maintenance organization for the new institutional health service proposed to be provided by the organization.

(ii) The availability of the new health services from non-health maintenance organization providers in a reasonable and cost-effective manner which is consistent with the basic method of operation of the health maintenance organization or proposed health maintenance organization. In assessing the availability of these health services from non-health maintenance organization providers, the agency shall consider only whether the services from these providers:

(A) Would be available under a contract of at least five years duration with a non-health maintenance organization provider;

(B) Would be available and conveniently accessible through physicians and other health professionals associated with the health maintenance organization or proposed health maintenance organization. (For example—whether physicians associated with the health maintenance organization have or will have full staff privileges at a non-health maintenance organization hospital);

(C) Would cost no more than if the services were provided by the health maintenance organization; and

(D) Would be available in a manner which is administratively feasible to the health maintenance organization or proposed health maintenance organization.

(iii) Any other factors which the health systems agency may propose and the Secretary may, in accordance with paragraph (c) of this section, find to be consistent with the purpose of Title XIII of the Act.

(11) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

(12) In the case of a construction project—

(i) the costs and methods of the proposed construction, including the costs and methods of energy provision, and

(ii) The probable impact of the construction project reviewed on the costs of providing health services by the person proposing such construction project.

(b) Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

(c) Where a health systems agency proposed under paragraph (a)(10)(iii) of this section that it be permitted to base its reviews of health maintenance organizations on critieria which consider factors not set forth in paragraph (a)(10) of this section, it shall do so in a written request to the Secretary, specifying the reasons for the proposal. The Secretary will approve the request if he finds the additional factors to be consistent with the purpose of Title XIII of the Act. Unless the Secretary has approved the additional factors, the health systems agency shall base its review solely on the factors set forth in paragraph (a)(10) of this section.

§ 122.309 Inpatient facilities; required findings.

In the case of any proposed new institutional health service for the provision of the health services to inpatients, a health systems agency shall not recommend that a State grant a certificate of need under its certificate of need program, or otherwise make a finding that such proposed new institutional health service is needed, unless, after consideration of the appropriateness of the use of existing facilities providing inpatient services similar to those being proposed, the health systems agency makes each of the following findings in writing:

(a) That superior alternatives to such inpatient services in terms of cost, efficiency, and appropriateness do not exist and that the development of such alternatives is not practicable.

(b) That in the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered and have been implemented to the maximum extent practicable;

(c) That patients will experience serious problems in terms of cost, availability, or accessibility, or such other problems as may be identified by the reviewing agency, in obtaining inpatient care of the type proposed in the absence of the proposed new service.

(d) That in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care, the relationship of the addition to the plans of agencies of the State responsible for providing and financing long-term care (including home health services) has been considered.

§ 122.310 Health maintenance organizations; required finding[s.]

(a) In the case of any new institutional health service proposed to be provided by or through a health maintenance organization, a health systems agency shall not recommend that a State Agency deny a certificate of need with respect to such service (or otherwise make a finding under this subpart that such service is not needed); (1) in those cases (i) when the State Agency has granted a certificate of need which authorized the development of the service, or expenditures in preparation for such offering or development (or has otherwise made a finding that such development or expenditure is needed), and (ii) when the offering of this new institutional health service will be consistent with the basic objectives, time schedules, and plans of the previously approved application, or (2) solely because there is a health maintenance organization of the same type, as specified in section 1310(b) of the Act, in the same area, or solely because the services being reviewed are not discussed in the applicable health systems plan, annual implementation plan, State health plan, or State medical facilities plan.

(b) In the case of any new institutional health service proposed to be provided by or through a health maintenance organization for which assistance may be provided under Title XIII of the Act, a health systems agency shall not recommend that a State Agency deny a certificate of need with respect to the service.

(1) Unless the health systems agency determines that the service is:

(i) Not needed by the enrolled or reasonably anticipated new members of the health maintenance organization or proposed health maintenance organization or;

(ii) Available from non-HMO providers in a reasonable and cost-effective manner which is consistent with the basic method of operation of the health maintenance organization, in accordance with § 122.308(a)(10)(ii), or

(2) Unless the health systems agency determines that the service is not needed under criteria based on factors which the Secretary has approved in accordance with § 122.308(c).

(c) In the case of a new institutional health service which is proposed to be provided by or through a health maintenance organization for which assistance may be provided under Title XIII of the Act and which consists of (or includes) the construction, development or establishment of a new inpatient health care facility, a health systems agency shall recommend that the State Agency deny a certificate of need for the service if, in addition to making one of the determinations set forth in paragraph (b) of this section, it determines that utilization of the facility by members of the applicant will not account for at least 75 percent of the annual in-patient days of the proposed facility.

PART 123—STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES

2. Part 123 of Title 42, CFR, is amended by revising Subpart E to read as follows:

Subpart E—Certificate of Need and Review of New Institutional Health Services

123.401 Definitions.
123.402 Purpose and applicability.
123.403 General.
123.404 New institutional health services subject to review.
123.405 Enforcement.
123.406 Adoption and pubic notice of review procedures and criteria.
123.407 Procedure for State Agency review.
123.408 Exceptions to use of procedures.
123.409 Criteria for State Agency review.
123.410 Inpatient facilities; required findings.
123.411 Health maintenance organizations; required finding.

AUTHORITY: Sec. 215, 58 Stat. 690 (42 U.S.C. 216); secs. 1523, 1532 of the Public Health Service Act, 88 Stat. 2246, 2251.

§ 123.401 Definitions.

In addition to the terms defined in subpart A of this Part, as used in this subpart:

(a) The term "to develop," when used in connection with health services, means to undertake those activities which on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, as defined under applicable State law, in relation to the offering of such a service.

(b) The term "health care facility" is defined under section 1531(5) of the Act to have the same meaning as such term has in regulations prescribed under section 1122 of the Social Security Act. Such regulations (42 CFR 100.102(e)) define the term "health care facility" as including hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facilities, kidney disease treatment centers, including freestanding hemodialysis units, intermediate care facilities, and ambulatory

surgical facilities, but does not include Christian Science sanatorium operated, or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts. Such regulations also provide that:

(1) The term "hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such term does not include psychiatric and tuberculosis hospitals.

(2) The term "psychiatric hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.

(3) The term "tuberculosis hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.

(4) The term "skilled nursing facility" means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(5) The term "intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require health related care and services (above the level of room and board).

(6) The term "ambulatory surgical facility" means a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization. Such term does not include the offices of private physicians or dentists, whether for individual or group practice.

(c) The term "health maintenance organization" is defined under section 1531(5) of the Act to have the same meaning as such term has in regulations prescribed under section 1122 of the Social Security Act. Such regulations (42 CFR 100.102(f)) define the term "health maintenance organization" to mean a public or private organization, organized under the laws of any State, which:

(1) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, x-ray, emergency and preventive services, and out-of-area coverage;

(2) Is compensated (except for copayments) for the provision of the basic health care services listed in paragraph (c)(1) of this section to enrolled participants on a predetermined periodic rate basis; and

(3) Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(d) The term "health maintenance organization for which assistance may be provided under Title XIII" means a health maintenance organization which the Secretary determines, upon the basis of an application and the submission of any information and assurances which he finds necessary, may be eligible for assistance under Title XIII of the Act.

(e) The term "health services" means clinically related (i.e., diagnostic, treatment, or rehabilitative) services, and includes alcohol, drug abuse, and mental health services.

(f) The term "institutional health services" means health services provided in or through health care facilities or health maintenance organizations and includes the entities in or through which such services are provided.

(g) The term "to offer," when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.

(h) The term "person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies) a State, or a political subdivision or instrumentality (including a municipal corporation) of a State.

§ 123.402 Purpose and applicability.

(a) (1) Section 1523(a)(4)(B) of the Public Health Service Act requires each State health planning and development agency to administer a State certificate of need program which applies to new institutional health services proposed to be offered or developed within the State and which is satisfactory to the Secretary. The purpose of this subpart is to set forth the requirements and standards that a State certificate of need program must meet in order for the Secretary to find it satisfactory. A State certificate of need program may include additional provisions not inconsistent with the requirements of this subpart.

(2) Section 1523(a)(5) of the Act requires each State Agency, after consideration of recommendations submitted by health systems agencies under section 1513(f) of the Act and 42 CFR Part 122, Subpart D, to make findings as to the need for new institutional health services proposed to be offered within the State. This subpart also sets forth the requirements and standards for State reviews under section 1523(a)(5).

(3) Section 1532(a) of the Act requires that in performing its review functions under section 1523 of the Act (which include reviews conducted pursuant to section 1523(a)(4)(B) and (5)), each State Agency shall (except to the extent approved by the Secretary) follow procedures and apply criteria developed and published by the State Agency in accordance with regulations of the Secretary. This subpart sets forth requirements respecting such procedures and criteria.

(b) The regulations of this subpart are applicable to State certificate of need programs under section 1523(a)(4)(B) of the Act and, except for § 123.405 (Enforcement), to reviews for purposes of making findings as to the need for new institutional health services to be offered within a State under section 1523(a)(5) of the Act.

§ 123.403 General.

(a) Each state health planning and development agency shall (1) administer within the State a certificate of need program meeting the requirements of this subpart; *Provided*, that this requirement shall not apply to a State Agency of a State until the expiration of the first regular session of the legislature of the State which begins after January 4, 1975; and

(2) Make findings as to the need for new institutional health services proposed to be offered or developed in the State, in accordance with the applicable requirements of this subpart.

(b) The State Agency shall consider recommendations made by health systems agencies under section 1513(f) of the Act and in accordance with 42 CFR Part 122, Subpart D, in reviewing any proposed new institutional health service under this subpart.

(c) Except as provided in § 123.408, each State Agency shall adopt and utilize review procedures and criteria which meet the requirements of § 123.407 and § 123.409, respectively, when conducting reviews of new institutional health services. The public shall be given notice of such review procedures and criteria in accordance with the requirements of § 123.406. In addition, in the case of any proposed new institutional health service for the provision of health services to inpatients, the State Agency shall comply with the requirements of § 123.410; in the case of any new insti-

tutional health service proposed for a health maintenance organization the State Agency shall comply with the requirements of § 123.411.

§ 123.404 New institutional health services subject to review.

(a) All new institutional health services proposed to be offered or developed within the State by any person shall be subject to review under this subpart. For purposes of this subpart, "new institutional health services" shall include:

(1) The construction, development, or other establishment of a new health care facility or health maintenance organization;

(2) Any expenditure by or on behalf of a health care facility or health maintenance organization in excess of $150,000 (or such lesser amount as the State may specify) which, under generally accepted accounting principles consistently applied, is a capital expenditure; except that this subpart shall not apply to expenditures for (i) site acquisitions; (ii) acquisitions of existing health care facilities and health maintenance organizations; or (iii) expenditures solely for the termination or reduction of beds or of a health service; unless included by the State in its scope of coverage. Where a person makes an acquisition by or on behalf of a health care facility or health maintenance organization under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be deemed a capital expenditure subject to review.

(3) A change in bed capacity of a health care facility or health maintenance organization which increases the total number of beds (or distributes beds among various categories, or relocates such beds from one physical facility or site to another) by more than forty beds or more than twenty-five percent of total bed capacity as defined by the State, whichever is less, over a two-year period.

(4) Health services, except home health services, which are offered in or through a health care facility or health maintenance organization and which were not offered on a regular basis in or through such health care facility or health maintenance organization within the twelve month period prior to the time such services would be offered.

(b)(1) Any expenditure by or on behalf of a health care facility or health maintenance organization in excess of $150,000 (or such lesser amount as the State may specify) made in preparation for the offering or development of a new institutional health service and any arrangement or commitment made for financing the offering or development of the new institutional health service shall be subject to review under this subpart, except that the State Agency may not review expenditures amounting to $200,000 or less for feasibility surveys for health maintenance organizations which are funded under section 1303 of the Act or expenditures amounting to $200,000 or less for planning of health maintenance organizations which are funded under section 1304 of the Act.

(2) Nothing in this subpart shall preclude a State Agency from granting a certificate of need which permits expenditures only for predevelopment activities, but does not authorize the offering or development of the new institutional health service with respect to which such predevelopment activities are proposed. Expenditures in preparation for the offering of a new institutional health service shall include expenditures for architectural designs, plans, working drawings, and specifications. Such expenditures may also include those for site acquisition and preliminary plans, studies, and surveys, if these are included by the State Agency in its definition of predevelopment activities, but may not include expenditures for health maintenance organization activities described in subparagraph (1) of this paragraph.

(c) Prior to its review of new institutional health services, each State Agency shall disseminate to all health care facilities and health maintenance organizations within the State, and shall publish in one or more newspapers of general ciriculation in the State, a description of the scope of coverage of its program for review of new institutional health services. Such description shall include, at a minimum, the coverage required by paragraphs (a) and (b) of this section. Whenever the scope of such coverage is revised, the State Agency shall disseminate and publish a revised description thereof.

§ 123.405 Enforcement.

(a) The State certificate of need program shall provide (1) that only those new institutional health services which are found by the State Agency to be needed shall be granted certificates of need, (2) that only those new institutional health services which are granted certificates of need shall be offered or developed within the State, (3) that no expenditures in excess of $150,000 (or such lesser amount as the State may specify) in preparation for the offering or development of a new institutional health service shall be made by any person unless a certificate of need for such services or expenditures has been granted; and (4) that no arrangement or commitment for financing the offering or development of the new institutional health service shall be made by any person, unless a certificate of need for such arrangement or commitment has been granted.

(b) The State certificate of need program shall provide sanctions, such as the denial or revocation of a license to operate, civil or criminal penalties, or injunctive relief, which the Secretary finds sufficient to assure compliance with the provisions of paragraph (a) of this section.

§ 123.406 Adoption and public notice of review procedures and criteria.

(a) Each State Agency shall adopt, and review and revise as necessary, review procedures and criteria in accordance with the requirements of this subpart prior to its review of new institutional health services, and in accordance with its Designation Agreement.

(b) Before adopting the review procedures and criteria required by this subpart or any revisions of such procedures and criteria, the State Agency shall give interested persons an opportunity to offer written comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt, as follows:

(1) The State Agency shall distribute copies of its proposed review procedures and criteria, and proposed revisions thereof, to Statewide health agencies and organizations, the Statewide Health Coordinating Council, and each health systems agency for a health service area located in whole or in part within the State, and any agency which establishes rates for health care facilities or health maintenance organizations in the State.

(2) The State Agency shall publish, in one or more newspapers of general circulation in the State, a notice stating that review procedures and criteria, or revisions thereof, have been proposed for adoption and are available at specified addresses for inspection and copying by interested persons.

(3) A health systems agency may request from the Secretary an exception to the requirement of § 122.305(b)(2). Such request shall be in writing, shall contain a detailed explanation of the reasons for the request and of the substitute publication procedures that the agency intends to follow if the exception is approved. The Secretary may grant such an exception if he determines that the proposed substitute procedures are less costly or more effective and do not adversely and substantially affect the rights of persons affected by the subject reviews.

(c) Each State Agency shall distribute copies of its adopted review procedures and criteria, and any revisions thereof, to the agencies and organizations specified in paragraph (b)(1) of this section and to the Secretary, and shall provide such copies to other persons upon request.

§ 123.407 Procedures for State Agency review.

(a) The procedures adopted and utilized by a State Agency for conducting the reviews covered by this subpart shall include at least the following:

(1) Written notification to affected persons of the beginning of a review, which shall include notification of the proposed schedule for the review, of the period within which a public hearing during the course of the review may be requested by persons directly affected by the review as defined in paragraph (a)(7) of this section, and of the manner in which notification will be provided of the time and place of any hearing so requested. For purposes of this subparagraph, "affected persons" include, at a minimum, the person whose proposal is being reviewed, the health systems agency for the health service area in which the proposed new institutional health service is to be offered or developed, health systems agencies serving contiguous health systems areas, health care facilities and health maintenance organizations located in the health service area which provide institutional health services, any agency which establishes rates for health care facilities or health maintenance organizations in the State, and those members of the public who are to be served by the proposed new institutional health services. For purposes of this subparagraph, the date of "notification" is the date on which the notice is sent or the date on which the notice appears in a newspaper of general circulation, whichever is later. Written notification to members of the public may be provided through newspapers of general circulation in such area and public information channels; notification to all other affected persons shall be by mail (which may be as part of a newsletter).

(2) Schedules for reviews which provide that no review shall, to the extent practicable, take longer than 90 days from the date that notification is sent to all affected persons to the date of the written findings made in accordance with paragraph (a)(5) of this section: *Provided*, That in the case of a review of a new institutional health service proposed by a health maintenance organization, no review shall take longer than 90 days from the date the application is received. The State Agency shall adopt criteria for determining when it would not be practicable to complete a review within 90 days. Where a proposed new institutional health service is to be provided in a health service area for which a health systems agency has been designated, such schedule shall set forth the period within which the health systems agency must complete its review under section 1513(f) of the Act and 42 CFR Part 122, subpart D, and provide its recommendation with respect to such new service to the State Agency: *Provided*, That the period allotted by the State Agency to the health systems agency for completion of its review and submission of its recommendations may not be less than 60 days, except with the written consent of the health systems agency, but in the case of reviews of new institutional health services proposed by a health maintenance organization, the State Agency may not extend the length of a health systems agency review beyond 60 days from the date the application is received.

(3) Provision for persons subject to a review to submit to the State Agency in such form and manner, and containing such information as the State agency shall prescribe and publish, such information as the State Agency may require concerning the subject of such review. Such information requirements may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed; *Provided*, That the State Agency may require no information of a person subject to review which is not prescribed and published as being required.

(4) Submission of periodic reports by providers of health services and other persons subject to State Agency review under section 1523 (a)(4)(B) and (a)(5) of the Act respecting the development of proposals subject to review under this subpart.

(5) Provision for written findings (including, as appropriate, the required findings under §§ 123.410 and 123.411) which state the basis for any final decision made by the State Agency. The State Agency may make its final decision conditional if the established State program provides for such a procedure. Such findings shall be sent to the person proposing the new institutional health service and to the health systems agency for the health service area in which the new service is proposed to be offered or developed, and shall be available to others upon request. In the case of a new institutional health service proposed by a health maintenance organization, these written findings shall also be sent to the appropriate Regional Office of the Department of Health, Education, and Welfare at the time these are sent to the person proposing the new institutional health service.

(6) Notification, upon request, of providers of health services and other persons subject to review under this subpart of the status of the State Agency review of new institutional health services subject to review, findings made in the course of such review, and other appropriate information respecting such review.

(7) Provision for a public hearing in the course of agency review if requested by one or more persons directly affected by the review. The agency must provide for a reasonable period from the date of written notification of the beginning of a review (see paragraph (a)(1) of this section) within which a public hearing during the course of the review may be requested by persons directly affected by the review. The agency may not impose fees for such a hearing.

(i) For purposes of this subparagraph, "persons directly affected" by the review include, at a minimum, the person whose proposal is being reviewed, members of the public who are to be served by the proposed new institutional health services; health care facilities and health maintenance organizations located in the health service area in which the service is proposed to be offered or developed which provide services similar to the proposed services under review; health care facilities and health maintenance organizations which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide such similar services in the future; and any agency which establishes rates for health care facilities or health maintenance organizations located in the health service area in which the service is proposed to be offered or developed. Where such a hearing is requested, the State Agency shall, prior to such hearing, provide notice of such hearing, in accordance with its procedure adopted pursuant to paragraph (a)(1) of this section. The procedure for the hearing must provide an opportunity for any person to present testimony.

(ii) Although paragraph (c) of this section provides that the requirement of this paragraph is satisfied if the appropriate health systems agency has provided for the corresponding procedure found at 42 CFR 122.306(a)(7), in the event that a person qualifying under the State Agency definition of "directly affected" is not provided an opportunity for a public hearing by the health system agency, due to a difference in that agency's definition of "directly affected persons", the State Agency must provide an opportunity for a public hearing.

(8) Provision that any person may, for good cause shown, request in writing a public hearing for purposes of reconsideration of a State Agency decision, and procedures for such a hearing. The agency may not impose fees for such a hearing. For purposes of this subparagraph, a request for a public hearing shall be deemed by the State Agency to have shown good cause if it (i) presents significant relevant information not previously considered by the State Agency, (ii) demonstrates that there have been significant changes in factors or circumstances relied upon by the State

Agency in reaching its decision, (iii) demonstrates that the State Agency has materially failed to follow its adopted procedures in reaching its decision, or (iv) provides such other bases for a public hearing as the State Agency determines constitutes good cause. To be effective, a request for such a hearing shall be received within 30 days of the State Agency decision, and the hearing shall commence within 30 days of receipt of the request, except that where any different time periods for such procedures are established by State law governing the practices and procedures of administrative agencies, the latter shall govern. Notification of such a public hearing shall be sent, prior to the date of the hearing, to the person requesting the hearing, the person proposing the new institutional health service, and the health systems agency for the health service area in which the new institutional health service is proposed to be offered or developed, and shall be sent to others upon request. The State Agency shall make written findings which state the basis for its decision within 45 days after the conclusion of such hearing, except that where any different time period is required by State law governing the practices and procedures of administrative agencies, the latter shall govern. A decision of the State Agency following a public hearing under this subparagraph, shall be considered a decision of the State Agency for purposes of subparagraphs (5), (6), (9), (10), (11), and (12) of this paragraph.

(9) Provision that if the State Agency makes a decision regarding a proposed new institutional health service which is inconsistent with a recommendation made with respect thereto by the health systems agency making such recommendation pursuant to 42 CFR 122.107(c)(14), the State Agency shall submit to such health systems agency a written, detailed statement of the reasons for the inconsistency. Such decision (and the record upon which it was made) shall, upon request of the health systems agency, be reviewed, under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies, by an agency of the State (other than the State Agency) designated by the Governor. To be effective, the health systems agency's request must be received within 30 days of the State Agency decision, and the review of the appeal shall commence within 30 days of receipt of the request, except that where any different time periods for such procedures are established by State law governing the practices and procedures of administrative agencies, the latter shall govern. The decision of the reviewing agency shall be made in writing within 45 days after the conclusion of such review, except that where any different time period is required by State law governing the practices and procedures of administrative agencies, the latter shall govern. These written findings shall be sent to the person proposing the new institutional health service, to the health system agency requesting the review, and to the State Agency, and shall be made available by the State Agency to others upon request. The decision of the reviewing agency shall be considered the final decision of the State Agency; however, the reviewing agency may remand the matter to the State Agency for further action or consideration if applicable State law permits such remanding.

(10) Provision that any decision of the State Agency under this subpart (and the record upon which it was made) shall, upon request of the person proposing the new institutional health service, be reviewed, under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies, by an agency of the State (other than the State Agency) designated by the Governor. To be effective, the request of the person proposing the new institutional health service must be received within 30 days of the State Agency decision, and the review of the appeal shall commence within 30 days of receipt of the request, except that where any different time periods for such procedures are established by State law governing the practices and procedures of administrative agencies, the latter shall govern. The decision of the reviewing agency shall be made in writing within 45 days after the conclusion of such review, except that where any different time period is required by State law governing the practices and procedures of administrative agencies, the latter shall govern. These written findings shall be sent to the person proposing the new institutional health service, the appropriate health systems agency, and to the State Agency, and shall be made available by the State Agency to others upon request. The decision of the reviewing agency shall be considered the final decision of the State Agency; however, the reviewing agency may remand the matter to the State Agency for further action or consideration if applicable State law permits such remanding.

(11) If a State Agency (or a reviewing agency, under subparagraph (a)(9) or (a)(10) of this section) makes a decision regarding a proposed new institutional health service which the State Agency determines is not consistent with the goals of the applicable health systems plan (established under section 1513(b)(2) of the Act) or the priorities of the applicable annual implementation plan (established under section 1513(b)(3) of the Act), the State Agency (or the reviewing agency, as appropriate) shall submit to the appropriate Health Systems Agency a written, detailed statement of the reasons for the inconsistency.

(12) Preparation and publication, at least annually, of reports by the State Agency of the reviews being conducted (including a statement concerning the status of each such review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and decisions made in the course of such reviews.

(13) Access by the general public to all applications reviewed by the State Agency and to all other written materials pertinent to any agency review.

(14) In the case of construction projects, submission to the State Agency by the persons proposing such projects of letters of intent in such detail as may be necessary to inform the agency of the scope and nature of the projects at the earliest possible opportunity in the course of planning of such construction projects.

(15) Provision that if the State Agency does not make a decision regarding a proposed new institutional health service within the period of time specified for State Agency review, the proposal shall be deemed to have been found not to be needed.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(c) The procedures may provide that the requirements of paragraph (a) (3), (4), (7), or (14) of this section shall be deemed satisfied if the appropriate health systems agency has provided for the corresponding procedure found at 42 CFR 122.306(a) (3), (4), (7), or (11).

§ 123.408 Exceptions to use of procedures.

After following the procedure set forth at § 123.406(b), a State Agency may, with respect to any type or group or reviews, request from the Secretary an exception to the requirement of § 123.403(c) that it utilize review procedures which meet the requirements of § 123.407. Such request shall be in writing, shall contain a detailed explanation of the reasons for the request and of the substitute review procedures that the agency intends to follow if the exception is approved, and shall be accompanied by copies of all written comments submitted under § 123.406(b) to the State Agency with respect to the request for an exception. The Secretary may grant such an exception if he determines that the proposed substitute procedures are less costly or more effective, are consistent with the purposes of the Act,

and do not adversely and substantially affect the rights of persons affected by the subject reviews. The State Agency shall distribute copies of substitute procedures approved by the Secretary in accordance with the requirements of § 123.406(c).

§ 123.409 Criteria for State Agency review.

(a) The State Agency shall adopt, and utilize as appropriate, specific criteria for conducting the reviews covered by this subpart. The criteria shall include at least the following general considerations listed below, but in the case of health maintenance organizations for which assistance may be provided under Title XIII the considerations shall be limited to those set forth in subparagraph (10).

(1) The relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan adopted pursuant to section 1513(b) (2) and (3), respectively, of the Act.

(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing such services.

(3) The need that the population served or to be served by such services has for such services.

(4) The availability of less costly or more effective alternative methods of providing such services.

(5) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health service.

(6) The relationship of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided.

(7) The availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services.

(8) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.

(9) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers.

(10) The special needs and circumstances of health maintenance organizations for which assistance may be provided under title XIII of the Act. Such needs and circumstances shall be limited to:

(i) The needs of enrolled members and reasonably aniticipated new members of the health maintenance organization or proposed health maintenance organization for the new institutional health services proposed to be provided by the organization.

(ii) The availability of the new health services from non-health maintenance organization providers in a reasonable and cost-effective manner which is consistent with the basic method of operation of the health maintenance organization or proposed health maintenance organization. In assessing the availability of these health services from non-health maintenance organization providers, the agency shall consider only whether the services from these providers:

(A) Would be available under a contract of at least five years duration with a non-health maintenance organization provider;

(B) Would be available and conveniently accessible through physicians and other health professionals associated with the health maintenance organization or proposed health maintenance organization. (For example—whether physicians associated with the health maintenance organization have or will have full staff privileges at a non-health maintenance organization hospital);

(C) Would cost no more than if the services were provided by the health maintenance organization or proposed health maintenance organization; and

(D) Would be available in a manner which is administratively feasible to the health maintenance organization or proposed health maintenance organization.

(iii) Any other factors which the State Agency may propose and the Secretary may, in accordance with paragraph (c) of this section, find to be consistent with the purpose of Title XIII of the Act.

(11) The special needs and circumstances of biomedical and behaviorial research projects which are designed to meet a national need and for which local conditions offer special advantages.

(12) In the case of a construction project—

(i) The costs and methods of the proposed construction, including the costs and methods of energy provision, and

(ii) The probable impact of the construction project reviewed on the costs of providing health services by the person proposing such construction project.

(b) Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

(c) Where a State Agency proposes under paragraph (a)(10)(iii) of this section that it be permitted to base its reviews of health maintenance organizations on criteria which consider factors not set forth in paragraph (a)(10) of this section, it shall do so in a written request to the Secretary, specifying the reasons for the proposal. The Secretary will approve the request if he finds the additional factors to be consistent with the purpose of Title XIII of the Act. Unless the Secretary has approved the additional factors, the State Agency shall base its review solely on the factors set forth in paragraph (a)(10) of this section.

§ 123.410 Inpatient facilities; required findings.

In the case of any proposed new institutional health service for the provision of health services to inpatients, a State Agency shall not grant a certificate of need under its certificate of need program, or otherwise make a finding that such proposed new institutional health service is needed, unless, after consideration of the appropriateness of the use of existing facilities providing inpatient services similar to those being proposed, the State Agency makes each of the following findings in writing:

(a) That superior alternatives to such inpatient services in terms of cost, efficiency, and appropriateness do not exist and that the development of such alternatives is not practicable.

(b) That in the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered and have been implemented to the maximum extent practicable;

(c) That patients will experience serious problems in terms of cost, availability, or accessibility, or such other problems as may be identified by the reviewing agency, in obtaining inpatient care of the type proposed in the absence of the proposed new service, and

(d) That in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care the relationship of the addition to the plans of other agencies of the State responsible for providing and financing long-term care (including home health services) has been considered.

§ 123.411 Health maintenance organizations; required findings.

(a) In the case of any new institutional health service proposed to be provided by or through a health maintenance organization, a State Agency shall not deny a certificate of need with respect to such service (or otherwise make a finding under this subpart that such service is not needed) (1) in those cases (i) when the State Agency has granted a certificate of need

which authorized the development of the service, or expenditures in preparation for such offering or development (or has otherwise made a finding that such development or expenditure is needed), and (ii) when the offering of this new institutional health service will be consistent with the basic objectives, time schedules, and plans of the previously approved application: *Provided*, That the State Agency may impose a limitation on the duration of the certificate of need which shall expire at the end of such time unless the health service is offered prior thereto, or (2) solely because there is a health maintenance organization of the same type, as specified in section 1310(b) of the Act, in the same area, or solely because the services being reviewed are not discussed in the applicable health systems plan, annual implementation plan, State health plan, or State medical facilities plan.

(b) In the case of any new institutional health service proposed to be provided by or through a health maintenance organization for which assistance may be provided under Title XIII of the Act, a State Agency shall not deny a certificate of need with respect to the service.

(1) Unless the State Agency determines that the Service is:

(i) Not needed by the enrolled or reasonably anticipated new members of the health maintenance organization or proposed health maintenance organization, or

(ii) Available from non-HMO providers in a reasonable and cost-effective manner which is consistent with the basic method of operation of the health maintenance organization, in accordance with § 123.409(a)(10)(ii), or

(2) Unless the State Agency determines that the service is not needed under criteria based on factors which the Secretary has approved in accordance with § 123.409(c).

(c) In the case of a new institutional health service which is proposed to be provided by or through a health maintenance organization for which assistance may be provided under Title XIII of the Act and which consists of (or includes) the construction, development or establishment of a new inpatient health care facility, the State Agency shall deny a certificate of need for the service if, in addition to making one of the determinations set forth in paragraph (b) of this section, it determines that utilization of the facility by members of the applicant will not account for at least 75 percent of the projected annual inpatient days of the proposed facility.

[FR Doc. 78-6758 Filed 3-16-78; 8:45 am]

[6820-35]

LEGAL SERVICES CORPORATION

[45 CFR Parts 1608, 1612, 1613, 1614, 1620]

AMENDMENTS TO THE REGULATIONS

AGENCY: Legal Services Corporation.

ACTION: Proposed Regulation.

SUMMARY: The Legal Services Corporation Act Amendments of 1977, Pub. L. 95-222 (December 28, 1977), made necessary several changes to the Corporation's Regulations. The Corporation is publishing for notice and comment proposed changes to Part 1608, concerning political activities of employees; Part 1612, concerning prohibited lobbying activities and enforcement of the prohibitions; Part 1613, concerning criminal representation; Part 1614, concerning juvenile representation; and, Part 1620, concerning program priorities. The specific changes and the reasons for them are set out in the Supplementary Information. Where less than a full Section is to be changed, the affected language has been underlined.

DATES: Comments must be received on or before April 17, 1978.

ADDRESS: Legal Services Corporation, 733 15th Street NW., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Walters, 202-376-5113.

EDITORIAL NOTE.—For the Supplementary Information, see the "comments" at the end of each section.

PART 1608—PROHIBITED POLITICAL ACTIVITIES

§ 1608.5 Prohibitions Applicable to Corporation Employees and to Staff Attorneys (Existing).

While employed under the Act, no Corporation employee and no staff attorney shall, at any time,

(a) Use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office, whether partisan or nonpartisan;

(b) directly or indirectly coerce, attempt to coerce, command or advise an employee of the Corporation or of any recipient to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; and

(c) *no staff attorney shall be a candidate for elective public office, whether partisan or nonpartisan; nor shall a Corporation employee be a candidate for partisan elective public office.*

Section 1608.5. Subsection (c) of this Section should be amended to read as follows: "(c) be a candidate for partisan elective public office."

§ 1608.6 Prohibitions Applicable to Attorneys and to Staff Attorneys (Existing).

(a) While engaged in legal assistance activities supported under the Act, no attorney shall engage in

(1) Any political activity,

(2) Any activity to provide voters with transportation to the polls, or to provide similar assistance in connection with an election, or

(3) Any voter registration activity.

(b) *While employed under the Act, no staff attorney shall engage in the activities prohibited by paragraphs (a)(2) or (a)(3) of this section at any time.*

Section 1608.6. Paragraph (b) of this Section should be deleted.

Comment. Section 7(a) of the Amendment makes the present provisions of the Hatch Act relating to the political activities of State and local employees applicable to staff attorneys as well as Corporation employees. Other, more restrictive, provisions of the Act affecting the political activities of staff attorneys on their own time were repealed. The proposed revisions of Section 1608 reflect these changes.

PART 1612—RESTRICTIONS ON CERTAIN ACTIVITIES

§ 1612.4 Legislative and administrative representation. [Existing.]

(a) No funds made available to a recipient by the Corporation shall be used, directly or indirectly, to support activities intended to influence the issuance, amendment, or revocation of any executive or administrative order or regulation of a Federal, State, or local agency, or to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body; *except that*

(1) An employee may engage in such activities in response to a request from a governmental agency or a legislative body, committee, or member made to the employee or to a recipient; and

(2) An employee may engage in such activities on behalf of an eligible client of a recipient, if the client may be affected by a particular legislative or administrative measure; *but no employee shall*

(i) *Solicit a client for the purpose of making such representation possible, or*

(ii) *Solicit a group of clients for the purpose of representing it with respect to matters of general concern to a broad class of persons as distinguished from the interests of a particular client.*

Section 1612.4. The semicolon at the end of the first full paragraph in paragraph (a) should be deleted and the following inserted: "or State proposals by initiative petition;"

The semicolon and everything following it should be deleted from § 1612.4(a)(2), and the following added: "but no employee shall solicit a client in violation of professional responsibilities for the purpose of making such representation possible; and,

(3) An employee may engage in such activities if a governmental agency, legislative body, committee, or member thereof is considering a measure directly affecting the activities

under the Act of the recipient or the Corporation."

§ 1612.5 Enforcement. [Existing.]

(a) The Corporation shall have authority, in accordance with procedures set forth in Title 45 of the Code of Federal Regulations, at § 1067.1-4(b) (relating to suspension), or at §§ 1067.1-5 through 1067.1-11 (relating to termination)

(1) To suspend or terminate the employment of an employee of the Corporation who violates the provisions of this Part; and

(2) To suspend or terminate financial assistance to a recipient which fails to insure that its employees refrain from activities proscribed by the Act or by this Part; provided that

(i) No suspension of employment or financial assistance shall be continued for longer than 30 days unless the recipient or employee of the Corporation is provided notice and an opportunity for a hearing in accordance with the procedures relating to termination cited above, and

(ii) The term "OEO" in the above-referenced regulations shall mean the Corporation, and the term "responsible OEO official" shall mean the President of the Corporation, or, if no President is in office, the Chairman of the Board or his designee.

Section 1612.5. Subsection (a) of this section should be amended to read as follows:

The Corporation shall have authority in accordance with the procedures set forth in Part 1606 and Part 1623 of this chapter;

(1) To suspend or terminate the employment of an employee of the Corporation who violates the provisions of this Part; and

(2) To suspend or terminate financial assistance to a recipient who fails to insure that its employees refrain from activities prescribed by the Act or by this Part.

Comment. Section 9(c) of the amendments expanded the restriction in section 1007(a)(5) of the Act regarding legislative representation to include activities designed to include the outcome of State proposals by initiative petition, expanded the exceptions to the prohibition to include lobbying regarding measures directly affecting the activities of the recipient or the Corporation, and clarified the restriction on soliciting clients for purposes of legislative representation to include only activities that violate the Code of Professional Responsibility. Section 1612.4(a) of the regulations has been revised to include the new language. In addition, section 1612.5(a) has been revised to reflect the fact that the Corporation has published in proposed form procedures governing suspension and termination proceedings. Thus, it is no longer necessary to rely on OEO regulations for enforcement of Part 1612.

It bears emphasis that the new exception for matters "directly affecting" a recipient does not permit lobbying on poor people's issues generally. To the contrary, an amendment in the House Bill that would have permitted such lobbying was dropped in conference. The exception extends only to appropriations or other measures directed to the recipient or its employees, as opposed to eligible clients. See Conf. Rep. 95-825, 95th Cong., 1st Sess. (1977), at 13.

PART 1613—RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS

§ 1613.4 Authorized representation. [Existing.]

Legal assistance may be provided with respect to a criminal proceeding:

(a) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters; or

(b) *When professional responsibility requires continued representation of a juvenile pursuant to § 1614.6; or*

(c) When professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being, or has been, represented by a recipient.

Section 1613.4. Paragraph (b) of this section should be deleted.

Comment. Section 10 of the amendments repealed the restriction on juvenile representation formerly contained in section 1007(b)(4) of the Act. There is, therefore, no longer a basis for Part 1614 of the regulations, and it should be repealed.

Section 1613.4 refers to juvenile cases as instances when representation may be provided in criminal proceedings. Now that such cases are no longer subject to special treatment, however, the general provisions relating to authorized criminal representation should apply. Section 1613.4 has been modified accordingly.

PART 1614—LEGAL ASSISTANCE TO JUVENILES

§ 1614.1 Purpose.

This part is designed to prevent improper interference in parent-child relationships, while permitting legal assistance when it is necessary to protect essential rights of a juvenile.

§ 1614.2 Definitions.

As used in this part:

(a) "Guardian" means a person or institution lawfully appointed to protect the interests of a juvenile.

(b) "Institution" means any facility, public or private, providing a juvenile with shelter, care, education, or other services.

(c) "Juvenile" means any person less than 18 years of age who is not emancipated under applicable law.

§ 1614.3 Policy.

Corporation funds may be used to provide legal assistance to a juvenile when authorized by this Part.

§ 1614.4 Request of a parent, guardian, or court.

(a) Legal assistance may be provided to a juvenile:

(1) When the written request of a parent or guardian of the juvenile is received; or

(2) At the request of an official or agent of a court of competent jurisdiction; but

(b) Legal assistance shall not be provided to a juvenile who is tried as an adult in a criminal proceeding, as defined in section 1613.2, unless required as part of an attorney's professional responsibilities, pursuant to section 1613.4, or section 1614.6.

§ 1614.5 Representation without request of a parent, guardian, or court.

Legal assistance may be provided to a juvenile without a request from a parent, guardian, or court in:

(a) cases, proceedings, or matters:

(1) Involving child abuse or neglect;

(2) To determine legal custody or guardianship of a juvenile;

(3) In which a court has jurisdiction by reason of a juvenile's alleged need for treatment, services, supervision or control, including but not limited to proceedings formally designed for persons in need of supervision (PINS) under State law; or

(4) Involving the initiation, continuation, or conditions of institutionalization of a juvenile; or

(b) When no judicial action is commenced against the parent or noninstitutional guardian of the juvenile, legal assistance may be provided:

(1) To secure or prevent the loss of benefits or services, or

(2) To prevent the imposition of services against the will of the juvenile.

§ 1614.6 Continuity of representation.

If a criminal proceeding, as defined in § 1613.2, arises out of a case, proceeding, or matter with respect to which a juvenile has received assistance authorized by this Part, an attorney should make a good faith effort, consistent with professional responsibility, to obtain approval of the court to withdraw from representation in the criminal proceeding, but may continue to provide representation unless relieved by the court.

§ 1614.7 Limitation policy.

A recipient shall adopt policies designed to insure that Corporation funds are not used to relieve a governmental entity of its legal responsibility to provide compensated counsel to represent juveniles in particular categories of cases, matters, or proceedings.

(Part 1614—Revision)

Part 1614. This part should be repealed.

PART 1620—PRIORITIES IN ALLOCATION OF RESOURCES

§ 1620.2 Procedure. [Existing.]

(a) A recipient shall adopt procedures for establishing priorities in the allocation of its resources. The procedures adopted shall insure participation by *clients* and employees of the recipient, and shall provide opportunity for comment by interested members of the public. Priorities shall be reviewed periodically.

(b) The following factors shall be among those considered in establishing priorities:

(1) The resources of the recipient;

(2) The population of eligible clients in the geographic area served by the recipient;

(3) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;

(4) The urgency of particular legal problems of the clients of the recipient; and

(5) The general effect of the resolution of a particular category of cases or matters on persons least able to afford legal assistance in the community served.

Section 1620.2. The word "clients" should be deleted from the second sentence of subsection (a), and the following inserted: "all significant segments of the client community * * *."

Subsection (b)(2) should be revised to read as follows: "(2) The population of eligible clients in the geographic area served by the recipient, including all significant segments of that population with special difficulties of access to legal services or special legal problems;"

The word "and" should be deleted from subsection (b)(4) and the following subsections added:

(6) The need of the recipient's employees for specialized training in particular areas of the law; and,

(7) the need for and availability of outreach services in the area served by the recipient.

Comment. Section 9(b)(1) of the amendments requires that recipients adopt procedures for setting and implementing priorities taking into account the relative needs of eligible clients, "including particularly the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems * * *." The elderly and handicapped are cited as examples of groups with such problems.

The legislative history of this provision makes clear that it was not meant to establish a preference for certain groups of eligible clients. See Conf. Rep. No. 95-825, 95th Cong., 1st Sess. (1977), at 12; S. Rep. No. 95-172, 95th Cong., 1st Sess. (1977), at 13. Rather, it is intended to insure that the needs of all significant segments of the client community are considered in setting priorities and that the consideration extends to a need for expanded access to service as well as substantive problems. Part 1620 of the regulations should be amended to make these requirements explicit.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 78-7130 Filed 3-16-78; 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.

[6110-01]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

COMMITTEE ON LICENSES AND AUTHORIZATIONS

Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Licenses and Authorizations of the Administrative Conference of the United States, to be held at 11 a.m., Tuesday, April 11, 1978, at the office of O'Melveny & Myers, 1800 M Street NW., Suite 500 South, Washington, D.C.

The Committee will meet to discuss Professor Robert W. Hamilton's study of government use of voluntary standards.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office 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 meeting contact David M. Pritzker, 202-254-7065. Minutes of the meeting will be available on request.

RICHARD K. BERG,
Executive Secretary.

MARCH 8, 1978.

[FR Doc. 78-7145 Filed 3-16-78; 8:45 am]

[3410-34]

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

NEW YORK ANIMAL IMPORT CENTER, NEWBURGH, N.Y.

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Animal and Plant Health Inspection Service, Department of Agriculture, has prepared a final environmental statement for the proposed New York Animal Import Center, Newburgh, N.Y. USDA-APHIS-ADM-76-1-F.

The final environmental statement concerns the construction of a proposed Animal Import Center on a site at Stewart Airport near Newburgh, N.Y. This proposed Animal Import Center will replace an existing facility in Clifton, N.J.

The final environmental statement was transmitted to the Environmental Protection Agency on February 7, 1978.

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

USDA, APHIS, ASD, Architectural Engineering Branch, Room 522, Presidential Building, 6525 Belcrest Road, Hyattsville, Md. 20782.

Metropolitan Transportation Authority, Stewart Airport, Newburgh, N.Y. 12550.

Public Library, Grand Street, Newburgh, N.Y. 12550.

A limited number of single copies are available upon request to Architectural Engineering Branch, Administrative Services Division, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 522, Presidential Building, 6525 Belcrest Road, Hyattsville, Md. 20782.

Copies of the final environmental statement have been sent to various Federal, State, and local agencies.

Dated: March 14, 1978.

J. K. ATWELL,
Acting Administrator, Aninal and Plant Health Inspection Service.

[FR Doc. 78-7159 Filed 3-16-78; 8:45 am]

[3410-37]

Food Safety and Quality Service

PUBLICIZING NAMES OF CHRONIC PROBLEM MEAT AND POULTRY PLANTS

Policy Statement

The Food Safety and Quality Service (FSQS) is responsible for inspecting meat and poultry at more than 7,000 federally inspected plants. In addition to regular in-the-plant inspection, FSQS conducts systematic internal reviews which measure the likelihood that a plant is producing adulterated or incorrectly labeled product that could be detrimental to the health or welfate of the general public. Although most meat and poultry plants operate in compliance with requirements, a few plants consistently work as close as possible to the absolute minimum standards for safety and labeling. This notice announces a new policy for identifying, reviewing, and making known the names of chronically deficient plants, to provide the public with further information on meat and poultry.

Plants reviewed under procedures of the Inplant Compliance Program[1] are rated according to one of four categories depending on the significance of the deficiencies found during the review. If no significant deficiencies are observed, a plant is assigned to category 4. Plants with only minor deficiencies are assigned to category 3. Serious deficiencies result in category 1 or 2 assignments.

A "problem plant" is a plant having two consecutive reviews with a sequence of categories 1-1 or 2-1, or three consecutive reviews with a sequence of 1-2-2 or 2-2-2. Written notice will be given to managers of the plant when the plant becomes a problem plant. Followup reviews of problem plants will be conducted at 6-month intervals. Two successive reviews of category 3 or 4 will remove a plant from the problem plant classification and prevent it from becoming a "chronic problem plant."

A "chronic problem plant" is any previously designated problem plant which on either of its next two reviews is assigned to category 1 or 2. Names of all futur chronic problem plants that show deficiencies in areas of plant responsibility will be announced to the public as they are identified. Followup reviews will normally be conducted at 6-month intervals until two successive reviews show sustained acceptable conditions, demonstrated by either category 3 or 4 ratings. At the request of the plant, the first followup review will be conducted ahead of schedule as soon as arrangements for such review can be made by FSQS. A followup announcement to the public will be made following a plant's removal from "chronic problem plant" classification.

Failure of establishments to comply with the provisions of the Federal Meat Inspection Act and the regula-

[1]These procedures for inplant compliance program reviews, including the basis for the categories and ratings, are set forth in MPI Directive 921.2. Interested parties may request and obtain a free copy of this directive by contacting Administrative Services Division, Food Safety and Quality Service, U.S. Department of Agriculture, Room 0157, South Building, Washington, D.C. 20250.

tions thereunder may, in appropriate cases, result in the refusal or withdrawal of inspection services pursuant to sections 4, 6, 8, and 401 of the Federal Meat Inspection Act (21 U.S.C. 604, 606, 608, and 671) and the rules and regulations thereunder (9 CFR 304.2, 305.5, 335.1-335.21; 42 FR 10960-10962).

Failure of establishments to comply with the provisions of the Poultry Products Inspection Act and the regulations thereunder may, in appropriate cases, result in suspension or withdrawal of inspection services pursuant to sections 7 and 18(b) of the Poultry Products Inspection Act (21 U.S.C. 456 and 467(b)) and the rules and regulations thereunder (9 CFR 381.21, 381.29, 381.230-381.236; 42 FR 10960-10963 and 42 FR 12416-12417).

Followup reviews at problem plants or chronic problem plants may be suspended if withdrawal of inspection services is contemplated or underway.

Done at Washington, D.C., on March 8, 1978.

ROBERT ANGELOTTI,
Administrator, Food Safety and Quality Service.

[FR Doc. 78-6719 Filed 3-16-78; 8:45 am]

[3410-16]

Soil Conservation Service

AGRICULTURE-RELATED POLLUTANT CONTROL RC&D MEASURE, N. MEX.

Intent Not To Prepare an Environmental Impact Statement

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 the Agriculture-Related Pollutant Control RC&D Measure, Chaves and Eddy Counties, N. Mex.

The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. A. W. Hamelstrom, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for waste control at animal confinement facilities. The planned works of improvement include diversions and temporary holding ponds.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. A. W. Hamelstrom, State Conservationist, Soil Conservation Service, 517 Gold Avenue SW., Albuquerque, N. Mex. 87103, 505-766-3277. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until after April 17, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.)

Dated: March 8, 1978.

EDWARD E. THOMAS,
Assistant Administrator for Land Resources, Soil Conservation Service.

[FR Doc. 78-7209 Filed 3-17-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Docket 30332; Agreement C.A.B. 27167; Order 78-3-49]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Specific Commodity Rates

Issued under delegated authority March 10, 1978.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

The agreement would add a specific commodity rate, under an existing commodity description as set forth below, reflecting a reduction from general cargo rates; and was adopted pursuant to unprotested notice to the carriers and promulgated in an IATA letter dated February 23, 1978.

Agreement CAB	Specific commodity item No.	Description and rate [1]
27167..	9993.....	Removal of household goods and personal effects: (A) Household goods, used, not for resale; (B) personal effects, consisting of wearing apparel cosmetics, toilet articles and articles worn by an individual, used, not for resale, when in mixed shipments with the commodities named in (A) above: 270 c/kg., minimium weight 100 kg. From Lagos/Kano to New York.

[1] Subject to applicable currency conversion factors as shown in tariffs.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the agreement is adverse to the public interest or in violation of the Act provided that approval is subject to the conditions ordered.

Accordingly, *It is ordered that:*

Agreement CAB 27167 be approved, provided that (a) approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publications; (b) tariff filings shall be marked to become effective on not less than 60 days' notice from the date of filing; and (c) where a specific commodity rate is published for a specified minimum weight at a level lower than the general commodity rate applicable for such weight, and where a general commodity rate is published for a greater minimum weight at a level lower than such specific commodity rate, the specific commodity rate shall be extended to all such greater minimum weights at the applicable general commodity rate level.

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 ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board unless within such period a petition for review is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

JAMES L. DEEGAN,
Chief, Passenger and Cargo Rates Division, Bureau of Pricing and Domestic Aviation.

[FR Doc. 78-7200 Filed 3-16-78; 8:45 am]

[6320-01]

TARIFF FILING AUTHORITY PICK-UP AND DELIVERY ZONE

Notice of Application

MARCH 13, 1978.

In accordance with Part 222 (14 CFR Part 222) of the Board's Economic Regulations (effective June 12, 1964), notice is hereby given that the Civil Aeronautics Board has received an application, Docket 32237, from Emery Air Freight Corp., Wilton, Conn. 06897, for authority to provide pick-up and delivery service between Orlando, Fla. and Daytona Beach Shores, Port Orange, South Daytona, Holly Hill, Ormond Beach, and Edgewater, Fla.

Under the provisions of § 222.3(c) of Part 222, interested persons may file an answer in opposition to or in support of this application on or before April 3, 1978. An executed original and nineteen copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and include such economic data and facts as are relied upon, and shall be served upon the applicant and state the date of such service.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-7201 Filed 3-16-78; 8:45 am]

[3510-24]

DEPARTMENT OF COMMERCE

Economic Development Administration

FAIRHAVEN CORP., AND MICROSTAR, INC.

Petitions for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions were accepted for filing from two firms: (1) Fairhaven Corp., P.O. Box G-830, 358 Belleville Avenue, New Bedford, Mass. 02742, a producer of handbags and purses (accepted March 8, 1978); and (2) Microstar, Inc., 1290 Motor Parkway, Hauppauge, N.Y. 11787, a producer of digital watches (accepted March 9, 1978). The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the U.S. Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

CHARLES L. SMITH,
Acting Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc. 78-7143 Filed 3-16-78; 8:45 am]

[3510-22]

National Oceanic and Atmospheric Administration

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Meeting

The New England Fishery Management Council, established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet April 19-20, 1978 at the Holiday Inn, Junction of Routes 1 and 128, Peabody, Mass. The meeting starts at 10 a.m. and will adjourn at approximately 5 p.m. April 19, and 9 a.m. to approximately 5 p.m. on April 20.

PROPOSED AGENDA

(1) Groundfish Management Plan—amendments; (2) Herring Management Plan; (3) Ocean Perch Management Plan; and (4) Other Business.

Meeting is open to the public. For more information on seating, changes to the agenda, or written comments, contact Spencer Apollonio, Executive Director, New England Fishery Management Council, Peabody Office Building, One Newbury Street, Peabody, Mass. 01960, telephone 617-535-5450.

Dated: March 14, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-7139 Filed 3-16-78; 8:45 am]

[3510-22]

NEW ENGLAND FISHERY MANAGEMENT COUNCIL'S SCIENTIFIC AND STATISTICAL COMMITTEE

Public Meeting

A meeting of the Scientific and Statistical Committee of the New England Fishery Management Council, established under section 302(g) of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will be held on April 12, 1978 at the University of Rhode Island, Faculty Center, Upper College Road, Kingston, R.I., from 9:30 a.m. to approximately 4:30 p.m.

The meeting may be extended or shortened depending on progress on the agenda.

PROPOSED AGENDA

(1) Multi-species management; (2) Objectives and data needs for ocean perch management; (3) Review of results of survey of Mid-Atlantic Scallop fishery; and (4) Other Business.

The meeting is open to the public. For more information on seating, changes to the agenda, and/or written comments, contact Spencer Apollonio, Executive Director, New England Fishery Management Council, Peabody Office Building, One Newbury Street, Peabody, Mass. 01960 telephone 617-535-5450.

Dated: March 14, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-7138 Filed 3-16-78; 8:45 am]

[3510-22]

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

Public Meeting

The South Atlantic Fishery Management Council, established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet April 25-27, 1978 at Hilton Inn, 101 South Adams Street, Tallahassee, Fla. 32302. The meeting starts at 1:30 p.m. on April 25 and will adjourn at about noon on April 27.

PROPOSED AGENDA

(1) Snapper-Grouper Fishery Management Plan; (2) Billfish Fishery Management Plan; (3) King and Spanish Mackerel Fishery Management Plan; and (4) Other management business.

Meeting is open to the public. For more information on seating, changes to the agenda, or written comments, contact Ernest D. Premetz, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, S.C. 29407, telephone 803-571-4366.

Dated: March 14, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-7140 Filed 3-16-78; 8:45 am]

[3510-22]

COD FISHING

Closing of the Commercial By-Catch Fishery for Cod in the Gulf of Maine

Notice is hereby given pursuant to 50 CFR 651.8(a)(3) (See FEDERAL REG-

ISTER, December 30, 1977, page 65187) that the Assistant Administrator for Fisheries has determined from statistics maintained by the National Marine Fisheries Service that the total quarterly allocation of cod for the commercial fishery in the Gulf of Maine has been taken.

The directed fishery for cod had been closed effective March 1, 1978 (FEDERAL REGISTER, March 1, 1978, page 8282) when 50 percent of the quarterly allocation was reached.

I hereby announce that the season for taking cod by commercial fishing vessels in the Gulf of Maine for the period January 1, 1978 to March 31, 1978 by persons subject to the jurisdiction of the United States shall terminate at 2400 hours, March 19, 1978. This restriction shall remain in effect until 2400 hours, March 31, 1978.

(1) The crew of any commercial fishing vessel must sort its catch and return any cod caught in the FCZ to the sea immediately, with a minimum of injury, regardless of its condition;

(2) It shall be unlawful to land cod caught in the FCZ; and

(3) It shall be a rebuttable presumption that any cod found on board a vessel was caught and retained in violation of 50 CFR Part 651.

Issued at Washington, D.C., and dated March 14, 1978.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc. 78-7212 Filed 3-16-78; 8:45 am]

[3510-22]

COD FISHING

Closing of the Commercial By-Catch Fishery for Cod in Areas Other Than Gulf of Maine

Notice is hereby given pursuant to 50 CFR 651.8(a)(3) (see FEDERAL REGISTER, December 30, 1977, page 65187) that the Assistant Administrator for Fisheries has determined from statistics maintained by the National Marine Fisheries Service that the total quarterly allocation of cod for the commercial fishery in areas other than the Gulf of Maine has been taken.

The directed fishery for cod had been closed effective March 1, 1978 (FEDERAL REGISTER, March 1, 1978, page 8282) when 50 percent of the quarterly allocation was reached.

I hereby announce that the season for taking cod by commercial fishing vessels in areas other than the Gulf of Maine for the period January 1, 1978, to March 31, 1978, by persons subject to the jurisdiction of the United States shall terminate at 2400 hours, March 19, 1978. This restriction shall remain in effect until 2400 hours, March 31, 1978.

(1) The crew of any commercial fishing vessel must sort its catch and return any cod cought in the FCZ to the sea immediately, with a minimum of injury, regardless of its condition;

(2) It shall be unlawful to land cod caught in the FCZ; and

(3) It shall be a rebuttable presumption that any cod found on board a vessel was caught and retained in violation of 50 CFR Part 651.

Issued at Washington, D.C., and dated March 14, 1978.

WINFRED H. MEIBOHM,
Associate Director, National
Marine Fisheries Service.

[FR Doc. 78-7211 Filed 3-16-78; 8:45 am]

[3510-22]

HADDOCK FISHING

Closing of the by-Catch Fishery for Haddock

Notice is hereby given pursuant to 50 CFR 651.8(a)(3) (See FEDERAL REGISTER, December 30, 1977, page 65187) that the Assistant Administrator for Fisheries has determined from statistics maintained by the National Marine Fisheries Service that the total quarterly allocation of haddock in the FCZ has been taken.

I hereby announce that the season for taking haddock in the FCZ for the period January 1, 1978 to March 31, 1978 by persons subject to the jurisdiction of the United States shall terminate at 2400 hours, March 19, 1978. This restriction shall remain in effect until 2400 hours, March 31, 1978.

(1) The crew of any commercial fishing vessel must sort its catch and return any haddock caught in the FCZ to the sea immediately, with a minimum of injury, regardless of its condition;

(2) Recreational fishermen must return any haddock caught in the FCZ to the sea immediately, with a minimum of injury, regardless of its condition;

(3) It shall be unlawful to land haddock caught in the FCZ; and

(4) It shall be a rebuttable presumption that any haddock found on board a vessel was caught and retained in violation of 50 CFR Part 651.

Issued at Washington, D.C., and dated March 14, 1978.

WINFRED H. MEIBOHM,
Associate Director, National
Marine Fisheries Service.

[FR Doc. 78-7210 Filed 3-16-78; 8:45 am]

[6820-33]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1978

Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1978 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: March 17, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: On January 6, 1978 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (43 FR 1117) of proposed addition to Procurement List 1978, November 14, 1977 (42 FR 59015).

After consideration of the relevant matter presented, the Committee has determined that the services listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48(c), 85 Stat. 77.

Accordingly, the following service is hereby added to Procurement List 1978:

SIC 7349—Janitorial Services (SH), Human Resources Spaces only, of Building 119, Ault Field, Naval Air Station, Whidbey Island, Washington.

E. R. ALLEY, Jr.,
Acting Executive Director.

[FR Doc. 78-7153 Filed 3-16-78; 8:45 am]

[6820-33]

PROCUREMENT LIST 1978

Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to Procurement List 1978 a service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 19, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely

Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following service to Procurement List 1978, November 14, 1977 (42 FR 59015):

SIC 7349—Janitorial Services, U.S. Department of Energy, Morgantown Energy Research Center, Morgantown, W. Va.

E. R. ALLEY, Jr.,
Acting Executive Director.

[FR Doc. 78-7154 Filed 3-16-78; 8:45 am]

[6820-33]

PROCUREMENT LIST 1978

Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Deletions from Procurement List.

SUMMARY: This action deletes from Procurement List 1978 services provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: March 17, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: On January 20, 1978 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (43 FR 2916) of proposed deletion from Procurement List 1978, November 14, 1977 (42 FR 59015).

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48(c), 85 Stat. 77.

Accordingly, the following services are hereby deleted from Procurement List 1978:

SIC 7349—Janitorial/Custodial (SH), National Marine Fisheries Complex, 2725 Montlake Boulevard, East, Seattle, Wash., for the West, Central, East, and Pilot Plant Buildings; and the Behavior Laboratory.

SIC 7641—Furniture Rehabilitation (SH), Rickenbacker Air Force Base, Columbus, Ohio; Wright-Patterson Air Force Base, Dayton, Ohio.

E. R. ALLEY, Jr.,
Acting Executive Director.

[FR Doc. 78-7155 Filed 3-16-78; 8:45 am]

[3810-70]

DEPARTMENT OF DEFENSE

Office of the Secretary

DEFENSE ADVISORY COMMITTEE ON WOMEN IN THE SERVICES

Meeting

Pursuant to Public Law 92-463 notice is hereby given that the next meeting of the Defense Advisory Committee on Women in the Services (DACOWITS) will be held April 16 to April 19, 1978, in Washington D.C., at the Washington Hotel, 15th and Pennsylvania Avenue NW.

Authorized not more than 50 U. S. citizens as members, DACOWITS meets twice a year to provide the Department of Defense with assistance and advice on matters relating to women in the Armed Forces, to interpret to the public the role of and the need for servicewomen and to encourage the acceptance of military service as a career opportunity.

Sessions will be conducted daily as indicated and will be open to the public. The agenda will include the following meetings and discussions:

SUNDAY, APRIL 16, 1978—THE WASHINGTON HOTEL

1:30 p.m. to 3:00 p.m.—Briefing for new members.

3:30 p.m. to 4:30 p.m.—Executive Committee Meeting.

MONDAY, APRIL 17, 1978—THE WASHINGTON HOTEL

9:00 a.m. to 9:30 a.m.—OSD Briefing.

9:30 a.m. to 10:15 a.m.—U. S. Marine Corps Briefing.

10:30 a.m. to 12:00 Noon—OSD Briefings continue.

1:30 p.m. to 2:30 p.m.—U. S. Navy Briefing.

2:30 p.m. to 5:30 p.m.—Subcommittee Meetings.

6:00 p.m. to 7:00 p.m.—Executive Committee Meeting.

TUESDAY, APRIL 18, 1978—THE WASHINGTON HOTEL

8:30 a.m. to 11:30 a.m.—Subcommittee Meetings continue.

1:00 p.m. to 2:00 p.m.—Enroute to The Basic School, Marine Corps Base, Quantico, Virginia.

2:15 p.m. to 3:00 p.m.—Command Briefing on The Basic School.

3:00 p.m. to 3:15 p.m.—Field Problem Briefing.

3:15 p.m. to 4:00 p.m.—Tour of Base Facilities.

4:00 p.m. to 4:15 p.m.—Travel to Demonstration Area.

4:15 p.m. to 5:30 p.m.—Observe students receiving field problem orders and rehearsing problem.

5:30 p.m. to 6:30 p.m.—Meal in the field, with Marine Escort Officers.

6:30 p.m. to 8:00 p.m.—Observe field problem.

WEDNESDAY, APRIL 19, 1978—THE WASHINGTON HOTEL.

8:00 a.m. to 9:00 a.m.—Executive Committee Meeting.

9:00 a.m. to 10:00 a.m.—Presentations by members of the public.

10:00 a.m. to 10:45 a.m.—U. S. Coast Guard Briefing.

10:45 a.m. to 12:45 p.m.—General Session.

Members of the public will not be permitted to go on the field trip or attend the social functions.

The following rules and regulations will govern the participation by members of the public at this meeting:

(1) All business sessions, to include Executive Committee sessions will be open to the public.

(2) Interested persons may submit a written statement and/or make an oral presentation for consideration by the Committee during the meeting.

(3) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the DACOWITS Executive Secretary, OASD (Manpower, Reserve Affairs and Logistics), Room 3D324, the Pentagon, Washington, D.C. 20301 by April 3, 1978.

(4) Length and number of oral presentations to be made will depend on the number of requests received from the members of the public.

(5) Oral presentations by members of the public will be permitted only from 9:00 a.m. to 10:00 a.m. on Wednesday, 19 April 1978, before the full Committee.

(6) Each person desiring to make an oral presentation or submit a written statement must provide the DACOWITS Secretariat with 40 copies of the presentation/statement by 3 April 1978.

(7) Persons submitting a written statement only for inclusion in the minutes of the meeting must submit one (1) copy either before or during the meeting or within five (5) days after the close of the meeting.

(8) Members of the public will not be permitted to enter into the oral discussion conducted by the committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by members of the Committee.

(9) Members of the public will be permitted to orally question the scheduled speakers if time allows after the official participants have asked questions and/or made comments.

(10) Questions from the public will not be accepted during the subcommittee sessions, the executive committee sessions, or the final general session on Wednesday, April 19, 1978.

Additional information regarding the Committee and/or this meeting may be obtained by contacting the DACOWITS Executive Secretary, OASD (MRA&L), The Pentagon, Washington, D.C. 20301, telephone 202-OXford 7-5656.

MAURICE W. ROCHE,
Director, Correspondence & Directives, Washington Headquarters Services, Department of Defense.

MARCH 14, 1978.

[FR Doc. 78-7158 Filed 3-16-78; 8:45 am]

[3810-70]

DOD ADVISORY GROUP ON ELECTRON DEVICES

Advisory Committee Meeting

Working Group B (Mainly Low Power Devices) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session at 201 Varick Street, New York, N.Y., on 4 April 1978.

The purpose of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with tactical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The low power device area includes such programs as intergrated circuits, charge coupled devices and memories. The review will include details of classified program details throughout.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Advisory Group 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.

Dated: March 14, 1978.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 78-7165 Filed 3-16-78; 8:45 am]

[6360-01]

DELAWARE RIVER BASIN COMMISSION

PUBLIC HEARING

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, March 22, 1978, commencing at 2 p.m. The hearing will be a part of the Commission's regular March business meeting which is open to the public. Both the hearing and the meeting will be held in the Benjamin West "A" Room of the Holiday Inn, 1800 Market Street in Philadelphia, Pa. The subject of the hearing will be application for approval of the following projects as amendments to the Comprehensive Plan pursuant to Article 11 of the Compact and/or as project approvals pursuant to Section 3.8 of the Compact.

1. *Garden State Water Co. (D-77-61 CP).* A well water supply project to augment public water supplies in the town of Phillipsburg and portions of Lopatcong and Pohatcong Townships, Warren County, N.J. Designated as Cline Farm Well No. 4, the new facility is expected to yield about 500,000 gallons per day.
2. *Jackson Township Municipal Utilities Authority (D-77-65 CP).* A project to increase withdrawal from an existing well serving the Great Adventure Amusement Park in Jackson Township, Ocean County, N.J. Designated as Well No. 7, yield of the facility will be incresed from a maximum limit of 9 million gallons per month to 12.1 million gallons per month.
3. *Medford Water Co. (D-77-75 CP).* A well water supply project to increase the withdrawals from public water supplies in Medford Township, Burlington County, N.J. Two existing wells will be utilized to provide a combined yield of 1.8 million gallons per day.
4. *Borough of Ambler (D-77-92 CP).* A well water supply project to augment public water supplies in the Borough's service area. Designated as Well No. 12, the new facility is expected to yield 216,000 gallons per day and is located in Lower Gwynedd Township, Montgomery County, Pa.
5. *Flying Hills Water Co. (D-77-94 CP).* A well water supply project to provide water service at the Flying Hills housing development in Cumru Township, Berks County, Pa. A new well No. 2 and a modified well No. 1 will be utilized to provide a combined yield of approximately 500,000 gallons per day.
6. *Borough of West Grove (D-77-96 CP).* A well water supply project to augment public water supplies in the Borough of West Grove and portions of London Grove Township, Chester County, Pa. Designated as Well No. 7, the new facility is expected to yield 360,000 gallons per day.
7. *Gloucester Township Municipal Utilities Authority (D-77-108 CP).* Expansion and upgrading of existing sewerage facilities in Gloucester Township, Camden County, N.J. Interim treatment facilities will be used pending the availability of regional sewerage service by Camden County. The project will provide a new treatment plant with a capacity of 2 million gallons per day. About 96 percent of BOD_5 and suspended solids will be removed from the sewage flow at both the new facility and the existing treatment plant. Treated effluent will discharge to the North Branch Big Timber Creek.
8. *Matamoras Municipal Authority (D-78-13 CP).* A well water supply project to augment public water supplies in the Borough of Matamoras, Pike County, Pa. Designated as Well No. 7, the new facility is expected to yield 200,000 gallons per day.
9. *Maidencreek Township Authority (D-78-14 CP).* A sewage collection and treatment project in the Authority's service area of Maidencreek and Ontelaunee Townships, Berks County, Pa. Approximately 95 percent of BOD_5 will be removed from a wastewater flow of 450,000 gallons per day. Treated effluent will discharge to Willow Creek, a tributary of the Schuylkill River.
10. *Purelaad Water Co. (D-78-17 CP).* A well water supply project to provide public water supplies in the Beckett residential development and Pureland industrial complex in Logan Township, Gloucester County, N.J. Approval is sought for wells designated 1 and 2 having a capacity of 290,000 gallons per day and 2 million gallons per day, respectively.
11. *J. T. Baker Chemical Co. (D-76-50-rev.).* Modification of the company's industrial waste discharge at its facility in Phillipsburg, Warren County, N.J. The effluent limitation for total dissolved solids is proposed to be set at 1,400 milligrams per liter measured over a 24-hour average. Wastewater flow of 2.7 million gallons per day will discharge to the Delaware River.
12. *Cranberry Hill Corp. (D-77-12).* A well water supply project and interim sewage treaatment plant to serve a real estate development project known as Penn Estates in Stroud Township, Monroe County, Pa. When fully developed the project will require approximately 422,000 gallons per day of groundwater and sewage will be treated in an interim plant prior to discharge into an unnamed tributary of Brodhead Creek.
13. *Robert I. Hallock (D-77-91).* A farm well at the subject farm in Plumsted Township, Ocean County, N.J. To be used for vegetable irrigation, the new facility is expected to yield 288,000 gallons per day.
14. *Getty Refining & Marketing Co. (D-78-2).* A flue gas desulfurization project at the company's refining facility in Delaware City, New Castle County, Del. The facilities will be installed at the Delmarva Power and Light Co.'s generating facilities associated with the applicant's refinery. Approximately 16 million gallons per day of water will be used to remove sulfur from the flue gas. Wastewater will discharge to the Delaware River.
15. *NVF Company (D-79-4).* An industrial waste treatment project to upgrade the treatment of waste at the company's paper and fiber mill in Yorklyn, New Castle County, Del. Approximately 87 percent of BOD_5 and 94 percent of suspended solids will be removed from wastewater flow of 800,000 gallons per day. Treated effluent will discharge to Red Clay Creek.

16. *Papen Farms, Inc. (D-78-11).* A well water supply project at the subject farms in Dover, Kent County, Del. A new well will provide about 1 million gallons per day for use as supplemental irrigation on vegetable crops during the growing season.
17. *John F. Walton (D-78-12).* A well water supply project at the T/A Star Farms in Magnolia, Kent County, Del. A new well is expected to yield about 1 million gallons per day which will be used for supplemental irrigation on vegetable crops during the growing season.

Documents relating to the above-listed projects may be examined at the Commission's offices. Persons wishing to testify at this hearing are requested to notify the Secretary prior to the date of the hearing.

W. BRINTON WHITALL,
Secretary.

MARCH 10, 1978.

[FR Doc. 78-7146 Filed 3-16-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

SOUTHERN CALIFORNIA GAS CO.

Gas Utility Use of Propane; Request for Comment

AGENCY: Economic Regulatory Administration.

ACTION: Notice of request for comment.

SUMMARY: On May 21, 1976, the Southern California Gas Co. (SoCal) petitioned the Federal Energy Administration (FEA) for a waiver of the limitations imposed by the Mandatory Petroleum Allocation Regulations on gas utility use of propane. This notice requests public comments to assist the Economic Regulatory Administration (ERA) in evaluating SoCal's pending petition under ERA's guidelines for the allocation of propane and other NGL's for gas utility and gas transmission company use.

DATE: Written comments to be submitted by April 17, 1978.

ADDRESS: Comments should be submitted to: Bruce D. Starnes, Economic Regulatory Administration, Office of Fuel Allocation, Room 6318, 2000 M Street NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Deanna Williams (DOE, Freedom of Information Reading Room), 12th and Pennsylvania Avenue NW., Room 2107, Washington, D.C. 20461, 202-566-9161.

Bruce D. Starnes (Economic Regulatory Administration, Office of Fuel Allocation), 2000 M Street NW., Room 6318, Washington, D.C. 20461, 202-254-6030.

SUPPLEMENTARY INFORMATION:

SoCal, a subsidiary of the Pacific Lighting Corp., proposes to use non-Canadian imported propane to supplement its natural gas sendout stream until such time as it can obtain sufficient Alaskan natural gas, imported liquefied natural gas (LNG), or other supplies of gas. The propane would be imported and supplied to SoCal by Petrolane, Inc., which has marine import and storage facilities in the Los Angeles Harbor area. In order to use the propane, SoCal would construct a propane-air-natural gas mixing plant and three connecting pipelines in the Wilmington area of the city of Los Angeles, in close proximity to Petrolane's facilities. The plant could be operational approximately one year after receipt of all necessary governmental approvals, and would continue to operate for a period of five years thereafter.

SoCal anticipates the purchase of 13,500 barrels of imported propane per day from Petrolane, and has applied to ERA for waiver of the use limitations to permit the purchase and use of that volume of product. On an annual basis, the amount requested by SoCal would total approximately 4,927,500 barrels (206,955,000 gallons) of propane. SoCal also has requested that ERA consider its application concurrently a petition for authority to receive whatever small quantities of butane might be mixed with the propane, the total amount of propane and butane, however, not to exceed 13,500 barrels per day.

On October 1, 1977, pursuant to the Department of Energy Organization Act, Pub. L. 95-91, and Executive Order 12009 (42 FR 46267, September 15, 1977), the Department of Energy (DOE) was established and the Secretary of Energy assumed the functions of the FEA. The Administrator of the Economic Regulatory Administration (ERA) was delegated by the Secretary of Energy in Delegation Order 0204-4, the authority to administer the regulations promulgated under § 4(a) of the Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended. ERA's guidelines for the allocation of propane and other NGL's for gas utility use and gas transmission company use (42 FR 38553, July 29, 1977) appear at 10 CFR Part 211, Appendix to Subpart D.

Comment procedure: A file containing all information and data filed in conjunction with SoCal's petition, other than confidential information which ERA has determined to be exempt from the disclosure requirements of 5 U.S.C. 522, is available for public inspection and copying at the DOE Freedom of Information Reading Room, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. An environmental assessment, as announced at 43 FR 10434, March 13, 1978, is available separately.

Written comments regarding SoCal's petition will be accepted and considered if filed by 4:30 p.m. on April 17, 1978. Any person submitting written comments with respect to the SoCal petition should submit ten (10) copies to ERA and should comply with the requirements of the ERA procedural regulations set forth at 10 CFR 205.9 et seq. Comments should be submitted to the Office of Fuel Allocation, ERA, Room 6318, 2000 M Street NW., Washington, D.C. 20461, Attention: Mr. Bruce D. Starnes. Comments should be identified on the outside of the envelope and on documents submitted to ERA with the designation "Gas utility use of propane by SoCal".

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, in one copy only, in accordance with procedures set forth in 10 CFR 205.9(f). Any material not accompanied by a statement of confidentiality will be considered to be non-confidential. The Economic Regulatory Administration reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

Issued in Washington, D.C., March 14, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation Economic Regulatory Administration.

[FR Doc. 78-7237 Filed 3-16-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket No. RP72-157 (PGA Nos. 78-5 and 78-5a)]

CONSOLIDATED GAS SUPPLY CORP.

Proposed Changes in FERC Gas Tariff

MARCH 10, 1978.

Take notice that Consolidated Gas Supply Corp. (Consolidated) on February 28, 1978, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, pursuant to its PGA Clause and Commission order of January 27, 1978, in Consolidated's Docket No. RP72-157 (PGA Nos. 78-5 and 78-5a). The proposed rate increase, to be effective February 1, 1978, would generate approximately $9.0 million annually in jurisdictional revenues.

Consolidated states that the PGA filing resulted from rate changes filed

by Texas Eastern Transmission Corp. and Texas Gas Transmission Corp. for effectiveness February 1, 1978. Additionally Consolidated has included a rate change from Transcontinental Gas Pipe Line Corp. approved for effectiveness January 1, 1978.

Substitute Alternate Twenty-Ninth Revised Sheet Nos. 8 and 9, filed in lieu of Alternate Twenty-Ninth Revised Sheet Nos. 8 and 9, reflect the currently effective base rates. Consolidated has also included in its filing, Substitute Twenty-Ninth Revised Sheet Nos. 8 and 9 which reflect the Stipulation and Agreement filed November 28, 1977 upon which no action has yet been taken.

Consolidated requests a waiver of any of the Commission's Rules and Regulations as may be deemed necessary by the Commission.

Copies of this filing were served upon Consolidated's jurisdictional customers, as well as interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory 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 March 21, 1978. 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. 78-7107 Filed 3-16-78; 8:45 am]

[6740-02]

[Docket No. RP72-157]

CONSOLIDATED GAS SUPPLY CORP.

Proposed Changes in FERC Gas Tariff

MARCH 10, 1978.

Take notice that Consolidated Gas Supply Corp. (Consolidated) on February 28, 1978, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, pursuant to its PGA Clause. The proposed rate increase, to be effective March 1, 1978, would generate approximately $0.6 million annually in jurisdictional revenues.

Consolidated states that the PGA filing resulted from rate changes filed by Texas Eastern Transmission Corp. and Transcontinental Gas Pipe Line Corp. both for effectiveness March 1, 1978.

Alternate Thirtieth Revised Sheet Nos. 8 and 9 reflect the currently effective base rates. Consolidated has also included in its filing, Thirtieth Revised Sheet Nos. 8 and 9 which reflect the Stipulation and Agreement filed November 28, 1977 upon which no action has yet been taken.

Consolidated requests a waiver of any of the Commission's Rules and Regulations as may be deemed necessary by the Commission.

Copies of this filing were served upon Consolidated's jurisdictional customers, as well as interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory 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 March 21, 1978. 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. 78-7106 Filed 3-16-78; 8:45 am]

[6740-02]

[Docket No. CP76-525]

EL PASO NATURAL GAS CO.

Petition To Amend

MARCH 9, 1978.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Public Law 95-91, 91 Stat. 565 (August 4, 1977) and Executive order no. 12009, 42 Fed. Reg. 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977.

The "savings provisions" of Section 705(b) of the DOE Act provide that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of these proceedings were specifically transferred to the FERC by Section 402(a)(1) of the DOE Act.

The joint regulation adopted on October 1, 1977, by the Secretary and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC," 10 CFR —, provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

Take notice that on March 1, 1978, El Paso Natural Gas Co. (Petitioner), P.O. Box 1492, El Paso, Tex. 79978, filed in Docket No. CP76-525 a petition to amend the order of December 15, 1976 (56 FPC —), issued by the Federal Power Commission (FPC) in the instant docket pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(g) of the regulations thereunder (18 CFR 157.7(g)) so as to provide for waiver of the single project cost limitation with respect to the removal and relocation of a certain compressor unit under the budget-type authorization in the instant docket, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection

It is indicated that pursuant to the FPC order of December 15, 1976, in the instant docket, Petitioner was granted budget-type authorization, inter alia, to abandon, remove, construct and relocate, during the calendar year 1977, and operate field compression facilities in connection with the operation of its interstate pipeline system. It is stated that the aggregate cost of all facilities installed by Petitioner during the authorized period is limited to $3,000,000 with an out-of-pocket single project cost limitation of $500,000.

Petitioner indicates that among the field compressor facilities that it relocated pursuant to the subject budget-type authorization was one 1,068 horsepower Solar T-1000 gas turbine-driven centrifugal compressor unit with appurtenances, which unit was removed from Petitioner's Waha Plant located in Reeves County, Tex., and relocated at the Hobart Ranch compressor station site located in Hemphill County, Tex. Applicant states that the 1,068 horsepower Solar T-1000 gas turbine unit, prior to its relocation, was utilized at Petitioner's Waha Plant to compress gas gathered in the Worsham-Bayer Field area and purchased by Petitioner from Mobil Oil Corp. (Mobil), under Mobil's FERC Gas Rate Schedule No. 377, comprised of a gas purchase agreement dated June 14, 1965, as amended, authorized by the Commission in Docket No. CI65-1355. However, due to rerouting

of the Worsham-Bayer Field gas to Mobil's Waha Plant in 1975, the subject unit was no longer required at Petitioner's Waha Plant, it is indicated.

The petition states that Petitioner had originally estimated the cost of removal and relocation of said compressor unit at $424,000; however, due to unexpected cost overruns associated with increased labor costs resulting from the time lost due to inclement weather, delays in receipt of necessary material, and Petitioner's need for expedited installation of such compressor unit, Petitioner's final removal and relocation cost exceeded the single project cost limitation of $500,000 by some 6 percent or $33,609, as of December 31, 1977.

Consequently, Petitioner requests waiver of the $500,000 single project out-of-pocket cost limitation as to the removal and relocation of said compressor unit under the authorization granted in the instant docket. Petitioner states that the total actual cost of removal and relocation of said compressor unit, when taken together with the costs for other budget-type construction during the calendar year 1977 pursuant to the authorization issued in the instant docket, does not exceed the total authorized dollar limitation of $3,000,000.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 31, 1978, file with the Federal Energy Regulatory 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-7102 Filed 3-16-78; 8:45 am]

[6740-02]

[Docket No. RP72-6]

EL PASO NATURAL GAS CO.

Tariff Filing

MARCH 10, 1978.

Take notice that on February 28, 1978, El Paso Natural Gas Co. (El Paso), P.O. Box 1492, El Paso, Tex. 79978, filed in Docket No. RP 72-6 pursuant to Section 4 of the Natural Gas Act certain tariff sheets to its FERC Gas Tariff, Original Volume No. 1, Third Revised Volume No. 2 and Original Volume No. 2A. Such sheets, Identified in the appendix attached hereto, contain proposed modifications to El Paso's curtailment plan allowing flexibility in the plan's operation to accommodate aberrations in daily scheduling and/or deliveries due to human error or mechanical failure, all as more fully set forth in the tariff filing on file with the Commission and open to public inspection.

El Paso states that, in accordance with the provisions of the Commission's order issued June 1, 1977, in the captioned proceeding, El Paso implemented its revised interim curtailment plan on July 1, 1977, subject to further modification as may be ordered by the Commission upon completion of the hearings now pending at Docket No. RP72-6. El Paso further states that in its implementation of the revised interim curtailment plan, it has been made aware that the currently effective curtailment provisions of its FERC Gas Tariff fail to take into account the possibility that mechanical failures or human errors may cause a customer either to schedule more or less gas than it actually requires on a particular day and thereby to unnecessarily incur daily overrun penalties when it receives gas which it could have otherwise taken without penalty had it scheduled correctly, or to receive more or less gas than it was otherwise entitled to receive.

El Paso states that the changes proposed by the instant tender are intended to modify the curtailment procedures and daily unauthorized overrun gas sections of El Paso's revised interim curtailment plan as presently contained in its Original Volume Nos. 1 and 2A and Third Revised Volume No. 2 Tariff, in order to:

(i) Include provisions for the make-up of gas volumes, through adjustments to subsequent daily entitlements, to El Paso's customers who, due to reasons of mechanical failure or human error, fail to receive their full entitlement on any day or series of days;

(ii) Permit waiver of daily unauthorized overrun penalties as to quantities of gas which, but for a mechanical failure or human error in scheduling, a customer could have received without penalty; and

(iii) Permit El Paso's customers to restore to El Paso, by means of scheduled reductions in daily entitlements, those quantities of daily unauthorized overrun gas taken in any month, as a result of mechanical failure or human error, resulting in other than scheduling error, in lieu of the payment of daily unauthorized overrun penalties.

In addition, such sheets are intended to clarify the availability of the waiver of daily unauthorized overrun penalty payments [1] in order to more precisely indicate that the waiver is available on days when El Paso is curtailing Priority 2 deliveries to its California customers, but is able to maintain full service to its East-of-California customers through Storage withdrawals and other similar load equation efforts. Such sheets are also designed to revise the seasonal unauthorized overrun gas provision [2] of El Paso's Tarriff so as to make clear that all daily unauthorized overrun penalties accrued during a seasonal period (whether or not all of such penalties have been actually paid prior to El Paso's billing for the last month of such season) shall be allowed as credit against seasonal unauthorized overrun penalties imposed against that customer for that season. Lastly, such sheets delete the provisions designed to forego collection of the daily overrun penalty payments set forth in El Paso's tariff tender of September 29, 1977, and made effective on July 1, 1977, by the Commission's order of November 1, 1977, inasmuch as such provision was of a limited term nature and is no longer applicable under El Paso's revised interim curtailment plan.

El Paso requests pursuant to Section 154.51 of the Commission's Regulations, that the Commission grant waiver of the notice requirements of Section 154.22 of said regulations and accept the tendered tariff sheets for filing and permit them to become effective as of July 1, 1977. El Paso further states that such effective date will permit El Paso and its customers to make any adjustments, as may be necessary, for any mechanical failures or human errors which may have occurred since the implementation of the revised interim curtailment plan on July 1, 1977.

El Paso states that copies of the filing have been served upon all parties of record in Docket No. RP72-6 and, otherwise, upon all of El Paso's interstate transmission system customers and all interested State regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said tariff tender should, on or before March 17, 1978, file with the Federal Energy Regulatory 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 any protestants parties to the proceeding. Any person wishing to become a party to the proceeding or

[1] Section 20.1(c) of El Paso's Original Volume No. 1 tariff, and Section 5.1 of its Third Revised Volume No. 2 and Original Volume No. 2A tariff.

[2] Section 20.2 of El Paso's Original Volume No. 1 tariff, and Section 5.2 of its Third Revised Volume No. 2 and Original Volume No. 2A tariff.

to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

APPENDIX

EL PASO NATURAL GAS CO.

The following sheets are included in the instant tender and designed to replace the currently effective counterpart sheets:

TARIFF VOLUME AND SHEET NO.

Original Volume No. 1

Original Sheet No. 63-B.1; Original Sheet No. 63-B.2; Third Revised Sheet No. 63-C; Fourth Revised Sheet No. 67-D; Fourth Revised Sheet No. 67-E; Second Revised Sheet No. 67-F; Original Sheet No. 67-F.1; Original Sheet No. 67-F.2; Original Sheet No. 67-F.3; Original Sheet No. 67-F.4.

Third Revised Volume No. 2

Original Sheet No. 1-L.1; Original Sheet No. 1-L.2; Third Revised Sheet No. 1-M; Second Revised Sheet No. 1-T; Second Revised Sheet No. 1-U; First Revised Sheet No. 1-V; Original Sheet No. 1-W; Original Sheet No. 1-X; Original Sheet No. 1-Y.

Original Volume No. 2A

Original Sheet No. 6-MM.1; Original Sheet No. 6-MM.2; Third Revised Sheet No. 7-MM; Second Revised Sheet No. 14-MM; Second Revised Sheet No. 15-MM; First Revised Sheet No. 16-MM; Original Sheet No. 17-MM; Original Sheet No. 18-MM; Original Sheet No. 19-MM.

[FR Doc. 78-7103 Filed 3-16-78; 8:45 am]

[6740-02]

[Project No. 485]

GEORGIA POWER CO.

Change in Land Rights

MARCH 10, 1978.

Public notice is hereby given that an application was filed December 8, 1977, under the Federal Power Act (16 U.S.C. 791a-825r) by Georgia Power Co. (Correspondence to: Mr. I.S. Mitchell, III, Vice President and Secretary, Georgia Power Co., P.O. Box 4545, Atlanta, Ga. 30302) for approval of a change in land rights at the Bartletts Ferry Project, FERC Project No. 485, located on the Chattahoochee River in Lee and Chambers Counties, Ala., and Harris County, Ga.

Applicant requests Commission approval to convey that right-of-way necessary to enable the Harris County Commission of Roads and Revenues to replace an unsafe highway bridge located within the Bartletts Ferry Project. The new bridge would be situated adjacent to the existing bridge across Mountain Oak Creek, and would have a roadway width of 30 feet, and a length of 225 feet.

Any person desiring to be heard or to make protest with reference to the subject application should, on or before April 24, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426 protests or petitions to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.10 or 1.8 (1977)). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or 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. 78-7108 Filed 3-16-78; 8:45 am]

[6740-02]

[Docket No. RP73-23 (PGA78-3)]

LAWRENCEBURG GAS TRANSMISSION CORP.

Filing of Revised Gas Tariff Sheets

MARCH 10, 1978.

Take notice that on February —, 1978, Lawrenceburg Gas Transmission Corp. (Lawrenceburg) tendered for filing two (2) sets of revised gas tariff sheets. One (1) set comprises two (2) revised gas tariff sheets to its FPC Gas Tariff, First Revised Volume No. 1, both of which are dated as issued on February 24, 1978, proposed to become effective April 1, 1978, and identified as follows:

Thirteenth Revised Sheet No. 4, and Twelfth Revised Sheet No. 18.

Lawrenceburg states that these revised gas tariff sheets are being filed under its purchased gas adjustment provision in order to track an increase in its cost of gas purchased from Texas Gas Transmission Corp. propsed to become effective April 1, 1978. The rates contained thereon track Texas Gas' proposed April 1, 1978, rate increase on top of revised base rates filed by Lawrenceburg at Docket No. RP78-37 and proposed to become effective February 28, 1978. Lawrenceburg has requested a maximum of one (1) day's suspension of its revised base rates.

In the event that the Commission would suspend the effective date of its previously filed revised base rates beyond April 1, 1978, Lawrenceburg has included with its filing one (1) set of alternate tariff sheets also dated as issued on February 24, 1978, proposed to become effective April 1, 1978, and identified as follows:

Thirteenth Revised Sheet No. 4, and Twelfth Revised Sheet No. 18.

The rates contained on these alternate sheets track Texas Gas' proposed April 1, 1978, increase on top of Lawrenceburg's last approved rates effective February 1, 1978. Depending on the Commission's action at Docket No. RP78-37, Lawrenceburg has requested that either the primary or alternate sets of tariff sheets be approved effective April 1, 1978.

The proposed changes contained in this filing would increase revenues from jurisdictional sales by $242,579 based on the 12 months ending January 31, 1978.

Lawrenceburg requests an effective date of April 1, 1978, on its proposed tariff sheets and requests that the Commission waive its notice requirements, as required, in order that its proposed tariff sheets can become effective on that date.

Lawrenceburg states that copies of this filing have been mailed to its two wholesale customers and to the interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory 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 March 24, 1978. Protests wil 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. 78-7109 Filed 3-16-78; 8:45 am]

[6740-02]

[Docket No. CP78-209]

NATIONAL FUEL GAS SUPPLY CORP.

Application

MARCH 8, 1978.

Take notice that on February 28, 1978, National Fuel Gas Supply Corp. (Applicant), 308 Seneca Street, Oil City, Pa. 16301, filed in Docket No. CP78-209 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to render an underground gas storage service for Central Hudson Gas & Electric Corp. (Central Hudson), Connecticut Natural Gas Corp. (CNG), Delmarva Power & Light Co. (Delmarva), Elizabethtown Gas Co. (Elizabethtown), Lowell Gas Co. (Lowell),

Orange and Rockland Utilities, Inc. (O&R) and UGI Corp. (UGI) for the period April 1, 1978, through March 31, 1979, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states the Applicant has rendered one-year limited term storage service to non-affiliated customer utilities in each storage year commencing 1975-76, through the storage year which would end March 31, 1978, in varying amounts not exceeding 6,500,000 Mcf annually. Applicant proposes herein to continue this service for an additional storage year ending March 31, 1979, and in the aggregate amount of 9,131,000 Mcf.

It is stated that in August 1976, Applicant joined with National Gas Storage Corp. (Storage) in requesting authorization in Docket No. CP76-492 necessary for Storage to acquire from Applicant, and to develop and operate, facilities to provide underground gas storage service to nonaffiliated customer utilities on a long-term basis commencing in the storage year 1978-79. Delays have prevented Storage from commencing this long-term service on schedule, it is said. Applicant states that the authorization requested herein would permit it to provide one-year interim service to gas distribution companies in all or part of the quantities in which service through Storage was requested to have been provided in Docket No. CP76-492.

Consequently, Applicant proposes to provide storage for the aforementioned seven customers for the period April 1, 1978 through March 31, 1979. It is stated that the volumes and transporters for each customer are as follows (all volumes in Mcf):

Customer	Transporter	Top storage capacity	Maximum injection per day [1]	Maximum withdrawal per day [1]
Central Hudson	Tennessee Gas Pipeline Co	200,000	1,333	1,333
CNG	Tennessee Gas Pipeline Co.	1,000,000	6,667	6,667
Delmarva	Transcontinental Gas Pipe Line Corp	1,000,000	6,667	6,667
Elizabethtown	Transcontinental Gas Pipe Line Corp	1,500,000	10,000	10,000
Lowell	Tennessee Gas Pipeline Co	2,000,000	13,333	13,333
O & R	Tennessee Gas Pipeline Co. and Columbia Gas Transmission Corp.	1,000,000	6,667	6,667
UGI	Columbia Gas Transmission Corp	2,431,000	16,207	16,207
Total		9,131,000	60,874	60,874

[1] Maximum injection and withdrawal volumes are to be achieved on a best efforts basis; in its sole discretion, Applicant may exceed such volumes upon customer request.

Applicant states that it would charge each customer for the proposed storage service a rate of $0.4077 per Mcf of top storage capacity made available, which amount is said to represent Applicant's cost of service for such service as reflected in a settlement in Docket No. CP75-348 and to have been charged for similar limited term service rendered during the 1976-77 and 1977-78 seasons.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 1978, file with the Federal Energy Regulatory 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 Energy Regulatory 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. 78-7122 Filed 3-16-78; 8:45 am]

[6740-02]

[Project No. 287]

NORTH COUNTIES HYDRO-ELECTRIC CO.

Application for New Major License

MARCH 10, 1978

Public notice is hereby given that an application was filed on December 20, 1972, and revised on September 16, 1977, under the Federal Power Act, 16 U.S.C. §§ 791a-825r, by North Counties Hydro-Electric Co. (Applicant) (Correspondence to: Mrs. Bette Breit O'Keefe, President, North Counties Hydro-Electric Co., 1047 North Kenilworth Avenue, Oak Park, Ill. 60302; and John C. Mason, Esq., Morgan, Lewis and Bockius, 1800 M Street NW., Washington, D.C. 20036) for a new license for Project No. 287 known as the Dayton Project. The project is located on the Fox River in the Village of Dayton, La Salle County, Ill.

The Dayton Project consists of: (1) a dam about 594 feet long and 23 feet high across the Fox River, having a crest elevation of 498.9 feet, U.S.G.S.; (2) a power canal extending along the west side of the Fox River for about 800 feet from the dam to the powerhouse; (3) a powerhouse containing two 1,000-kW generators and one 1,680-kW generator; (4) a 1,600-acre reservoir, 100 to 600 feet wide, extending upstream from the dam for about 5 miles; and (5) appurtenant facilities.

The project reservoir is also used for canoeing, boating, and fishing. The Applicant proposes to make the following improvements for recreational purposes: two paths from the parking area to the river bank will be graveled; vegetation will be cleared at selected areas along the river bank; and portage points will be improved.

The Applicant estimated the net investment in the poroject at $314,977 as of June 30, 1975. The Applicant stated that it paid $7,339 and $7,735 in property taxes to La Salle County in 1974 and 1975, respectively. The Applicant also stated that during good water years the Federal income taxes range from $10,000 to $15,000 and during bad water years the project operates at a loss.

According to the application, all of the energy generated at the project is sold to Illinois Power Co.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (August 4, 1977) and Executive Order No. 12009, 42 FR 46267 (September 15, 1977), the Federal Power Commission ceased to

exist and its functions and regulatory responsibilities were transferred to the Secretary and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 11, 1978, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., 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 (1977). 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 in any hearing therein must file a petition 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. 70-7113 Filed 3-16-78; 8:45 am]

[6740-02]

[Docket No. RP74-100 et al]

NATIONAL FUEL GAS SUPPLY CORP.

Proposed PGA Rate Adjustment

MARCH 10, 1978.

Take notice that on March 7, 1978, National Fuel Gas Supply Corp. (National) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sixteenth Revised Sheet No. 4, proposed to be effective April 1, 1978.

National states that the sole purpose of this revised tariff sheet is to adjust National's rates pursuant to the PGA provisions in section 17 of the General Terms and Conditions. National further states that such tariff sheet reflects an adjustment in National's rates of .28¢ per Mcf on Sixteenth Revised Sheet No. 4.

It is stated that copies of the filing have been mailed to all of its jurisdictional customers and affected State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory 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 and 1.10). All such petitions or protests should be filed on or before March 31, 1978. Protests will be considered by the Commission in determining the appropriate 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. 78-7112 Filed 3-16-78; 8:45 am]

[6740-02]

[Docket No. RP73-8]

NORTH PENN GAS CO.

Notice of Proposed Changes in FERC Gas Tariff

MARCH 10, 1978.

Take notice that North Penn Gas Co. (North Penn) on March 6, 1978, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1, pursuant to its PGA Clause for rates to be effective March 1, 1978.

North Penn states that the change in rates reflected in Fifty-Second Revised Sheet No. PGA-1 reflect an increase of 2.500¢ per Mcf to the rates as submitted for Commission approval on February 9, 1978, in Corrected Substitute Fifty-First Revised Sheet No. PGA-1.

The increase in rates contained in Fifty-Second Revised Sheet No. PGA-1 reflect increases in rates from North Penn's pipeline suppliers, Consolidated Gas Supply Corp. and Transcontinental Gas Pipe Line Corp. for effectiveness March 1, 1978.

North Penn requests waiver of any of the Commission's Rules and Regulations in order to permit the proposed rates to go into effect on March 1, 1978.

Copies of this filing were served upon North Penn's jurisdictional customers, as well as interested State commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 on 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 March 30, 1978. 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. 78-7114 Filed 3-1-78; 8:45 am] 3

[6740-02]

[Docket No. C178-293]

MARATHON OIL CO.

Application for certificate of Public Convenience and Necessity and Petition for Special Relief

MARCH 8, 1978.

Take notice that Marathon Oil Co. (Marathon), 539 South Main street, Findlay, Ohio 45840, filed an application on January 8, 1978 and an amended application on February 8, 1978, in the above captioned docket for a certificate of public convenience and necessity and a petition for special relief pursuant to section 157.23 of Commission's Regulations and section 2.56a of Commission's General Policy and Interpretations.

Specifically, Marathon as operator of the leaseholds proposes to sell and deliver gas from its interest in Blocks 37, 38, 57 and 58, Eugene Island Area, Block 57 Field, offshore Louisiana to United Gas Pipe Line Co. (United), Arkansas Louisiana Gas Co. (Arkla.), and Natural Gas Pipeline Co. of america (Natural). United assigned 50% of its rights and obligations to Southern Natural Gas Co. (Southern Natural). The proposed sales do not involve transportation of gas or pipeline facilities. Amerada Hess Corp. (Amerada Hess), a co-owner of the leases, is not a signatory party to Marathon's contracts.

Marathon seeks a certificate of public convenience and necessity pursuant to section 157.23 for the leases named in this application.

Marathon indicates that production may commence on or about April 1, 1978. Marathon states that the cost to produce its gas reserves is substantially in excess of both the nationwide ceiling rates prescribed in Opinion No. 770-a and their contractually provided base price of $2.25 per Mcf. Therefore, Marathon requests special relief pursuant to section 2.56a(g); it proposes an initial rate of $2.25 per Mcf at 15.025 psia for the gas sold, subject to refund should the Commission find that rate not just and reasonable.

Any person desiring to be heard or to make any protest with reference to said petition should on or before March 31, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hear-

ing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-7104 Filed 3-16-78; 8:45 am]

[6740-02]

[Docket No. CP76-254]

MICHIGAN CONSOLIDATED GAS CO.

Extension of Time

MARCH 10, 1978.

On March 2, 1978, Michigan Consolidated Gas Co. filed a motion to extend the time period within which to comply with Ordering Paragraphs (B) and (C) of the Commission's February 24, 1978 order issued in the above referenced proceeding. The motion states that the grant of this motion will not prejudice any party to the proceeding.

Upon consideration, notice is hereby given that an extension of time is granted to and including April 17, 1978, within which to file tariff sheets and to refund excess rates with interest in compliance with Ordering Paragraphs (B) and (C) of the Commission's February 24, 1978 order. Notice is also given that an extension of time is granted to and including April 27, 1978, within which to furnish reports of refunds and interest in compliance with Ordering Paragraph (C) of the Commission's February 24, 1978 order.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-7110 Filed 3-16-78; 8:45 am]

[6740-02]

[Docket No. ER76-848]

MONTANA POWER CO.

Compliance Filing

MARCH 10, 1978.

Take notice that Montana Power Co. on March 1, 1978, tendered for filing Original Sheet No. 10 of the FPC Electric Tariff M-1, which has been revised to show the addition of Tri-State Generation and Transmission, and a summary of sales made under the Company's FPC Electric Tariff M-1 during January, 1978, along with cost justification for the rate charged, in compliance with the Commission's Order of May 6, 1977, in the above-noted docket.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with 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 March 27, 1978. 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. 78-7111 Filed 3-16-78; 8:45 am]

[6740-02]

[Docket No. ER78-67]

PUBLIC SERVICE CO. OF OKLAHOMA

Extension of Time

MARCH 9, 1978.

On February 6, 1978, Public Service Co. of Oklahoma filed a motion to extend the time for filing appropriate cost support data, set by the Commission's Order issued November 30, 1977 in Docket Nos. ER77-422, ER78-20, and ER78-49.

Upon consideration, notice is hereby given that the date for filing appropriate cost support data is extended to and including April 3, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-7105 Filed 3-16-78; 8:45 am]

[6740-02]

[Docket Nos. CS78-269, et al.]

APPLICATIONS FOR "SMALL PRODUCER" CERTIFICATES [1]

MARCH 8, 1978.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and section 157.40 of the Regulations thereunder for "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 6, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No.	Date Filed	Applicant
CS78-269	2-13-78	MR 77, a California Ltd. partnership, 1006 Russ Bldg., 235 Montgomery, San Francisco, Calif. 94104.
CS78-270	2-13-78	James L. Franks, Suite 455, 101 Park Ave. Bldg., Oklahoma City, Okla. 73102.
CS78-271	2-13-78	O. H. Berry, 515 Midland National Bank Tower, Midland, Tex. 79701.
CS78-272	2-13-78	E. J. Brumage, R.D. No. 2, Waynesburg, Pa. 15370.
CS78-273	2-17-78	Roy L. McKay, P.O. Box 2014, Roswell, N. Mex. 88201.
CS78-274	2-16-78	Quest Oil Co., 444 Denver Club Bldg., Denver, Colo. 80202.
CS78-275	2-16-78	Crabtree Oil & Gas Co., P.O. Drawer 17G T.A., Denver, Colo. 80217.
CS78-276	2-17-78	Diamond H. Oil Co., P.O. Box 599, Sterling City, Tex. 76951.
CS78-277	2-21-78	Adco Producing Co., Inc., 114 Jefferson Davis Blvd., Natchez, Miss. 39120.
CS78-278	2-21-78	Markland Corp. 4835 LBJ, suite 545, Dallas, Tex. 75234.
CS78-279	2-21-78	Smith Eng., Inc. & Lovelace Drug, Inc., Box 428, Pawhuska, Okla. 74056.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date Filed	Applicant
CS78-280	2-21-78	Gale E. Butterfield, d.b.a. Probe Oil Co., P.O. Box 1779, Havre, Mont. 59501.
CS78-281	2-21-78	Wyoming Gas Fuel Corp., 2334 East 3d Ave., Denver, Colo. 80206.
CS78-282	2-22-78	W. D. Moore, 4410 Montrose, Houston, Tex. 77006.
CS78-283	2-22-78	R. H. Hass, 4410 Montrose, Houston, Tex. 77006.
CS78-284	2-22-78	F. B. Lacy, 4410 Montrose, Houston, Tex. 77006.
CS78-285	2-27-78	Richard D. Harrison, North Broadway Plaza, 6401 North Broadway, Oklahoma City, Okla.
CS78-286	2-27-78	Calalta Resources, Inc., Hindry & Meyer, P.C., 2300 First National Bank Bldg., Denver, Colo. 80293.
CS78-287	2-28-78	FAM CO, 1625 Vickers KSB&T Building, Wichita, Kans. 67202.
CS78-288	2-28-78	Retsal Drilling Co., P.O. Box 205, Shreveport, La. 71162.
CS78-289	2-27-78	Robert A. Berliner, Hindry & Meyer, P.C., 2300 First National Bank Bldg., Denver, Colo. 80293.
CS78-291	3-2-78	GRICO, Suite 1625, 125 North Market, Wichita, Kans. 67202.

[FR Doc. 78-7123 Filed 3-16-78; 8:45 am]

[6740-02]

[Docket No. RP72-121, PGA78-1]

SOUTHWEST GAS CORP.

Change in Rates Pursuant to Purchased Gas Cost Adjustment

MARCH 10, 1978.

Take notice that on February 27, 1978, Southwest Gas Corp. ("Southwest") tendered for filing Twenty-Fourth Revised Sheet No. 3A, constituting Original PGA-1 in its FERC Gas Tariff, Original Volume No. 1. According to Southwest, the purpose of this filing is to increase rates of Southwest under its Purchased Gas Adjustment Clause in section 9 of the General Terms and Conditions contained in said tariff, as a result of an increase in rates from its supplier, Northwest Pipeline Corp. ("Northwest"), effective April 1, 1978. The proposed change in rates would increase Southwest's revenues from jurisdictional sales and service by $1,426,133, based on the twelve-month period ending December 31, 1977.

Southwest states that copies of the filing have been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Sierra Pacific Power Co. and the California-Pacific Utilities Co.

Any person desiring to be heard, or to protest said filing, should file a petition to intervene or protest with the Federal Energy Regulatory 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 March 24, 1978. 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. 78-7115 Filed 3-16-78; 8:45 am]

[6740-02]

[Docket No. RP72-155]

TRANSWESTERN PIPELINE CO.

Proposed Changes in FERC Gas Tariff

MARCH 10, 1978.

Take notice that Transwestern Pipeline Co. (Transwestern) on March 2, 1978, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets: Ninth Revised Sheet No. 5; Ninth Revised Sheet No. 6.

These sheets are issued pursuant to Transwestern's Purchased Gas Cost Adjustment provision as set forth in section 19 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. This increase in Transwestern's rates reflects a Cost of Gas Adjustment to track increased purchased gas costs and a Surcharge Adjustment to clear the balance of the Gas Cost Adjustment Account.

The proposed effective date of the above tariff sheets is April 1, 1978.

Copies of the filing were served upon the company's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory 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 March 24, 1978. 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. 78-7117 Filed 3-16-78; 8:45 am]

[6740-02]

[Project No. 2820]

VERMONT ELECTRIC COOPERATIVE

Application for Preliminary Permit

MARCH 10, 1978.

Take notice that an application was filed on October 13, 1977, with the Federal Energy Regulatory Commission by the Vermont Electric Cooperative, Inc. (Correspondence to: Mr. Walter N. Cook, Excutive Manager, Vermont Electric Cooperative, Inc., School Street, . Johnson, Vermont 05656; Copy to: Acres American Inc., 900 Liberty Bank Building, Buffalo, New York 14202, Attention: Mr John D. Lawrence) for a preliminary permit for the proposed Hart Island Hydroelectric Project, which would be located in Windsor County, Vt., near the Town of North Hartland, on the Connecticut River about 400 feet downstream from Hart Island, 1.5 miles downstream from Hartland, Vt., and 12 miles downstream from the existing Wilder Project (FERC No. 1892).

The proposed project would have a capacity of 10,000 to 20,000 kW and consist of: (1) a concrete dam across the main river channel, with earth abutments, having an overall length of 1,300 feet and a maximum height of 51 feet above the streambed; (2) a storage reservoir having a normal power pool elevation of 331 msl extending 12 miles upstream to the tailwater of the existing Wilder Project No. 1892; (3) a power house located on the right bank of the river containing three vertical Francis-type turbines driving generators; and (4) appurtenant facilities. Applicant states that the proposed use or market for the power to be developed is to meet present and future electric energy requirements of the residential members served by the Applicant. Any surplus capacity and/or energy would be sold by, or exchanged with, electric utilities in the area for public utility purposes.

A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering and economic feasibility for the project, the market for the power, and all information necessary for inclusion in an application for license.

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Energy Regulatory 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 such petitions or protests should be filed on or before May 15, 1978. 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 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. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-7118 Filed 3-16-78; 8:45 am]

[6740-02]

[Docket No. ER78-234]

WISCONSIN ELECTRIC POWER CO.

Proposed Tariff Change, March 10, 1978

Take notice that Wisconsin Electric Power Co. on March 6, 1978, tendered for filing an amendment to FPC Rate Schedule No. 33 between Wisconsin Electric Power Co. (Wisconsin Electric) and the City of Shawano.

Wisconsin Electric indicates that the amendment, proposed to be effective October 12, 1977, modifies the agreement to provide for the following:

1. Initial demand metering equipment shall be installed and paid for by Wisconsin Electric.
2. A second 34.5-kV circuit, including the necessary metering to the point of interconnection, shall be installed and maintained by Wisconsin Electric. The cost of same shall be paid by the City of Shawano.
3. The additional facilities are being constructed solely to provide a second circuit to the existing point of service and are being constructed at the request of the City of Shawano.

Applicant states that this situation is unique to the City of Shawano and comparison rates for similar services cannot be made.

According to Wisconsin Electric a copy of this filing was served upon the City of Shawano.

Waiver of the Commission's notice requirements is requested to allow for an effective date of October 12, 1977.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with 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 March 27, 1978. 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. 78-7119 Filed 3-16-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8682]

GUIDELINES FOR FUEL ADDITIVE WAIVERS

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Clean Air Act Amendments of 1977 added section 211(f), which prohibits or limits the use of certain fuels and fuel additives. Section 211(f) also provides for waivers of these prohibitions and limitations if a fuel or fuel additive manufacturer can show that a fuel or fuel additive will not cause or contribute to the failure of any emission control device or system installed on vehicles or engines to achieve compliance with applicable emission standards.

Pursuant to section 211(f), the Administrator has 180 days after receipt of an application within which to grant or deny a waiver. If the Administrator does not act within 180 days, the application for waiver shall be treated as granted.

These Guidelines are being published in order to facilitate waiver application and review. The Guidelines also establish procedures for the waiver process. At this time, these Guidelines have been restricted in focus to fuel additives, specifically methylcyclopentadienyl manganese tricarbonyl (MMT).

FOR FURTHER INFORMATION CONTACT:

George Y. Sugiyama, Attorney-Advisor, Mobile Source Enforcement Division (EN-340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-755-2816.

SUPPLEMENTARY INFORMATION:

GUIDELINES: SECTION 211(f)(4) WAIVERS

I. APPLICATIONS FOR WAIVERS AND BURDEN OF PROOF

All requests for a waiver, the supporting data, and the contents of all related submittals should be public information and therefore releasable to any party requesting such data. Should an applicant for a waiver desire to assert a claim of business confidentiality or trade secret information over any part of an application requesting a waiver, such assertion should only be made if the failure to submit such information would seriously jeopardize the success of the application and the release of such information will cause significant harm to the applicant.

Applications for waivers should be submitted only by manufacturers of fuels or fuel additives. Requests for waivers by individuals or organizations who are not manufacturers will not be considered a sufficient request for waiver such as to initiate the 180 day review period provided by section 211(f)(4). For purposes of initiating the 180 day requirement, an application will be considered to be received on the date it is delivered to the Director, Mobile Source Enforcement Division. Use of certified (return receipt) or registered mail is encouraged.

The Administrator may waive the section 211(f) prohibitions and restrictions if he "determines that the *applicant has established*" (emphasis supplied) that the fuel additive in question will not cause the effects described in section 211(f)(4). The burden of performing tests and furnishing data and evidence is upon the applicant. Applications which are not accompanied by any evidence as to the effects of a fuel additive upon the emissions performance of the national automobile fleet will be denied. Any waiver granted to one manufacturer will be applicable to any manufacturer similarly situated. Multiple applications for the same waiver are not necessary and are discouraged unless based on different or additional information.

II. DEFINITIONS

A. *Substantially similar.* A fuel additive is not substantially similar to any fuel additive used in the certification of any model year 1975 or subsequent model year vehicle or engine under section 206 of the Clean Air Act (as amended), if:

(a) Such fuel additive contains any element other than an impurity which is not specified for use in the fuel utilized in the certification of any model year 1975 or subsequent model year vehicle or engine, or (b) the chemical structure of the additive is not identical to the chemical structure of any additive specified for use in the certification of any model year 1975, or subsequent model year vehicle or engine.

B. *Introduction into commerce.* Introduction into commerce of a fuel additive occurs when with regard to a quantity of fuel containing such additive:

(a) No further blending, mixing, or other treatment or change to the chemical composition of the fuel will occur, and (b) the fuel has entered into the process of shipment, such as pipeline or common carrier (whether or not owned or controlled by the manufacturer), with the purpose of selling or offering for sale.

C. *Increase in concentration.* The phrase "increase in concentration" is applicable on a per refiner basis and, with respect to fuel additives, will be considered to occur if any concentration in any gallon of fuel (in grams of additive per gallon) exceeds the highest of any preceding concentration for a fuel entered into commerce.

III. TESTING PROCEDURES

A request for a waiver should contain data relating to a fuel additive's emissions effects which are derived from vehicle testing. It is essential that test data provide a reliable basis for comparison with the conditions under which vehicles are certified pursuant to section 206 of the Clean Air Act. The various tests and conditions under which tests should be conducted are described below.

A. *Use of the FTP for exhaust emissions testing.* For all tailpipe emission tests the Federal Test Procedure for 1978 and subsequent year light-duty vehicles should be used. The FTP is described at 40 CFR 86.101 et seq. Any deviations from the FTP should be reported in the application for waiver along with an explanation as to the reasons for such deviations.

B. *Federal durability schedule.* Each car in the test fleet should accumulate 50,000 miles utilizing the Federal Durability Schedule. Test track or mileage accumulation dynamometers are equally acceptable if adequate emission control system cooling is provided on the dynamometers. The Federal Durability Schedule is described at 40 CFR Part 85 Appendix IV. Any deviations from the Federal Durability Schedule should be reported in the application for waiver along with an explanation of the reasons for such deviations.

C. *Testing at various concentration levels of fuel additives.* Where a waiver is sought for a fuel additive, the additive's effects upon emissions performance may be critically dependent upon its concentration in use. Data submitted should encompass the range of concentrations intended for use. No attempt by EPA to extrapolate data to a permissible concentration level is contemplated.

IV. FUEL AND FUEL ADDITIVE SPECIFICATIONS

A. *Service accumulation fuel.* The fuel utilized for service accumulation should be similar to that utilized in the certification of light-duty motor vehicles under section 206 of the Clean Air Act except with regard to the application additive. Reference should be made to 40 CFR 86.113-79(a)(2) for an example of one such fuel. Specifications for the service accumulation fuel should be reported in the application for a waiver along with documentation that the fuel utilized did not vary in specifications.

B. *Emission test fuel.* All emission testing should be performed using Indolene fuel. If Indolene fuel is not used, then it is recommended that the specifications for emission test fuel contained at 40 CFR 86.113-79(a)(1) be followed. Specifications for the emission test fuel used should be reported in the application for a waiver along with documentation demonstrating that the fuel utilized did not vary in specifications.

V. DURABILITY OF EMISSION CONTROL SYSTEMS AND DEVICES

A waiver cannot be granted if a fuel additive will cause or contribute to a failure of any emission control device or system to achieve compliance with the standards over the vehicle's useful life. EPA believes that harm to emission control devices or systems which adversely affects vehicle performance, such that removal or rendering inoperative of such devices or systems may be reasonably expected, should be considered a basis under section 211(f)(4) for denying a waiver. Where the potential for such harm is evidenced, the applicant has the burden of proving that such harm will not occur.

VI. FORMATS FOR SUBMITTAL OF INFORMATION

A. A separate application should be filed for each additive for which a waiver is requested.

B. The application should be in writing, signed by an authorized representative of the applicant, and clearly indicate that it is an application for a waiver pursuant to section 211(f)(4) of the Clean Air Act.

C. All information and data which is used to support a request for a waiver should be submitted at the same time. Substantive amendments (other than technical corrections of information already received by EPA) may be considered to be new applications, and the date such amendments are received may be treated as the beginning of the 180 day period specified in section 211(f)(4).

D. An application filed by more than one party is permissible and will be accepted.

E. The applicant has the burden of furnishing to EPA all data which is referenced or utilized as support for a request for a waiver.

F. Each application will receive a docket number which will be communicated to the applicant(s) along with the receipt date of the application. All correspondence should refer to the docket number.

G. Five copies of each application should be submitted to: Director, Mobile Source Enforcement Division (EN-340), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

H. Each application should contain the following information:

1. Fuel and fuel additive specification for the mileage accumulation and emissions test fuel and for the fuel and/or fuel additive for which a waiver is requested and the methods of analysis.

2. HC, CO, NOx emission values in grams/mile for each test performed.

3. Deterioration factors for each vehicle.

4. A description or reference to a description of all procedures used to test each vehicle.

5. A record and description of maintenance and other servicing performed.

6. The results of each emission test for each vehicle and the point in the durability schedule at which such vehicles were tested.

7. A description of each vehicle in the control and test fleets, including a description of their engines, emission control systems, fuel system components, and any auxiliary emission control devices.

8. Results of analysis of the actual fuel used in mileage accumulation and emission testing with respect to additive concentration, lead content, octane rating, sulfur content, phosphorus content, Reid vapor pressure, distillation specifications, and hydrocarbon composition.

9. Evidence of the physical effects of the additive for which waiver is requested on catalytic converters for the 50,000 miles of operation (e.g., pressure drop test results or other physical testing to determine extent of catalyst plugging).

Dated: March 9, 1978.

MARVIN B. DURNING,
Assistant Administrator for Enforcement.

[FR Doc. 78-7069 Filed 3-16-78; 8:45 am]

[6560-01]

[FRL 868-3]

NATIONAL AIR POLLUTION CONTROL TECHNIQUES ADVISORY COMMITTEE

Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the National Air Pollution Control Techniques Advisory Committee will be held at 9 a.m. on April 5 and 6, 1978, at the Olde Colony Motor Lodge and Conference Center, North Washington

and First Streets, Alexandria, Va. 22313. The commercial telephone number is 703-548-6300.

The meeting is scheduled for the Committee to review the standard support and environmental impact statements for the control of particulate emissions from glass manufacturing plants, nitrogen oxide emissions from internal combustion engines (greater than 350 CID/cylinder engines), and hydrocarbon emissions from metal furniture coating operations. The agenda also includes a review of the Section 111(d) document for aluminum smelters and a report on the methodology utilized to prepare the new source performance standards (NSPS) priority list required by Section 111(f) of the Clean Air Act.

The proposed agenda for the meeting is as follows:

April 5 (Wednesday)

9 a.m.—Metal furniture, NSPS for hydrocarbon emissions from coating operations.
11 a.m.—Glass manufacturing plants, NSPS for particulate emissions.
4 p.m.—NSPS priority list, report on methodology utilized to prepare this priority list.
5 p.m.—Committee executive session.

April 6 (Thursday)

8:30 a.m.—Internal combustion engines—NSPS for nitrogen oxide emissions from greater than 350 CID/cylinder engines.
11 a.m.—Aluminum smelters—Section 111(d)—Guidelines to State agencies for existing plants.
4:30 p.m.—Committee executive session.

All meetings are open to the public. Anyone wishing to make a presentation should contact Mr. Don R. Goodwin, Director, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, by March 31, 1978. The commercial telephone number is 919-541-5271 and the FTS number is 629-5271.

Dated: March 14, 1978.

EDWARD F. TUERK,
Acting Assistant Administrator, for Air and Waste Management.

[FR Doc. 78-7203 Filed 3-16-78; 8:45 am]

[6560-01]

[FRL 868-5]

RECEIPT OF ENVIRONMENTAL IMPACT STATEMENTS

Pursuant to the President's Reorganization Plan No. 1, the Environmental Protection Agency is the official recipient for environmental impact statements (EIS's) and is required to publish the availability of each EIS received weekly. The following is a list of environmental impact statements received by the Environmental Protection Agency from March 6, 1978 through March 10, 1978. The date of receipt for each statement is noted in the statement summary. Under the Guidelines of the Council on Environmental Quality the minimum period for public review and comment on draft environmental impact statements is forty-five (45) days; the date of submission of comment is May 1, 1978. The thirty (30) day period for each final statement begins on the day the statement is made available to the Environmental Protection Agency and to commenting parties.

On March 8, 1978, the Federal agencies were informed of an upcoming change in filing procedures for final EIS's. In July, 1974 the Council established that the 30 day review period for final EIS's would be counted from the date the statement was actually filed with the Council (now EPA). However, after consultation with the Council and in the interest of fairness to the public and commenting entities, it was determined that final EIS commenting period should be treated the same as for a draft EIS.

Therefore, effective April 17, 1978, for all final EIS's received during a given week (Monday through Friday), the 30-day timeframe will commence on the Friday of the following week.

Copies of individual statements are available for review from the originating agency. Back copies are also available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

Dated: March 15, 1978.

JOSEPH M. MCCABE,
Acting Director, Office of Federal Activities.

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Room 307A, Washington, D.C. 20250, 202-447-6827.

FOREST SERVICE

Final

Vegetation management with herbicides, Oregon, Washington, and California, Mar. 6: The proposed action is the reduction of unwanted vegetation, with herbicides, as a part of resource management activities on national forest lands. The action covered by this EIS involves the use of the following herbicides: 2,4-D, 2,4,5-T, Silvex, Atrazine, Dicamba, Dalapon, Amitrole-T, Picloram, Monosodium Methanearsenate, Krenite, and Cacodylic Acid. All counties in the States of Oregon and Washington which contain forest service lands plus Del Norte and Siskiyou Counties of California are involved. Comments made by: EPA, HEW, DOI, DOD, DOT, FPC, State and local agencies, groups and invididuals. (ELR Order No. 80216.)

DEPARTMENT OF DEFENSE

ARMY CORPS

Contact: Dr. C. Grant Ash, Office of Environmental Policy Department, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-6795.

Draft

Lake Erie Generating Station, Permit Application, New York, March 9: Proposed is the construction, operation, and maintenance of the proposed 1700 megawatt, fossil fuel, steam generating station, Lake Erie Generating Station, by the Niagara Mohawk Power Corp. (Applicant) at a site in Pomfret or Sheridan, N.Y. The proposed generating station will utilize two low-sulfur, western coal-fired units to produce steam for the generation of electric power. The exhaust steam from two turbine generators will be cooled and condensed by using Lake Erie water pumped to the plant via pipeline and circulated through a single natural draft cooling tower. (Buffalo District.) (ELR Order No. 80223.)

Port Ontario, Harbor of Refuge, Oswego County, N.Y., March 9: Proposed is the harbor of refuge plan recommended for Port Ontario located in Oswego County, N.Y. at the mouth of the Salmon River which would provide adequate refuge harbor facilities in the Mexico Bay region of eastern Lake Ontario. The need for a harbor of refuge is based upon three general facts: (1) Access into the area is difficult for all but very shallow draft vessels, during storms its difficult; (2) recreational boating along the shoreline has increased; and (3) increased sport fishing interest. The plan will provide a safe entrance channel at Port Ontario Harbor. (Buffalo District.) (ERL Order No. 80229.)

Urban Levee Improvement, Oroville, Okanogan County, Wash., March 10: Proposed is the improvement to an existing levee system located in Okanogan County, Wash. The plan includes a total of 9,300 feet of embankment to be constructed on the left bank of the Similkameen River at Oroville. The project would provide protection from floods having a 1 percent chance of occurring in any one year. The levee alignment would follow the river shoreline along approximately 4,000 feet of the river edge, and provide 100-year flood protection to 175 acres of land in South Oroville. (Seattle District.)

Final

Michigan City Harbor, Operation and Maintenance, Porter and La Porte Counties, Ind., March 10: Proposed is the continued operation and maintenance of the Michigan city harbor, Indiana navigation project. A diked containment structure for the polluted dredged material removed from the harbor, with an incorporated effluent filter, will be constructed on a 3.5 acre land site adjacent to Trail Creek. Harbor sediments classified as unpolluted or suitable for unrestricted or open-lake disposal by region 5, USEPA, will be dredged as needed to provide for safe navigation and deposited in an open-lake disposal site. Adverse effects include permanent loss of terrestrial vegetation and associated wildlife occupying the contained disposal site. (Chicago.) Comments made by: USDA, DOC, DOI, State and local agencies, and interested groups. (ELR Order No. 80235.)

Supplement

Missouri River Levee System (S-1), Nebraska, March 10: This statement supplements a FEIS originally filed with CEQ in

May of 1976. Since completion of the FEIS, it had been determined that a portion of the work to be done falls under the purview of section 404 of the Federal Water Pollution Control Act amendments of 1972. A section 404 permit is required because permanent fill will be placed in wetlands in conjunction with the construction of 23,660 linear feet of levee and underseepage facilities along the right bank of the Missouri River at Bellevue, Nebr. Adverse impacts involve the elimination of about ½ acre of aquatic habitat in the Papillion Creek. (Omaha District.) (ELR Order No. 80049.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Assistant Secretary for Environmental Affairs, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202-377-4335.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Final

Salmon Fisheries FMP, Washington, Oregon, California, March 8: The proposed action is to continue the management of commercial and recreational salmon fisheries off the coasts of Washington, Oregon, and California for optimum yield from the fisheries, conservation of the stocks, and equitable allocation among all domestic fishermen, including treaty Indians. In order to achieve the overall management objectives, recommended regulations and alternative regulations are proposed for the commercial troll, ocean-sport, and Indian treaty fisheries. Impacts of the various alternatives are discussed. Comments made by: EPA, DOI, State and local agencies, groups and individuals. (ELR Order No. 80221.)

The thirty (30) day review period for the following supplemental final EIS has been waived.

Final Supplement

King & Tanner Crab, East Bering Sea (S-2), March 10: This statement supplements a final EIS filed with CEQ in February 1977. Changes in optimum yield (QY) are proposed in the subject preliminary fishery plan management for the 1978 foreign fishing season. Adoption of this 1978 PMP may create some additional U.S. harvesting and processing as a result of increasing the U.S. capacity for "C. Bairdi" in the eastern Bering Sea. It will also eliminate all directed foreign fishing on "C. Bairdi" stocks and restrict foreign tanner crab fishing principally to "C. Opilio" in the eastern Bering Sea. Comment: Government of Japan. (ELR Order No. 80232.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Joseph M. McCabe, Director, Office of Federal Activities, Room WSMW 537, 401 M Street SW., Washington, D.C. 20460, 202-755-0780.

Final

Kraft Pulp Mills, Performance Standards, March 9: This statement outlines standards of performance and monitoring requirements for new and modified Kraft Pulp Mills, proposed under the authority of section III of the Clean Air Act. Emissions of particulate matter will be controlled in the recovery furnace, the smelt dissolving tank, and the lime kiln. Emissions of total reduced sulfur (TRS) will also be controlled in the aforementioned facilities as well as in the digester system. The brown stock washers, the multiple effect evaporators, and the black liquor oxidation system. Minor adverse impacts on water supply are expected. EPA-450/2-76-014B. Comments made by: DOC and State agencies. (ELR Order No. 80227.)

FEDERAL ENERGY REGULATORY COMMISSION

Contact: Dr. Jack M. Heinemann, Advisor on Environmental Quality, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, 202-275-4149.

Final

Solomon Gulch Project No. 2742, Alaska, March 7: Proposed is the issuance of a License to the Copper Valley Electric Association, Inc., authorizing the enlargement of the present dam at Solomon Lake, construction of a penstock, powerhouse, transmission line and ancillary facilities, and the operation of these project works for electric power supply to service areas in and around the towns of Valdez and Glenhallen, Alaska. The dam and powerhouse, with generating equipment having a rated capacity of 12,000-kW, would be located on Solomon Gulch Creek, approximately 4 miles south of Valdez. Adverse effects include the permanent alteration of about 515 acres of wildlife habitat. Comments made by: DOI, DOD, USDA, DOC, and EPA. (ELR Order No. 80220.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Andrew E. Kauders, Executive Director, Environmental Affairs Division, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, 202-566-0405.

Draft

Courthouse and Federal Office Building, Springfield, Hampden County, Mass., March 9: Proposed is the construction of a new courthouse and Federal office building in Springfield, Hampden County, Mass. by the General Services Administration. The proposed building will be multistory of reinforced concrete and/or structural steel frame. Interior parking will be provided for about 100 vehicles. The principal tenants in the building will be the U.S. Congress and related activities; the Departments of Treasury, HEW, Defense, and Veterans Administration. Space will be provided for other Federal agencies also. The proposed new building will be approximately 50,000 square feet to be acquired in the downtown area of Springfield. The facility will house about 372 employees. (ELR Order No. 80230.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, 202-755-6308.

Draft

Laurel Greene Subdivision, Columbus, Franklin County, Ohio, Mar. 7: Proposed is the Department of HUD acceptance for mortgage insurance purposes the Laurel Greene Subdivision located in Columbus, Franklin County, Ohio. The proposed development plan encompasses only single family housing types. The tract of ground contains approximately 175.6 acres purchased in two parcels. One parcel contains 70.0 acres and the second parcel contains 104.0 acres. Upon completion Laurel Greene will be a planned development comprised of 650 single family dwelling units. HUD-R05-EIS-77-16(D). (ELR Order No. 80218.)

Final

Rolling Green Subdivision, Harris County, Tex., Mar. 9: The proposed action is the approval, for HUD/FHA home mortgage insurance purposes, of the Rolling Green project in Harris County, Tex. The 317-acre development would be composed of 1,270 single-family units and would provide housing for some 4,500 people. Adverse effects would be the loss of agricultural land and an increased demand for fossil fuels through heavy dependence on the automobile for transportation. Comments made by: EPA, COE, DOT, DOI, USDA, State and local agencies, special groups and individuals. (ELR Order No. 80222.)

SECTION 104 (H)

The following are Community Development Block Grant Statements prepared and circulated directly by applicants pursuant to section 104(H) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate Local Executive. Copies are not available from HUD.

Final

Fairfax, Va.-Lincoln/Lewis/Vannoy Sewage Facilities, Fairfax County, Va., Mar. 6: Proposed is the installation of a small-diameter, low-pressure sewer system to provide sewage collection and conveyance to centralized treatment and disposal facilities in the Lincoln-Vannoy conservation area of Fairfax County, Va. The system will be funded with Federal community development block grants and county revenues. Adverse effects include the commitment of land to new uses and the loss of some trees and animal species. Comments made by: DOI, VA, DOD, EPA, State and local agencies. (ERL Order No. 80215.)

Final

Green Acres to Merricks Creek, water line, Cabell County, W. Va., Mar. 9: Proposed is the construction of a water distribution line extension project by the county commission of Cabell County, Cabell County, W. Va., water line would be installed along 5 miles of West Virginia route 2 and 2.2 miles along Merricks Creek, West Virginia route 19. Comments made by: EPA, USDA, DOT, DOI, State and local agencies. (ELR Order No. 80231.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Building, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

NATIONAL PARK SERVICE

Draft

Natchez Trace Parkway, Tennessee, Alabama, and Mississippi, Mar. 7: The proposed action involves the completion of 115 miles of motor road and associated public use and management facilities to expand recreational facilities along an existing motor road. The Natchez Trace Parkway (NTP) is an elongated park of 45,300 acres stretching an airline distance of 400 miles across Tennessee, Alabama, and Mississippi. This park memorialized a frontier roadway that followed

ancient Indian trails in the region between Nashville, Tenn. and Natchez, Miss. Completion of this action will provide a continuous 447-mile motor road transecting parkway which will serve for pleasure motoring and will afford access to cultural features. (ELR Order No. 80219.)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Voss A. Moore, Assistant Director for Environmental Projects, P-518, Washington, D.C. 20555, 301-492-8446.

Draft Supplement

Floating Nuclear Powerplants, Part II (S-1), Mar. 10: This supplement to the final EIS filed with CEQ in September 1976, provides further consideration on a number of topics discussed in the FEIS, particularly the environmental parameters peculiar to riverine and estuarine siting. The supplement also provides additional information regarding the potential siting at or near ocean shorelines, sabotage potential, alternative energy sources and protection of the coastal environment. (NUREG-0056) (ELR Order No. 80233.)

TENNESSEE VALLEY AUTHORITY

Contact: Dr. Peter Krenkel Director of Environmental Planning, Tennessee Valley Authority, 720 Edney Building, Chattanooga, Tenn. 37401, 615-755-3161, FTC 854-3161.

Draft

Cordova-Union-Browns Ferry, transmission line, Tennessee, Alabama, and Mississippi, March 9: The proposed action involves the plan to supply the anticipated generation needs for the overall power system, In examining the adequacy of the transmission system with these planned generating plant additions, some deficiencies in localized western areas of the power system became apparent. To supply the forecasted loads for the early 1980's in the Memphis, Tenn., Jackson, Tenn., and Tupelo, Miss., areas, it will be necessary to augment the transmission capacity to these load centers with additional east-west power transfer capacity facilities. This proposal will provide additional facilities in the western area and includes the location and construction of Union substation. (ELR order No. 80225.)

U.S. POSTAL SERVICE

Contact: Mr. Robert Coven, Director, Office of Program Planning, Real Estate and Building Department, U.S. Postal Service, Washington, D.C. 20260.

Draft

Post Office, Vehicle Maintenance Facility, Stamford Conn., Fairfield County, March 9: The proposed action consists of the construction of the U.S. Post Office general mail facility and vehicular maintenance facility in the city of Stamford, Conn., and the Transfer of approximately 645 U.S. Postal Service employees, wherein planned employment will number about 800 persons. These facilities are proposed for a 13-acre site, part of a 39-acre site known as the "Standard Brands" site, located at the southerly end of West Avenue and west of Betts Avenue within the city of Stamford. The site adjoins the town of Greenwich along the western boundary of the tract.(ELR order No. 80224.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, 202-426-4357.

FEDERAL HIGHWAY ADMINISTRATION

Draft

Tramway Boulevard (Parkway), Albuquerque, N. Mex., Bernalillo County, March 9; The proposed action involves the Tramway Parkway situated in the extreme northeast portion of the city of Albuquerque along a north-south alignment at the base of the Sandia Mountains. Project M-4067(4) identifies the proposed parkway and represents the ultimate six-lane divided improvement along the corridor. Projects UI-FI-040-1(58)168 and M-4067(2) represent the interchange modification at the I-40 and Tramway Parkway. The termini of the projects are Central Avenue on the south and Montgomery Boulevard on the north; a distance of approximately 4.3 miles. FHWA, NM, Eis, 78-01-D. (ELR order No. 80226.)

TN-53, Appalachian Corridor "J", improvement, Clay County, Tenn., March 6: Proposed is the improvement of the Appalachian Development Highway Corridor "J", section J-39 to J-40, State Route 53, in Clay County, Tenn. The project begins on the east side of the Obey River Bridge, east of Celina and extends north eastward approximately 7.35 miles to the Kentucky State line. State Route 53 is classified as a major aterial. The project will consist of two 12 foot traffic lanes with 10 foot paved shoulders on a minimum right-of-way of 150. Three alternative locations, two of which are the same except for a ½ mile section; "A" and "A-1", are considered in the proposal. FHWA, TN, EIS, 77-07-D (Region 4). (ELR order No. 80217.)

Final Supplement

Louisa-Catlettsburg Road, U.S. 23 (S-2), Boyd County, Ky., March 9; This Statement supplements a final EIS filed with CEQ in 1973. The Supplement was necessary because the northern 4.45 mile portion of the project was excluded from the original EIS to allow time for the area along the proposed relocation to be surveyed by a professional archaeologist. The project consists of the construction of a 4-lane divided Highway (U.S. 23) That begins at the White Creek Road (Ky. 757) and extends northward to a terminal point near the junction of existing U.S. 23 and Ky. 3, two miles south of Catlettsburg. Adverse impacts include the displacement of families, loss of land suitable for wildlife habitat, and construction-related pollution. Comments made by: DOT, HEW, HUD, DOI, EPA, State and Local agencies, and interested groups. (ERL order No. 80228.)

OFFICIAL EXTENSION OF REVIEW

The EPA has been notified by the USDA, Rural Electrification Administration that the USDI, Fish and Wildlife Service, has denied a request to construct the 161KV line across the wildlife refuge area at Lansing, Iowa. Therefore, the review period for the Draft EIS entitled "161KV Transmission Line, Genoa, Wis. to Lansing, Iowa (ELR No. 71546), has been extended from February 20, 1978, to April 13, 1978. EPA published the availability of this DEIS in the FEDERAL REGISTER dated January 9, 1978. All persons receiving the DEIS have been notified by the USDA/REA by letter of this extension of time.

[FR Doc. 78-7350 Filed 3-16-78; 8:50 am]

[6730-01]

FEDERAL MARITIME COMMISSION

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by section 311 (p)(1) of the Federal Water Pollution Control Act, and have been issued Federal Maritime Commission Certificates of Financial Responsibility (Oil Pollution) pursuant to Part 542 of Title 46 CFR.

Certificate No.	Owner/Operator and Vessels
01028	Flensburger Schiffsparten-Vereinigung A.G.: *Uranus I.*
01104	Hyundai International Inc.: *Atlas Challenger.*
01544	Esso Societe Anonyme Francaise: *Esso Flandre.*
01761	Union Steamship Co. of New Zealand: *Marama.*
01857	OHG I Fa Bernhard Schulte: *Henriette Schulte.*
01943	National Iranian Tanker Co.: *Reza Pahlavi, Farah Pahlavi.*
02417	Norfolk, Baltimore & Carolina Line, Inc.: *Container Transport 7, Container Transport 6.*
02604	Revere Sugar Corp.: *Revere Barge No. 1.*
02713	T. L. James & Co. Inc.: *BTD-3.*
02903	George Gibson & Co., Ltd.: *Pentland Glen, Pentland Brae, Pentland Moor.*
03068	Pacific Shipping Co. Ltd.: *Sun Kim.*
03256	Riverway Co.: *Gale C.*
03289	Det Forenede Dampskibs Seiskab A/S: *Dana Futura.*
03413	Baba-Daiko Shosen K.K.: *Rio Grande Maru.*
03428	Hachimuma Kisen K.K.: *Jinei Maru.*
03708	Puget Sound Tug & Barge Co.: *Kona.*
03712	Far Eastern Marine Transport Co. Ltd.: *Great River.*
03730	Brown & Root, Inc.: *Atlas I.*
03852	Guy F. Atkinson Co.: *Lisa A.*
03968	Zim-Israel Nay: *Yarden.*
04042	Companhia De Navegacao Maritima Netumar: *Olivia.*
04670	Standard Products Co. Inc.: *Atlantic Venture.*
04716	Jason Shipping Inc.: *Nagos.*
04848	Surrendra Overseas Ltd.: *APJ Anand.*
04933	Sun State Marine, Inc.: *Sun State No. 4, Sun State No. 3.*
05036	Companhia Nacional De Navegacao: *Frigoantartico.*
05048	F. Laeisz; *Primavera, Primula.*
05472	National Shipping Corp.: *Hunza.*
05549	Polska Zegluga Morska: *Feliks Dzierzynski.*
05578	Baltic Shipping Co.: *Skulptor Golubkina.*
05985	Sakhalin Shipping Co.: *Paramushir, Pavlovo, Primorye, Prokopyewsk, Przhevalsk.*
05998	Navarino Shipping & Transport Co. Ltd.: *Sincerity.*
06118	Marcaminos Atlanticos Navegacion S.A.: *Aegean Klif.*
06336	Mr Sadao Ogino: *Koyo Maru No. 11.*
06473	Rakennustoimisto Jussi Ketola: *Finn Builder.*
06510	Campagnie Nationale Algerienne De Navigation C.N.A.N.: *Blida.*
06995	Novorossiisk Shipping Co.: *Geori Kerchi.*
07313	Merivienti Oy: *Finnsailor.*
07362	Primorsk Shipping Co.: *Bam, Eniseysk, Kamensk-Uralskiy, Vilyuysk.*

Certificate No.	Owner/Operator and Vessels
07623	Dillingham Tug & Barge Corp.: *Mikiona, DTB-9, DTB-10, DTB-25, DTB-27, DTB-29, DTB-33, DTB-35, DTB-39, DTB-40.*
07711	AB Vasa Shipping Oy: *San Benito.*
07743	Yangming Marine Transport Corp.: *Ming Honesty, Ming Shine.*
07807	D. Wandel & Co.: *Santa Elena.*
08370	Indiana & Michigan Electric Co.: *Robert R. Jewell, Edwin A. Lewis.*
08840	Bangladesh Shipping Corp.: *Banglar Maitri.*
08999	Sause Bros. Ocean Towing Co. Inc.: *Chehalis.*
09189	Government of the Trust Territory of the Pacific Islands: *Micro Chief, Marshall Islands, Caroline Islands.*
09763	Atlas Maritime Co. S.A.: *Star Athenian.*
10260	Hollywood Marine, Inc.: *Hollywood 2008, Hollywood 2009.*
10931	Hansung Shipping Co. Ltd.: *Scan Commander.*
11239	Partenreederei Nordic: *Zim Northland.*
11518	Sabah Pacific Shipping Co. S.A.: *Arh Kim.*
11577	Joong Ang Shipping Co., Ltd.: *Neptune.*
11635	L & L Oil Co. Inc.: *MS-15, Patco-58.*
11828	Kosmos Bulkschiffahrts G.m.b.h.: *Ruedesheim.*
11949	Blackhall Shipping Co. Ltd.: *Icenic.*
12115	Nippon Kyodo Hogei K.K.: *Taka Maru.*
12152	Kabushiki Kaisha Eisei Maru: *Eiyo Maru.*
12189	Norrona Shipping Co. (PTE) Ltd.: *Cherry Earl.*
12405	Seecon Schiffahrtskontor G.m.b.h.: *Split.*
12960	Pallas Shipping Agency Ltd.: *World Concord, World Brigadier, Vasilikos.*
13053	Resolute Shipping Co. Ltd.: *Samos Island.*
13147	St. Lawrence Cement Co.: *Robert Koch.*
13198	Sekihyo Line Ltd.: *Blue Kochi.*
13235	Foster Shipping Co. Ltd.: *Friendship IV.*
13284	Alexander Doukas Compania Naviera S.A.: *Hiona.*
13319	Rio Pardo Compania Naviera S.A.: *Aghios Nicolaos.*
13379	Naviera Chilena Del Pacifico S.A.: *Renacimiento.*
13421	P.C. 2901 Inc.: *P.C. 2804, P.C. 2805.*
13447	Naviera Capriles, S.A.: *Teotiste.*
13466	Reederei Hermann Wulff: *John Wulff.*
13480	West Coast Shipping Co.: *Puerto Rican.*
13484	Western Carriers, Inc.: *Silver Cardinal.*
13490	Tower Isle Investments S.A.: *Gaspesien.*
13511	Denton Sherry: *Yardarm Knot.*
13530	Bifrost Ltd.: *Bifrost.*
13532	Paris Compania Naviera S.A.: *Calliope.*
13538	Marcosun Shipping Corp. S.A. PN: *Noni.*
13540	Global Mercantile Inc.: *Merlin 1.*
13549	K. A. Steel Chemicals Inc.: *Kas 101, Kas 102.*
13550	Schiffahrtskontor Hans Hermann Knuppel KG: *Peter Knuppel.*
13555	Shoei Shipping Co. Ltd.: *Georgia Rainbow.*
13557	Ditlev-Simonsens Rederi I A/S: *Velma.*
13560	Newtex Tankers Inc.: *Thomas M, Thomas Q.*
13566	Kommanditgesellschaft Jebsen Hamburg G.m.b.h. & Co.: *Becknes.*
13572	International Transport Sotavento Inc.: *Sumatras.*
13577	Norchem Shipping Co. Ltd.: *Chemical Explorer.*
13578	Norholm Shipping Co. Ltd.: *Chemical Venturer.*
13598	Western Poineer, Inc.: *Marlin, Tarpon, Sculpin, Denali, Bowfin.*
13632	Point Venture Corp.: *Point Susan.*
13635	Cajun Marine Service Inc.: *ST-122, ST-123.*
13641	Wall Schiffahrts G.m.b.h. & Co. K.G.: *Susanne Vinnen.*
13642	Buena Valle S.A.: *Akritas.*
13644	Guardian Transport Corp.: *Ocean Transporter.*
13646	Explorer Maritime Inc.: *Stolt Catherine.*
13648	Navios Ship Management Services Inc.: *Phosphore Conveyor.*
13649	World Magnolia Shipping Corp.: *Regent Virgo.*
13652	Jumbo Scheepvaart Maatschappij (Curacao) N.V.: *Mirabella.*
13653	World Trading Inc.: *Manitoba.*
13658	Venus Sea Marine S.A.: *Asian Highway.*
13660	Fertility Shipping Co. S.A.: *Anna C.*
13665	Gerenuk Shipping Corp.: *Aegis Island.*
13666	Reefer Lines Pt. Ltd.: *Ocean Gold.*
13667	Hamilton Marine Transport Ltd.: *Felicia V.*
13671	Lacon Shipping Co., Ltd.: *Lacon.*
13672	Deckships 5 Ltd.: *Francesca.*
13674	K/S A/S Lotos: *Lotos.*
13677	David Compania Naviera S.A.: *Arietta.*
13678	United Marine Transports Ltd.: *Gherania.*
13679	Northern Queen Co. S.A.: *Varde.*
13680	Javeli Corp.: *Doric Javelin.*
13681	Merit Shipping Inc.: *Unique Challenge.*
13683	Pirbright Compania Naviera S.A.: *Parthenon.*
13690	Masso Hermanos S.A.: *Masso 34.*
13691	Changi Star Shipping Co. (PTE) Ltd.: *Changi Star.*
13693	Murray Shipping Ltd.: *Murrary.*
13694	Mr J. Dammers: *Laura Christina.*
13698	Interocean Car Carriers S.A.: *Nissan Silvia.*
13699	Makurazaki-Shi Gyogyo Kyodo Kumiai: *Kyoyo Maru No. 12.*
13700	Caribbean Bulk Carriers, Ltd.: *La Minera.*
13701	Rederi-Interessentskabet Kiltrader: *Kiltrader.*
13702	Sandra Shipping Corp.: *Patraikos.*
13703	Heron Tankship Ltd.: *Carolyn Jane, Lis of Galway, Penelope of York.*
13704	Concord Carriers Ltd.: *John C.*
13705	Salvador Correa Maeirama: *Ciudad De Cristal.*
13714	Neuva Fortuna Corp.: *Nea Tyhi.*
13716	Arbyx Pearl Shipping S.A.: *Kriti Pearl.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-7129 Filed 3-16-78; 8:45 am]

[6730-01]

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by Section 311(p)(1) of the Federal Water Pollution Control Act, and have been issued Federal Maritime Commission Certificates of Financial Responsibility (Oil Pollution) pursuant to Part 542 of Title 46 CFR.

Certificate No.	Owner/Operator and Vessels
01015	A/S Rederiet Odfjell: *Bow Sea.*
01068	The Bowring Steamship Co. Ltd.: *Trinculo.*
01326	Sabine Towing & Transportation Co., Inc.: STCO 226, STCO 227.
01330	Shell Tankers (U.K.) Limited: *Etrema.*
01610	CF Industries, Inc.: CF 204, CF 208.
01641	The Bank Line Ltd.: *Laganbank.*
01866	Industria Armamento Spa: *Auctoritas.*
01905	The Ben Line Steamers Ltd.: *Benmhor Bennevis.*
02146	Pittston Marine Transport Corp.: *New London.*
02194	Compagnie Generale Maritime: *Caraibe.*
02234	Gulf Mississippi Marine Corp.: *Gulf Giant 380.*
02246	Blue Star Line Ltd.: *Wellington Star,* Starman America, Queensland Star.
02363	Rederiet Otto Danielsen: *Gudrun Danielsen.*
02417	Norfolk, Baltimore & Carolina Line, Inc.: *Container Transport No. 4; Container Transport No. 5.*
02458	The China Navigation Co., Ltd.: *Erisort, Eriskay.*
02603	Empresa Hondurena De Vapores, S.A.: *Calamares.*
03256	Riverway Co.: *AC-1, Evey T, Harriet Ann, Henry B, Steve T, RW-912, RW-916, RW-903, RW-904, RW-905, RW-906, RW-907, RW-908, RW-909, RW-911, RW-910, RW-914, Superior, CAGC 2, Laura Lee.*
03289	Det Forenede Dampskibs-Selskab A/S: *Suffolk.*
03453	Kyosei Kisen Kabushiki Kaisha: *Seijun Maru.*
03466	Nanboku Sangyo K.K.: *Amagi Maru.*
03468	Nihokai Kisen Kabushiki Kaisha: *Nile Maru.*
03480	Osaka Senpaku K.K.: *Honmoku Maru.*
03530	Yashima Kaium K.K.: *Komeshima Maru.*
03751	Castle & Cooke, Inc.: *San Antonio V.*
04050	A/S Uglands Rederi: *Susan.*
04163	Cenac Towing Co., Inc.: *HBC-701.*
04212	Nilo Barge Line, Inc.: *NL-12.*
04228	Compagnie Maritime Belge (Lloyd Royal) S.A.: *Mineral Hoboken.*
04404	Lars Rej Johansen: *Roselina.*
04420	Navigazione Alta Italia S.P.A.: *Nai Genova.*
04564	Yamashita-Shinnihon Kisen Kaisha: *Kimishige Maru.*
04625	American Commercial Lines, Inc.: *Chem 110 Chem 111 Chem 112 Chem 113 Chem 114 Chem 115 Chem 116 Chem 117 Chem 118 Chem 119.*
04769	Texaco Norway A/S: *Texaco Stockholm.*
05047	PPG Industries Inc.: *A-7601 A-7602 A-7603 A-7604.*
05098	Esso Tankers Inc.: *Esso Pacific.*
05470	Charter Transport Line, Inc.: *WITTRANSPORT I, WITSUPPLY II.*
05520	Union Carbide Corp.: *USL-147, USL-150.*
05578	Baltic Shipping Co.: *Mekhanik Evgrafov.*
05749	Delta Fishing Co.: *Priscilla M.*
05770	C A Venezolana de Navegacion: *Carabobo, Falcon, Guarico, Lara, Trujillo, Zulia.*
06117	Helmut Bastian Reederi: *Kormoran.*
06179	Equimar Maritima S.A.: *Seatrain Saratoga.*
06248	Commercial Corporation Sovrybflot: *Stremitelniy, Davydov, Scryplev, Narval, Never, M. Chyurlenis, Nida, Y. Greifenberyeris, Torzhok, Y. Aleksonis.*
06452	Compania Maritima de Transportes Internacionales S.A.: Anubis.
06675	Cobrecaf: Pecheur Breton.
06877	Societe Francaise de Transports Maritimes: Dauphin de Cherbourg.
06925	Bibby Bulk Carriers Ltd., Cambridgeshire.
06965	Scandinavian Motorships AB: Taube.
06995	Novorossiisk Shipping Co.: Marshal Zhukov.
07523	Harbert Construction Corp.: Marie Thompson.
07366	Compagnie Maritime des Chargeurs Reunis: Seatrain Bunker Hill.
07743	Yangming Marine Transport Corp.: Ming Hope.
08175	Gunther Schulz Schulauer Schiffahrtskontor: Stockhorn.
08530	Prompt Shipping Corp., Ltd.: Savu Career.
08627	Terminales Maracaibo, C.A.: Cardon.
08809	Roro Dania Palm Schiffahrtsges, MBH & Co., K.G.: Roro Dania.
08811	Roro Anglia Palm Schiffahrtsges. MBH & Co. KG: Roro Anglia.
09031	Union Mechling Corp., 957, 958, 959, 960, 961,962, 963, 964.
09057	Ryan Walsh Stevedoring Co. Inc.: Agnes B.
09058	Roro Cimbria Palm Schiffahrtsgesellschaft MBH & Co. K.G.: Roro Cimbria.
09465	River Barges, Inc.: Joyce O.
09710	Continental Mariner Investment Co., Ltd.: Bodena.
09748	Spetses Shipping Corp.,: Spetses Island.
10215	Fountain Shipping Co. Ltd. S.A.: Lasinda

Certificate No.	Owner/Operator and Vessels
10322	Duk Soo Moolsan Co. Ltd.: Sunny No. 17, Sunny No. 35.
10538	Partenreederei MS Martha Fisser: Martha Fisser.
10657	Quebec Maritime Inc.: Strathearn.
10771	Alexandria Shipping & Navigation Co.: El Amir Fahd.
10931	Hansung Shipping Co., Ltd.: White Coral.
11187	Dome Petroleum Ltd.: White Coral.
11187	Dome Petroleum Ltd.: Canmar Supplier VI, Canmar Supplier VII.
11344	Brusco Towboat Co.: ZB9, ZB15.
11411	Union Maritime Scandinave (Unimar): Sijilmassa.
11873	Columbia Marine Lines, Inc.: ZB 1007, AB 1003, AB 1002.
12105	Transocean Liners (PTY) Ltd.: Dalmar.
12241	United Pacific Maritime Corp., Inc.: *Buyo.*
12269	P. T. Bogasari Flour Mills: *Bogasari Dua.*
12478	Kabushiki Kaisha Maruyo Gyogyobu: *Daikichi Maru No. 58.*
12655	Arthur H. Sulzer Associates, Inc.: *Dot Sulzer.*
12859	Osaka Hinode Shipping Co., S.A.: *Sunny Hawk.*
12863	Oil Transport Co. (Saudi Arabia), Ltd.: *Al-Duriyah.*
12866	Dillingham Jebsen Shipping Corp.: *Brisknes.*
12960	Pallas Shipping Agency, Ltd.: *Gresham, Lombard.*
12990	Gemini Maritime Corp.: *Gemini Friendship.*
13016	Captain Hans-Erich Ludtke: *Sybille.*
13061	Yamasan Tsubo Suisan Kabushiki Kaisha: *Sankichi Maru No. 23.*
13125	J. P. Knight Ltd.: *Kuphar.*
13141	Seafort Shipping Corp.: *St. Nicolas.*
13159	Connaught Shipping S.A.: *Grace Adelaide.*
13181	Compania de Transportes Maritimos San Constantino S.A. (Panama): *Stella.*
13215	Rathmore Bay Shipping Co. Ltd.: *Al Ahad.*
13216	Star Lines (Liberia) Corp.: *Western River.*
13217	Seaside Line S.A.: *Masashima Maru.*
13218	Tahiti Marine Co. Ltd.: *Evgenia*
13219	Trader Maritime Enterprises Corp.: *Arcadia.*
13220	Maritima Kretan Glory S.A.: *Kretan Glory.*
13221	Endeavour Bay Shipping Co. Ltd.: *Laky.*
13222	Gazelle Maritime Inc.: *Scopi.*
13223	Delina Maritime Inc.: *Lefthero.*
13224	Tesoro S.A.: *Cherish.*
13225	Justo Ojeda Perez: *Costa de Terranova.*
13227	Universal Bulk Carriers Ltd.: *Drakenstein, Hexrivier, Langkloof, Letaba, Tzaneen, Zebediela.*
13230	Migets Shipping Co. Inc.: *M.G. Tsangaris.*
13231	Cebaco Compania Naviera S.A.: *P.S. Palios.*
13234	Bahama Adventurer Shipping Ltd.: *Bahama Adventure.*
13236	Stylis Shipping Corp.: *Stylis.*
13237	Rathlin Bay Shipping Co., Ltd.: *San Nikitas.*
13238	Lefkas Shipping Corp.: *Lefkas.*
13240	Victory Transocean Shipping S.A.: *Thalassini Doxa.*
13241	Naomiya Gyogyo Kabushiki Kaisha: *Shotoku Maru No. 18, Shotoku Maru No. 21.*
13243	Rautaruukki Oy: *Rautaruukki.*
13244	Clipperton Inc.: *Clipperton.*
13245	Antco Shipping Co., Ltd.: *Intercontinent.*
13247	Partrederiet Helge Folmer: *Helge Folmer.*
13248	Kepbays Shipping (PTE) Ltd.: *Karamu Forest.*
13249	Keppel Shipyard Ltd.: *Kamahi.*
13250	Xerefon Shipping Co., S.A.: *Good Skipper.*
13255	Em. Z. Svitzers Salvage Co., Ltd.: *NS 12, Svitzer Jari, Svitzer.*
13257	Sovereign Oil Transports Ltd.: *Pentelikon.*
13258	Mediterranean International Navigation Corp.: *Cavalier Bulker.*
13259	Barbareia Shipping Co. Ltd.: *Faethon.*
13260	Helandros Shipping Co. Ltd.: *Erianna.*
13261	Karyatis Shipping Co. S.A.: *Karyatis.*
13303	Naviera Ultramar C.A.: *El Manglillo.*
13314	Marubeni Maritime Management Inc.: *Pacific Leader, Pacific Reefer.*
13383	Omni Shipping S.A.: *Nordwoge.*
13385	Sea Mitre Navigation Enterprises Corp.: *Dona Sophia.*
13405	Marprise, Ltd.: *Hopeclipper.*
13411	Ekati Shipping Co., S.A.: *Grotedyk.*
13415	Ben Hur Shipping Co., Ltd.: *Nela.*
13431	Montezillon Navigation Corp.: *Jacques.*
13534	Ittimar S.N.C. Di Cavalieri Eros & C: *Sagitta.*
13451	Fighter Shipping Co. Ltd.: *Atlantic Hero.*
13454	Bonita Ocean Steamship Co. Ltd.: *Bonita.*
13455	Radiant Bella Inc.: *Ocean Freezer.*
13457	Radiant Restis Inc.: *Victor.*
13465	AB Skarhamns Oljetransport: *Susanne.*
13552	Maninanav Shipping Co. S.A.: *Manina III.*
13553	Singha Shipping Private Ltd.: *Neptune Iris.*
13544	Team Ship Inc.: *Norvegia Team, Anglia Team, Suecia Team, Sevonia Team, London Team, Scandia Team.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-7128 Filed 3-16-78; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

FEDERAL OPEN MARKET COMMITTEE

Longer Run Ranges for Monetary Aggregates

On February 28, 1978, the Federal Open Market Committee adopted the following ranges for rates of growth in monetary aggregates for the period from the fourth quarter of 1977 to the fourth quarter of 1978: M-1, 4 to 6½ percent; M-2, 6½ to 9 percent; and M-3, 7½ to 10 percent.

By order of the Federal Open Market Committee, March 9, 1978.

ARTHUR L. BROIDA,
Secretary.

[FR Doc. 78-7135 Filed 3-16-78; 8:45 am]

[4110-88]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

EMPLOYEES OF THE DEPARTMENT OF SOCIO-MEDICAL SCIENCES AND COMMUNITY MEDICINE, BOSTON UNIVERSITY SCHOOL OF MEDICINE

Research on the Use and Effect of Alcohol; Authorization of Confidentiality

Under the authority vested in the Secretary of Health, Education, and Welfare by section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)) all persons who—

1. Are employed by the Department of Socio-Medical Sciences and Community Medicine, Boston University School of Medicine, and

2. Have, in the course of such employment, access to information which would identify individuals who are subjects of the research on the use and effect of alcohol which is assisted by the Department of Health, Education, and Welfare grant numbered RO1 AA 02133, titled "Life Problems and Alcohol Use in an Urban Population";

are hereby authorized to protect the privacy of the individuals who are the subjects of that research by withholding their names and other identifying characteristics from all persons not connected with the conduct of that research.

As provided in section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)):

"Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local, civil, criminal, administrative, legislative, or other proceedings to identify such individuals."

This authorization does not authorize employees of the Department of Socio-Medical Sciences and Community Medicine, Boston University School of Medicine, to refuse to reveal to qualified personnel of the Department of Health, Education, and Welfare, for the purpose of management or financal audits or program evaluation, the names or other identifying characteristics of individuals who are the subjects of the research conducted pursuant to Department of Health, Education, and Welfare grant numbered RO1 AA 02133. Such personnel will hold any identifying information so obtained strictly confidential in accordance with 45 CFR 5.71.

This authorization is applicable to all information obtained pursuant to Department of Health, Education, and Welfare grant numbered RO1 AA 02133 which would identify the individuals who are the subjects of the research conducted under that grant.

Dated: February 21, 1978.

IRVING WOLF,
Acting Deputy Director, National Institute on Alcohol, Drug Abuse, and Alcoholism.

Dated: February 21, 1978.

ROBERT L. DUPONT,
Director, National Institute on Drug Abuse.

Dated: February 23, 1978.

DAVID F. KEFAUVER,
Acting Deputy Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 78-6774 Filed 3-16-78; 8:45 am]

[4110-88]

RESEARCH TRIANGLE INSTITUTE

Research on the Use and Effect of Alcohol and Drugs; Authorization of Confidentiality

Under the authority vested in the Secretary of Health, Education, and

Welfare by section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)), all persons who:

1. Are employed by the Research Triangle Institute, Research Triangle Park, N.C.; and

2. Have, in the course of their employment, access to information which would identify individuals who are the subjects of the research on the use and effect of alcohol and drugs which is assisted by the Department of Health, Education, and Welfare under contract numbered ADM 281-76-0019, entitled "Follow-Up of the 1974 National Survey of Junior and Senior High School Students";

are hereby authorized to protect the privacy of the individuals who are the subjects of that research by withholding their names and other identifying characteristics from all persons not connected with the conduct of that research.

As provided in section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)):

"Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals."

This authorization does not authorize employees of the Research Triangle Institute to refuse to reveal to qualified personnel of the Department of Health, Education, and Welfare, for the purpose of management or financial audits or program evaluation, the names or other identifying characteristics of individuals who are the subjects of the research conducted pursuant to Department of Health, Education, and Welfare contract numbered ADM 281-76-0019. Such personnel will hold any identifying information so obtained strictly confidential in accordance with 45 CFR 5.71.

This authorization is applicable to all information obtained pursuant to Department of Health, Education, and Welfare contract numbered ADM 281-76-0019 which would identify the individuals who are the subjects of the research conducted under that contract.

Dated: February 14, 1978.

IRVING WOLF,
Acting Deputy Director, National Institute on Alcohol Abuse and Alcoholism.

Dated: February 22, 1978.

ROBERT L. DUPONT,
Director,
National Institute on Drug Abuse.

Dated: February 23, 1978.

DAVID F. KEFAUVER,
Acting Deputy Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 78-6773 Filed 3-16-78; 8:45 am]

[4110-86]

Center for Disease Control

CENTER FOR DISEASE CONTROL PROGRAMS AND POLICIES ADVISORY COMMITTEE (AD HOC)

Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Center for Disease Control announces the following Committee meeting:

CENTER FOR DISEASE CONTROL (CDC) PROGRAMS AND POLICIES ADVISORY COMMITTEE (AD HOC)

Dates: April 11-13, 1978.
Place: Room 207, Building 1, Center for Disease Control 1600 Clifton Road NE., Atlanta, Ga. 30333.
Time: 9 a.m.
Type of meeting: Open.
Contact person: Ms. Patsy Whitesell, Executive Secretary of Committee Bureau of Training, Center for Disease Control 1600 Clifton Road NE., Atlanta, Ga. 30333, phone AC/404-633-3311, extension 6502, FTS 236-7502.
Purpose: The CDC Programs and Policies Advisory Committee (Ad Hoc) will make recommendations to the Secretary, the Assistant Secretary for Health, and the Director, Center for Disease Control pertaining to future direction, programs, and policies for CDC.
Agenda: The Committee will review solicited suggestions on the future direction of CDC from professionals in the fields of public health and preventive medicine, and will develop recommendations on strategies of intervention for priority public health problems in the U.S.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. Anyone wishing to have a question answered during the meeting by a scheduled speaker should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: March 9, 1978.

WILLIAM H. FOEGE,
Acting Director,
Center for Disease Control.

[FR Doc. 78-6951 Filed 3-16-78; 8:45 am]

[4110-86]

SAFETY AND OCCUPATIONAL HEALTH STUDY SECTION

Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Center for Disease Control announces the following National Institute for Occupational Safety and Health Committee meeting:

SAFETY AND OCCUPATIONAL HEALTH STUDY SECTION

Dates: April 20-21, 1978.
Place: Conference Room C, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857.
Time: 7 p.m.
Type of meeting: Closed.
Contact person: Donald F. Flick, Ph.D., Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 8-63, Rockville, Md. 20857, phone: 301-443-4493.
Purpose: The Committee is charged with the initial review of research, training, demonstration, and fellowship grant applications for Federal assistance in program areas administered by the National Institute for Occupational Safety and Health, and with advising the Institute staff on training and research needs.
Agenda: The Study Section will be performing the initial review of training grant applications for Federal Assistance, and will not be open to the public, in accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code, and the Determination of the Director, Center for Disease Control, pursuant to Pub. L. 92-463.

Dated: March 9, 1978

WILLIAM H. FOEGE,
Acting Director,
Center for Disease Control.

[FR Doc. 78-6952 Filed 3-16-78; 8:45 am]

[4110-03]

Food and Drug Administration

ADVISORY COMMITTEE

Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR 14) relating to advisory committees. The following advisory committee meeting is announced:

Committee name	Date, time, and place	Type of meeting and contact person
Board of Tea Experts	Apr. 3 and 4, 10 a.m., room 700, 850 3d Ave., Brooklyn, N.Y..	Open public hearing, Apr. 3, 10 to 11 a.m.; open committee discussion Apr. 3, 11 a.m. to adjournment, Apr. 4, 10 a.m. to adjournment; Robert H. Dick, 850 3d Ave., Brooklyn, N.Y. 11232, 212-965-5739.

General function of the committee. Advises on establishment of uniform standards of purity, quality, and fitness for consumption of all teas imported into the United States pursuant to 21 U.S.C. 42.

Agenda—Open public hearing. Any interested persons may present data, information, or views, or orally or in writing, on issues pending before the board.

Open committee discussion. Discussion and selection of tea standards.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, DC, area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Dated: March 9, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-6784 Filed 3-16-78; 8:45 am]

[4110-03]

PULMONARY-ALLERGY DRUGS ADVISORY COMMITTEE

Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Pulmonary-Allergy Drugs Advisory Committee by the Secretary, Department of Health, Education, and Welfare.

DATE: Authority for this committee will expire on May 30, 1978, unless the Secretary formally determines that continuance is in the public interest.

FOR FURTHER INFORMATION CONTACT:

Richard L. Schmidt, Committee Management Officer (HFS-20), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2765.

Dated: March 9, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-6783 Filed 3-16-78; 8:45 am]

[4110-03]

[Docket No. 78G-0027]

VITENCO, INC.

Filing of Petition for Affirmation of Gras Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Vitenco, Inc., has filed a petition (GRASP 7G0088) proposing affirmation that the use of a lactase enzyme, derived from *Kluyveromyces (Saccharomyces) lactis* and entrapped inside cellulose triacetate fibers, is generally recognized as safe (GRAS) for reducing the lactose content of milk.

DATE: Comments by May 16, 1978.

ADDRESS: Written comments to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 (21 U.S.C. 321(s), 348, 371(a))) and the regulations for affirmation of GRAS status under § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 7G0088) has been filed by Vitenco, Inc., 594 Marett Rd., Lexington, Mass. 02173, and placed on public display at the office of the Hearing Clerk, Food and Drug Administration, proposing affirmation that the use of a lactase enzyme, derived from *Kluyveromyces (Saccharomyces) lactis* and entrapped inside cellulose triacetate fibers, is generally recognized as safe for reducing the lactose content of milk.

Any petition which meets the format requirements outlined in § 170.35 is filed by the Food and Drug Administration. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for affirmation.

Interested persons may, on or before May 16, 1978, review the petition and/or file comments (four copies) with the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857. Comments should include any available information that would be helpful in determining whether the substance is, or is not, generally recognized as safe. A copy of the petition

and received comments may be seen in the office of the Hearing Clerk, address given above, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 8, 1978.

HOWARD R. ROBERTS,
Acting Director of Bureau of Foods.

[FR Doc. 78-6785 Filed 3-16-78; 8:45 am]

[4110-03]

CARDIOVASCULAR DEVICE CLASSIFICATION PANEL

Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced:

Committee name	Date, time, and place	Type of meeting and contact person
Cardiovascular Device Classification Panel.	Apr. 7 ,9 a.m., room 1409, FB-8, 200 C St. SW., Washington D.C.	Open public hearing 9 to 10 a.m.; open committee discussion 10 a.m. to 2 p.m.; closed committee deliberations 2 to 4 p.m.; Glenn A Rahmoeller (HFK-450), 5787 Georgia Ave., Silver Spring, Md. 20910, 301-427-7560.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to this panel's tentative classification findings to the executive secretary. Those desiring to make formal presentations should notify the executive secretary by March 24, 1978 and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and an indication of the approximate time required to make their comments.

Open committee discussion. During this portion of the meeting, panel members will review their classification recommendation for defibrillators, discuss labeling for defibrillators with a stored energy greater than 400 joules, review clinical data (if available) from testing of teflon-coated guide wires, and review guidelines for the clinical testing of pacemakers and oxygenators as required in support of premarket notification submissions (21 U.S.C. 360(k)).

Closed committee deliberations. The panel members will discuss suggestions from the sponsor of the Hunter-Sessions Vena Cava Balloon Occluder for revising the indications and caution statements.

The panel will also discuss transitional New Drug Applications (NDA's) for biological arterial grafts and supporting Investigational New Drug Applications (INDA's) for these products.

This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permit such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient re-

cords, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably, deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: March 10, 1978.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc. 78-7070 Filed 3-16-78; 8:45 am]

[4110-03]

[Docket No. 78C-0041]

KIRKER CHEMICAL CO.

Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Kirker Chemical Co. has filed a petition proposing the issuance of a regulation for the safe use of silver metal as a color additive in externally applied cosmetics.

FOR FURTHER INFORMATION CONTACT:

Gerad L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Food, Drug, and Cosmetic Act (sec. 706(d), 74 Stat. 402-403 (21 U.S.C. 376(d))) notice is given that a color additive petition (CAP 8C0137) has been filed by Kirker Chemical Co., 1 East 11th Street, P.O. Box 365, River Street Station, Paterson, N.J. 07524, proposing the issuance of a color additive regulation under Part 73 (21 CFR Part 73) to provide for the safe use and exemption from certification of crystalline silver metal to be used as a color additive in fingernail polish.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Hearing Cleark (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 10, 1978.

HOWARD R. ROBERTS,
Acting Director, Bureau of Foods.

[FR Doc. 78-7071 Filed 3-16-78; 8:45 am]

[4110-39]

National Institute of Education

PROGRAM OF RESEARCH GRANTS ON ORGANIZATIONAL PROCESSES IN EDUCATION

Closing Dates for Receipt of Applications

The National Institute of Education (NIE) hereby gives notice that, pursuant to the authority contained in section 405 of the General Education Provisions Act, as amended (20 U.S.C. 1221e), NIE is accepting applications for grants under the Program of Research Grants on Organizational Processes in Education. This notice is a reminder of dates already announced in FR Doc. 77-32166, published on November 7, 1977, at 42 FR 57992.

A. *Types of awards.* The program funds two types of grants. Small grants may be made for projects of up to 12 months' duration in amounts not be exceed $7,500 in direct costs. Grants (other than small grants) may be made in any amount for projects of up to 3 years' duration.

B. *Application procedures.* Application for a grant (other than a small grant) requires a preliminary proposal, which is reviewed by NIE staff, scholars, and educators. NIE returns to the applicant an indication of the relative standing of the preliminary proposal among those received in the same cycle, and information on any major strengths or weaknesses found in the review. An applicant may submit a full proposal for a grant (other than a small grant) only after receiving the review of the preliminary proposal.

Application for a small grant requires only a full proposal, not a preliminary proposal.

In order to conduct its reviews, NIE requires 10 copies of each proposal submitted for review.

C. *Review cycles.* NIE will consider applications received at any time between the date of this notice and the end of the current fiscal year, September 30, 1978. (NIE intends to continue this program in future fiscal years, depending upon availability of funds and other factors. Dates for review cycles after September 30, 1978, will be published at a later time.)

Applications are reviewed in batches at 4-month intervals. The remaining closing dates in this fiscal year for small grant and preliminary applications are: April 13, 1978; August 15, 1978.

The closing dates for full proposals from applicants who have previously received NIE comments on preliminary proposals are: April 27, 1978; August 15, 1978.

D. *Program information.* Interested persons may obtain a program announcement from the Research Staff, Group on School Capacity for Problem Solving, National Institute of Education, 1200 19th Street, NW. (Mail Stop 4), Washington, D.C. 20208 telephone 202-254-6090. The announcement includes copies of all rules governing the program, as well as information on availability of funds, expected number of awards, eligibility and review criteria, and instructions on how to apply. Persons interested in applying for research support under this program are strongly urged to obtain the program announcement. Written requests for the program announcement should be accompanied by a self-addressed mailing label.

E. *Estimated distribution of program funds.* This program has available approximately $1.0 million for initial funding of new awards made in response to applications filed by fiscal year 1978 deadlines. Initial projections call for awarding 20-30 grants in fiscal year 1978. About 15 of these will be small grants. Approximately $100,000 of the $1.0 million is reserved for small grants.

The program will support only projects of the highest quality, whether or not the program's resources are exhausted. Further, nothing in this announcement commits NIE to award any specific amount. The actual total of funds awarded may change because of a need to reserve funds for continuation of projects begun in earlier years, for contract or in-house research, or because of budget or staffing restrictions.

F. *Applications sent by mail.* Applicants should address proposals to: National Institute of Education, Proposal Clearinghouse, Washington, D.C. 20208, Attention: Organizational Research. The outside of the package should indicate whether it contains a preliminary, small grant, or full proposal.

G. *Hand-delivered applications.* Hand-delivered applications must be brought to the Proposals Clearinghouse, Room 708, 1832 M Street NW., Washington, D.C. The Clearinghouse will accept hand-delivered applications daily between the hours of 9 a.m. and 4:30 p.m., Washington, D.C. time, except Saturdays, Sundays, and Federal holidays.

H. *Late applications.* To be considered in a particular review cycle, an application must reach the Clearing-

house by 4:30 p.m., Washington, D.C. time on the deadline date. The Clearinghouse closes promptly on deadline dates, and no other NIE office accepts application packages. Applications received after a deadline will not be entered in that review cycle, no matter when postmarked, so applicants should mail proposals early to ensure timely delivery. An application not received by 4:30 p.m. on a particular deadline date will be held for review in the next cycle, or returned if the applicant requests.

I. *Applicable regulations.* The regulations applicable to this program include the NIE General Provisions Regulations (45 CFR Part 1400) published in the FEDERAL REGISTER on November 4, 1974, at 39 FR 38992, and the final regulations for the Program of Research Grants on Organizational Processes in Education published in the FEDERAL REGISTER on November 22, 1977, at 42 FR 59847.

(Catalog of Federal Domestic Assistance Number 13.950, Educational Research and Development.)

Dated: March 13, 1978.

PATRICIA ALBJERG GRAHAM,
Director,
National Institute of Education.

[FR Doc. 78-7152 Filed 3-16-78; 8:45 am]

[4110-08]

National Institutes of Health

REVIEW OF CONTRACT PROPOSALS

Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual contract proposals, as indicated. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301-496-5708, will furnish summaries of the meetings and rosters of committee members, upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, unless otherwise stated.

Name of committee: Carcinogenesis Program Scientific Review Committee.
Dates: April 3-4, 1978; 8:30 a.m.
Place: Building 31C, Conference Room 9, National Institutes of Health.
Times: Open April 3, 8:30 a.m.-9 a.m., April 4, 8:30 a.m.-9 a.m. Closed April 3, 9 a.m.-5 p.m., April 4, 9 a.m.-adjournment.
Closure reason: To review research contract proposals.
Executive secretary: Dr. Carl E. Smith, Landow Building, Room 8C37, National Institutes of Health. 301-496-1071. (Catalog of Federal Domestic Assistance number 13.393, National Institutes of Health.)

Name of committee: Developmental Therapeutics Committee.
Dates: April 4, 1978; 9 a.m.-adjournment.
Place: Blair Building, Room 110, 8300 Colesville Road, Silver Spring, Md. 20910.
Times: Open April 4, 9 a.m.-9:30 a.m. Closed April 4, 9:30 a.m.-adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Dr. J. A. R. Mead, Blair Building, Room 5A03, National Institutes of Health. 301-427-7263. (Catalog of Federal Domestic Assistance number 13.395, National Institutes of Health.)

Name of committee: Committee on Cytology Automation.
Dates: April 6-7, 1978, 8:30 a.m.
Place: Building 31C, Conference Room 8, National Institutes of Health.
Times: Open April 6, 8:30 a.m.-9:30 p.m. Closed April 6, 9:30 a.m.-5 p.m., April 7, 8:30 a.m.-adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Dr. Bill Bunnag, Building 10, Room 1A21, National Institutes of Health, 301-496-5282. (Catalog of Federal Domestic Assistance Number 13.394, National Institutes of Health.)

Name of committee: Committee on Cancer Immunodiagnosis.
Dates: April 18, 1978, 1 p.m.-adjournment.
Place: Building 10, Room 4B14, National Institutes of Health.
Times: Open April 18, 1 p.m.-1:30 p.m. Closed April 18, 1:30 a.m.-adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Mrs. Judith M. Whalen, Building 10, Room 4B17, National Institutes of Health, 301-496-1791. (Catalog of Federal Domestic Assistance Number 13.394, National Institutes of Health.)

Name of committee: Virus Cancer Program Scientific Review Committee.
Dates: April 24-26, 1978, 9 a.m.
Place: Landow Building, Room 4C18, 7910 Woodmont Building, Bethesda, Md. 20014.
Times: Open April 24, 9 a.m.-9:30 p.m. Closed April 24, 9:30 a.m.-5 p.m., April 25, 9 a.m.-5 p.m., April 26, 9 a.m.-adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Dr. Maurice L. Guss, Landow Building, Room 9A10, National Institutes of Health, 301-496-4533. (Catalog of Federal Domestic Assistance Number 13.393, National Institutes of Health.)

Dated: March 7, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-6703 Filed 3-16-78; 8:45 am]

[4110-08]

CARCINOGENESIS PROGRAM SCIENTIFIC REVIEW COMMITTEE

Renewal

The Director, National Institutes of Health, announces the renewal on March 2, 1978, of the Carcinogenesis Program Scientific Review Committee, under the authority of section 410(a)(3) of the Public Health Service Act (42 U.S.C. 286d). Such advisory committees shall be governed by the provisions of the Federal Advisory Committee Act, as amended (Pub. L. 92-463) setting forth standards governing the establishment and use of advisory committees.

This committee provides to the Director, NCI, and the Director, Division of Cancer Cause and Prevention, advice concerning scientific merit of proposals for contracts submitted to the carcinogenesis program of the National Cancer Institute. The committee will terminate March 2, 1980, unless renewed by appropriate action as authorized by law.

Dated: March 8, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 78-6713 Filed 3-16-78; 8:45 am]

[4110-08]

CANCER CONTROL COMMUNITY ACTIVITIES REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Control Community Activities Review Committee, National Cancer Institute, April 27-29, 1978, Building 31, Conference Room 4, 9000 Rockville Pike, Bethesda, Md. 20014. Except as noted below, this meeting will be open to the public on April 27, 1978, from 8:30 a.m. to 5 p.m. for administrative details and to review contracts with the New Mexico cancer control program and the Metropolitan Detroit cancer control program for implementation of community-based cancer control programs. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5 United States Code, and section 10(d) of Pub. L. 92-463, the meeting will be

closed to the public approximately for two 30-minute periods on April 27, 1978, to discuss personal information concerning individuals associated with each contract. In addition, and in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code, and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on April 28, 1978, from 8:30 a.m. to adjournment, for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions of the proposals could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals.

Mrs. Marjorie F. Early, Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301-496-5708, will provide a summary of the meeting and a roster of committee members, upon request.

Dr. Robert F. Browning, Executive Secretary, National Cancer Institute, Blair Building, Room 7A07, National Institutes of Health, Bethesda, Md. 20014, 301-427-7941, will furnish substantive program information.

(Catalog of Federal Domestic Assistance No. 13.399, National Institutes of Health.)

Dated: March 7, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR DOC. 78-6708 Filed 3-16-78; 8:45 am]

[4110-08]

CANCER CONTROL GRANT REVIEW COMMITTEE

Renewal

The Director, National Institutes of Health, announces the renewal on March 3, 1978, of the Cancer Control Grant Review Committee, under the authority of section 410A(a) of the Public Health Service Act (42 U.S.C. 286e). Such advisory committees shall be governed by the provisions of the Federal Advisory Committee Act, as amended (Pub. L. 92-463) setting forth standards governing the establishment and use of advisory committees.

This committee provides to the Director, NCI, and the Director, Division of Cancer Control and Rehabilitation, advice concerning the technical merit of grant proposals for projects in cancer control. The committee will terminate March 3, 1980, unless renewed by appropriate action as authorized by law.

Dated: March 8, 1978.

DONALD S. FREDERICKSON,
Director,
National Institutes of Health.

[FR Doc. 78-6712 Filed 3-16-78; 8:45 am]

[4110-08]

CANCER IMMUNOTHERAPY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Committee on Cancer Immunotherapy, National Cancer Institute, April 26-28, 1978, Landow Building, Room C-418, 7910 Woodmont Avenue, Bethesda, Md. 20014. The meeting will be open to the public on April 26, 1978, from 7:30 p.m. to 8 p.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, United States Code, and 10(d) of Pub. L. 92-463, the meeting will be closed to the public on April 26, 1978, from 8 p.m. to 11:30 p.m.; on April 27, from 8:30 a.m. to 11:30 p.m., and on April 28, from 8:30 a.m. to adjournment, for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal personal information concerning individuals associated with the proposals.

Mrs. Marjorie F. Early, Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301-496-5708, will provide summaries of the meeting and rosters of committee members, upon request.

Dr. George M. Steinberg, Executive Secretary, National Cancer Institute, Building 10, Room 4B09, National Institutes of Health, Bethesda, Md. 20014, 301-496-1791, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.395, National Institutes of Health.)

Dated: March 6, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-6707 Filed 3-16-78; 8:45 am]

[4110-08]

CONTRACEPTIVE EVALUATION RESEARCH CONTRACT REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Contraceptive Evaluation Research Contract Review Committee, National Institute of Child Health and Human Development, May 12, 1978, Building 31, Conference Room 2A-52, National Institutes of Health, Bethesda, Md.

The entire meeting will be open to the public from 9 a.m. to 5 p.m. to discuss: (a) Review of current program, (b) plans for new contracts, and (c) budget fiscal year 1979. Attendance by the public will be limited to space available.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Building 31, Room 2A-04, National Institutes of Health, Bethesda, Md., area code 301-496-1848, will provide a summary of the meeting and roster of committee members. Dr. Heinz W. Berendes, Chief, Contraceptive Evaluation Branch, Center for Population Research, NICHD, Landow Building, Room 7A14, National Institutes of Health, Bethesda, Md., area code 301-496-4924, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.864, National Institutes of Health.)

Dated: March 6, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-6709 Filed 3-16-78; 8:45 am]

[4110-08]

HIGH BLOOD PRESSURE WORKING GROUP

Meeting

Notice is hereby given of the meeting of the High Blood Pressure Working Group on May 19, 1978, from 9 a.m. to 5 p.m., at the National Institutes of Health, Building 1, Wilson Hall, Bethesda, Md. 20014.

Attendance by the public will be limited to space available.

For detailed program information and agenda, contact Mr. Graham W. Ward, Acting Chief, Health Education Branch, National High Blood Pressure Education Program, Building 31, Room 5A10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, 301-496-1051. For the list of participants and meeting summary, contact Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, Building 31, Room 5A03.

Dated: March 6, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-6710 Filed 3-16-78; 8:45 am]

[4110-08]

LIPID METABOLISM ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the

Lipid Metabolism Advisory Committee, National Heart, Lung, and Blood Institute, April 19-20, 1978, Building 31, Conference Room 7, National Institutes of Health, Bethesda, Md.

This meeting will be open to the public on April 19 from 9 a.m. to 10:30 a.m. to discuss the lipid metabolism branch program review. 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, United States Code, and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on April 19 from 10:30 a.m. to adjournment on April 20 for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, National Institutes of Health, Building 31, Room 5A03, Bethesda, Md. 20014, 301-496-4236, will provide summaries of meetings and rosters of committee members. Dr. Basil M. Rifkind, Chief, Lipid Metabolism Branch, NHLBI, Federal Building, Room 302, 301-496-1681, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, National Institutes of Health.)

Dated: March 7, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 73-6706 Filed 3-16-78; 8:45 am]

[4110-08]

NATIONAL DIABETES ADVISORY BOARD

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the National Diabetes Advisory Board on April 11 and 12, 1978.

The Executive Committee meeting will be held on April 11, 1978. The Board meeting will be held on April 12, 1978. The time and meeting location may be obtained by contacting Mr. Raymond M. Kuehne, Executive Director of the Board, P.O. Box 30174, Bethesda, Md. 20014, 301-496-6045.

The meetings, which will be open to the public, are being held to continue review of the status and implementation of the long-range plan to combat diabetes formulated by the National Commission on Diabetes. Attendance by the public will be limited to space available.

Mr. Raymond M. Kuehne (address above) will provide summaries of the meeting and a roster of the committee members.

(Catalog of Federal Domestic Assistant Program No. 13.847, National Institutes of Health.)

Dated: March 6, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-6705 Filed 3-16-78; 8:45 am]

[4110-08]

NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES, RECOMBINANT DNA MOLECULE PROGRAM ADVISORY COMMITTEE

Working Group Meeting

Notice is hereby given of a Working Group, sponsored by the Recombinant DNA Molecule Program Advisory Committee, to consider the Report of the U.S.-EMBO Workshop To Assess Risks for Recombinant DNA Experiments Involving the Genomes of Animal, Plant and Insect Viruses at the National Institutes of Health, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, Md. 20014 on April 6-7, 1978, from 9 a.m. to 5 p.m.

The Working Group will discuss the report of a joint U.S.-EMBO Workshop held on January 27-29 to discuss the possible risks of recombinant DNA experiments involving the DNAs of animal, plant and insect viruses. The U.S.-EMBO Workshop was convened as a result of comments received on the virus sections of the proposed revised Guidelines for Research Involving Recombinant DNA Molecules (42 FR 49596). Recommendations arising from this Working Group meeting on April 6-7 will be considered at the next meeting of the Recombinant DNA Molecule Program Advisory Committee.

The U.S.-EMBO Workshop report will be reprinted in the FEDERAL REGISTER in the near future. Copies of the Workshop report and other relevant information may be obtained from Dr. William J. Gartland, Executive Secretary, Recombinant DNA Molecule Program Advisory Committee, NIGMS, NIH, Building 31, Room 4A52, Bethesda, Md., telephone 301-496-6051.

The meeting will be open to the public. Attendance by the public will be limited to space available.

Dated: March 8, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-6704 Filed 3-16-78; 8:45 am]

[4110-08]

VIRUS CANCER PROGRAM SCIENTIFIC REVIEW COMMITTEE

Renewal

The Director, National Institutes of Health, announces the renewal on February 20, 1978, of the Virus Cancer Program Scientific Review Committee, under the authority of section 410(a)(3) of the Public Health Service Act (42 USC 286d). Such advisory committees shall be governed by the provisions of the Federal Advisory Committee Act, as amended (Pub. L. 92-463) setting forth standards governing the establishment and use of advisory committees.

This committee provides to the Director, NCI and the Director, Division of Cancer Cause and Prevention, advice concerning scientific merit of proposals for contracts submitted to the Virus Cancer Program. The committee will terminate February 20, 1980, unless renewed by appropriate action as authorized by law.

Dated: February 28, 1978.

DONALD S. FREDRICKSON, M.D.,
Director,
National Institutes of Health.

[FR Doc. 78-6711 Filed 3-16-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 32928]

NEW MEXICO

Application

MARCH 7, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Llano, Inc., has applied for one 2⅜-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, N. MEX.

T. 22 S., R. 25 E.,
Sec. 10, lots 3, 6, S½NW¼ and N½SW¼.

This pipeline will convey natural gas across 0.67 of a mile of public land in Eddy County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land

Management, P.O. Box 1397, Roswell, N. Mex. 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-7147 Filed 3-16-78; 8:45 am]

[4310-84]

[NM 32929]

NEW MEXICO

Application

MARCH 7, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, N. MEX.

T. 31 N., R. 9 W.,
Sec. 18, lot 10.

This pipeline will convey natural gas across 0.046 of a mile of public land in San Juan County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-7148 Filed 3-16-78; 8:45 am]

[4310-84]

[NM 32998]

NEW MEXICO

Application

MARCH 10, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, N. MEX.

T. 30 N., R. 14 W.,
Sec. 33, lots 3 and 4.

This pipeline will convey natural gas across 0.370 miles of public land in San Juan County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-7149 Filed 3-16-78; 8:45 am]

[4310-84]

[NM 32968, 32970, 32971, 32975, 32976, 32977, and 32978]

NEW MEXICO

Applications

MARCH 10, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for eleven 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, N. MEX.

T. 19 S., R. 27 E.,
Sec. 36, SE¼SW¼ and SW¼SE¼.
T. 20 S., R. 27 E.,
Sec. 1, lots 3 and 4;
Sec. 2, lots 1, 2, SW¼NE¼ and SE¼NW¼;
Sec. 13, NW¼SW¼;
Sec. 14, N½SE¼.
T. 20 S., R. 28 E.,
Sec. 21, N½SE¼;
Sec. 22, SW¼NE¼, S½NW¼ and N½SW¼.
T. 24 S., R. 28 E.,
Sec. 29, NW¼SW¼;
Sec. 30, lot 4, SE¼SW¼, N½SE¼ and SW¼SE¼.
T. 20 S., R. 29 E.,
Sec. 4, SW¼SW¼;
Sec. 5, E¼SE¼.
T. 19 S., R. 32 E.,
Sec. 3, N½SW¼ and NW¼SE¼.
T. 126 S., R. 37 E.,
Sec. 14, NE¼SE¼.

These pipelines will convey natural gas across 5.17 miles of public lands in Eddy and Lea Counties, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-7150 Filed 3-16-78; 8:45 am]

[7020-02]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-50]

CERTAIN SYNTHETIC GEMSTONES

Notice of Investigation

Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 9, 1978, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Queensbury Opal Co., Ltd., Three Commerce Park Square, Beachwood, Ohio 44122. The complaint alleges that unfair methods of competition and unfair acts exists in the importation of certain synthetic gemstones into the United States, or in their sale, by reason of the alleged coverage of such articles by the claims of the U.S. Letters Patent No. 3,742,731, which patent is owned by Queensbury Opal Co. Ltd. The complaint alleges that such unfair methods of competition and unfair acts have the effect or tendency to destroy or substantially injure an industry, efficently and economically operated, in the United States or to prevent the establishment of a domestic industry. The complaint further alleges that certain misrepresentations take place in the sale of infringing gemstones. Complainant has requested that the imports in question be temporarily and permanently excluded from entry into the United States.

Having considered the complaint, the U.S. International Trade Commission, on March 10, 1978, *Ordered*—

(1) That, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), an investigation be instituted to determine, under subsection (c) whether, on the basis of the allegations set forth in the complaint and the evidence adduced, there are violations or there is reason to believe there are violations of subsection (a) of this section in the unauthorized importation of certain

synthetic gemstones into the United States, or in their sale, by reason of the alleged coverage of such gemstones by the claims of U.S. Letters Patent No. 3,742,731, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States or to prevent the establishment of such an industry in the United States.

(2) That, for the purpose of the investigation so instituted, the following persons alleged to be involved in the unauthorized importation of such articles into the United States, or in their sale, are hereby named as the respondents upon which the complaint and this notice are to be served:

Paul S. Rogell, P.O. Box 1321, Stamford, Conn. 06904.

Rogell Associates, Inc., P.O. Box 1321, Stamford, Conn. 06904.

Incom Corp., 205 Chapin Street, Southbridge, Mass.

Fritz Mohr, Breiten Weg No. 6, Idar-Oberstein 3, West Germany.

Rudolph & Helmut Mei, Tiefensteiner Strass 29, Idar-Oberstein 2, West Germany.

(3) That, for the purpose of the investigation so instituted, Donald K. Duvall, Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby appointed as presiding officer, and

(4) That, for the purpose of the investigation so instituted, Charles F. Schill, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby named Commission investigative attorney.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extension of time for submitting a response will not be granted unless good and sufficient clause therefore is shown.

Failure of the respondents to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute waiver of the right to appear and contest the allegations of the complaint and of this notice, and will authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination, respectively, containing such findings.

The complaint, with the exception of confidential information referred to therein, is available for inspection by interested persons at the Office of the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and in the New York City Office of the Commission, 6 World Trade Center.

By order of the Commission.

Issued: March 14, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-7202 Filed 3-16-78; 8:45 am]

[1505-01]

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

Correction

In FR Doc. 78-6074 appearing at page 10154 in the issue for Friday, March 10, 1978, a page was inadvertently omitted. It is published below for the convenience of the reader.

Page 9

DECISION NO. HY78-3007

HEAVY AND HIGHWAY CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Class 1	$11.66	.93	1.95	.70+a	.02
Class 2	11.58	.93	1.95	.70+a	.02
Class 3	11.33	.93	1.95	.70+a	.02
Class 4	11.11	.93	1.95	.70+a	.02
Class 5	10.88	.93	1.95	.70+a	.02
Class 6	10.87	.93	1.95	.70+a	.02
Class 7	10.59	.93	1.95	.70+a	.02
Class 8	10.36	.93	1.95	.70+a	.02
Class 9	9.89	.93	1.95	.70+a	.02
Class 10					
a	12.08	.93	1.95	.70+a	.02
b	12.33	.93	1.95	.70+a	.02
c	12.58	.93	1.95	.70+a	.02
d	12.08	.93	1.95	.70+a	.02
Class 11	12.07	.93	1.95	.70+a	.02
Class 12	11.78	.93	1.95	.70+a	.02
Class 13	11.58	.93	1.95	.70+a	.02
Class 14	11.13	.93	1.95	.70+a	.02

FOOTNOTE:

a. Paid Holidays: New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veteran's Day, Thanksgiving Day, Christmas Day, providing the employee works one day in the payroll week in which the holiday occurs.

[4510-30]

DEPARTMENT OF LABOR

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth

at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice to:

Deputy Assistant Secretary for Employment and Training, 601 D St. NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 13th day of March 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

APPLICATIONS RECEIVED DURING THE WEEK ENDING MAR. 10, 1978

Name of applicant and location of enterprise	Principal product or activity
Lenape Transportation Co., Inc., Lafayette, N.J.	Trucking of commodities tons.
Ridgecrest Convalescent Center, Inc.	Long-term nursing care.
JEP Enterprises, Beaufort, S.C.	Motor hotel.
Lubricants, Inc., Pewaukee, Wis.	Manufacture of quality oil and base oil for other products.
Kress Corporation, Brimfield, Ill.	Manufacture of heavy haulage equipment.
Steel King Industries, Inc., Stevens Point, Wis.	Manufacture material handling equipment racks and containers.
Fowler Products Incorporated, Crestline, Ohio.	Custom plastic extrusions manufacturing.
A.B.C. Chetek, Inc., Chetek, Wis.	Manufacture of particleboard and vinyl furniture.
Bucking Equipment and Supply, Inc., Willard, Ohio.	Sales of farm equipment.
Trosky Elevator Co., Trosky, Minn.	Retail sales of feed and grain.
Tate Rentals, Jonesboro, Ark.	General rental store to public.
Lane Processing, Inc., Polk County, Ark., and McCurtain County, Okla.	Poultry operation.

APPLICATIONS RECEIVED DURING THE WEEK ENDING MAR. 10, 1978—Continued

Name of applicant and location of enterprise	Principal product or activity
Ozark Walnut Inc., Houston, Mo.	Manufacture of wood living room and occasional furniture.
Building Services Inc., Marianna, Ark.	Retail sales of building material and construction.
Bee Cee Manufacturing Co., Malden, Mo.	Manufacture of storm doors, patio doors, storm windows, and prime windows.
Hotel Vosburg Inc., San Jacinto, Calif..	Hotel.
Los Banos Community Hospital Association, Inc., Los Banos, Calif.	Acute general hospital.
Teton West Motor Inn, Driggs, Idaho.	Motel.
Two Rivers Motor Inn, Pasco, Wash.	Do.

[FR Doc. 78-6891 Filed 3-16-78; 8:45 am]

[4510-26]

Occupational Safety and Health Administration

ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH

Request for Nomination of Members

The Assistant Secretary of Labor for Occupational Safety and Health requests nominations for the Advisory Committee on Construction Safety and Health. The current terms of the 15-member Committee expire as of June 30, 1978.

The function of the Committee is to advise the Assistant Secretary on occupational safety and health in construction. The Committee membership is comprised of the following categories: five representatives of employees, five representatives of employers, two State government representatives, one Federal Government representative, and two public representatives. One of the members will be designated as the chairperson. Terms of office are two years. No member of the committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule.

Any interested person or organization may nominate one or more qualified persons for membership. Nominees shall be identified by name, occupation or position, address and telephone number. The nomination shall specify the field or group which the candidate would represent and shall include a resume of the nominee's background, experience and qualifications. In addition, the nomination shall state that the nominee is aware of the nomination, is willing to serve as a Committee member, and appears to have no conflict of interest that would preclude committee membership.

Nominations should be submitted to Ken Hunt, OSHA Division of Consumer Affairs, Room N-3635, New Department of Labor Building, 3rd and Constitution Avenue NW., Washington, D.C. 20210, no later than April 30, 1978.

Signed at Washington, D.C., this 10th day of March 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-7055 Filed 3-16-78; 8:45 am]

[4510-26]

VIRGINIA STATE STANDARDS

Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor of Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On September 28, 1976, notice was published in the FEDERAL REGISTER (41 FR 42655) of the approval of the Virginia Plan and the adoption of Subpart EE to 29 CFR Part 1952 containing the decision.

The Virginia Plan provides for the adoption of Federal standards as State standards which are at least as effective as comparable Federal Standards promulgated under section 6 of the Act after comments and public hearing. Section 1952.210 of Subpart EE sets forth the State's schedule for the adoption of Federal standards. By letter dated March 23, 1977, from Edmond M. Boggs, Commissioner, Virginia Department of Labor and Industry, to David H. Rhone, Regional Administrator, and incorporated as part of the plan, the State submitted standards comparable to the additions, revisions, amendments and corrections to 29 CFR Parts 1910 and 1926 which were published in the FEDERAL REGISTER as of December 21, 1976. These standards were promulgated after public comment requested on October 31, 1976, hearings held on November 15, 1976 and a resolution adopted by the Virginia Safety and Health Codes Commission effective April 15, 1977, pursuant to section 40.1-22 and the Administration Process Act, Codes of Virginia.

2. *Decision.* Having reviewed the State submission in comparison with Federal standards, it has been determined that the State standards are

identical to the comparable Federal standards except for the State standard for ionizing radiation which has been determined to be at least as effective as the comparable Federal standard, 29 CFR 1910.96, and are hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Suite 2100, Gateway Building, 3535 Market Street, Philadelphia, Pa. 19104; Office of the Commissioner, Virginia Department of Labor and Industry, 205 North Fourth Street, Richmond, Va. 23219; and Office of the Director of Federal Compliance and State Programs, Room 3603, 200 Constitution Avenue NW., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds good cause exists for not publishing the supplement to the Virginia State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards and are deemed to be at least as effective with the exceptio of the State standard for ionizing radiation which has been determined to be at least as effective as the comparable Federal standard 29 CFR 1910.96.

2. The standards were adopted in accordance with procedural requirements of State law which included public comment and further public participation would be unnecessary.

This decision is effective March 17, 1978.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Philadelphia, Pa., this 3rd day of February 1978.

DAVID H. RHONE,
Regional Administrator.

[FR Doc. 78-7056 Filed 3-16-78; 8:45 am]

[4510-26]

Occupational Safety and Health Administration

[V-78-5]

INTERLAKE STAMPING CORP.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTIONS: (1) Proposed extension of experimental variance; (2) Grant of interim order.

SUMMARY: This notice announces the proposed extension of the experimental variance granted to Interlake Stamping Corp. from the standard prescribed in 29 CFR 1910.217 concerning mechanical power presses.

It also announces the granting of an interim order until a final decision is rendered on the proposed extension of the experimental variance.

DATES: The effective date of the interim order is March 1, 1978. The last date for interested persons to submit comments is April 17, 1978. The last date for affected employers, employees, to request a hearing on the application is April 17, 1978.

ADDRESSES: Send comments or requests for a hearing to:

Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 3rd Street and Constitution Avenue NW., Room N-3668, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Mr. James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 3rd Street and Constitution Avenue NW., Room N-3668, Washington, D.C. 20210.

or the following Regional and Area Offices:

U.S. Department of Labor, Occupational Safety and Health Administration, 32nd Floor, Room 3263, 230 South Dearborn Street, Chicago, Ill. 60604.

U.S. Department of Labor, Occupational Safety and Health Administration, 1240 East Ninth Street, Cleveland, Ohio 44199.

I. NOTICE OF INTENT TO EXTEND EXPERIMENT

Notice is hereby given that, the Secretary of Labor proposes to extend the experimental variance granted to Interlake Stamping Corp. under section 6(b)(6)(C) of the Occupational Safety and Health Act of 1970 (84 Stat. 1594; 29 U.S.C. 655). The experimental variance was granted on August 31, 1976 (41 FR 36702) from the standard prescribed in 29 CFR 1910.217(c)(3)(iii)(*b*) which prohibits the use of a presence sensing device for tripping a mechanical power press. The experiment was extended for six months on September 9, 1977 (42 FR 45389).

The address of the place of employment that will be affected by the extension is:

Interlake Stamping Corp., 4732 East 355th Street, Willoughby, Ohio 44094.

All interested persons, including employers and employees, who believe they would be affected by the proposed extension of the experimental variance for Interlake Stamping Corp. are invited to submit written data, views, and arguments relating only to the proposed extension no later than April 17, 1978. Affected employers or employees, objecting to the proposed extension, may also request a hearing solely on the issue of the extension no later than April 17, 1978. Requests for a hearing shall include:

(1) A concise statement of facts showing how the applicant would be affected by the proposed action;

(2) The reasons for objection and arguments on any issue of fact or law on which the objection is based; and

(3) A specific account of evidence to be presented or adduced as support of the objection.

The experimental variance authorizes the use of Erwin Sick electronic light curtains as a tripping means as well as a point of operation device on five Bliss-OBI mechanical power presses. This system has been used in Sweden and West Germany with excellent safety records, but has not been permitted in this country. Five additional Bliss-OBI mechanical power presses are used as a control group with conventional tripping means in order to compare the safety, worker acceptance and productivity of the two methods.

During the six month extension, the operation has continued to be as safe and production has continued to be as high as during the original year of the experiment.

The initial purpose of this experiment was to collect information to aid in determining whether the OSHA standard should be modified to permit the tripping of power presses with presence sensing devices.

As information has been collected from Interlake and other sources during this experimental period, it has become apparent that additional information is needed before a final decision can be made on whether to modify the standard and, if so, what requirements and/or restrictions should be included in the new standard.

For example, the need for a certification program as is used in Sweden and West Germany must be studied. More recent European statistics must be obtained. A 10 year study of light curtains by the French government has recently been released and must be studied. It is also necessary, in order to set priorities, that we determine the level of interest in the use of this method of actuating mechanical power presses among users in the United States.

In order to obtain this and other needed information, it is anticipated that a conference or informal hearing may be held. If such an event is scheduled, a notice will be published in the FEDERAL REGISTER. The possibility of obtaining additional data by expanding the experiment to include other companies is also being considered.

It is expected that the continuing data and operating experience ob-

tained from Interlake Stamping Corp. under this experiment will prove helpful in analyzing the cumulative information obtained from other sources.

Therefore, OSHA has requested Interlake Stamping Corp. to continue operating its presses using the Erwin Sick electronic light curtain as a tripping means and an extension of the variance would be required. The Secretary of Labor proposes to extend the variance for a period not to exceed two years under the same terms and conditions of the original order 41 FR 36702, August 31, 1976, as amended, 42 FR 45389, September 9, 1977, except that new statements as required under item 5(b) of the original order would be required; and, that certain recordkeeping changes may be made in the final order.

II. INTERIM ORDER

It appears that an interim order is necessary in order to preserve the continuity of the experiment being conducted by Interlake Stamping Corp. pending a decision on the extension of the variance. Therefore, it is ordered, pursuant to the authority in section 6(b)(6)(C) of the Occupational Safety and Health Act of 1970 and in Secretary of Labor's Order No. 8-76 (41 FR 25059) that Interlake Stamping Corp. be, and it is hereby, authorized to continue the use of the Erwin Sick electronic light curtain as a means of initiating slide motion on its Bliss-OBI mechanical power presses under the terms of the experimental variance granted August 31, 1976 (41 FR 36702) until a final decision is made on the proposed extension of the experimental variance.

As soon as possible Interlake Stamping Corp. shall give notice to affected employees of the terms of this order by the same means required to be used to inform them of the previous grant and extension of the variance.

Effective date: This order shall become effective on March 1, 1978, and shall remain in effect until a final decision is made on the extension of experimental variance.

Signed at Washington, D.C. this 10th day of March, 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-7171 Filed 3-16-78; 8:45 am]

[4510-28]

Office of the Secretary

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or portion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under title II, chapter 2, of the Act in accordance with the provisions of subpart B of 29 CFR part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing: *Provided*, Such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 27, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 27, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 2nd day of March 1978.

HAROLD A. BRATT,
Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Button Corp. of America (workers).	Newark, N.J	Jan. 19, 1978	Jan. 9, 1978	TA-W-3,291	Buttons.
The Cambridge Tailoring Co. (ACTWU).	Baltimore, Md	Feb. 21, 1978	Jan. 24, 1978	TA-W-3,292	Men's tailored clothing.
J. Wiss & Sons Co. (American Federation of Labor & Organizations).	Newark, N.J	Feb. 24, 1978	Feb. 21, 1978	TA-W-3,293	Farm implements such as scissors, knves, metal masters, snip shears and pinking shears and garden tools.
Do	Maplewood, N.J	do	do	TA-W-3,294	Do.
Lebow Brothers, Inc. (ACTWU).	Baltimore, Md	Feb. 21, 1978	Jan. 24, 1978	TA-W-3,295	Men's tailoring clothing.
Munsingwear, Inc. (ACTWU).	Ashland, Wis	do	Feb. 7, 1978	TA-W-3,296	Men's and boys' knitted sport shirts.
Novelty Footwear, Inc. (R.C.I.U.).	Port Jervis, N.Y	Feb. 24, 1978	Feb. 21, 1978	TA-W-3,297	Women's footwear.
Ronson Corp. of Delaware (IAM&W).	Ogletown, Del	do	Feb. 16, 1978	TA-W-3,298	Lighters, hairdryers, electric can openers, electric knives and blenders.
RTE Corp. (workers)	Waukesha, Wis	Feb. 1, 1978	Jan. 29, 1978	TA-W-3,299	Transformers used to change electrical volts and currents.
T. I. Swartz & Sons, Inc. (ACTWU).	Baltimore, Md	Feb. 21, 1978	Jan. 24, 1978	TA-W-3,300	Men's tailored clothing.

[FR Doc.78-7058 Filed, 3-16-78; 8:45 am]

[4510-28]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing: *Provided*, Such request in filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 27, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance at the address shown below, not later than March 27, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 7th day of March 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Alberto (ACTWU)	Baltimore, Md	Feb. 21, 1978	Jan. 24, 1978	TA-W-3,301	Men's tailored clothing.
Browning Laboratories, Inc. (workers).	Laconia, N.H	Feb. 27, 1978	Feb. 17, 1978	TA-W-3,302	CB radio base stations.
Davis & Furber Machine Co. (company).	North Andover, Mass	do	Feb. 20, 1978	TA-W-3,303	Textile machinery used for the carpet yarn and nonwoven industries.
Gulant & Maslin, Inc. (ACTWU).	Brooklyn, N.Y	Feb. 6, 1978	Jan. 31, 1978	TA-W-3,304	Men's and boys' tailored clothing.
GMC, Delco Battery Plant, Delco-Remy Division (workers).	Muncie, Ind	Feb. 27, 1978	Feb. 1, 1978	TA-W-3,305	Batteries used in the automobile industry.
Haas Tailoring Co. (ACTWU).	Baltimore, Md	Feb. 21, 1978	Jan. 24, 1978	TA-W-3,306	Men's tailored clothing.
Imperial Pants Co. (ACTWU).	Brooklyn, N.Y	Feb. 6, 1978	Jan. 31, 1978	TA-W-3,307	Men's and boys' tailored clothing.
J. Molofsky Sons (ACTWU)	Baltimore, Md	Feb. 21, 1978	Jan. 24, 1978	TA-W-3,308	Men's tailored clothing.
J. Schoeneman, a division of Cluett Peabody (ACTWU).	Owing Mills, Md	do	do	TA-W-3,3,09	Warehousing and shipping of men's tailored clothing.
Do	Wilmington, Del	do	do	TA-W-3,310	Men's tailored clothing.
Do	Winchester, Va	do	do	TA-W-3,311	Do.
Do	Chambersburg, Pa	do	do	TA-W-3,312	Do.
Jules Simon Co. (workers)	Frankfort, Ind	Feb. 27, 1978	Feb. 15, 1978	TA-W-3,313	Men's sport and suite coats.
Linden Manufacturing, Inc. (workers).	Lindenhurst, N.Y	do	Feb. 21, 1978	TA-W-3,314	Raincoats, ladies' coats and jackets.
Mavest, Inc. & Modern Manfacturing Corp.	Timonium, Md	Feb. 21, 1978	Jan. 24, 1978	TA-W-3,315	Men's casual apparel.

[FR Doc. 78-7059 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2161 etc.]

PERENNIAL PRINT WORKS, INC. ET AL.

Negative Determination Regarding Application for Reconsideration

Perennial Print Works, Inc., Paterson, N.J. (TA-W-2161); Applikay Textile Process Corp., Passaic, N.J. (TA-W-2186); Bouquet Screen Printing, Inc., Passaic, N.J. (TA-W-2187); Standard Dyeing Co., Paterson, N.J. (TA-W-2227); Great Eastern Textile Co., Mahwah, N.J. (TA-W-2244).

On January 24, 1978, the Amalgamated Clothing & Textile Workers Union requested administrative reconsideration of the Department of Labor's negative determinations regarding eligibility to apply for worker adjustment assistance in the case of worker groups in five printing and dyeing firms in New Jersey. These determinations were published in the FEDERAL REGISTER respectively on January 6, 1978 (43 FR 1149), December 6, 1977 (42 FR 61673), December 6, 1977 (42 FR 61675), December 30, 1977 (42 FR 65323), and January 6, 1978 (43 FR 1146).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears, on the basis of facts not previously considered, that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The only issue of substance raised by the Amalgamated Clothing & Textile Workers Union in these cases was that the Department had used import categories in evaluating the increased imports test of section 222(3) of the Trade Act of 1974, which were too broad and that the Department should have confined itself to catego-

ries which were "in direct competition" with the articles which each individual company produced.

With respect to the petition submitted by workers of Great Eastern Textile Co. of Mahwah, N.J., TA-W-2244, information had earlier and separately come to the Department of Labor's attention suggesting the appropriateness of a reopening of its investigation. That re-investigation developed data warranting issuance of a certification. However, the data developed was specific to that case and does not bear on the issue raised by the Amalgamated Clothing & Textile Workers Union in its request for reconsideration. Therefore, consideration of that case is excluded from the Department's response to the subject application.

In evaluating the application for reconsideration, the Department reviewed the import categories it had used in its original investigation and found that there were certain deficiencies in them. Since flocking is a specialized process, it was decided to delete flocked fabric. Greige goods were also dropped, while bleached facric was added to the categories of like or directly competitive articles.

The revised import categories, which include dyed and printed, woven and knit fabric of cotton and man mades, showed imports increasing by 14 percent in 1976 and by 4 percent in the first half of 1977 compared to the same period in 1976.

The determination to deny the workers' petitions, however, was not based on the finding that imports had not increased over the relevant time period. Rather, the Department's determinations to deny these petitions were based on the finding that increased imports had not contributed importantly to worker separations at the petitioning plants. The Department based its determinations on a survey of converters who are customers of the dyeing and printing firms and of manufacturers who are customers of the converters. The result of these customer surveys indicated only minor import competition. The printing and dyeing industry is marked by a very low import penetration ratio. The Department's findings with respect to customers surveyed during the investigation were consistent with the low import penetration ratio.

In summary, even if the Department were to concede the point that in certain circumstances it wuld be more appropriate to use narrower categories of imports, to do so in these cases would have no effect on the outcome.

CONCLUSION

After review of the applications and the investigative files, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decisions. The applications are, therefore, denied.

Signed at Washington, D.C., this 9th day of March 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-7057 Filed 3-16-78; 8:45 am]

[4510-23]

ADVISORY COMMITTEE TO REVIEW ADVISORY METAL AND NONMETALLIC MINE HEALTH AND SAFETY STANDARDS

Meeting

Pursuant to section 301(b)(2) of the Federal Mine Safety and Health Amendments Act of 1977, Pub. L. 95-164, enacted November 9, 1977, notice is hereby given that the Advisory Committee To Review Advisory Metal and Nonmetallic Mine Health and Safety Standards which met in Washington, D.C., March 6-10, 1978, will continue its meeting beginning Tuesday, April 4, 1978, through Friday, April 7, 1978.

Meetings will be held Tuesday through Friday starting at 9 a.m. local time until the conclusion of the meeting each day, at the Desert Inn, 1 North Freeway at Congress, Tucson, Ariz. 85705. The meetings of the Advisory Committee are open to the public and approximately 50 seats will be available on a first-come first-served basis. Any member of the public may file a written statement with the Advisory Committee before and during the public meetings. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meetings.

Copies of the committee agenda are available for examination by the public at the office of, and all written statements, comments, and inquiries should be addressed to Frank J. Delimba, Executive Secretary, Room 703, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, telephone 703-235-8597.

Dated: March 15, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-7236 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2790]

AETNA PIPE PRODUCTS CO. OF ILLINOIS, CHICAGO, ILL.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2790: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 21, 1977 in response to a worker petition received on December 9, 1977 which was filed by the United Steelworkers of America on behalf of workers and former workers producing carbon steel products at the Armitage Avenue and West Lake Street plants of Aetna Pipe Products Co. of Illinois, Chicago, Ill.

The notice of investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1556). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Aetna Pipe Products Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criterion have been met, the following criterion has not been met:

that sales or production, or both, of such firm or subdivision have decreased absolutely;

The Department's investigation revealed that company sales and production increased from 1975 to 1976 and continued to increase in 1977 compared to 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that all workers at the Armitage Avenue and West Lake Street facilities of Aetna Pipe Products Co. of Illinois, Chicago, Ill. are not eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 10th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-7179 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2810]

ANACONDA CO., ARBITER PLANT, ANACONDA, MONT.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department

of Labor herein presents the results of TA-W-2810: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 27, 1977 in response to a worker petition received on December 9, 1977 which was filed on behalf of workers formerly producing refined copper cathodes at the Arbiter Plant of The Anaconda Co. in Anaconda, Mont.

The notice of investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1555). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of The Anaconda Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the U.S. Department of the Interior, "Metals Week, Metal Bulletin, American Metals Market," industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. It is concluded that all of the requirements have been met.

U.S. imports of refined copper increased from 147 thousand short tons in 1975 to 384 thousand short tons in 1976. U.S. imports declined from 313 thousand short tons in the first three quarters of 1976 to 275 thousand short tons in the first three quarters of 1977. U.S. imports increased from 101 thousand short tons in the third quarter of 1976 to 111 thousand short tons in the third quarter of1977.

The ratio of imported copper to domestic production increased from 8.6 percent in 1975 to 21.0 percent in 1976. The ratio of imports to domestic production declined from 23.9 percent in the first 6 months of 1976 to 14.8 percent in the first 6 months of 1977.

While imports of refined copper had increased by 161 percent in 1976 compared to 1975, domestic demand increased at only a fraction of that rate. Inventory levels of domestic and imported copper on consignment at domestic refineries in December 1976 were 31.4 percent above December 1975 levels and were 143.2 percent above December 1974 levels. Anaconda and other domestic producers of refined copper lost substantial sales in 1977 because of the excessive inventories of domestic and imported refined copper.

Imports of copper are affected by the differential between the domestic price of copper established by Comex (Commodity Metal Exchange) and the price established by the LME (London Metals Exchange). When the LME price drops more than the estimated transportation costs of 5 to 8 cents per pound below the Comix price, the demand for imported copper increases. During May and June 1977 the LME price was almost 11 cents per pound below the Comex price and in July and August 1977 the LME price was almost 12 cents per pound below the Comex price. At the same time, the abundant supply of copper stocks in the forseeable future provides no reason for domestic consumers of copper to maintain ties with domestic producers for purposes of a guarantee against copper shortages. Consequently, in the third quarter of 1977, when many domestic copper producers curtailed production because of the depressed market price for copper, imports of refined copper increased 9.9 percent compared to the third quarter of 1976.

Price pressure from imported copper has reduced the ability to profitably mine domestic ore and convert it to copper concentrates and precipitates and then to refined copper. Industry sources state that the weighted average production costs of the lowest cost domestic copper mines are 63 cents per pound. The weighted average costs for the highest cost domestic copper mines are $1.05 per pound. Thus, with a current domestic market price of 60 cents per pound, dometic producers lose, on the average, 3 to 45 cents on each pound of copper they choose to sell.

Anaconda Co.'s decision to layoff workers and reduce it mining operations was based mainly on an attempt to minimize losses which the company could not avoid were it to run at normal production levels at the current market prices for copper.

Comments made by customers purchasing copper from Anaconda Co. substantiate the fact that increased imports have contributed importantly to record inventory levels which have driven the price of domestic copper below the level at which many domestic firms can profitably produce copper.

CONCLUSION

After careful revie of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with refined copper produced at the Arbiter Plant of the Anaconda Co. contributed importantly to the decline in production and to the total or partial separations of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Arbiter Plant of The Anaconda Co. in Anaconda, Mont. who became totally or partially separated from employment on or after December 9, 1977 are eligible to aply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-7180 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2650]

CHICOPEE CLOTHING MANUFACTURING CO., CHICOPEE, MASS.

Certification Regarding Eligibility To Apply For Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2650: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 23, 1977, in response to a worker petition received on November 14, 1977, which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing women's coats at Chicopee Clothing Manufacturing Co., Chicopee, Mass., a division of Davis Sportswear, Inc., Lawrence, Mass. A previous worker petition (TA-W-731) was denied in a determination signed on August 5, 1976.

The notice of investigation was published in the FEDERAL REGISTER on December 6, 1977 (42 FR 61695). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Davis Sportswear, Inc., its customers, the U.S. Department of Commerce, the U.S International Trade Commission, the National Cotton Council of America, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. It is concluded that all of the requirements have been met.

Imports of women's, misses' and children's coats and jackets increased in 1975 to 1,517,000 dozen, increased in 1976 to 2,252,000 dozen and increased to 2,081,000 dozen in the first nine months of 1977 compared to 1,680,000 dozen for the same period of 1976. The ratios of imports to domestic production and consumption increased from 38.9 percent and 28.0 percent, respectively, in 1975 to 57.5 percent and 36.5 percent, respectively, in 1976.

Imports of women's, misses' and children's raincoats increased in 1975

to 191,000 dozen, increased in 1976 to 261,000 dozen and then declined to 180,000 dozen in the first nine months of 1977 compared to 182,000 dozen for the same period in 1976. The ratios of imports to domestic production and consumption increased from 36.8 percent and 26.9 percent, respectively, in 1975 to 50.4 percent and 33.5 percent, respectively, in 1976.

Imports of women's, misses', and children's coats and jackets and raincoats have captured an increasing share of the domestic market, as evidenced by the significant import/domestic production and consumption ratios. For coats and jackets, as well as raincoats, imports constituted 1 out of every 3 coats sold in the U.S. in 1976.

Customers who purchased women's coats from Davis Sportswear who were surveyed indicated that they decreased purchases from Davis and increased purchases of imported women's coats, both directly and indirectly.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's coats produced at Chicopee Clothing Manufacturing Co., Chicopee, Mass., contributed importantly to the decline in sales or production and to the total or partial separations of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at Chicopee Clothing Manufacturing Co., Chicopee, Mass., who became totally or partially separated from employment on or after November 10, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 10th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-7181 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2546]

CRANWOOD TRUCKING CO., INC., CLEVELAND, OHIO

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2546: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 1, 1977, in response to a worker petition received on October 27, 1977, which was filed on behalf of workers and former workers engaged in employment related to transporting coke and slag at the Cranwood Trucking Co, Inc., Cleveland, Ohio.

The notice of investigation was published in the FEDERAL REGISTER on November 15, 1977 (42 FR 59131). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principaly from officials of the Cranwood Trucking Co., Inc. and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. The Department has determined that services are not "articles" within the meaning of Section 222 of the Act, and that independent firms for which the subject firm provides services cannot be considered to be the "workers' firm."

The Department's investigation revealed that the Cranwood Trucking Co., Inc., is a transport firm which operates a terminal in Cleveland, Ohio, and a terminal in Buffalo, N.Y. Founded in 1937, and incorporated in Ohio in 1959, the Company has no parent company and no subsidiaries. The firm is licensed and regulated by the Interstate Commerce Commission as a contract carrier and as a common carrier.

The Cranwood Trucking Co. transports coke. Workers at the firm are engaged in transport operations and perform no production operations.

Workers at the Cranwood Trucking Co., Inc., transport coke and do not produce an article within the meaning of Section 222(3) of the Act. This Department has already determined that the performance of services is not covered by the adjustment assistance program. See Notice of Determination in "Pan American World Airways, Incorporated (TA-W-153, 40 FR 54639). The question in this case is whether any customers of the Cranwood Trucking Co., i.e., firms which produce an article (namely steel) and for whom the service is provided, can be considered the "workers' firm." See Notice of Determination in "Nu-Car Driveaway, Incorporated" (TA-W-393, 41 FR 12749).

Cranwood Trucking Co., Inc., is not financially, corporately, or otherwise involved in the business of any of its customers. The workers on whose behalf this petition was filed were hired and are paid by and subject to the control of Cranwood Trucking Co., personnel only. All employment benefits are provided and maintained by the Cranwood Trucking Co., Inc. Thus, Cranwood Trucking Co. must be considered the workers' firm.

CONCLUSION

After careful review, I conclude that all workers at the Cranwood Trucking Co., Inc., Cleveland, Ohio, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 10th day of March 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-7182 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2667]

DAVIS SPORTSWEAR, INC., LAWRENCE, MASS.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2667: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 29, 1977, in response to a worker petition received on November 23, 1977, which was filed on behalf of workers and former workers producing women's coats at Davis Sportswear, Inc., Lawrence, Mass. The investigation revealed that Davis is the parent company and divisional office for its manufacturing facilities which produce women's coats.

The notice of investigation was published in the FEDERAL REGISTER on December 16, 1977 (42 FR 63486). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Davis Sportswear, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. It is concluded that all of the requirements have been met.

Imports of women's, misses' and children's coats and jackets increased in 1975 to 1,517,000 dozen, increased in 1976 to 2,252,000 dozen and increased to 2,081,000 dozen in the first nine months of 1977 compared to 1,680,000 dozen for the same period of 1976. The ratios of imports to domestic production and consumption increased from 38.9 percent and 28.0 percent, respectively, in 1975 to 57.5 percent and 36.5 percent, respectively, in 1976.

Imports of women's, misses' and children's raincoats increased in 1975 to 191,000 dozen, increased in 1976 to 261,000 dozen and then declined to 180,000 dozen in the first nine months of 1977 compared to 182,000 dozen for the same period in 1976. The ratios of imports to domestic production and consumption increased from 36.8 percent and 26.9 percent, respectively, in 1975 to 50.4 percent and 33.5 percent, resectively, in 1976.

Imports of women's, misses, and children's coats and jackets and raincoats have captured an increasing share of the domestic market, as evidenced by the significant import/domestic production and consumption ratios. For coats and jackets, as well as raincoats, imports constituted 1 out of every 3 coats sold in the U.S. in 1976.

Customers who purchased women's coats from Davis Sportswear who were surveyed indicated that they decreased purchases from Davis and increased purchases of imported women's coats, both directly and indirectly.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's coats produced at Davis Sportswear, Inc., Lawrence, Mass., contributed importantly to the decline in sales or production and to the total or partial separation of the workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers at Davis Sportswear, Inc., Lawrence, Mass., and the sales office in Boston, Mass., who became totally or partially separated from employment on or after September 1, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 10th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-7183 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2797]

FALL RIVER CLOTHING MANUFACTURING CO., FALL RIVER, MASS.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2797: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 21, 1977, in response to a worker petition received on November 23, 1977, which was filed on behalf of workers and former workers producing women's coats at Fall River Clothing Manufacturing Co., Fall River, Mass., a division of Davis Sportswear, Inc., Lawrence, Mass.

The notice of investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1556). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Davis Sportswear, Inc., its customers, the U.S. Department of Commerce, the U.S International Trade Commission, the National Cotton Council of America, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. It is concluded that all of the requirements have been met.

Imports of women's, misses' and children's coats and jackets increased in 1975 to 1,517,000 dozen, increased in 1976 to 2,252,000 dozen and increased to 2,081,000 dozen in the first nine months of 1977 compared to 1,680,000 dozen for the same period of 1976. The ratios of imports to domestic production and consumption increased from 38.9 percent and 28.0 percent, respectively, in 1975 to 57.5 percent and 36.5 percent, respectively, in 1976.

Imports of women's, misses' and children's raincoats increased in 1975 to 191,000 dozen, increased in 1976 to 261,000 dozen and then declined to 180,000 dozen in the first nine months of 1977 compared to 182,000 dozen for the same period in 1976. The ratios of imports to domestic production and consumption increased from 36.8 percent and 26.9 percent, respectively, in 1975 to 50.4 percent and 33.5 percent, respectively, in 1976.

Imports of women's, misses', and children's coats and jackets and raincoats have captured an increasing share of the domestic market, as evidenced by the significant import/domestic production and consumption ratios. For coats and jackets, as well as raincoats, imports constituted 1 out of every 3 coats sold in the U.S. in 1976.

Customers who purchased women's coats from Davis Sportswear who were surveyed indicated that they decreased purchases from Davis and increased purchases of imported women's coats, both directly and indirectly.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's coats produced at Fall River Clothing Manufacturing Co., Fall River, Mass., contributed importantly to the decline in sales or production and to the total or partial separations of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at Fall River Clothing Manufacturing Co., Fall River, Mass., who became totally or partially separated from employment on or after November 21, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 10th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-7184 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2620]

GENERAL ELECTRIC CO., SYRACUSE, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2620: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 17, 1977 in response to a worker petition received on November 7, 1977 which was filed by the International Union of Electrical, Radio and Machine Workers on behalf of workers and former workers producing vidicon tubes in the Imaging Devices Operation at the Electronics Park complex of the General Electric Co., Syracuse, N.Y.

The Notice of Investigation was published in the FEDERAL REGISTER on December 13, 1977 (42 FR 62556). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the General Electric Company, its customer, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced

by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

General Electric's Imaging Devices Operation (IDO) sells vidicon tubes for three general markets: U.S. Government contractors, DE's own in-house production operations, and other domestic users. Since 1974, approximately 50 percent of all vidicon tubes produced in IDO were sold to one customer. That customer, which used the vidicon tube in a missile manufactured for the U.S. Government, purchases all of the vidicon tubes used in that missile from IDO. The customer has reduced its purchases of vidicon tubes from IDO by approximately 70 percent since 1975 as the U.S. Government has phased out production of the missile for which the tubes were produced.

The Imaging Devices operation also produces vidicon tubes for a variety of commercial closed circuit television cameras sold by General Electric and by independent manufacturers. Customers purchasing vidicon tubes for commercial closed circuit television cameras either did not purchase imported vidicon tubes or had decreased their purchases from the Imaging Devices Operation in order to purchase vidicon tubes from other domestic suppliers.

All of the commercial closed circuit television cameras sold by General Electric are manufactured in the Imaging Systems Operation (ISO) which is also located in the Electronics Park complex. Prior to the second half of 1975, the Imaging Devices Operation (IDO) supplied all of the vidicon tubes used in the commercial closed circuit television cameras manufactured by ISO. During the period under investigation, production of vidicon tubes for ISO constituted approximately 5 percent of total vidicon tube production in IDO. In the second half of 1975, the Imaging Systems Operation introduced a new commercial closed circuit television camera using an imported vidicon tube. A similar tube had never been manufactured by the Imaging Devices Operation and the introduction of the new camera did not affect IDO's production of vidicon tubes for the Imaging Systems Operation.

CONCLUSION

After a careful review, I determine that all workers at the Imaging Devices Operation, Electronics Park Complex, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 10th day of March 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-7185 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2568]

INTERSTATE VENDAWAY, INC., WILMINGTON, DEL.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2568: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 7, 1977, in response to a worker petition received on October 26, 1977, which was filed by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (Ind.) on behalf of workers and former workers of Interstate United Corp., Wilmington, Del., providing cafeteria services for the General Motors Assembly Division. During the course of the investigation, it was determined that the name of the firm is Interstate Vendaway, Inc., a subsidiary of Interstate United Corp.

The notice of investigation was published in the FEDERAL REGISTER on November 18, 1977 (42 FR 59584). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Interstate Vendaway, Inc., Interstate United Corp., (the parent firm) and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. If any criterion is not satisfied, a negative determination must be made.

Interstate Vendaway, Inc., is a wholly owned subsidiary of Interstate United Corp., Chicago, Ill. Interstate United Corp. provides professional food service management.

Petitioning workers at Interstate Vendaway, Inc. provide cafeteria service at the General Motors Assembly Division in Wilmington, Del. Workers at Interstate Vendaway, Inc., do not produce an article within the meaning of Section 222(3) of the Act and this Department has already determined that the performance of services is not covered by the adjustment assistance program. See Notice of Determination in "Pan Amercian World Airways Incorporated" (TA-W-153, 40 FR 54639). The issue in this case is whether General Motors Corp., i.e., a firm which produces an article, namely automobiles, and for whom the service is provided, can be considered the "workers' firm." See Notice of Determination in "Nu-Car Driveaway, Incorporated" (TA-W-393, 41 FR 12749).

Neither General Motors Corp. nor Interstate Vendaway, Inc., is financially, corporately, or otherwise involved in the business of the other. The workers upon whose behalf this petition was filed were hired and are paid by Interstate Vendaway, Inc. They are supervised by and subject to the control of Interstate Vendaway, Inc., personnel only. All employment benefits which they enjoy are provided and maintained by Interstate Vendaway, Inc.

CONCLUSION

After careful review of the issues and facts involved, I have determined that services of the kind provided by workers at Interstate Vendaway, Inc., Wilmington, Del., are not "articles" within the meaning of Section 222(3) of the Trade Act of 1974, and that General Motors Corp. cannot be considered the "workers' firm". The petition for Trade Adjustment Assistance is, therefore, denied.

Signed at Washington, D.C., this 10th day of March 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-7186 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2612]

KEYSTONE CONSOLIDATED INDUSTRIES, INC., BARTONVILLE, ILL.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2612: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 15, 1977, in response to a worker petition received on November 7, 1977, which was filed on behalf of workers and former workers producing wire and wire products at the Bartonville, Ill., plant of Keystone Consolidated Industries, Inc.

The notice of investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1557). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Keystone Consolidated Industries, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. It is concluded that all of the requirements have been met.

Imports of carbon steel wire and wire products increased each year from 628.5 thousand tons in 1972 to 991.5 thousand tons in 1974, declined to 602.6 thousand tons in 1975 then increased to 695.6 thousand tons in 1976. Imports increased from 561.1 thousand tons in the first 3 quarters of 1976 to 706.8 thousand tons in the first three quarters of 1977. The ratio of imports to domestic shipments of wire and wire products increased from 28.5 percent in 1975 to 28.9 percent in 1976 and increased from 29.7 percent in the first 3 quarters of 1976 to 38.8 percent in the first 3 quarters of 1977.

A survey of some customers who purchase wire and wire products from the Bartonville plant of Keystone Consolidated Industries indicated that in 1976 and 1977 many of these customers reduced purchases from Keystone and increased purchases of imported wire and wire products. Many customers stated that imports were lower priced than domestic wire and wire products and claimed that they were forced to buy imports in order to compete in the domestic marketplace.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with wire and wire products produced by the Bartonville, Ill., plant of Keystone Consolidated Industries, Inc., contributed importantly to the total or partial separations of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Bartonville, Ill., plant of Keystone Consolidated Industries, Inc., who became totally or partially separated from employment on or after November 2, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 10th day of March 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-7187 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2673]

LAWRENCE GARMENT, INC., LAWRENCE, MASS.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2673: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 29, 1977, in response to a worker petition received on November 23, 1977, which was filed on behalf of workers and former workers producing women's coats at Lawrence Garment, Inc., Lawrence, Mass., a division of Davis Sportswear, Inc., Lawrence, Mass.

A previous worker petition (TA-W-732) was denied in a determination signed on August 5, 1976.

The notice of investigation was published in the FEDERAL REGISTER on December 16, 1977 (42 FR 63486). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Davis Sportswear, Inc., its customers, the U.S. Department of Commerce, the U.S International Trade Commission, the National Cotton Council of America, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. It is concluded that all of the requirements have been met.

Imports of women's, misses', and children's coats and jackets increased in 1975 to 1,517,000 dozen, increased in 1976 to 2,252,000 dozen and increased to 2,081,000 dozen in the first nine months of 1977 compared to 1,680,000 dozen for the same period of 1976. The ratios of imports to domestic production and consumption increased from 38.9 percent and 28.0 percent, respectively, in 1975 to 57.5 percent and 36.5 percent, respectively, in 1976.

Imports of women's, misses', and children's raincoats increased in 1975 to 191,000 dozen, increased in 1976 to 261,000 dozen and then declined to 180,000 dozen in the first nine months of 1977 compared to 182,000 dozen for the same period in 1976. The ratios of imports to domestic production and consumption increased from 36.8 percent and 26.9 percent, respectively, in 1975 to 50.4 percent and 33.5 percent, respectively, in 1976.

Imports of women's, misses', and children's coats and jackets and raincoats have captured an increasing share of the domestic market, as evidenced by the significant import/domestic production and consumption ratios. For coats and jackets, as well as raincoats, imports constituted 1 out of every 3 coats sold in the U.S. in 1976.

Customers who purchased women's coats from Davis Sportswear who were surveyed indicated that they decreased purchases from Davis and increased purchases of imported women's coats, both directly and indirectly.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's coats produced at Lawrence Garment, Inc., Lawrence, Mass., contributed importantly to the decline in sales or production and to the total or partial separation of the workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at Lawrence Garment, Inc., Lawrence, Mass., who became totally or partially separated from employment on or after November 21, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C., this 10th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-7188 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2361]

PATMORE COAT CO., PATERSON, NEW JERSEY

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2361: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 19, 1977 in response to a worker petition received on September 15, 1977, which was filed on behalf of workers and former workers producing women's coats at Patmore Coat Co., Paterson, N.J.

The notice of investigation was published in the FEDERAL REGISTER on October 4, 1977 (42 FR 54032). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Patmore Coat Co., its customers, the U.S. Department of Commerce, the U.S. Inter-

national Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with article produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department's investigation revealed that one manufacturer for whom Patmore Co. worked decreased work with the subject firm in 1976 compared to 1975 and in the first nine months of 1977 compared to the same period of 1976. That manufacturer did not purchase imports of women's coats nor contract with foreign contractors for women's coats during the 1975-1977 period. All manufacturers for whom the subject firm worked increased sales in 1976 compared to 1975 and in the first nine months of 1977 compared to the same period of 1976.

Further, the subject firm produced women's pantsuits for one manufacturer in the spring of 1976. Production and employment declines in the first several months of 1977, compared to the same period a year earlier, reflected a decision of Patmore Coat Co. not to produce such articles.

CONCLUSION

After careful review I conclude that all workers at Patmore Coat Co., Paterson N.J. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 8th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-7189 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2723]

STAFFORD CLOTHING MANUFACTURING CO., FALL RIVER, MASS.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

IN accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2723: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 5, 1977 in response to a worker petition received on November 25, 1977, which was filed on behalf of workers and former workers producing women's coats at Stafford Clothing Manufacturing Co., Fall River, Mass., a division of Davis Sportswear, Inc., Lawrence, Mass.

A previous work petition (TA-W-730) was denied in a determination signed August 3, 1976.

The notice of investigation was published in the FEDERAL REGISTER on December 16, 1977 (42 FR 63487). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Davis Sportswear, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of women's, misses' and children's coats and jackets increased in 1975 to 1,517,000 dozen, increased in 1976 to 2,252,000 dozen and increased to 2,081,000 dozen in the first nine months of 1977 compared to 1,680,000 dozen for the same period of 1976. The ratios of imports to domestic production and consumption increased from 38.9 percent and 28.0 percent, respectively, in 1975 to 57.5 percent and 36.5 percent, respectively, in 1976.

Imports of women's, misses' and children's raincoats increased in 1975 to 191,000 dozen, increased in 1976 to 261,000 dozen and then declined to 180,000 dozen in the first nine months of 1977 compared to 182,000 dozen for the same period in 1976. The ratios of imports to domestic production and consumption increased from 36.8 percent and 26.9 percent, respectively, in 1975 to 50.4 percent and 33.5 percent, respectively, in 1976.

Imports of women's, misses, and children's coats and jackets and raincoats have captured an increasing share of the domestic market, as evidenced by the significant import/domestic production and consumption ratios. For coats and jackets, as well as raincoats, imports constituted 1 out of every 3 coats sold in the U.S. in 1976.

Customers who purchased women's coats from Davis Sportswear who were surveyed indicated that they decreased purchases from Davis and increased purchases of imported women's coats, both directly and indirectly.

CONCLUSION

After careful review of the facts obtained in the investigation I conclude that increases of imports like or directly competitive with women's coats produced at Stafford Clothing Manufacturing Co., Fall River, Mass. contributed importantly to the decline in sales or production and to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act I make the following certification:

"All workers at Stafford Clothing Manufacturing Co., Fall River, Mass. who became totally or partially separated from employment on or after November 22, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974."

Signed at Washington, D.C., this 10th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-7190 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2066]

SUPERBA MILLS, INC., PHILADELPHIA, PA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2066: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on May 11, 1977 in response to a worker petition received on that date which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing women's underwear at Superba Mills, Inc., Philadelphia, Pa.

The Notice of Investigation was published in the FEDERAL REGISTER on May 24, 1977 (42 FR 26481). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from information and publications provided by officials of Superba Mills, its customers, the U.S. Department of Commerce, the U.S. International trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations,

or threat thereof, and to the absolute decline in sales or production.

The Department's investigation revealed that Superba Mills produces women's panties, footsocks, and tights. A survey of a sample of Superba's customers indicated that customers did not switch from Superba to imports. Imports of women's underwear have constituted less than 3 percent of domestic production since 1973.

Women's underwear is directly competitive with panty hose. In recent years the growing consumer preference for popularly priced, one-size-fits-all panty hose has adversely affected the market for women's panties and briefs. The domestic panty hose market is dominated by domestic firms. Imports of hosiery and panty hose have accounted for less than three percent of domestic production since 1972 and have decreased steadily since 1974.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that workers at Superba Mills, Inc., Philadelphia, Pa., are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C., this 8th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-7191 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2776]

TERRY SLIPPER CORP., PATERSON, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2776: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 14, 1977 in response to a worker petition received on November 29, 1977 which was filed by the United Shoe Workers of America on behalf of workers and former workers producing children's slippers at Terry Slipper Corporation, Paterson, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1556). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Terry Slipper Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. It is concluded that all of the requirements have been met.

Imports of house slippers increased 17 percent from 23.9 million pairs in 1975 to 28.0 million pairs in 1976. The ratio of imports to domestic production increased from 33.9 percent in 1975 to 43.1 percent in 1976 and increased from 42.4 percent during January-September 1976 to 44.0 percent during January-September 1977.

A customer survey conducted by the U.S. Department of Commerce revealed that customers' purchases from Terry Slipper have been adversely afeced by lower-priced imported slippers.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with children's slippers produced at Terry Slipper Corp., Paterson, N.J. contributed importantly to declines in production and to the total or partial separations of workers at that firm. In accordance with the provisions of the Trade Act of 1974, I make the following certification:

All workers at Terry Slipper Corporation, Paterson, New Jersey who became totally or partially separated from employment on or after November 21, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 10th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-7192 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2195]

TRICOLOR MILLS, INC., NEW YORK, N.Y.

Certification Regarding Eligibility To Apply For Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-2195: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 5, 1977, in response to a worker petition received on July 1, 1977, which was filed by the International Ladies' Garment Workers Union on behalf of workers producing women's knit blouses and T-shirts at Tricolor Mills, Inc., New York, N.Y.

The notice of investigation was published in the FEDERAL REGISTER on July 15, 1977 (42 FR 36513). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Tricolor Mills, its customers, the U.S. Department of Commerce, U.S. International Trade Commission, the National Cotton Council of America, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. The investigation has revealed that all of the requirements have been met.

Imports of women's, misses', and children's blouses and shirts increased in each year from 1973 to 1976. Imports increased from 20.5 million dozen in 1974 to 30.3 million dozen in 1976. Imports remained stable at 24.0 million dozen from the first 9 months of 1976 to the first 9 months of 1977. Imports relative to domestic production increased from 54.6 percent in 1974 to 74.8 percent in 1976.

A survey of customers of Tricolor Mills, Inc., revealed that the customers increased their purchases of imported women's knit blouses and T-shirts while decreasing their purchases from Tricolor Mills, Inc.

CONCLUSION

After careful review of the facts obtained in the investigation, I concluded that increases of imports of articles like or directly competitive with women's knit blouses and T-shirts produced by Tricolor Mills, Inc., New York, N.Y. contributed importantly to the decline in sales and to the separation of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers at Tricolor Mills, Inc., New York, N.Y. who became totally or partially separated from employment on or after June 27, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 10th day of March 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-7193 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2520]

U.S. STEEL CORP., ELECTRICAL CABLE DIVISION, WORCESTER, MASS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department

of Labor herein presents the results of TA-W-2520: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 27, 1977 in response to a worker petition received on October 25, 1977 which was filed by the United Steelworkers of America on behalf of former workers producing electrical cable at U.S. Steel Corporation, Electrical Cable Division, Worcester, Mass.

The notice of investigation was published in the FEDERAL REGISTER on November 15, 1977 (42 FR 59132). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of U.S. Steel Corporation, its customers, the U.S. Department of Commerce, the U.S. international Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partical separation, or threat thereof, and to such decline in sales or production.

Imports of electrical cable declined from $12.5 million in 1975 to $8.6 million in 1976 and to $8.1 million in 1977. The ratio of imports to domestic shipments of electrical cable declined from 0.90 percent in 1975 to 0.58 percent in 1976 and to 0.47 percent in 1977.

CONCLUSION

After careful review I conclude that all workers at the U.S. Steel Corporation, Electrical Cable Division are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 10th day of March 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-7194 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2937]

UNITED STATES STEEL CORP., GARY, IND.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 17, 1978 in response to a worker petition received on December 20, 1977 which was filed on behalf of workers and former workers in the Industrial Engineering Department at the Gary, Ind. Works of the U.S. Steel Corp.

The Notice of the Investigation was published in the FEDERAL REGISTER on February 3, 1978 (43 FR 4696). No public hearing was requested and none was held.

On September 12, 1977 the Department issued a Notice of Determinations in which workers engaged in employment related to the production of carbon steel plates, structural shapes, pipe and tubing at the Gary Works who became separated from employment on or after November 15, 1975 were certified eligible to apply for adjustment assistance benefits. (See TA-W-1438).

At the request of the United Steelworkers of America, the investigation was reopened to determine whether workers engaged in employment related to the production of products not covered in the original investigation were eligible for benefits.

On February 17, 1978 the Department issued a Revised Notice of Determination in which workers engaged in employment related to the production of various products at the Gary Works who became totally or partially separated from employment on or after January 1, 1977 were certified eligible to apply for adjustment assistance benefits. The intent of that certification was to extend coverage to all workers engaged in plant-wide support activities.

The petitioning group of workers were employed in the Industrial Engineering Department at the Gary Works, which is active in all areas of the plant and is not associated with or confined to an individual product line. The workers in the Industrial Engineering Department are therefore covered under the existing revised certification for TA-W-1438.

The existing certification will expire on February 17, 1980 unless terminated by the Secretary of Labor. Since workers newly separated, totally or partially, are covered by the existing certification provided such separations occurred on or after the impact date (January 1, 1977) and before the certification expiration date (February 17, 1980), a new investigation would serve no purpose; consequently the investigation has been terminated.

Signed at Washington, D.C., this 7th day of March 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-7195 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2617]

UPPER MERION AND PLYMOUTH RAILROAD CO., CONSHOHOCKEN, PA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2617: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 15, 1977 in response to a worker petition received on November 7, 1977, which was filed on behalf of workers and former workers of the Upper Merion and Plymouth Railroad Co., Conshohocken, Pa.

The notice of investigation was published in the FEDERAL REGISTER on January 10, 1978 (42 FR 1557). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Upper Merion and Plymouth Railroad Co., the Alan Wood Steel Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

INCREASED IMPORTS

The Alan Wood Steel Co., Conshohocken, Pa., generated the majority of the rail traffic handled by the Upper Merion and Plymouth Railroad Co.

Imports of articles like or directly competitive with steel products formerly produced at the Alan Wood Steel Co. have increased as evidenced by the certification of workers engaged in employment related to the production of these products in previous investigations (see TA-W-2266, 2267).

CONTRIBUTED IMPORTANTLY

The Upper Merion and Plymouth Railroad Co. is a wholly owned subsidiary of the Alan Wood Steel Co. The Upper Merion and Plymouth Railroad was heavily dependent on rail traffic generated by the Alan Wood Steel Co. as a source of revenue. The shutdown of steelmaking operations at Alan Wood Steel Co. has resulted in declines in rail traffic for the Upper Merion and Plymouth Railroad and this has resulted in separations of workers at the Upper Merion and

Plymouth Railroad. All workers at the Alan Wood Steel Co., Conshohocken, Pa., have previously been certified as eligible to apply for trade adjustment assistance (see TA-W-2266, 2267). The conditions which led to the shutdown of steelmaking operations at the Alan Wood Steel Co. have also resulted in declines in rail traffic for the Upper Merion and Plymouth Railroad Co.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with steel products formerly produced by the Alan Wood Steel Co., Conshohocken, Pa., contributed importantly to the decline in sales or production and to the total or partial separations of the workers of the Upper Merion and Plymouth Railroad Co., a wholly owned subsidiary of the Alan Wood Steel Co. In accordance with the provisions of the Act, I make the following certification:

"All workers at the Upper Merion and Plymouth Railroad Co., Conshohocken, Pa., who became totally or partially separted from employment on or after November 1, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C., this 10th day of March 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-7196 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2789]

VATCO MANUFACTURING CO., BOSTON, MASS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2789: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 14, 1977, in response to a worker petition received on December 7, 1977, which was filed on behalf of workers and former workers producing slipcovers and throws for furniture at the Boston, Mass. plant of Vatco Manufacturing Co.

The notice of investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1556). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Vatco Manufacturing Co., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed in the course of the investigation revealed that imports of articles like or directly competitive with slipcovers or throws produced at Vatco Manufacturing Co. enter the United States under TSUSA item 365.7835 "Cotton Net Furnishings Not Elsewhere Specified." Based on the results of a survey of manufacturers and a sample survey of imports under TSUSA number 365.7835, there are no known imports of slipcovers or throws. The capital intensive nature of the fabricated textile products industry offsets the low labor cost advantage of foreign producers.

CONCLUSION

After careful review, I conclude that all workers at Vatco Manufacturing Co., Boston, Mass., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 8th day of March 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-7197 Filed 3-16-78; 8:45 am]

[4510-28]

[TA-W-2970]

WHEELING-PITTSBURGH STEEL CORP. WHEELING, W. VA.

Notice of Termination of Investigation.

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 26, 1978, in response to a worker petition received on January 10, 1978, which was filed by the United Steelworkers of America on January 5, 1978, on behalf of workers and former workers producing roof decking and building materials at the Wheeling fabricating plant of Wheeling-Pittsburgh Steel Corp., Wheeling, W. Va.

Notice of investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7070). No public hearing was requested and none was held.

On December 19, 1977, Steelworkers Local 7213 filed a similar petition on behalf of the same group of workers (TA-W-2938).

Notice of investigation was published in the FEDERAL REGISTER on February 3, 1978 (43 FR 4696). No public hearing was requested and none was held.

Workers at the Wheeling plant of Wheeling-Pittsburgh Steel Corp., Wheeling, W. Va., are being covered in the ongoing investigation, TA-W-2938, filed on the earlier date, thus a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 9th day of March 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-7198 Filed 3-16-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155]

CONSUMERS POWER CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 17 to Facility Operating License No. DPR-6, issued to the Consumers Power Co. (the licensee), which revised the license and its appended Technical Specifications for operation of the Big Rock Point Plant (the facility) located in Charlevoix County, Mich. The amendment is effective 30 days after its date of issuance.

The amendment incorporates fire protection Technical Specifications on the existing fire protection equipment and adds administrative controls related to fire protection at the facility. This action is being taken pending completion of the Commission's overall fire protection review of the facility.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 28, 1977, as amended by letter dated December 15, 1977, (2) Amendment No. 17 to License No. DPR-6, and (3) the Commission's letter to the licensee dated November 25, 1977 and the attached Safety Evaluation of the same date. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Charlevoix Public Library, 107 Clinton Street, Charlevoix, Mich. 49720.

A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 6th day of March, 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-7092 Filed 3-16-78; 8:45 am]

[7590-01]

[Docket No. 50-255]

CONSUMERS POWER CO.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 36 to Provisional Operating License No. DPR-20, issued to Consumers Power Co. (the licensee), which revised Technical Specifications for operation of the Palisades Plant (the facility), located in Covert Township, Van Buren County, Mich. The amendment is effective as of its date of issuance.

This amendment deletes the requirement for: (1) An annual operating report and (2) a respiratory protection program.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment did not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not reult in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated November 11, 1977, (2) Amendment No. 36 to License No. DPR-20, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Mich. 49006. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 24th day of February 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-7093 Filed 3-16-78; 8:45 am]

[7590-01]

[Docket No. 50-409]

DAIRYLAND POWER COOPERATIVE

Issuance of Amendment to Provisional Operating License

The Nuclear Regulatory Commission (the Commission) has issued Amendment No. 11 to Provisional Operating License No. DPR-45 issued to Dairyland Power Cooperative (the licensee) which revised Technical specifications for operation of the La Crosse Boiling Water Reactor (LACBWR), located in Vernon County, Wis. The amendment is effective as of its date of issuance.

The amendment (1) modifies the Technical Specifications for operation of the LACBWR with a core configuration of 32 Exxon Type III new fuel assemblies and 40 Allis-Chalmers Type II irradiated fuel assemblies; (2) adds provisions in the Technical Specifications for an off-gas and coolant activity monitoring program and limiting conditions for operation which will assure that appropriate correction action will be taken in the event of excessive fuel failures; (3) increases the surveillance on the control rods and drives; (4) adds provisions in the Technical Specifications for operation of LACBWR with a second completely redundant and independent 120 volt A.C. nonintertruptible bus and a diverse parameter (containment pressure) for actuation of the High Pressure Core Spray System; and (5) provides for minor changes in the Technical Specifications which include rearrangement of sections, addition of definitions, and numbering of pages to accommodate the Standard Technical Specification format.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Notice of Proposed Issuance of Amendment to Provisional Operating License in connection with Item 1 of this action was published in the FEDERAL REGISTER on July 26, 1976 (41 FR 30743) and October 21, 1977 (42 FR 56171). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action. Prior public notice of Items 2 through 5 of this action was not required since they do not involve a significant hazards consideration

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated May 18, 1976, as supplemented December 9, 1976, January 17 and 21, February 10, 17, and 25, March 4, April 27, October 5 and 11, and December 9, 1977; and November 16, 1977, as supplemented February 16, 1978; (2) Amendment No. 11 to License No. DPR-45; (3) the Commission's Safety Evaluation related to a New Core Configuration; (4) the Commission's Safety Evaluation related to Fuel Performance; (5) the Commission's Safety Evaluation related to Facility Modifications; and (6) the report entitled "Analysis of LACBWR Fuel Failures." All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the La Crosse Public Library, 800 Main Street, La Crosse, Wis. A copy of items (2) through (6) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commis-

sion, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 3rd day of March 1978.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-7094 Filed 3-16-78; 8:45 am]

[7590-01]

[Docket No. 50-366]

GEORGIA POWER CO.

Availability of Final Environmental Statement Operating License Stage for Edwin I. Hatch Nuclear Plant, Unit No. 2

Pursuant to the National Environmental Policy Act of 1969 and the U.S. Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that the final environmental statement prepared by the Commission's Office of Nuclear Reactor Regulation, related to the proposed operation of the Edwin I. Hatch Nuclear Plant, Unit No. 2, is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C., and in the Appling County Public Library, Parker Street, Baxley, Ga. The final environmental statement is also being made available at the Office of Planning and Budget, Intergovernmental Relations Division, 270 Washington Street SW., Atlanta, Ga., and the Altamaha Area Planning Commission, Baxley, Ga.

The notice of availability of the draft environmental statement and request for comments from interested persons was published in the FEDERAL REGISTER on May 6, 1977 (42 FR 23189). The comments received from Federal, State, and local officials and interested members of the public have been included as an appendix to the final environmental statement.

Copies of the final environmental statement (Document No. NUREG-0417) may be purchased, at current rates, from the National Technical Information Service, Springfield, Va. 22161. (Printed Copy: $8, Microfiche: $3.)

Dated at Bethesda, Md., this 10th day of March 1978.

For the Nuclear Regulatory Commission.

GEORGE W. KNIGHTON,
Chief, Environmental Projects Branch No. 1, Division of Site Safety and Environmental Analysis.

[FR Doc. 78-7095 Filed 3-16-78; 8:45 am]

[7590-01]

[Dockets Nos. 50-245 and 50-336]

NORTHEAST NUCLEAR ENERGY CO., CONNECTICUT LIGHT AND POWER CO., HARTFORD ELECTRIC LIGHT CO., AND WESTERN MASSACHUSETTS ELECTRIC CO.

Issuance of Amendments to Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 45 to Provisional Operating License No. DPR-21 and Amendment No. 36 to Facility Operating License No. DPR-65 to Northeast Nuclear Energy Co., the Connecticut Light and Power Co., the Hartford Electric Light Co., and Western Massachusetts Electric Co., which revised technical specifications for operation of the Millstone Nuclear Power Station, Units Nos. 1 and 2, located in the Town of Waterford, Conn. The amendments are effective as of their date of issuance.

These amendments modify the technical specifications to permit use of the LER and monthly operating report formats different than those contained in Regulatory Guide 1.16 and delete the requirements for an annual operating report.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendment dated October 31, 1977, (2) Amendments Nos. 45 and 36 to Licenses Nos. DPR-21 and DPR-65, and (3) the Commission's related safety evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Conn. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 10th day of March 1978.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-7096 Filed 3-16-78; 8:45 am]

[7590-01]

[Docket No. 50-548]

OMAHA PUBLIC POWER DISTRICT

Availability of NRC Final Environmental Statement Related to the Determination of Site Suitability for Fort Calhoun Station, Unit No. 2

Pursuant to the National Environmental Policy Act of 1969 and the U.S. Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a final environmental statement (NUREG-0434) has been prepared by the Commission's Office of Nuclear Reactor Regulation related to the suitability of the site proposed for eventual construction of the Fort Calhoun Station, Unit No. 2, in Washington County, Nebr. NUREG-0434 is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C., and the Blair Public Library, 1665 Lincoln Street, Blair, Nebr. 68028. The final environmental statement is also being made available at the State Office of Planning and Programming, State Capitol, Lincoln, Nebr. 68509 and the Extra-Metropolitan Council of Governments, P.O. Box C, Fremont, Nebr. 68025.

The notice of availability of the draft environmental statement related to the suitability of the Fort Calhoun site and request for comments from interested persons was published in the FEDERAL REGISTER (42 FR 20845) on April 22, 1977.

The comments received from Federal, State, and local officials and interested members of the public have been included as an appendix to the final environmental statement.

Copies of the final environmental statement (Document No. NUREG-0417) may be purchased, at current rates, from the National Technical Information Service, Springfield, Va. 22161. (Printed Copy: $8, Microfiche: $3.)

Dated at Bethesda, Md., this 13th day of March 1978.

For the Nuclear Regulatory Commission.

GEORGE W. KNIGHTON,
Chief, Environmental Projects Branch No. 1, Division of Site Safety, and Environmental Analysis.

[FR Doc. 78-7089 Filed 3-16-78; 8:45 am]

[7590-01]

RISK ASSESSMENT REVIEW GROUP

Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a 2-day open meeting of the Risk Assessment Review Group of the U.S. Nuclear Regulatory Commission (NRC), to be held at 8:30 a.m., on April 3 and 4, 1978, in Room 3148 of Building 90, University of California, Lawrence Berkeley Laboratory, Berkeley, Calif. The purposes of this meeting are to continue the review of the final report of the Reactor Safety Study (WASH-1400) and the peer comments thereon, to obtain information on developments in the field of risk assessment methodology and to discuss subjects that might be included in the report of the Review Group.

The Risk Assessment Review Group is an independent group established by the NRC (42 FR 34955) for the purpose of providing advice and information to the Commission regarding the final report of the Reactor Safety Study, WASH-1400 (NUREG-75/014), and the peer comments on the study, advice and recommendations on developments in the field of risk assessment methodology and courses of action which might be taken on future development and use of risk assessment methodology. This advice and information will assist the Commission in establishing policy regarding the use of risk assessment in the regulatory process. It will also clarify the achievements and limitations of the Reactor Safety Study. The Review Group will submit a report to the Commission on or before July 1, 1978.

In carrying out these assignments, it is anticipated that a number of working sessions will be scheduled at different locations, with notification to the public well in advance of each meeting. With respect to public participation in the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda may do so by providing 10 readily reproducible copies to the Review Group at the beginning of the meeting. Comments should be limited to areas within the Group's purview. Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than March 24, 1978, to Dr. John H. Austin, Office of Policy Evaluation, NRC, Washington, D.C. 20555, will normally be received in time to be considered at this meeting. Of course, comments not received in time for this meeting will be circulated to the members of the Review Group for consideration at a future meeting. Comments should pertain to the field of risk assessment methodology or should be based on the final report of the Reactor Safety Study, copies of which are available for public inspection at:

1. The NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

2. The NRC's five Regional Offices of Inspection and Enforcement:

REGION I.—631 Park Avenue, King of Prussia, Pa. 19406.
REGION II.—Suite 1217, 230 Peachtree Street, Atlanta, Ga. 30303.
REGION III.—799 Roosevelt Road, Glen Ellyn, Ill. 60137.
REGION IV.—Suite 1000, 611 Ryan Plaza Drive, Arlington, Tex. 76012.
REGION V.—Suite 202, 1990 North California Boulevard, Walnut Creek, Calif. 94596.

Copies of the Final Report may be obtained from:

U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Probabilistic Analysis Staff, Attn: Melea S. Fogle, telephone: 301-492-8377, 7735 Old Georgetown Road, Bethesda, Md. 20014.

(b) Persons desiring to make an oral statement at the meeting should make a request to do so prior to the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The time allotted for such statements will be at the discretion of the Chairman. The Review Group will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on March 31, 1978, to the Office of Policy Evaluation, telephone 202-254-5184, Attn: John Austin, between 8:15 a.m. and 5 p.m. EDT.

(d) Questions may be asked only by members of the Review Group.

(e) Statement of views or expressions of opinion made by members of the Review Group at open meetings are not intended to represent final determinations or beliefs.

(f) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(g) A copy of the minutes of the meeting will be available for inspection on or after June 30, 1978, at the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Copies may be obtained upon payment of appropriate charges.

Dated at Washington, D.C., March 13, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-7091 Filed 3-16-78; 8:45 am]

[7590-01]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, WORKING GROUP ON ANTICIPATED TRANSIENTS WITHOUT SCRAM

Meeting

The March 31, 1978 meeting of the ACRS Working Group on Anticipated Transients Without SCRAM has been rescheduled to be held on April 20, 1978 in Room 1046, 1717 H Street NW., Washington, D.C. 20555, starting at 8:30 a.m. All items pertaining to the meeting remain the same as announced in the FEDERAL REGISTER on December 2 and December 19, 1977.

Dated: March 14, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-7101 Filed 3-16-78; 8:45 am]

[7590-01]

[Docket No. 27-39]

NUCLEAR ENGINEERING CO., INC.

Establishment of Atomic Safety and Licensing Board To Rule on Petitions

Pursuant to delegation by the Commission dated December 29, 1972, published in the FEDERAL REGISTER (37 FR 28710) and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to rule on petitions and/or requests for leave to intervene in the following proceeding:

NUCLEAR ENGINEERING CO., INC.

(Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site—"Trench 15" Matter.)

This action is in reference to a notice published by the Commission on January 6, 1978, in the FEDERAL REGISTER (43 FR 1160) entitled "Receipt of Application for License Amendment and Request for Exemption; Notice of Opportunity for Public Comment."

The Chairman of this Board and his address is as follows:

Andrew C. Goodhope, Esq.
3320 Estelle Terrace
Wheaton, Md. 20906

The other members of the Board and their addresses are as follows:

Dr. Linda W. Little
Research Triangle Institute
P.O. Box 12194
Research Triangle Park, N.C. 27709

Dr. Forrest J. Remick
305 E. Hamilton Avenue
State College, Pa. 16801

As a result of the above FEDERAL REGISTER Notice several petitions to intervene have been filed. The above Board will rule on these petitions. In addition, the NRC Staff will publish in the FEDERAL REGISTER a "Notice of Opportunity for Public Hearing," in this matter. The Board has no jurisdiction to rule on the application for an exemption, unless such jurisdiction is delegated to it by the Commission.

Dated at Bethesda, Md., this 13th day of March 1078.

ATOMIC SAFETY AND LICENSING BOARD PANEL,
JAMES R. YORE,
Chairman.

[FR Doc. 78-7097 Filed 3-16-78; 8:45 am]

[7590-01]

[NuReg-75/087]

REVISION TO THE STANDARD REVIEW PLAN

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated Dec. 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to Section No. 13.3 of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear-power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NuReg-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section No. 13.3 is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 (5 U.S.C. 552(a)).

Dated at Bethesda, Md., this 9th day of March, 1978.

For the U.S. Nuclear Regulatory Commission.

ROGER S. BOYD,
Director, Division of Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 78-7098 Filed 3-16-78; 8:45 am]

[7590-01]

[NuReg-75/087]

REVISION TO THE STANDARD REVIEW PLAN

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated Dec. 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to Section No. 5.4.6 of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NuReg-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section No. 5.4.6 is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 (5 U.S.C. 552(a)).

Dated at Bethesda, Md., this 10th day of March, 1978.

For the U.S. Nuclear Regulatory Commission.

ROGER J. MATTSON,
Director, Division of Systems Safety, Office of Nuclear Reactor Regulation.

[FR Doc. 78-7099 Filed 3-16-78; 8:45 am]

[7590-01]

[NUREG-75/087]

REVISION TO THE STANDARD REVIEW PLAN

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to Section No. 6.7 of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section No. 6.7 is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555 (5 U.S.C. 552(a)).

Dated at Bethesda, Md., this 9th day of March 1978.

For the U.S. Nuclear Regulatory Commission.

ROGER J. MATTSON,
Director, Division of Systems Safety, Office of Nuclear Reactor Regulation.

[FR Doc. 78-7100 Filed 3-16-78; 8:45 am]

[7590-01]

[Docket No. 50-245]

NORTHEAST NUCLEAR ENERGY CO. ET AL.

Proposed Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-21 issued to Northeast Nuclear Energy Co., The Hartford Electric Light Co., Western Massachusetts Electric Co. and Connecticut Light and Power Co. (the licensees) for operation of the Millstone Nuclear Power Station Unit No. 1 located in Waterford, Conn.

In accordance with the licensee's request dated December 14, 1977, as supplemented by filing dated February 28, 1978, the amendment would consider a reevaluation of Emergency Core Cooling System (ECCS) cooling performance submitted in accordance with the Commission's Order for Modification of License dated March 11, 1977. This reevaluation not only corrected the errors noted in the March 11, 1977 Order but also included the effect of certain other recently approved model changes in the ECCS evaluation models. These changes would permit an increase in authorized Maximum Average Planar Linear Heat Generation Rates, and are the aspects of the amendment covered by this notice.

Prior to issuance of the proposed license amendment, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations and will have completed a Safety Evaluation of the proposed action.

By April 17, 1978 the licensee may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the issuance of the amendment to the subject provisional operating license. Petitions for leave to intervene must be filed under oath or affirmation in accordance with the provisions of Section 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition for leave to intervene must set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and the petitioner's contentions with respect to the proposed licensing action. Such petitions must be filed in accordance with the provisions of this FEDERAL REGISTER notice and § 2.714, and must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for a hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to William H. Cuddy, Esquire, Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Conn. 06103, attorney for the licensees.

A petition for leave to intervene must be accompanied by a supporting affidavit which identifies the specific aspect or aspects of the proceeding as to which intervention is desired and specifies with particularity the facts on which the petitioner relies as to both his interest and his contentions with regard to each aspect on which intervention is requested. Petitions stating contentions relating only to matters outside the Commission's jurisdiction will be denied.

All petitions will be acted upon by the Commission or licensing board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions. A petition for leave to intervene which is not timely will not be entertained absent a determination by the Commission or the licensing board designated to rule on petitions to intervene that the petitioner, in addition to the matters specified in 10 CFR 2.714(d), has made a substantial showing of good cause for failure to file on time. The reasons for the tardiness in filing a petition for leave to intervene, as well as the factors specified in 10 CFR 2.714(a)(1)-(4), shall be considered in making a determination as to whether there has been a substantial showing of good cause by the petitioner.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see the application for amendment dated December 14, 1977 and supplement thereto dated February 28, 1978, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Conn. 06385.

Dated at Bethesda, Md., this 15th day of March, 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Systematic Evaluation Projects Branch, Division of Operating Reactors.

[FR Doc. 78-7178 Filed 3-16-78; 9:19 am]

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

Reports on New Systems

PRIVACY ACT OF 1974

The purpose of this notice is to list reports on new systems filed with the Office of Management and Budget to give members of the public the opportunity to make inquiries about them and to comment on them.

The Privacy Act of 1974 requires the agencies give advance notice to the Congress and the Office of Management and Budget of their intent to establish or modify systems of records subject to the Act (5 U.S.C. 552a(o)). During the period February 20 through March 3, 1978 the Office of Management and Budget received the following reports on new (or revised) systems of records.

DEPARTMENT OF JUSTICE

System Name:

Position Accounting/Control system (PACS).

Report Date:

February 9, 1978.

Point-of-Contact:

Robert J. Coyne, Acting Administrative Counsel, Department of Justice, Washington, D.C. 20530.

Summary:

This proposed system will provide automated data on vacant positions, cost data, turnover rates, and other position elements to support personnel, budget, and finance functions of the Immigration and Naturalization Service.

DEPARTMENT OF TRANSPORTATION

System Name:

Airplane Noise Complaint System.

Report Date:

February 16, 1978.

Point-of-Contact:

Mr. Richard Doms, Operational Privacy Act Coordinator, Department of Transportation, Washington, D.C. 20591.

Summary:

This proposed system is intended to systematize access to and use of noise complaints registered at Dulles International and Washington National Airports, and JFK Airport during Concorde Tests.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc. 78-7136 Filed 3-16-78; 8:45 am]

[3110-01]

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 13, 1978 (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; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division or office.

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

VETERANS ADMINISTRATION

Evaluation of a VA Vietnam-Era Vocational Rehabilitation Program, single time, 6,429 service-connected disabled veterans, Housing, Veterans, and Labor Division, Caywood, D. P., 395-3532.

ENVIRONMENTAL PROTECTION AGENCY

Assessment of Environmental Carcinogens: Survival Interview—Control Interview, single time, 5,000 selected cases in four study communities, Clearance Office, 395-3772.

GENERAL SERVICES ADMINISTRATION

Claim for Exemption From Submission of Certified Cost or Pricing Data, OF-277, on occasion, 4,000 suppliers of commercial items, Caywood, D. P., 395-3443.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service, Cash-in-Lieu of Commodities Study Solicitation, single time, 50 school districts, Human Resources Division, Ellett, C. A., 395-3532.

Animal and Plant Health Inspection Service, Certificate for Poultry or Hatching Eggs for Export, VS 17-6, on occasion, 16,000 poultry farms, hatcheries, Clearance Office, 395-3772.

DEPARTMENT OF DEFENSE

Department of the Navy, College Students' Perception of the Military Survey, single time, 800 college students at selected colleges, Clearance Office, 395-3772.

DEPARTMENT OF THE INTERIOR

National Park Service, Carrying Capacity Studies, single time, 3,100 visitors to Lake Mead and Coulee Dam NRA's, Clearance Office, 395-3772.

REVISIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration, Representative Payee Report, SSA-624, on occasion, organizations receiving benefits on behalf of individuals, 40,000 responses, 10,000 hours, Clearance Office, 395-3772.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service, Procedure for Requesting Technical Assistance When Establishing, Mainteaining, and Expanding Food Service Facilities in School, on occasion, public and private schools, 120 responses, 240 hours, Clearance Office, 395-3772.

Economics, Statistics, and Cooperatives Service-Cooperatives Land Ownership Survey, single time, land owners, 250 responses, 50 hours, Clearance Office, 395-3772.

Animal and Plant Health Inspection Service, Inspection Report of Livestock Market to Handle Swine, VS 2-5, VS 2-6, quarterly, stockyards, 6,000 responses, 3,000 hours, Ellett, C. A., 395-6132.

Agricultural Marketing Service, Cotton Sampling Inspection Report, CN-59, on occasion, cotton gins, 3,000 responses, 90 hours, Clearance Office, 395-3772.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration, Import Entry Report, FD 700, on occasion, brokers, etc., 500,000 responses, 25,000 hours, Richard Eisinger, 395-3214.

Social Security Administration:

Report of Person Entitled to Special Benefits, SSA-1625, on occasion, persons receiving special age 72 payments, 15,000 responses, 750 hours, Clearance Office, 395-3772.

Petition to Obtain Approval of a Fee for Representing a Social Security Claimant, SSA-1560, on occasion, attorneys or other persons representing claimants, 10,000 responses, 7,500 hours, Marsha Traynham, 395-3773.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-7271 Filed 3-16-78; 8:45 am]

[4710-02]

DEPARTMENT OF STATE

Agency for International Development

[Delegation of Authority No. 40]

REGIONAL ASSISTANT ADMINISTRATORS, ET AL.

Delegation of Authority Regarding Source, Origin and Nationality for Procurement

Pursuant to the authority delegated to me by Delegation of Authority No. 104, dated November 3, 1961 (26 FR 10,608, November 10, 1961), as amended, from the Secretary of State, and AID Delegation of Authority No. 34, dated May 13, 1969, it is hereby directed as follows:

I. The Assistant Administrator for Africa, Asia, Latin America, Near East, Development Support, and Private Development Cooperation, each for countries or programs for which he or she is responsible, are hereby delegated the following authorities:

A. *Selected Free World.*—Authority to waive, in accordance with the criteria prescribed by Supplement B of AID Handbook 1, U.S. source, origin or nationality requirements, to permit procurement of goods and services, other than transportation services, in countries included in AID Geographic Code 941 (Selected Free World) and the cooperating country, when the cost of the goods and services does not exceed $500,000 (exclusive of transportation costs) of funds made available under the Foreign Assistance Act of 1961, as amended.

B. *Free World.*—Authority to make specific exceptions to U.S. or Code 941 source, origin or nationality requirements, in accordance with criteria prescribed by Supplement B of Handbook 1, to permit procurement of goods and services, other than transportation services, in any country included in AID Geographic Code 899 (Free World), when the cost of the goods and services does not exceed $500,000 (exclusive of transportation costs) of funds made available under the Foreign Assistance Act of 1961, as amended: *provided, however:*

1. That all waivers, authorized pursuant to this paragraph I.B., of the source and origin of goods shall contain a certification by the approving official that "Exclusion of procurement from free world countries other than the cooperating country and countries included in Code 941 would seriously impede attainment of U.S. foreign policy objectives and objectives of the foreign assistance program."; and

2. That all waivers approved pursuant to this paragraph I.B., of the nationality requirements for suppliers of services, other than transportation services, shall contain a certification by the approving official that "The interests of the United States are best served by permitting the procurement of services from free world countries other then the cooperating country and countries included in Code 941."

II. The Assistant Administrator for Program and Management Services is hereby delegated the following authorities:

A. SELECTED FREE WORLD

1. When Code 000 has been authorized for the procurement of goods and services, authority to waive, in accordance with the criteria prescribed in Supplement B of AID Handbook 1, the requirement that transportation services be on U.S. flag aircraft or ocean vessels, to permit financing of

transportation on aircraft or ocean vessels under flag registry of the cooperating country or any AID Geographic Code 941 country, when transportation costs do not exceed $500,000 of funds made available under the Foreign Assistance Act of 1961, as amended.

2. When Code 941 has been authorized for the procurement of goods and services, other than transportation services, authority to waive, in accordance with the criteria prescribed in Supplement B of AID Handbook 1, the requirement that transportation services be on U.S. or cooperating country flag aircraft or ocean vessels, to permit financing of transportation on aircraft or ocean vessels under flag registry of any AID Geographic Code 941 country.

B. FREE WORLD

Authority to waive, in accordance with criteria prescribed in Supplement B of AID Handbook 1, the requirement that transportation services be on U.S., cooperating country, or a Code 941 country flag aircraft or ocean vessels, to permit the financing of transportation on aircraft or ocean vessels under flag registry of any country included in AID Geographic Code 899 (Free World), when transportation costs do not exceed $500,000 of funds made available under the Foreign Assistance Act of 1961, as amended; *provided, however:* That all waivers approved pursuant to paragraph II.B. shall contain a certification by the approving official that "The interests of the U.S. are best served by permitting financing of transportation services on aircraft or ocean vessels under flag registry of free world countries other than the cooperating country and countries included in Code 941."

III. General Provisions.

A. Any reference in this Delegation of Authority to any Act of Congress, order, determination, or delegation of authority shall be deemed to be a reference to such Act of Congress, order, determination, or delegation of authority as amended from time to time.

B. Any official of AID to whom functions are delegated under this Delegation of Authority may redelegate any of the functions, *provided, however:* That any such redelegation shall be limited to cases in which the cost of the goods, services, and transportation services do not exceed $250,000; and *provided further,* That the authority to waive source and origin requirements for motor vehicle procurement shall not be redelegated for transaction in excess of $25,000.

C. Delegation of Authority No. 40, dated April 17, 1964, (29 FR 5695, April 29, 1964) as previously amended, is hereby revoked. This revised delegation shall not be construed to affect the validity of any waiver or redelegation granted by a properly authorized official prior to the effective date of this revised delegation and any such waiver or redelegation shall continue in effect unless modified or revoked by an official to whom such authority has been delegated by this order.

D. This Delegation of Authority is effective immediately.

Dated: March 5, 1978.

ROBERT H. NOOTER,
Deputy Administrator.

[FR Doc. 78-7151 Filed 3-16-78; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Office of the Secretary

PORTLAND HYDRAULIC CEMENT FROM CANADA

Antidumping; Withholding of Appraisement Notice

AGENCY: U.S. Treasury Department.

ACTION: Withholding of Appraisement.

SUMMARY: This notice is to advise the public that there are reasonable grounds to believe or suspect that there are sales of portland hydraulic cement from Canada to the United States as less than fair value within the meaning of the Antidumping Act, 1921. Sales at less than fair value generally occur when the price of merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries. Appraisement for the purpose of determining the proper duties applicable to entries of this merchandise will be suspended for 6 months. Interested persons are invited to comment on this action not later than April 17, 1978.

EFFECTIVE DATE: March 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Vincent P. Kane, Operations Officer, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On August 2, 1977, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26 and 153.27), indicating that portland hydraulic cement from Canada is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was submitted by the law firm of Barnes, Richardson and Colburn, representing the Glens Falls Division of the Flintkote Co. On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of September 8, 1977 (42 FR 45059).

For purposes of this notice, the term "portland hydraulic cement" refers to portland hydraulic cement, other than white nonstaining cement.

TENTATIVE DETERMINATION OF SALES AT LESS THAN FAIR VALUE

On the basis of information developed in Customs investigation and for the reasons noted below, pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), I hereby determine that there are reasonable grounds to believe or suspect that the purchase price or the exporter's sales price, as applicable, of portland hydraulic cement from Canada is less, or likely to be less, than the fair value, and thereby the foreign market value of such or similar merchandise.

STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED

The reasons and bases for the above tentative determination are as follows:

A. SCOPE OF THE INVESTIGATION

It appears that about 84 percent of all imports of portland hydraulic cement from Canada was produced by Miron Company, Ltd., Lake Ontario Cement, Ltd., Canada Cement Lafarge, Ltd., and St. Lawrence Cement Co. Therefore, the investigation was limited to these producers.

B. BASIS OF COMPARISON

For the purpose of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison appears to be between purchase price or exporter's sales price, as applicable, and the adjusted home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used for the sales of Miron Company, Ltd., since all export sales by this company appear to have been made to nonrelated customers in the United States. Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), was used since the sales by the other three producers were made to the U.S. firms related to those producers within the meaning of section 207 of the Act (19 U.S.C. 166). Home market prices, as defined in § 153.2, Customs Regulations (19 CFR 153.2), were used for fair value purposes since such or similar merchandise appears to have been sold in the home market in sufficient quantities to provide an adequate basis for comparison.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning imports of portland hydraulic cement from Canada sold in the United States during the 5-month period April 1, through August 31, 1977. Pricing information on home market sales was obtained for the period corresponding to the dates of purchase of cement sold by Miron Co., Ltd., to the United States and for the period corresponding to the dates of export of the cement sold by the other companies to the United States.

C. PURCHASE PRICE

For the purposes of this tentative determinastion, in the case of Miron Co., Ltd., all of the imported merchandise was purchased, or agreed to be purchased, prior to the time of exportation by the persons by whom or for whose account it was imported, within the meaning of section 203 of the Act. The purchase price was calculated on the basis of the delivered price in the United States. Deductions were made for freight, Customs brokerage, and a prompt payment discount. An addition was made for the Canadian Federal Sales Tax incurred with respect to such sales, but not collected by reason of export to the United States, in accordance with section 203 of the Act.

D. EXPORTER'S SALES PRICE

For the purposes of this tentative determination of sales at less than fair value, regarding the other three companies, all of the merchandise was sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of a related U.S. producer considered to be the exporter, within the meaning of section 207 of the Act. Accordingly, the exporter's sales price has been calculated on the basis of the delivered price to unrelated U.S. customers with deductions for freight, Customs brokerage, financing expenses, selling expenses, and storage costs, as applicable. Additions were made for the Canadian Federal Sales Tax and provincial taxes, as applicable, incurred with respect to such sales, but not collected by reason of export to the United States, in accordance with section 204 of the Act.

E. HOME MARKET PRICE

For the purposes of this tentative determination, the home market prices have been calculated on the basis of the delivered, weighted-average price, generally to unrelated customers. Adjustments were made for cash discounts, competitive discounts, freight, selling expenses, and storage costs, as applicable. Adjustments were made for costs relating to differences in credit terms and for Portland Cement Association dues, which were regarded as assumed advertising costs, as applicable, in accordance with § 153.10, Customs Regulations (19 CFR 153.10).

A claim was made that certain vessel leasing costs be allocated only to Candian sales, since the vessels had been leased mainly to transport Canadian shipments. The claim was not allowed since all sales using vessel deliveries were regarded as properly bearing a proportional amount of these leasing costs.

A claim that storage costs incurred in the United States should not be deducted from exporter's sales price was rejected in that these were expenses incidental to bringing the merchandise from place of shipment in Canada to place of delivery in the United States.

A claim was also made that freight not be deducted and that delivered prices to the United States and in Canada, be used for fair value comparisons, since it is standard practice in the cement industry to quote prices on a delivered basis. Fluctuations in freight costs do not necessarily affect the delivered prices. This claim was disallowed since the Act specifically requires a deduction for freight costs included in the price for export.

A claim was made that certain administrative expenses assumed by the Canadian parent firm on behalf of its U.S. subsidiary be allowed as a deduction in calculating home market price. This claim was disallowed, since it was not regarded as appropriate to deduct costs applicable to sales in the United States in the calculation of home market price.

F. RESULTS OF FAIR VALUE COMPARISONS

Using the above criteria, preliminary analysis suggests that the purchase price or the exporter's sales price, as appropriate, probably will be lower than the home market price of such or similar merchandise. Comparisons were made on about 72 percent of the portland hydraulic cement sold for export to the United States by all producers investigated for the period under consideration. Margins were tentatively found ranging from 31 to 106 percent for sales made by Miron Co., Ltd., on 100 percent of the sales compared, ranging from 0.3 to 73 percent for sales made by Lake Ontario Cement, Ltd., on 51 percent of the sales compared, ranging from 1 to 190 percent for sales made by Canada Cement Lafarge, Ltd., on 78 percent of the sales compared, and ranging from 1 to 369 percent for sales made by St. Lawrence Cement Co. on 99 percent of the sales compared. Weighted-average margins for each firm's sales compared were approximately 54 percent for Miron Co., Ltd., 3.2 percent for Lake Ontario Cement, Ltd., 20.5 percent for Canada Cement Lafarge, Ltd., and 59.8 percent for St. Lawrence Cement Co. These margins were calculated using the prices of two similar types of portland hydraulic cement in the U.S. with prices of only one of those in Canada. Treasury will determine whether an adjustment is necessary under § 153.11, Customs Regulations (19 CFR 153.11), for differences in the cost of producing the two types of cement if those differences are reflected in the respective prices.

In accordance with § 153.40, Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 1301 Constitution Avenue NW., Washington, D.C. 20229, in time to be received by his office not later than March 27, 1978. Such requests must be accompanied by a statement outlining the issues wished to be discussed.

Any written views or agruments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than April 17, 1978. All persons submitting written views or arguments should avoid repetitious and merely cumulative material. Counsel for the petitioner and respondents are requested to serve all written submissions on all other counsel and to file their submissions with the Commissioner of Customs in 10 copies.

This notice, which is published pursuant to § 153.35(b), Customs Regulations (19 CFR 153.35(b)), shall become effective March 17, 1978. It shall cease to be effective at the expiration of 6 months from the date of this publication (September 17, 1978), unless previously revoked.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

MARCH 8, 1978.

[FR Doc. 78-7126 Filed 3-16-78; 8:45 am]

[4810-25]

Office of the Secretary

ADVISORY COMMITTEE ON REFORM OF THE INTERNATIONAL MONETARY SYSTEM

Meeting

Notice is hereby given that the Advisory Committee on Reform of the International Monetary System will meet at the Treasury Department on April 13, 1978.

The meeting is called in order to obtain the opinions of the participants in the Advisory Committee regarding international monetary questions to be discussed at the annual meeting of

the Board of Governors of the International Monetary Fund on April 27-28 and the related meeting of the Interim Committee of the Board of Governors.

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that this meeting is for the purpose of considering matters falling within the exemption to public disclosure set forth in 5 U.S.C. 552b(c)(1) and that the public interest requires such meeting be closed to public participation.

Any comment or inquiry with respect to this notice can be addressed to Donald Syvrud, Director, Office of International Monetary Affairs, U.S. Department of the Treasury, Washington, D.C. 20220, 202-566-5365.

Dated: March 13, 1978.

ANTHONY M. SOLOMON,
Under Secretay for Monetary Affairs.

[FR Doc. 78-7125 Filed 3-16-78; 8:45 am]

[8320-01]

VETERANS ADMINISTRATION

SPECIAL MEDICAL ADVISORY GROUP

Meeting

The Veterans Administration gives notice pursuant to Pub. L. 92-463 that a meeting of the Special Medical Advisory Group, authorized by 38 U.S.C. 4112(a), will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, D.C., on April 3 and 4, 1978. The purpose of the Special Medical Advisory Group is to advise the Administrator and the Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery.

The general sessions will convene at 8:30 a.m. on April 3, and at 9 a.m. on April 4. These will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mr. R. E. Lindsey, Executive Secretary, Special Medical Advisory Group, Veterans Administration Central Office, phone 202-389-2588, prior to March 27, 1978.

The Executive Session portion of the meeting, April 4, 1978, 11 a.m.-12:00 Noon, will be closed for discussions of employment matters in the Department of Medicine and Surgery, pursuant to 5 U.S.C. 552b(c)(2), as it relates solely to the internal personnel rules and practices of the agency.

Dated: March 10, 1978.

MAX CLELAND,
Administrator.

[FR Doc. 78-7142 Filed 3-16-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 28676 (Sub-No. 1)]

GRAND TRUNK WESTERN RAILROAD CO.—CONTROL—DETROIT, TOLEDO AND IRONTON RAILROAD CO.

Grand Trunk Western Railroad Co. (GTW) and Grand Trunk Corp. (GTC), 131 West Lafayette Boulevard, Detroit, Mich. 48226, represented by Basil Cole, Dechert Price & Rhoads, Esqs., 888 Seventeenth Street NW., Washington, D.C. 20006, hereby give notice that on the 16th day of February, 1978, they filed with the Interstate Commerce Commerce Commission at Washington, D.C. a joint application under Section 5(2) of the Interstate Commerce Act for an order approving and authorizing acquisition of control by GTW of the Detroit, Toledo and Ironton Railroad Co. (DT&I) AND THE Detroit and Toledo Shore Line Railroad Co. (DTSL), which application is assigned Finance Docket No. 28676 (Sub-No. 1).

Approval of the application will authorize GTW to purchase the stock of DT&I owned by Pennsylvania Co. (Pennco), amounting to substantially all of the stock of DT&I, and will further authorize GTW to purchase the stock of DTSL owned by the Norfolk & Western Railway Co. (N&W), amounting to 50% of all of the stock of DTSL. GTW presently owns 50% of all of the stock of DTSL.

The application is "inconsistent", within the meaning of Section 5(2) of the Act and the Commission's Regulations adopted in Ex Parte No. 282 (Sub-No. 1), Railroad Consolidation Procedures, 340 ICC 771 (1977), which amended 49 CFR Part 1111, with the application filed October 21, 1977, by Norfolk and Western Railway Co. (N&W) and The Baltimore and Ohio Railroad Co. (B&O), et al., for authority to acquire joint control of DT&I, docketed Finance Docket No. 28499 (Sub-No. 1).

The transactions proposed by the application are subject to the execution of appropriate agreements for the purchase by GTW of the stock interests of Pennco and N&W. GTC, GTW's parent, is not a party to the transactions, but joins in the application pursuant to Section 5(2). GTW has offered $15,000,000 for Pennco's stock interest in DT&I. GTW has offered $1,920,000 for N&W's 50% stock interest in DTSL. Upon final approval of the application, GTW will integrate the organization, facilities and operations of GTW, DT&I and DTSL under common control.

GTW is a Class I carrier providing rail freight and passenger service, operating approximately 921 miles of main track in MI, IN and IL. In addition, the GTW operates car ferry service across Lake Michigan from Muskegon, MI, to a terminal at Milwaukee, WI.

The DT&I is a Class I carrier providing rail freight service. It operates between Detroit, MI, through Delta, Lima, and Maitland, OH, to Sringfield, OH, continuing to Cincinnati, OH, via trackage rights, and to Ironton, OH. Other DT&I lines extend from Flat Rock to Dearborn, MI, from Diann, MI, to Toledo, OH, and from Malinta, OH, to Tecumseh, MI. In addition, DT&I has operating rights over an alternate route to Cincinnati from Maitland, OH, and a short track in Ottawa, OH.

The DTSL is a Class II carrier operating over approximately 50 miles of rail line between the suburbs of Toledo, OH and the suburbs of Detroit, MI. Approximately 47 of these route miles are owned by the DTSL and 3.3 miles are operated under trackage rights over the N&W from West Detroit to River Rouge, MI.

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation Finance Docket No. 28676 (Sub-No. 1) and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than 45 days after the date notice of the filing of the application is published in the FEDERAL REGISTER. Such written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the public interest; and a request for oral hearing if one is desired. Additionally, interested persons who do not intend to participate formally in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirements specified herein. Persons submitting written comments to the Commission, shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation and the Attorney General.

H. G. HOMME, Jr.
Acting Secretary.

[FR Doc. 78-7325 Filed 3-16-78; 2:33 pm]

[7035-01]

[Finance Docket No. 28643 (Sub-No. 1)]

NORFOLK AND WESTERN RAILWAY CO.—PURCHASE—DETROIT, TOLEDO AND IRONTON RAILROAD CO.

Norfolk and Western Railway Co. (NW), 8 North Jefferson Street, Roa-

noke, Va. 24042, represented by John S. Shannon, Vice President-Law Norfolk and Western Railway Co., 8 North Jefferson Street, Roanoke, Va. 24042, and Frederick C. Nash, Bodman, Longley, Bogle & Dahling, 100 Renaissance Center, Detroit, Mich. 48243, hereby give notice that on the 17th day of February, 1978, it filed with the Interstate Commerce Commission at Washington, D.C., an application under section 5(2) of the Interstate Commerce Act for an order approving and authorizing the acquisition of 11.1 miles of the Tecumseh Branch of the Detroit, Toledo and Ironton Railroad Co. (DT&I) through purchase from DT&I, which application is assigned Finance Docket No. 28643 (Sub-No. 1).

NW proposes to purchase from DT&I 11.1 miles of DT&I's Tecumseh Branch extending from the branch's intersection with NW's main line at Page, Mich. (near Adrian), in a northerly direction to the termination of the branch at Tecumseh, Mich. NW will serve former DT&I customers on the purchased segment, which is 44 miles closer to NW's main line than to DT&I's main line. The portion of the Tecumseh Branch NW seeks authority to purchase lies in Lenawee County, Mich.

NW can provide service more efficiently than DT&I, and DT&I can be relieved of an unprofitable operation. In addition to withdrawing from the 11.1 miles being acquired by NW, approval of the transaction will enable DT&I to withdraw from 8.6 miles of trackage rights on NW used only to serve the northerly segment in question, and will facilitate DT&I's application to abandon other portions of the branch filed in Docket No. AB-111 on June 11, 1975, all without loss of any presently operated rail service.

In the opinion of the applicant, the granting of the authority sought will 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. In accordance with the Commission's Regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), Implementation—National Environmental Policy Act, 1969, 352 ICC 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See Implementation—National Environmental Policy Act, 1969, supra, at p. 487.

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation Finance Docket No. 28643 (Sub-No. 1) and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than 45 days after the date notice of the filing of the application is published in the FEDERAL REGISTER. Such written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the public interest; and a request for oral hearing if one is desired. Additionally, interested persons who do not intend to formally participate in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirements specified herein. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation and the Attorney General.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-7324 Filed 3-16-78; 2:33 pm]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Publ. L. 91-409), 5 U.S.C. 552b(e)(3).

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[6320-01]

1

[M-109, Amdt. 1; Mar. 13, 1978]

NOTICE OF DELETION OF ITEMS FROM THE MARCH 16, 1978 MEETING AGENDA

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., March 16, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 16. Deregulation of air freight forwarding, (BPDA, OEA, BAS, BOE, OGC). 17. Docket 32122, Travel Dividend Voucher Program proposed by Eastern, (BPDA).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The staff has requested that Item No. 16 (Deregulation of air freight forwarding—D0013) on the calendar for the Sunshine Meeting of March 16, be delayed until the Sunshine Meeting of March 30, 1978. While nearly all items have been completed on the Memorandum and the draft notice of proposed rulemaking several technical matters remain to be resolved. The additional two weeks will permit completion of all staff coordination. In order to permit its evaluation of the proposal based on the staff's recommendation OGC has requested that we remove the following item for the calendar list for Thursday, March 16, 1978. (Item 17 Docket 32122, Travel Voucher Program proposed by Eastern). Accordingly, the following Members have voted that agency business requires the deletion of these items for the March 16, 1978 agenda and that no earlier announcement of these deletions was possible:

Chairman, Alfred E. Kahn
Vice Chairman, G. Joseph Minetti
Member, Lee R. West
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey

[S-579-78 Filed 3-15-78; 9:27 am]

[6320-01]

2

[M-111; Mar. 13, 1978]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., March 14, 1978.

PLACE: Room 1011, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Ongoing Consultations with the United Kingdom and the recently concluded consultations with the Netherlands.

STATUS: Closed.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: On March 10, 1978, the Board voted that its series of meetings involving the subject of ongoing consultations with the United Kingdom and the Netherlands, would be closed to public observation, under Exemption 9(B), 5 U.S.C. 552b(c)(9)(B) and 14 CFR 310b.5(9)(B). The full explanation of the closings, the votes of each Member of the Board on the closings, the list of persons expected to attend and the General Counsel's certification are set forth in CAB Meeting Announcement M-110, dated March 10, 1978.

The recent round of consultations with the Netherlands was concluded on Friday, March 10, 1978. Consultations with the United Kingdom are continuing. So that the Board can consider its positions during the ongoing consultations with the United Kingdom, as well as the possible effects of the Netherlands consultations on those with the United Kingdom, the following Members have voted that agency business requires that the Board meet on Tuesday, March 14, 1978, on less than seven days' notice, and that no earlier announcement of the meeting was possible:

Chairman, Alfred E. Kahn
Vice Chairman, G. Joseph Minetti
Member, Lee R. West
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey

[S-580-78 Filed 3-15-78; 9:27 am]

[6320-01]

3

[M-109 Amdt. 2; Mar. 13, 1978]

NOTICE OF ADDITION OF ITEMS TO THE MARCH 16, 1978 MEETING AGENDA

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., March 16, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 4a. Boston/Philadelphia/New York/Washington-Puerto Rico/Virgin Islands Service Inv. 4b. Docket 30697, Caribbean Service Inv.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The staff requests that these two items be added to the Thursday, March 16, Calendar Meeting because BALJ has the capacity to set down for immediate hearing the Boston/Philadelphia/New York/Washington-Puerto Rico/Virgin Islands Service Inv., which contemplates an immediate hearing to explore the grant of interim authority. The order in the Caribbean Service Inv., Docket 30697, must also be addd to the Calendar because it is to be issued at the same time as the Puerto Rico order. Accordingly, the following Members have voted that agency business requires the addition of these two items to the March 16, 1978 agenda and that no earlier announcement of these additions was possible:

Chairman, Alfred E. Kahn
Vice Chairman, G. Joseph Minetti
Member, Lee R. West
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey

[S-593-78 Filed 3-15-78; 3:41 pm]

[6320-01]

4

[M-109, Amdt. 3; Jan. 14, 1978]

NOTICE OF ADDITION OF ITEM TO THE MARCH 16, 1978 AGENDA

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., March 16, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 25a Aerovias Condor de Colombia, S.A. (AeroCondor) application for Barranquilla—Santo Domingo blind sector traffic authorization (Memo No. 7814, BPDA, BIA).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Expeditious treatment of Aerocondor's application is desirable because certain U.S. carrier applications for new authority are pending before the Government of Colombia. The staff believes that favorable action on Aerocondor's request will assist the U.S. carrier in obtaining a favorable decision in Colombia. Accordingly, the following Members have voted that agency business requires the addition of this item to the agenda of March 16, 1978 and that no earlier announcement of this addition was possible:

Chairman, Alfred E. Kahn
Vice Chairman, G. Joseph Minetti
Member, Lee R. West
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey

[S-594-78 Filed 3-15-78; 3:41 pm]

[6320-01]

5

[M-112; Mar. 14, 1978]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 2 p.m., March 21, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUJECT: Air Charter Tour Operators of America to make a presentation regarding the problems of charter tour operators.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

[S-595-78 Filed, 3-15-78; 3:41 pm]

[6351-01]

6

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., March 22, 1978.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters/Offer of Settlement.

CONTACT PERSON FOR MORE INFORMATION:

Jame Stuckey, 254-6314.

[S-582-78 Filed 3-15-78; 9:38 am]

[6351-01]

7

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., March 23, 1978.

PLACE: 2033 K Street, N.W., Washington, D.C. 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Judicial Session to consider reparation and enforcement cases.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-583-78 Filed 3-15-78; 9:38 am]

[6351-01]

8

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., March 22, 1978.

PLACE: 2033 K Street, NW., Washington, D.C., 5th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters/Offer of Settlement.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-584-78 Filed 3-15-78; 9:38 am]

[6355-01]

9

CONSUMER PRODUCT SAFETY COMMISSION.

PREVIOUSLY ANNOUNCED DATE AND TIME: March 16, 1978.

CHANGES IN MEETING: The Commission has added for discussion in closed session matters related to the aluminum wire litigation. The Commission has deferred the previously scheduled briefing on carpet and rug flammability standards.

CONTACT PERSON FOR ADDITIONAL 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-586-78 Filed 3-15-78; 2:13 pm]

[6570-06]

10

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, March 21, 1978.

PLACE: Chairman's Conference Room, No. 5240, on the floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, DC. 20506.

STATUS: Parts will be open to the public and parts will be closed to the public.

MATTERS TO BE CONSIDERED:

Parts open to the public:

1. Private Bar Program; Report of Monitoring and Managerial Responsibilities.
2. Proposed Procedures for Processing Systemic Cases.

Parts closed to the public:

1. Litigation Authorizations; General Counsel Recommendations: Matters closed to the public under Sec. 1612.13(a) of the Commission's regulations (42 F.R. 13830, March 14, 1977).
2. Reconsideration of Commission Decision No. 77-21.

NOTE.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This notice issued March 14, 1978.

[S-585-78 Filed 3-15-78; 2:13 pm]

[6714-01]

11

FEDERAL DEPOSIT INSURANCE CORPORATION.

NOTICE OF CHANGE IN SUBJECT MATTER OF AGENCY MEETING

At the commencement of its closed meeting held at 2 p.m. on March 14, 1978, the Corporation's Board of Directors voted, on motion of Chairman George A. LeMaistre, seconded by Director John G. Heimann, to withdraw from consideration the application of Floyd County Bank, New Albany, Ind., for consent to purchase the assets of and assume liability to pay deposits made in American Bank, New Albany, Ind., pending the receipt of an advisory opinion from the Department of Justice on the competitive factors involved in the proposed transaction. The Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

DATED: March 14, 1978.

FEDERAL DEPOSIT INSURANCE CORPORTAION,
ALAN R. MILLER,
Executive Secretary.

[S-596-78 Filed, 3-15-78; 3:41 am]

[6740-02]

12

MARCH 15, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: March 16, 1978, following regular meeting.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pending Civil Litigation.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

KENNETH F. PLUMB,
Secretary.

[S-591-78 Filed 3-15-78; 2:32 pm]

[6210-01]

13

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS).

TIME AND DATE: 10 a.m., Wednesday, March 22, 1978.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase, under competitive bidding, of an electronic system for the New York Federal Reserve Bank.
2. Proposed negotiation of competitive purchases of computers and computer equipment within the Federal Reserve System.
3. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: March 14, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-581-78 Filed 3-15-78; 9:38 am]

[6750-01]

14

FEDERAL TRADE COMMISSION.

TIME AND DATE: 2 p.m., Tuesday, March 21, 1978.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

NONADJUDICATIVE MATTERS

1. Approval of minutes of nonadjudicative matters considered at meetings of February 3, and March 7, 1978.
2. Consideration of acceptance of proposed Consent Agreement in Bankers Life and Casualty Co., et al., Docket No. 9075.

ADJUDICATIVE MATTERS UNDER PART 3 OF THE RULES OF PRACTICE

The Commission has not yet scheduled any adjudicative items for discussion at this meeting.

CONTACT PERSON FOR MORE INFORMATION:

Wilbur T. Weaver, Office of Public Information, 202-523-3830. Recorded Message: 202-523-3806.

[S-587-78 Filed 3-15-78; 2:13 pm]

[6750-01]

15

FEDERAL TRADE COMMISSION.

TIME AND DATE: 2:30 p.m., Wednesday, March 22, 1978.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Consideration of Proposed Discovery Rules.

CONTACT PERSON FOR MORE INFORMATION:

Wilbur T. Weaver, Office of Public Information, 202-523-3830. Recorded Message: 202-523-3806.

[S-558-78 Filed 3-15-78; 2:13 pm]

[7210-01]

16

RENEGOTIATION BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 9931, March 10, 1978.

PREVIOUSLY ANNOUNCED DATE AND TIME OF MEETING: Tuesday, March 21, 1978; 10 a.m.

CHANGES IN MEETING: Items 14 and 15 are added to the previously announced agenda.

MATTERS TO BE CONSIDERED: Board Meeting concerning:

14. Organization and operations of the electronic data processing staff.
15. Recommended clearance or determination of excessive profits: Ocean technology, fiscal year ended March 31, 1974.

STATUS: Item 14 is open to the public. Item 15 is closed to the public.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: March 14, 1978.

GOODWIN CHASE,
Chairman.

[S-592-78 Filed 3-15-78; 2:32 pm]

[8010-01]

17

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 9931, March 10, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE: 10 a.m., March 16, 1978.

CHANGES IN THE MEETING: The following item will not be considered by the Commission at the open meeting scheduled for March 16, 1978, at 10 a.m.:

Proposed rule amendments filed by the Chicago Board Options Exchange, Inc. concerning order priority and trading procedures.

The following additional item will be considered by the Commission at the open meeting scheduled for March 16, 1978, at 10 a.m.:

Consideration of the postponement of the effective date of Securities Exchange Act Rule 10b-10, which prescribes confirmation delivery and disclosure requirements applicable to brokers and dealers.

Commissioners Loomis, Evans, Pollack, and Karmel determined that Commission business required the above cited changes in the meeting agenda and that no earlier notice thereof was possible.

MARCH 14, 1978.

[S-578-78 Filed 3-15-78; 9:27 am]

[4410-01]

18

UNITED STATES PAROLE COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, March 23, 1978.

PLACE: Room 338, Federal Home Loan Bank Board Building, 320 First Street NW., Washington, D.C. 20537.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Consideration of two applications for exemptions from a bar imposed by 29 U.S.C. 504 against the employment of applicants by certain labor unions following hearings held pursuant to the Administrative Procedures Act and recommended decisions based thereon.

CONTACT PERSON FOR MORE INFORMATION:

M. E. Malin Foehrkolb, 202-724-3117.

[S-589-78 Filed, 3-15-78; 2:13 am]

[4410-01]

19

UNITED STATES PAROLE COMMISSION: National Commissioners (the Commissioners presently maintaining offices at Washington, D.C. Headquarters).

TIME AND DATE: 10:30 a.m., Thursday, March 23, 1978.

PLACE: Room 338, Federal Home Loan Bank Board Building, 320 First Street NW., Washington, D.C. 20537.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Referrals from regional commissioners of approximately 20 cases in which inmates of Federal Prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION:

Lee H. Chait, Analyst, 202-724-3094.

[S-590-78 Filed 3-15-78; 2:13 pm]

federal register

FRIDAY, MARCH 17, 1978
PART II

ENVIRONMENTAL PROTECTION AGENCY

CONSUMER PRODUCT SAFETY COMMISSION

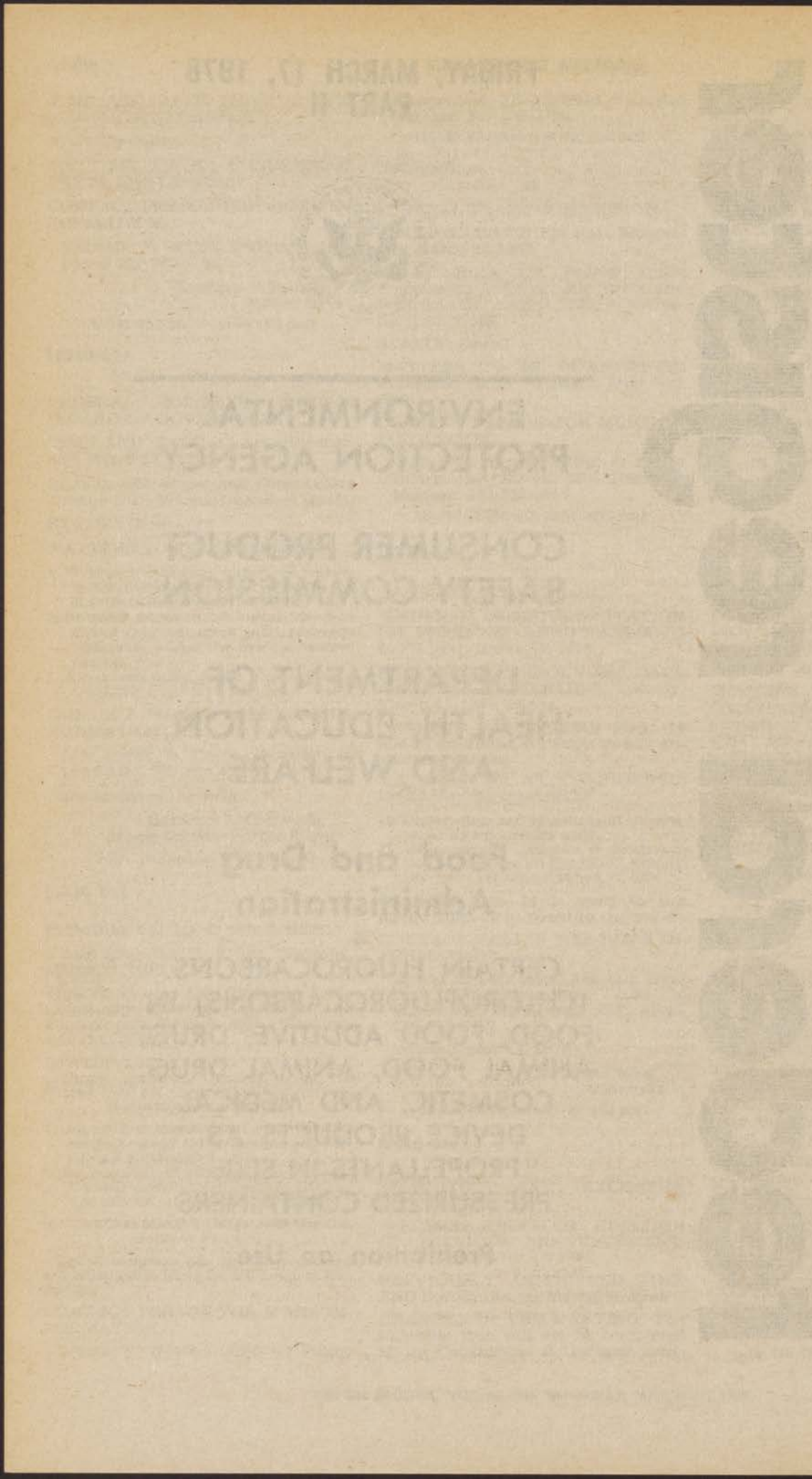
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

CERTAIN FLUOROCARBONS (CHLOROFLUOROCARBONS) IN FOOD, FOOD ADDITIVE, DRUG, ANIMAL FOOD, ANIMAL DRUG, COSMETIC, AND MEDICAL DEVICE PRODUCTS AS PROPELLANTS IN SELF-PRESSURIZED CONTAINERS

Prohibition on Use



[4110-03]

Title 21—Food and Drugs

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

[Docket No. 76N-0460]

CERTAIN FLUOROCARBONS (CHLOROFLUOROCARBONS) IN FOOD, FOOD ADDITIVE, DRUG, ANIMAL FOOD, ANIMAL DRUG, COSMETIC, AND MEDICAL DEVICE PRODUCTS AS PROPELLANTS IN SELF-PRESSURIZED CONTAINERS

Prohibition on Use

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This final rule prohibits the use of certain fluorocarbons, the fully halogenated chlorofluoroalkanes (chlorofluorocarbons), as propellants in self-pressurized containers in products subject to the Federal Food, Drug, and Cosmetic Act (hereafter, "the act"). This action is being taken because chlorofluorocarbons may deplete stratospheric ozone, leading to an increase in skin cancer, climatic changes, and other adverse effects. Essential uses of chlorofluorocarbons, specified in the regulation, will not be subject to the regulation.

EFFECTIVE DATES: Food, drug, device, or cosmetic products manufactured or packaged on or after December 15, 1978, and finished products initially introduced into interstate commerce on or after April 15, 1979, must comply with the regulation.

FOR FURTHER INFORMATION CONTACT:

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3. Economic: Gail Updegraff, Office for Planning and Evaluation (HFP-14), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-6250.

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SUPPLEMENTARY INFORMATION:

Related Actions

1. A final rule published in the Federal Register of April 29, 1977 (42 FR 22017) that requires warning statements on foods, over-the-counter (OTC) drugs, animal food, animal drugs, cosmetics, and medical devices in self-pressurized containers that contain chlorofluorocarbon propellants has been in effect since October 31, 1977.

2. The Environmental Protection Agency (EPA) plans to promulgate a final rule to prohibit, under the Toxic Substances Control Act, the manufacture, processing, and initial distribution in commerce of chlorofluorocarbons for aerosol propellant uses except for specified essential uses.

3. The Consumer Product Safety Commission (CPSC) published in the Federal Register of August 24, 1977 (42 FR 42780) a final rule to require that aerosol products subject to the Consumer Product Safety Act that contain chlorofluorocarbon propellants carry a warning label statement. The effective date of this regulation is February 20, 1978.

4. The Food and Drug Administration (FDA), along with EPA and CPSC held a public meeting on October 25-27, 1977, to collect information on nonpropellant uses of chlorofluorocarbons, e.g., in refrigeration, air conditioning, plastic foam blowing, or as solvents, anesthetics. An additional public meeting on nonpropellant uses of chlorofluorocarbons is scheduled for February 21-24, 1978. Notices of this joint public meeting were published in the Federal Register of January 13, 1978 (43 FR 1986, 1997). The information obtained at these meetings will be used in the consideration of regulatory decisions relating to nonpropellant uses of chlorofluorocarbons.

Background

The prohibition on the use of chlorofluorocarbons established by this rule was proposed in the Federal Register of May 13, 1977 (42 FR 24535). The products to which the regulation applies are human foods, human drugs (including biological products), animal foods, animal drugs, cosmetics, and medical devices. The prohibition does not apply to uses, specified in the rule, that the Commissioner has concluded are essential.

The Food and Drug Administration is issuing this regulation to reduce the risk of injury resulting from stratospheric ozone depletion posed by the release of chlorofluorocarbons. A reduction of stratospheric ozone would increase the amount of biologically damaging ultraviolet radiation reaching the Earth, and as a result might increase the incidence of skin cancer, change the climate, and produce other adverse effects. Chlorofluorocarbon release might also affect the climate by increasing infrared absorption in the atmosphere.

The Commissioner of Food and Drugs took the initial steps toward phasing out the use of chlorofluorocarbons in products subject to the act in a proposal to require warning statements (Docket No. 76N-0459), and in a notice of intent to propose rules and request for information (Docket No. 76N-0460), which were published in the Federal Register of November 26, 1976 (41 FR 52071 and 52070, respectively). The preamble to the proposal to require a warning set forth the Commissioner's reasons for believing that regulatory action is necessary to phase out nonessential uses of chlorofluorocarbons. The final rule requiring a warning statement on products containing nonessential chlorofluorocarbon propellants subject to the act, except for prescription drugs for use in humans, was published in the Federal Register of April 29, 1977 (42 FR 22017). In the preamble to the final rule, the Commissioner discussed the comments received on the proposed warning statement.

In the Federal Register of May 13, 1977 (42 FR 24535), the Commissioner published the proposal to phase out nonessential uses of chlorofluorocarbon propellants. The Commissioner relies on the administrative record relating to the regulation to require a warning statement and this regulation, Docket Nos. 76N-0459 and 76N-0460, to support and demonstrate the need for this final regulation to prohibit the nonessential uses of chlorofluorocarbons as propellants in self-pressurized containers in products subject to the act.

Applicability of Regulation

The final regulation contains a provision limiting the applicability of the regulation to the use of chlorofluorocarbons in whole or in part as a propellant to expel from the same con-

tainer or from a different container other liquid or solid contents under pressure.

The effective dates of this regulation are the same as those set forth in the proposal. The scope of this FDA regulation is not significantly different from that set forth in the May 13, 1977, proposal. The following items are included in this final regulation that were not part of the proposal: (1) An additional use of chlorofluorocarbon propellants determined to be essential, i.e., use in metered-dose ergotamine tartarate drug products for oral inhalation, (2) a use previously determined to be essential, i.e., in sytological fixative sprays, now classified as nonessential and therefore subject to this regulation, (3) a provision to allow studies to continue after December 15, 1978, on the use of chlorofluorocarbon propellants in investigational new drug products likely to be considered essential, and (4) additional discussion in the preamble to the regulation (comment 37) and a slight modification in § 2.125(a)(2) of the regulation to indicate more clearly that all nonessential uses of chlorofluorocarbon propellants are subject to this regulation, including those cases in which chlorofluorocarbons in one container are used to propel the active ingredients in a separate container.

Response to Comments on Proposal

Seventy submissions were received on the May 13, 1977, proposal to phase out nonessential uses of chlorofluorocarbon propellants. These comments came from other Federal agencies, State agencies, legislators, industries, professional societies (e.g., American Medical Association, American Chemical Society), churches, scientists, physicians, veterinarians, students, and concerned citizens. For convenience, the responses to these comments have been divided into seven major groupings: I. General Issues; II. Scientific Overview; III. Specific Scientific Issues; IV. Legal Issues; V. Economic Issues; VI. Essentiality Issues; and VII. Alternatives.

I. General Issues

Thirty-four general submissions were received. Of these, 27 supported the proposed action; 7 opposed; and 1 expressed general views without taking a position. The American Medical Association adopted a resolution commending the Federal Government for its efforts to prohibit the sale of chlorofluorocarbons in aerosol cans.

1. Among those supporting the regulation, many expressed a general concern for the lack of knowledge about the full extent of the damage to the public health and the environment that might result from chlorofluorocarbon emissions. Until the consequences are better understood, the comments urged that the production and use of these compounds be reduced as much as possible. The major reason given by those opposing the proposed regulation, however, was also that there are too many unknowns and uncertainties in the current predictions of potential effects resulting from chlorofluorocarbon emissions. One comment characterized the evidence against chlorofluorocarbons as pure conjecture, and held that the threat posed is mild as compared to those from alcohol and tobacco.

The Commissioner believes that the available information indicates that chlorofluorocarbon release poses a risk of significant harm, notwithstanding the existence of some uncertainties which may make the consequences greater or less than currently estimated. The Commissioner has dealt with this issue in greater detail in response to those making specific comments on scientific uncertainties (see section IIIA).

2. Another frequently expressed comment among those supporting the proposed regulation was that the agency was allowing too much time before the effective date of the phaseout. It should be noted that the agency also received comments requesting extension of the effective date and has addressed these in sections III–V.

Based upon the information presented in the National Academy of Sciences' (NAS) reports (refs. 1, 2), the National Aeronautics and Space Administration Workshop and assessment reports (refs. 3, 4), the FDA environmental impact statement (ref. 5), and the FDA inflation impact statement (ref. 6), the Commissioner has attempted to set an effective date for the regulation that would reduce the risks associated with chlorofluorocarbon emissions from nonessential aerosol propellant uses to the greatest extent possible and as soon as possible, and to allow time for an orderly phaseout. In addition, this phaseout regulation has been coordinated with the actions of other Federal agencies in order to establish a unified Federal program and uniform effective dates.

3. Several comments cited the availability of suitable alternatives to aerosol propellants containing chlorofluorocarbons, though some noted an inconvenince in using alternatives.

The Commissioner believes that alternatives to nonessential chlorofluorocarbon sprays do exist, and that any convenience is small when compared to the risks of continued chlorofluorocarbon emissions (section VII).

4. Some people revealed concern and anger that their children might suffer health and environmental consequences because "someone proposed an easier way for people to get through a day." The comments criticized the failure to correct the problem much earlier.

It is true that most chlorofluorocarbon-induced health and environmental effects, should they occur, would largely be borne by children and future generations. However, these environmental and indirect health risks were only recently established. At any point in time the agency can only make decisions based on the best available science and technology. Now that risks have been documented, the Commissioner is acting to prevent the possibility of further adverse impacts resulting from the nonessential uses of chlorofluorocarbon propellants.

5. Two comments expressed support for the proposal because it would solve the aerosol "sniffing" problem that has resulted in injury and death to many who have attempted to get a "high" by intentionally inhaling products containing chlorofluorocarbons.

Although this action is not being taken to protect against direct health effects, the Commissioner notes that this issue has been of concern to the agency. A final regulation requiring a label warning against misuse was promulgated in 1975, e.g., 21 CFR 740.11.

6. One individual noted that the problem is global in nature and asked what efforts are being made at the international level to reduce chlorofluorocarbon emissions. The international scope of the problem was the subject of two additional comments. They pointed to the fact that most nations have not yet initiated regulatory procedures to reduce emissions of chlorofluorocarbons and stated that this fact supported the position to delay U.S. regulations.

The Commissioner notes that recognition of the possibility of damage to the oxzone layer from human activities has been widespread in the international community for some time. In relation to the specific threat posed by chlorofluorocarbons, the publication and wide distribution of the National Academy of Sciences' reports (refs. 1, 2) stimulated considerable international interest. As in the United States, there are differences of opinion within and among countries concerning the urgency of the threat and the need to take early remedial action. However, it was explicitly recognized in the final report of the March 1977 international scientific meeting on the ozone layer, sponsored by the United Nations environment program (ref. 7), that "CFM [1] emissions are a matter of concern." The consensus of the April 1977 meeting of policy level officials on the reg-

[1] CFM: chlorofluoromethane, a class of chlorofluorocarbons containing one carbon atom, e.g., F-11 (CCl_3F) and F-12 (CCl_2F_2).

ulation of chlorofluorocarbons (ref. 8), attended by 13 of the world's leading producers and users of chlorofluorocarbons, was also that the issue of ozone depletion is a serious one that requires close attention.

7. The American Chemical Society, a professional organization, commented that the proposed regulation failed to provide a timely review mechanism and a "time base that allows the community effort to assess and alleviate the problem." The comment described the proposal as the first instance in which a regulation had been based on "unverified scientific projection," a basis described as "a very dangerous precedent." The comment noted that individual chemists found the effects of chlorofluorocarbon release to be "a cause for concern," apparently more with respect to climatic, agricultural, and ecosystem consequences than with respect to the risks of skin cancer. This concern was thought to warrant further research and continual monitoring. The comment expressed the opinion that, during the upcoming period of making measurements to test the validity of model predictions, the agency "should not respond to every prediction," and noted the "very limited" impact on the stratospheric ozone concentrations from 1 year or 2 delay. The comment expressed agreement with the general goal of protecting the public from unreasonable risks, and noted that the regulation of chlorofluorocarbons poses "a very difficult problem."

The Commissioner agrees with many of the principles cited in the submission. He recognizes that it is important to have experimental testing of scientific models and that it would be inappropriate to respond to every prediction of ozone depletion. In the case of chlorofluorocarbons, the scientific models underlying the regulatory action have undergone careful and intensive scientific scrutiny by government, academic, and industry scientists. Several components of these models have been tested and validated. The complexities of the subject make full verification difficult and timing of full verification uncertain. The Commissioner notes in particular that he finds the increased risk of nonmelanoma skin cancer as a consequence of depletion to be of serious concern; this view may account for the differences between his assessment and the individual views reflected in this comment. Under the law, the agency need not wait for actual injury to occur before acting to protect the public. The Commissioner believes that, notwithstanding some uncertainties and the absence of complete experimental testing, the available information establishes an unreasonable risk of injury that warrants regulatory action at this time.

The Commissioner believes that the regulation provides an adequate time basis and framework for taking account of new developments. The Commissioner will promptly take action to stay the regulation or withdraw it if further research shows that such action is warranted. Under the agency's procedural regulation, 21 CFR 10.30, any person can file a petition to request revocation of a regulation. Furthermore, periodic reports will be made by EPA and other agencies, pursuant to the Clean Air Act Amendments, of research developments and Federal regulatory actions. EPA and FDA will also be undertaking a consideration of a control of chlorofluorocarbon emissions from nonpropellant uses. That effort will necessitate a continued monitoring and reassessment of any developments relating to ozone depletion. Consequently, a specific review mechanism in the regulation is not needed.

II. Scientific Overview

Many comments requested the agency to delay the issuance of the final regulation to await further research and evaluations that would explore the scientific uncertainties about the effects of chlorofluorocarbon release on ozone depletion. A major manufacturer of fluorocarbons requested a delay for further research for the 1- or 2-year period recommended in the NAS Committee report (ref. 1). The comment also stated that "substantial new findings" could result from ongoing research, and requested a delay in promulgation of the regulation until June 1978, without extending the effective dates, to permit a reassessment of the data by the NAS Committee. Other comments suggested that a 2- or 3-year delay would be reasonable.

These comments based their recommendation for a delay on some or all of the following points: (1) Uncertainty in the estimates of ozone depletion and its effects, including some uncertainties brought out by recent research, (2) the absence of empirical evidence validating the scientific models and establishing that stratospheric ozone is in fact being depleted, (3) the NAS Committee's original recommendation that there could be up to a 2-year delay to permit further research, (4) the small amount of ozone depletion and consequent injury that would occur from delay for a short period, (5) the reduction in the amounts of chlorofluorocarbons used as propellants over the past 3 years, and (6) the possibility that the monitoring of ozone depletion through trend analysis would detect depletions of ozone levels in time to limit the amount of ultimate ozone depletion to a certain "acceptable" amount.

The Commissioner has discussed below in more detail (section IIIA) the specific scientific uncertainties and research needs raised in the comments and the available information about these developments. In addition, the Commissioner continues to rely on the supporting material and responses already in the record relating both to this action and to the regulation to require a warning statement. Discussed in this section is the general response to the underlying argument made by those comments opposing the regulation, that the risk of ozone depletion and harm from chlorofluorocarbon release is so uncertain that regulatory action to prohibit the nonessential uses of chlorofluorocarbon propellants is unwarranted at the present time and should be delayed for various suggested periods, ranging from 6 months to 3 years, in order to permit further research and evaluation.

The agency is aware that there are uncertainties about the extent of ozone depletion from chlorofluorocarbon emissions, and the consequences of depletion, and that there may be unknown processes that could reduce depletion estimates below the lowest current estimates or conceivably establish that no depletion occurs. The NAS Panel and Committee pointed out the existence of uncertainties in the reports upon which the agency has relied (Refs. 1, 2). Virtually all of the areas of uncertainty and research needs raised in these comments were discussed in the NAS (Refs. 1, 2) and recent National Aeronautics and Space Administration (Refs. 3, 4) reports, as is indicated in the detailed responses to follow.

The agency has also recognized that the NAS Committee report recommended a "strictly limited delay" of up to 1 or 2 years from September 1976 to conduct the research that would reduce the "undeterminable uncertainties." In the preamble to each of the earlier documents published in the Federal Register of November 26, 1976, April 29, 1977, and May 13, 1977 (41 FR 52071, 42 FR 22017, and 42 FR 24537, respectively) requiring a warning and proposing a phaseout of nonessential chlorofluorocarbon propellant uses, the agency has extensively discussed the reasons for initiating regulatory action notwithstanding the existence of scientific uncertainties and the recommendations for more research. In brief, the agency has acted because the best estimates of the scientific community after careful examination are that chlorofluorocarbon release leads to a reduction of stratospheric ozone, that the ultimate consequences of ozone depletion at the estimated levels are unacceptable in the agency's judgment, and that it is indefinite when the remaining scientific questions will be conclusively resolved. As previously indicated in these preambles and in FDA's environmental

impact statement, a delay in regulatory action poses a risk of additional nonmelanoma skin cancer and other adverse effects. The subsequent scientific developments have not materially altered the agency's overall assessment of the need for action.

Since the issuance of the proposed prohibition, the National Aeronautics and Space Administration issued in September 1977 final workshop and assessment reports (Refs. 3, 4) evaluating the stratospheric effects of chlorofluorocarbon releases. These reports represent the current knowledge as of June 1977 relating to the effects of chlorofluoromethanes on stratospheric ozone. The final National Aeronautics and Space Administration assessment report states that the predictions of the modeling groups active in the field "cover a range of ozone depletions from 10.8 percent to 16.5 percent. This range is the current best estimate for ozone depletion from continued (chlorofluorocarbon 11 and 12) releases at the 1975 release rate." The National Aeronautics and Space Administration assessment also noted the uncertainties of the assessment. Using the NAS procedure for estimating uncertainties, "the overall uncertainty range is 4 percent to 30 percent."

Therefore, the best estimates, based on currently known information, of the amount of ultimate ozone depletion from release of chlorofluorocarbons at 1973–1975 rates are even higher than those made in the NAS report. The risks of nonmelanoma skin cancer and other adverse effects are now greater than those estimated in FDA's environmental impact statement (Ref. 5), even in light of reported decreases in propellant uses of chlorofluorocarbons. Thus, the current estimates of ultimate ozone depletion provide additional reason to phase out the nonessential uses of chlorofluorocarbon propellants in an orderly fashion without delay.

The Federal government, as well as industry, has been sponsoring a considerable amount of research to improve the understanding of man-induced modifications of the stratosphere and their effects on biological systems and the climate. The statutory provisions in the Clean Air Act Amendments of 1977 (42 U.S.C. 7450 et seq.) require the NAS and Federal agencies to provide continuing updates of scientific developments.

In response to this statutory provision, the NAS issued a report (Ref. 9) on December 19, 1977, updating the scientific knowledge about the effects of substances and activities which may affect the stratosphere, especially ozone in the stratosphere. The report contains the following summary of the scientific developments and some of the remaining uncertainties:

> At present, the major threat to the ozone layer is from the releases of F-11 and F-12. There are no new developments that suggest that the effects will be smaller than the ones outlined in our previous report; in fact, as noted above, the best available figure is about twice what the best figure was in 1976.
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> The new values of the rate constants have produced some inconsistencies between the model calculations and a number of the stratospheric measurements. There are also some serious problems in explaining some of the recent ClO measurements and the latitudinal and temporal dependencies of NO_2. Until these problems are resolved, the quantitative predictions of the models including the allowances for recognized uncertainties (e.g., those in the NASA report) must still be viewed with reasonable caution.
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> It is unfortunately true, however, that, accompanying very substantial overall progress, the recent development of our understanding of stratospheric chemistry has been dominated by major upheavals caused by the recognition of the importance of processes whose role either had not been properly appreciated (such as the addition of chlorine nitrate chemistry, which delayed the publication of the previous panel report) or whose rate coefficient had been grossly misjudged (such as the rate constant for the important reaction $HO_2+NO \rightarrow HO+NO_2$, whose recently established larger value has made chlorine catalysis of ozone much more effective than previously thought and NO_x catalysis less so). To say how many more major upheavals we should expect in the future is rather like trying to foresee the unforeseeable. Yet it is certainly true that there is less and less likelihood of future such major upheavals. (Footnote omitted.)
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> The recommendation made in the NAS report that action to limit releases of CFM's should be delayed for a period up to 2 years was made, in part, because a number of atmospheric measurements were expected to be made during that period, which, it was believed, would decrease the uncertainties in the predictions of the effects of CFM's on stratospheric ozone. A number of these measurements have indeed been made. While the results of these measurements do confirm many aspects of the model, they have also raised some new, unanswered questions. Some ambivalence in interpretation of isolated measurements is not too surprising in a system as complex as the earth's atmosphere.
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> The most serious health consequence of possible stratospheric change still seems to be possible or probable increases in death from malignant melanoma (a type of skin cancer).
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> Increased DUV would increase the incidence of basal- and squamous-cell carcinomas, a less serious, rarely fatal, but much more prevalent form of DUV-induced skin cancer. This increased incidence would result in serious disfigurement and an increased economic burden.
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Thus, the NAS update confirms that the best current estimates indicate that continued release of chlorofluorocarbons at 1973 rates would lead to a significant decrease in stratospheric ozone. The availability of this NAS update would seem to meet the comments that urged the agency to delay issuing a final regulation to permit a reassessment by the NAS committee. The Commissioner agrees with the NAS update report (Ref. 9) that there are remaining scientific uncertainties, and that the estimates of depletion have to be viewed with "reasonable caution." The regulatory course adopted by the agency is an appropriate one in this situation. The agency has undertaken a gradual phaseout. Only nonessential propellant uses are affected by the current action. The agency remains committed to monitoring scientific developments and taking prompt action if further research indicates that chlorofluorocarbon release does not significantly affect the stratosphere, human health, and the enviromemt.

The Commissioner recognizes that this scientific field is unusually complicated and that there are and may continue to be uncertainties about the estimates and the models. There are natural fluctuations in stratospheric ozone levels which complicate efforts to determine the trend and validate model predictions. There are difficulties in standardizing measurements. Much work has been done in recent years to reduce the uncertainties. As happens in science, further research may open up new questions that have to be explored before a definitive answer emerges.

The principal area of uncertainty that could significantly affect whether regulatory action is needed lies in the possibility that there are chemical processes or reaction rates not now known that would reduce the current estimates of the effects of chlorofluorocarbons on stratospheric ozone to some insignificant level. It is not now possible to estimate how significant these matters are or how long it would take to evaluate their significance. During any delay to await answers, the public would continue to be exposed to a greater risk of nonmelanoma skin cancer and other effects resulting from a depletion and/or redistribution of stratospheric ozone.

Because the best available information indicates that the nonessential propellent uses of chlorofluorocarbons pose a risk of injury that the Commissioner regards as unacceptable, the Commissioner is proceeding to issue the final regulation. The prohibitions on the use of chlorofluorocarbons in

aerosol products begin in late 1978. The effective date falls after the expiration of the maximum 2-year time period originally recommended by the NAS Committee for further research. The Commissioner will give prompt attention at any time to any new developments that warrant delaying the effective dates or withdrawing the final regulation. He believes this is a reasonable way to take into account both the continuing uncertainties, the ongoing research and the need to protect the public from an unreasonable risk of injury.

III. Specific Scientific Issues

A. *Uncertainties of Stratospheric, Biological, and Climatic Effects: Requests for Delay to Await Further Research.* 8. One comment concluded that there would be no depletion of stratospheric ozone secondary to chlorofluorocarbon releases because any ozone destroyed would increase the amount of the sun's radiation passing through the stratosphere, which would in turn increase the generation of new ozone from oxygen.

Indeed, ozone regeneration as described in the comment does occur and is taken into account in present one-dimensional models (Refs. 2 and 3). This negative feedback mechanism, referred to as the "self-healing" effect, is expected to result in an increased rate of production of ozone in the lower stratosphere (around 20 kilometers (km)) secondary to a large chlorofluorocarbon-induced decrease in the percent of ozone at about 30 to 40 km. Even so, current models predict that the ozone levels in the lower stratosphere will be slightly decreased with respect to natural levels. Therefore, the so-called "self-healing" effect is not complete and an overall net decrease in column ozone would remain. Current predictions are that this ultimate net reduction of stratospheric ozone resulting from continuous chlorofluoromethane emissions at 1975 release rates would be in the order of 10.8 to 16.5 percent (Ref. 3, pp. 189–195). Even if all the ozone destroyed by chlorofluorocarbons were completely regenerated, the redistribution of stratospheric ozone itself could produce changes in global climatic patterns of unknown nature and magnitude.

9. Eleven submissions raised the issue of existing uncertainties in the theory that chlorofluorocarbons released into the atmosphere will deplete stratospheric ozone. The comments viewed these uncertainties as reason to defer the regulation or to delay its effective dates. Specific areas of uncertainty mentioned were the following:

(a) Effects on Stratospheric Ozone.

(1) Uncertainties in reaction rate data—Several comments stated that uncertainties exist in the rates of many key reactions, particularly for $NO+HO_2$ and for the photochemistry of NO and O_3 and that inaccurate reaction rates could lead to errors in calculating the effects of chlorofluorocarbons on stratospheric ozone. One comment stated that "the reactions of HO_2 account for the largest uncertainty in current model chemistry."

The Commissioner is aware that uncertainties exist in current reaction rate data which are used in models predicting the stratospheric effects of chlorofluorocarbon release. The National Aeronautics and Space Administration (NASA) discussed the data base for each of its recommended reaction rates (Ref. 3, pp. 1–25) and concluded that uncertainties remain. An important point, though, is that the uncertainties relate to the extent of ozone depletion and not to the fact that ozone is being destroyed by chlorinated compounds which enter the stratosphere. Revised reaction rates since the September 1976 NAS reports (Refs. 1, 2) point to greater ozone depletion. The recent direct measurement of the $NO+HO_2$ reaction rate raised by a factor of 30 the previously recommended rate based on laboratory measurements (Ref. 3, pp. 17–18). The significance of this finding is reflected in the NASA statement, "When the new $NO+HO_2$ rate is used, all of the models (1-D temperature coupled) showed an increase in the calculated column-ozone depletion due to continued CFM release at 1975 rates of about a factor of 2 so that the range is from 10.8 to 16.5 percent." (Ref. 3, p. 192.) It would not be unexpected if further research resulted in the need to revise other recommended reaction rates. The NASA assessment found that "the reaction rates given in the workshop report are close to those recommended in the NAS report and re- flect the best information available to date." (Ref. 4, p. 9.) The NASA workshop also assessed the uncertainty associated with reaction rate measurements and estimated it to be "a factor of 2.8 on the low side and a factor of 1.8 on the high side." (Ref. 4, pp. 9–10.)

(2) Tropospheric and stratospheric "sinks" not yet adequately quantified—As noted in a few comments, the formation of chemical species leading to the temporary or permanent removal from the atmosphere of active or potentially active forms of chlorine would reduce the magnitude of predicted ozone destruction from chlorofluorocarbons. Additionally, secondary reactions which affect the rate of the above reactions may also act indirectly as "sinks" reducing the effects of chlorofluorocarbons on stratospheric ozone. The comments suggested that current models may not include or adequately account for all "sinks," such as the degradation of chlorofluorocarbon 11 to hydrochloro- fluorocarbon 21, the degradation of chlorofluorocarbons absorbed to silica particles, and the formations of chlorine nitrate ($ClONO_2$) and peroxynitric acid (HO_2NO_2).

The Commissioner agrees that the possibility exists that the conversion of chlorofluorocarbon 11 to hydrochlorofluorocarbon 21 is a tropospheric sink. Laboratory measurement instruments indicate the presence of hydrochlorofluorocarbon 21 in tropospheric air samples at part-per-trillion levels. These levels cannot be accounted for on the basis of hydrochlorofluorocarbon 21 emissions data. In the response to a similar comment in the final warning statement regulation (see the Federal Register of April 29, 1977 (42 FR 22022)), it was suggested that the presence of hydrochlorofluorocarbon 21 in tropospheric air samples is probably the result of instrumental contamination. Dr. H. B. Singh, one of those who made the above measurements, states that the most likely explanation is that minute amounts of chlorofluorocarbon 11 are being degrated to hydrochlorofluorocarbon 21 within the measuring equipment (Ref. 10). If this is the case, actual chlorofluorocarbon 11 concentrations in the troposphere would be higher than measured levels, a factor which would increase the tropospheric lifetime of this compound and also the present estimates of ultimate ozone reduction.

Regarding the possibility of tropospheric removal of chlorofluorocarbon 11 by photolysis when contact is made with sand, NASA states, "Quantitative evaluation is not yet possible." (Ref. 3, p. 179).

Current one-dimensional models used to describe the effects of chlorofluorocarbons on stratospheric ozone have taken into account effects due to the formation of chlorine nitrate as they are now understood. Upper limits to the abundance of chlorine nitrate ($ClONO_2$) in the stratosphere have been established (Ref. 3, p. 176), but its mixing ratio [2] is not well understood (Ref. 3, p. 100).

NASA acknowledges that peroxynitric acid (HO_2NO_2) is a potential sink for NO_x (and HO_x) in the atmosphere which would reduce current estimates of ultimate ozone depletion, but then states that "* * * peroxynitric acid should not be introduced into atmospheric models until there is also kinetic information on its photolysis and reactions with atoms and free radicals; it may be an ineffective sink." (Ref. 3, p. 16.)

NASA concludes its discussion of possible tropospheric sinks as follows:

[2] Mixing ratio: Density of a chemical species divided by the density of the total atmosphere at a given altitude.

In summary, no significant inactive removal processes have been suggested for F-12. For F-11, the combined effects of two possible 70-year sinks—solution in the oceans and ion-molecular reactions—could reduce the steady-state concentration of F-11 by 60 percent. However, because F-11 contributes only approximately one-third of total ozone depletion of CFM's, a 60 percent decrease in its steady-state concentration will result in only approximately 20 percent reduction in predicted ozone depletion." (Ref. 3, pp. 184-185.)

The NASA workshop report also indicates "that more studies and measurements are needed to obtain better estimates of the oceanic removal times for F-11 and F-12." (Ref. 3, p. 181.)

The Commissioner reemphasizes his intent to monitor closely the scientific developments relating to significant tropospheric and stratospheric sinks for chlorofluorocarbons.

(3) Uncertainties due to approximations of transport parameters—Two comments stated that the treatment of atmospheric motion and the transfer of chemical species is over-simplified in one-dimensional (1-D) models and subject to large errors. It was also noted that various models use different parameters to approximate the transport of chemical species.

The Commissioner understands that 1-D models do not fully account for the transport of substances to and from the stratosphere. However, regarding the vertical transport of chlorofluorocarbons, NASA states "Because of the expected uniform mixing of CFM's in the troposphere, the uncertainties in vertical transport resulting from the use of a 1-D model are relatively small." (Ref. 3, p. 226.) As recognized by NASA, the so-called eddy diffusion parameter is the best available estimate of transport processes until multi-dimensional analyses are perfected (Ref. 3, pp. 134-138, 208-229, and Ref. 4, p. 10). The NASA assessment report makes the statement that "This approximation, while probably not leading to great errors, should increase the uncertainties from that quoted in the NAS report * * *. The overall conclusion then is that the uncertainty in the assessment due to the approximation in dynamics implied by the use of a 1-D model is at least the factor of 1.7 quoted in the NAS report. A more detailed estimate must await further studies using multi-dimensional models." (Ref. 4, p. 10.)

(4) Uncertainties due to model chemistry—Inadequacies in the chemistry introduced into 1-D models were the subject of several comments. Specifically mentioned was that (a) several field measurements differ from model predictions, i.e., those for O_3, OH, HCl, and ClO at specific altitudes, (b) certain atmospheric species, i.e., $ClONO_2$ and HO_2NO_2, have not been adequately quantified, (c) simultaneous measurements of various chemical species in the atmosphere are needed to validate model chemistry, and (d) there may be additional missing chemistry.

Regarding expected and observed ozone levels (item 4(a) above), several manufacturers cited a four-fold discrepancy between the mid-latitude ozone profile projected by the models and measured ozone concentrations based on satellite data. Specifically, one satellite has recorded levels of ozone at 50 km which are four times the value calculated in current models. Some rocket measurements are also twice as high as model calculations at this altitude. Additionally, differences exist between calculated and observed ozone levels at altitudes above 35 km using the Umkehr method.[3]

The comments stated that one-dimensional models should be more reliable at this upper region of the stratosphere so that these discrepancies "give greater weight to the possibility of serious inadequacies" in the models that perdict ozone depletion. It was pointed out that the NAS Panel considered the one-dimensional models reliable on the basis of their ability to predict mid-latitude ozone profiles.

Regarding differences between field measurements and model predictions in general, it should first be noted "* * * that comparison of the 1-D model results with specific species measurements should not be expected to be better than a factor of 2 or 3 because of the assumptions inherent in time and spatial averaging and in representing transport in the diffusion approximation." (Ref. 3, p. 193.)

The measurements cited in the comments were known at the time of the NASA assessment. Other satellite and rocket measurements are in general agreement with model predictions at other altitudes. Regarding estimates of ozone depletion above 35 km using the Umkehr method, NASA notes that this method is "less precise" than satellite measurements (Ref. 3, p. 76).

The NASA report states (Ref. 3, p. 194):

A further difficulty encountered in comparing 1-D model results to measurements is the upper stratospheric-ozone profile. Above about 30 kilometers, time constants for odd-oxygen destruction become sufficiently short for one to expect a near chemical equilibrium situation, and the model results should be a reasonably accurate representation of the atmosphere in this region. In the 30- to 40-kilometer region, this appears to be so when measurements at mid-latitudes are compared to model results. However, near 50 kilometers altitude, the models appear to give consistently lower values than are measured. A further uncertainty is the apparent disagreement between different measurement techniques at this altitude. Until this is resolved, it is not clear exactly how large the actual ozone concentration is at 50 kilometers and above. It is clear that the model results with the current evaluation of rate constants are less than all of the measurements. Some attempts have been made to adjust model inputs in order to lessen this discrepancy. These yield results for ozone depletion generally within the ranges already quoted. The adjustments made are arbitrary, and it is not clear at this time which, if any, are correct.

Above 50 km the contribution to total ozone is small. Therefore, as noted above, a wide range of ozone values at 50 km can be introduced into current models without significantly affecting ozone depletion estimates. Additional ozone measurements will undoubtedly resolve this apparent conflict.

The Commissioner recognizes the variability between field measurements and model predictions for other chemical species, i.e., for OH, HCl, and ClO, but notes that much of this may be due to natural fluctuations. Hydrogen atom species (HO_x) in the lower stratosphere "are strongly affected by the distribution and variability of the hydrogen atom source compounds—water vapor, molecular hydrogen, and methane. For example, enough water-vapor measurements have been made to verify its extreme variability in the lower stratosphere, and HO_x concentrations will reflect this variability to a large extent." (Ref. 3, p. 153.)

Measurements of hydrogen chloride (HCl) and chlorine oxide (ClO) have also shown these species to be variable. By appropriately varying the concentrations of other species that influence HCl and ClO, current models can predict the observed concentrations of both species. However, the observed variations in HCl and ClO are not well understood. The NAS update report emphasizes the significance of the currently available Cl and ClO measurements (Ref. 9, p. 23) and the need for additional such measurements, particularly those made simultaneously with other photochemically related species, in order to determine the nature of the apparent conflict between measured and expected ClO concentrations (Ref. 9, p. 24).

NASA's treatment of $ClONO_2$ and HO_2NO_2 (item 4(b) above), has been discussed under item 9(a)(2) tropospheric sinks. Research is ongoing to better quantify these atmospheric species.

The Commissioner understands the emphasis now being placed on the need for simultaneous measurements of temperature, O_3, and the photochemically related ClO_x, HO_x, and NO_x species (item 4(c) above). All of these stratospheric species and temperature exist in a dynamic state such that an accurate representation of the interaction among them can only be deter-

[3] Umkehr method: An old method for measuring the vertical distribution of ozone based upon the variation in the absorption by ozone of two wavelengths as a function of the position of the sun.

mined by making simultaneous measurements. A few simultaneous measurements have been made (Ref. 3, pp. 109-110) and most compare reasonably well with model predictions. Additional such measurements are planned, and the Commissioner will monitor the results obtained.

Though the possibility cannot yet be eliminated that there may be missing chemistry (item 4(d) above), the NAS update report indicates that major changes in our understanding of stratospheric chemistry are becoming less likely (Ref. 9, p. 19, see also quote in section II). Even without a complete understanding of all the chemistry, it is clear at this time that ozone is being depleted by reactions with chlorine in the stratosphere. As stated by the NASA workshop report, "* * * the detection and measurement of Cl and ClO, coupled with previous measurements of $O(^3p)$ and with laboratory kinetic studies of reactions, $Cl+O_3>ClO+ClO+O>Cl+O_2$, establishes that catalytic removal of O_3 by these reactions *is* [emphasis added] proceeding in the high stratosphere." (Ref. 3, p. 177.)

The Commissioner concludes that while all of the above are important reasons to continue a strong measurements research program, they are not valid reasons to halt reasonable preventive measures to protect our health and environment from impacts that may result should current model predictions be substantially correct.

(5) Diurnal chemistry—A comment stated that the time dependence of chemical reactions in the atmosphere due to diurnal effects is only approximated in 1-D models.

The Commissioner is aware that averaging techniques are used to approximate the effects of the sun's radiation on chemical reactions in the atmosphere. The NASA workshop report describes how these effects are accounted for in current models (Ref. 3, pp. 139-144). The report explains that time and cost do not permit the direct approach of integrating diffusion equations to properly reproduce essential diurnal effects, so "some form of diurnal averaging is necessary." (Ref. 3, p. 139.)

The Commissioner notes that the only measurements of diurnal effects to date are in close agreement with those obtained using present diurnal averaging techniques (Ref. 11). The Commissioner will continue to monitor the on-going efforts by NASA-sponsored scientists to improve these techniques.

(6) Limitations of one-dimensional (1-D) models—Several comments noted that one-dimensional models are being used to predict ozone depletion in a three-dimensional atmosphere. The comments suggested that two- and three-dimensional models are being developed which will more accurately describe the situation, and that regulation should be delayed until they are available.

As an overview, NASA states that: "In general, current evaluations of the relationship between model predictions and the response of the atmosphere rest on the degree of agreement between model calculations and concentrations in the current atmosphere." (Ref. 3, p. 193.) The extent of agreement between model predictions and field measurements is discussed above under item 9(a)(4).

The Commissioner is aware that there are problems inherent in the simplified approach of the 1-D model. "The one-dimensional (1-D) model is a particular simplification of the atmospheric radiative/chemical/dynamic system in which chemistry is treated in greater detail than radiation or dynamics." (Ref. 3, p. 133.) Latitudinal and seasonal dependencies of transport, temperature, and the solar flux are better described by multi-dimensional models. However, "* * * a generally applicable model of interactive RCD (radiation, chemistry, and dynamics) will not be available in the near future." (Ref. 3, p. 197.) NASA concludes that "The results of these models (1-D models) provide the best available estimate of the CFM effects on ozone that depends on the anticipated CFM-release scenario." (Ref. 3, p. 226.)

The Commissioner concludes that until more comprehensive multi-dimensional models are available, the 1-D model can and must be used as a predictive tool for assessing possible changes in the natural ozone content resulting from chlorofluorocarbon releases.

(b) Effects Resulting from Reduction and/or Redistribution of Stratospheric Ozone.

(1) Uncertainties in estimates of new cases of nonmelanoma skin cancer—A few comments questioned whether the relationship between nonmelanoma skin cancer and exposure to UV-B radiation has been well enough established to estimate increases in the incidence of this disease as a result of chlorofluorocarbon-induced increases in UV-B transmission to earth.

The Commissioner believes that the currently available scientific data support the existence of a causal relationship between UV-B exposure and the induction of nonmelanoma skin cancer. As the NAS report states: "For nonmelanomas three kinds of evidence—latitude dependence, body location, and occupational differences—all combine to point closely to exposure to the sun as a prime cause and to increased incidence as a quite certain consequence of increased DUV." (Ref. 1, p. 85.) The Commissioner recognizes that there are many uncertainties concerning the exact nature of this relationship and that attempts to quantify the effects must, of necessity, use certain assumptions. The increase in the estimate of ozone reduction from 7 percent to 10.8-16.5 percent also increases the estimate of the number of new cases of nonmelanoma skin cancer that could result from continued releases of chlorofluorocarbons at 1973 emission rates as calculated in FDA's environmental impact statement (Ref. 5, section 3.3.2). The uncertainties, assumptions, and ameliorating circumstances associated with making such an estimate are also discussed in FDA's environmental impact statement (Ref. 5, section 3.3.3).

The Commissioner concludes that "a quantitative estimate of impact (nonmelanoma skin cancer), even if uncertain by a factor of 2-4, is useful in order to assess whether the impact is potentially important or trivial." (Ref. 5, section 3.3.2.2.) The Commissioner also notes that, although "projections of melanoma cases and melanoma-related deaths cannot be made at this time, * * * both cases and deaths could be higher with a no action alternative than would occur if U.S. chlorofluoromethane emissions were restricted." (Ref. 5, section 4.3.)

Two comments suggested that changes in lifestyle may ameliorate human biological damage due to increased UV-B. The Commissioner has already responded to this point in the preamble to the final warning statement regulation (see the FEDERAL REGISTER of April 29, 1977 (42 FR 22023-22024)). Further discussion is also provided in FDA's environmental impact statement (Ref. 5, section 3.3.3).

(2) Uncertainties in the nature and magnitude of possible nonhuman biological and climatic impacts—Two comments pointed out the uncertainty involved in determining biological and climatic effects due to ozone depletion. They stated that the effects of UV-B on plant and animal life are little understood and that the potential for temperature changes and disruption of weather patterns remains unquantified. The comments conclude that these effects should not be used as a basis for regulating chlorofluorocarbon uses.

The Commissioner agrees that the magnitude and nature of the effects on biological systems and climate are uncertain. The Food and Drug Administration has already responded to comments on nonhuman biological effects from increased UV-B in a previous FEDERAL REGISTER document (see the FEDERAL REGISTER of April 29, 1977 (42 FR 22024-22025)). Additional discussion of these projected impacts, including the associated uncertainties and ameliorating circumstances, is given in FDA's environmental impact statement (Ref. 5, section 3.2). From

this document the following summary of potential impacts is provided: From basic photobiological knowledge, we can generalize that organisms are currently living in, and apparently coping with, a radiation field of damaging solar DUV.[4] The potential effects from increased UV-B to sensitive plant species include decreased photosynthesis, decreased rate of biomass accumulation and development, decreased fruit or grain yield, decreased reproductive ability, altered structure, altered competitive ability, and decreased resistance to other physical and chemical stresses. The potential effects on sensitive animal species include increased incidences of cancer, photokeratitis and cataracts, and altered competitive ability.

If nonhuman biological effects occur, the consequences could be important. Consequently, it is warranted to consider this risk along with other effects in assessing regulatory action, notwithstanding the gaps in knowledge about these effects. Since regulatory action is justified because of the other risks from chlorofluorocarbons, the Commissioner need not decide now if the risks to nonhuman organisms alone would warrant the initiation of a phaseout or some other type of regulatory action.

Two comments specifically questioned the use of possible impacts of chlorofluorocarbons on climate as a basis for taking the proposed action. In support of this position, the following quote from the NAS report was cited:

> The direct climatic effect, which seems most likely to be serious, is immediate (is not delayed for the CFM's to reach the stratosphere) and shows no overshoot (the effects of curbed release show more rapidly). It is probably not a concern at present levels of CFM accumulation. Thus, delay in decision is even more reasonable, as far as direct climatic effects go, than for the effects of ozone reduction. (Ref. 1, p. 13.)

The Commissioner responded to a similar comment in the final regulation to require warning labels on containers using chlorofluorocarbon propellants (see the FEDERAL REGISTER of April 29, 1977 (42 FR 22025)). The Commissioner points out that the direct climate effects could be immediate or delayed. The NAS report further explains the direct climatic effects as follows:

> If CFM use and release were to continue at a constant rate, the amount of direct climatic effect would also flatten out, approaching a steady state, again reaching half of this value in about 50 years. The increase of infrared absorption and emission would similarly reach half of its ultimate value in about 50 years. Resulting climatic effects might be further delayed because of slowness in response in the climatic mechanism. (Ref. 1, pp. 4-5.)

The direct climatic effect described in the first quote (Ref. 1, p. 13) must refer to the physical process of increased absorption and emission of infrared radiation by chlorofluorocarbons. The process would occur immediately upon release of chlorofluorocarbons into the atmosphere. As described in the second quote (Ref. 1, pp. 4-5), the actual climatic effects resulting from the increased absorption and emission of infrared radiation by chlorofluorocarbons may occur immediately and increase in magnitude as the concentrations of chlorofluorocarbons in the atmosphere increase (assuming continuous release), or they may be delayed due to a lag time between the physical process (absorption and emission of infrared radiation) and the event (observed effects on climate). The Commissioner further notes that even if the climatic effects resulting from chlorofluorocarbon release are immediate, the source of the observed effects may not be recognized as chlorofluorocarbons for a considerable period of time.

Regarding the magnitude of possible direct climatic effects, the NAS states: "The estimated climatic effects of CFM releases * * * are sufficiently large that continued release of CFM's, at their 1973 rates, must be recognized now as potentially serious." (Ref. 1, p. 65.)

The response to the use of possible direct and indirect climatic effects as a basis for regulatory action is still the following:

> The Commissioner believes the critical importance of climatic effects warrants their being taken into account in assessing regulatory action, notwithstanding the gaps in knowledge about climate. Since regulatory action is justified because of the other risks from chlorofluorocarbons, the Commissioner need not decide now if the climatic risks alone would warrant the initiation of a phaseout or some other type of regulatory action. (FEDERAL REGISTER of April 29, 1977 (42 FR 22025).)

The Commissioner agrees that much research is needed to provide a better understanding of the possible nonhuman biological and climatic impacts that may result from perturbations in stratospheric ozone. The Biological and Climatic Effects Research program sponsored by EPA is addressing this area of potential risk.

10. Several comments requested that regulation be delayed until actual ozone measurements indicate that column ozone is decreasing. The point is made that this would be a good test of the validity of present models. Dr. W. J. Hill et al. (Refs. 12, 13) have statistically analyzed past ozone measurement data and determined that an abnormal global ozone change of 0.26 percent total deviation from historical patterns of ozone trends could be detected with present monitoring capabilities. A 1.56 percent early warning (the result of a 0.26 deviation per year for 6 years) could limit maximum reversible depletion to 2.3 percent, if the cause was due to chlorofluorocarbons and all global chlorofluorocarbon emissions were eliminated at the time the 1.56 percent deviation in column ozone is detected.

In January 1977, the NASA workshop concluded that "* * * it is clear that a larger data set (based on more precise observational techniques) than is currently available is needed to verify the rate of ozone destruction by CFM's postulated by the models discussed in this document." (Ref. 3, p. 87). In July 1977, a NASA-sponsored meeting was held in Boulder, Colo., to discuss the practical application of ozone trend detection systems. There was no agreement at this meeting that an abnormal ozone trend of the magnitude described above could be detected if it were to occur. The major criticism of the Hill early warning system was that he had not adequately accounted for the limits in the accuracy of ozone monitoring instruments.

The Commissioner notes that the Hill system, even in a perfected state, would only provide an early warning for abnormal deviations in total column ozone. Reliance on this system would leave the public unprotected against the possible climatic impacts that might occur as a result of chlorofluorocarbon-induced alterations in the distribution of stratospheric ozone, even in the absence of detectible variations in column ozone.

The Commissioner will continue to monitor the attempts to improve upon this ozone trend detection system but concludes that it is not yet refined enough to rely upon for protection of the public against possible chlorofluorocarbon-induced reductions and redistributions in stratospheric ozone.

11. Several comments specifically requested that FDA delay the effective date for the phaseout of nonessential chlorofluorocarbon propellants until December 1980. The following reasons were cited for the requested delay: (a) "The impact of the world of waiting a couple of years before deciding whether or not to regulate the uses and releases of F-11 and F-12 is small although we are uncertain just how small." (Ref. 1, p. 9); (b) there has been a 40 percent drop in the sales of chlorofluorocarbon propellants since 1974; and (c) a definitive answer on the health hazards associated with potential replacement propellants, hydrochlorofluorocarbons 22 and 142B, may not be available until late 1979.

The Commissioner has already responded to item 11(a) above in the Scientific Overview, Section II in the preamble to this regulation.

[4] DUV: Biologically harmful ultraviolet radiation; similar to UV-B.

The manufacturers of chlorofluorocarbon propellants have reported a 40 percent drop in sales over the past 2 to 3 years (item 11(b) above). Estimates of potential effects resulting from the use and release of chlorofluorocarbons have been based on 1973 and 1975 production and emissions data. Comments contend that a delay of 12-18 months in the phaseout regulation is now possible without any increase in magnitude of the estimates of potential health and environmental impacts forming the basis of the regulatory action.

It is the Commissioner's goal to reduce the risks associated with chlorofluorocarbon emissions from nonessential aerosol propellant uses to the greatest extent possible and as soon as possible, allowing time for an orderly phaseout. Additionally, the Commissioner notes that on the basis of new scientific data, NASA recently has concluded that the current best estimate of ultimate ozone depletion as a result of chlorofluorocarbon emissions at 1975 release rates must be revised upward to 10.8-16.5 percent (Ref. 3, pp. 189-195). The new estimate represents approximately a two-fold increase over the NAS estimate of 7 percent ultimate ozone depletion. This increase in the estimate of chlorofluorocarbon effects on stratospheric ozone more than offsets the decrease in such effects that would result from the reported reduction in U.S. emissions.

The Commissioner acknowledges the efforts of industry to encourage conversions to nonchlorofluorocarbon-propelled mechanisms of product delivery, particularly in the form of public advertising. This advertising campaign, along with the visibility given by the press to the potential impacts resulting from chlorofluorocarbon emissions, has undoubtedly been responsible for most of the 40 percent drop in sales. A consumer response of this magnitude is viewed by the Commissioner as a strong indicator of public support for the regulation.

Furthermore, the drop in U.S. sales of chlorofluorocarbons for use as aerosol propellants has not markedly reduced world-wide production of these compounds (Ref. 9, p. 17). World-wide reduction of chlorofluorocarbon emissions is necessary to minimize the associated risks and cannot be achieved unless the United States takes a strong action to reduce its own production and release of chlorofluorocarbons. For all these reasons, the Commissioner concludes that an extension of the effective date for the regulations cannot be justified on the basis of reduced sales.

The third reason (item 11(c) above) given by those requesting a delay in the effective date of the phaseout until December 1980 was that the necessary toxicity testing of alternative propellants, hydrochlorofluorocarbons 22 and 142B, has not yet been completed. Both of these hydrochloro- fluorocarbons have been found to be mutagenic in a bacterial bioassay test (the Ames test). Based on these results, DuPont and Allied Chemical, the major flurocarbon producers, have recommended that neither hydrochlorofluorocarbon be used as an aerosol propellant for consumer products until toxicity testing indicates that they are safe.

The present action is being taken to protect the public health and the environment from the possible adverse effects resulting from ozone depletion. The fact that certain potential replacement propellants are not yet adequately tested is incidental. There are nonpropellant alternatives available and the uses of chlorofluorocarbons affected by this regulation are nonessential. The Commissioner cannot justify the possibility of further chlorofluorocarbon-induced alterations in stratospheric ozone while waiting for the development of alternative propellants for nonessential aerosol uses (see also the FEDERAL REGISTER of April 29, 1977 and May 13, 1977 (42 FR 22027 and 24539, respectively)).

B. *Additional responses to requests for information.* The Commissioner notes that he has received a few additional comments in response to FDA's requests for information in specific scientific areas (see the FEDERAL REGISTER of November 26, 1976, and May 13, 1977 (41 FR 52071 and 42 FR 24539)).

12. One comment attempted to put into perspective the uncertainties associated with currently used methods for estimating tropospheric hydroxyl radical (OH) concentrations, including that used by Singh (ref. 14). Apparently the accuracy of the measurements used to calculate OH concentrations is often not accounted for in indirect estimates of tropospheric OH levels. The comment concludes that until direct measurements are available or until consistent estimates are obtained by several indirect methods such as that of Singh (ref. 14), estimates of tropospheric lifetimes for hydrochlorofluorocarbons based on OH reactions cannot be established with confidence.

The submission provides helpful information for understanding the uncertainties associated with indirect methods of estimating tropospheric OH concentrations. The Commissioner will await additional verification of existing estimates before formulating definitive conclusions about the potential impacts associated with the release of halocarbons which react more readily with OH in the troposphere than do chlorofluorocarbons, e.g., the hydrochlorofluorocarbons and methyl chloroform.

13. A scientist submitted information on the results of laboratory measurements of the ultraviolet absorption characteristics of several brominated compounds. He reports that $CBrF_3$ (F-13B1), $BrClF_2$ (F-12B1) and $CBrF_2CBrF_2$ (F-114B2) will not photodissociate in the troposphere. All available information therefore indicates that the perhalobromoalkanes are generally comparable in stratospheric hazard to the chlorofluorocarbons. The same investigator finds that iodocarbons are subject to tropospheric photodissociation and, therefore, represent less of a hazard to stratospheric ozone with respect to chlorofluorocarbons.

The Commissioner notes that to his knowledge there are no perhalobromoalkanes being used as propellants in FDA-regulated products and therefore there is no need to consider regulation of these compounds at this time. Brominated fluorocarbons are currently used in products subject to EPA jurisdiction, e.g., fire extinguishers. EPA is considering these uses in making regulatory decisions on nonpropellant, fully halogenated halocarbon emissions (see the FEDERAL REGISTER of September 22, 1977 (42 FR 47863)).

IV. LEGAL ISSUES

14. Several comments maintained that because of the exemptions in section 3 of the Toxic Substances Control Act, EPA does not have authority under that act to prohibit the manufacture or manufacture for export of chlorofluorocarbon propellants that might ultimately be used in a food, food additive, drug, cosmetic, or device. One comment requested FDA to withdraw the statement in the preamble to the proposed FDA rule that exported foods, cosmetics, and other articles were subject to the Toxic Substances Control Act to the extent they were exempt from the Federal Food, Drug, and Cosmetic Act pursuant to section 801(d) of the Federal Food, Drug, and Cosmetic Act.

The comments deal primarily with EPA's authority under the Toxic Substances Control Act, and EPA plans to respond to these comments. EPA intends to make some changes in its regulation with respect to the matters dealt with in the comments. In view of the responses and changes being made by EPA, the Commissioner does not believe it necessary to make any additional responses to the comments, or to state a final position at this time on the applicability of the Toxic Substances Control Act to exported foods, cosmetics, and other articles to which the Federal Food, Drug, and Cosmetic Act is inapplicable.

15. One comment urges FDA to prohibit subsidiaries of U.S. corporations operating overseas from manufacturing or selling chlorofluorocarbons for aerosol uses.

FDA has no statutory authority to take the action sought in the comment.

V. ECONOMIC ISSUES

A. *Impact on costs and prices.* 16. A comment by a trade association asserted that most of the economic impact of the phaseout will fall on the marketing industry.

The Commissioner agrees with this assertion. The agency's economic impact statement (ref. 6) contains estimates that confirm this impact on marketers.

17. Two comments indicated that the shortage of capacity to produce pumps will hinder a conversion to mechanical delivery systems by the April 1979 phaseout date. The estimate of current pump production is about 300 million units per year, with a possibility of doubling this output each year. Even with this rapid expansion, it is asserted that there will be a shortage of pumps for the near future.

The Commissioner agrees that, in the short-run, the demand for pumps as an alternative to chlorofluorocarbon aerosols may exceed the production of pumps. The economic impact statement prepared by the agency (ref. 6) considered this supply bottleneck as one cause of lost sales by marketers. Although it is difficult to predict what percentage of lost sales will be caused by supply constraints, the agency estimated that, in the first 2 years following the phaseout, sales lost due to supply constraints will exceed those lost for other reasons and will be great enough to cause a major economic impact, i.e., losses greater than $100 million annually. After that time, production of pumps should be sufficient to meet demand.

As previously mentioned in comment 11, chlorofluorocarbon manufacturers have recently reported a 40 percent drop in their sales of chlorofluorocarbon propellants since 1974. This could mean that the anticipated supply shortage of mechanical devices such as pumps may also be diminished by as much as 40 percent. The International Research and Technology Corp. study (ref. 15) estimated lost sales at $199 million for an 18-month phaseout period. If it is assumed that 50 percent of these losses would be caused by supply constraints, bottlenecks will cost at least $100 million in sales. Use of the chlorofluorocarbon propellant sales figures could reduce the sales loss due to shortages of mechanical delivery systems to as low as $60 million for an 18-month phaseout. The Commissioner notes, however, that the agency does not have firsthand knowledge of the most recent data and, therefore, cannot say with certainty that the reduction in use of chlorofluorocarbons as propellants already achieved would result in a 40 percent cut in the sales loss due to shortages. To the extent that conversions to nonchlorofluorocarbon-propelled products have already been made by industry, a phaseout by the effective dates will be less costly to achieve.

One possible solution to the shortage of pumps is to use refillable pump containers. Thus, one pump could propel two or three bottles of hair spray, for example. Until pump production is increased enough to satisfy demand, this strategy could keep consumer prices down by eliminating the purchase of a pump each time a product needing a spray propellant is bought; at the same time manufacturers of these products maintain their sales.

18. One comment expressed concern that if regulatory efforts are applied too early, before satisfactory alternatives are identified for all aerosol uses of chlorofluorocarbons, the consumer may lose his "right to free choice" in the aerosol market. It was further stated that no recognition was given to the intangible social costs to consumers who cannot find an acceptable alternative to chlorofluorocarbon aerosols or who cannot buy a substitute because of supply shortages.

The Commissioner recognizes that the phaseout may deprive the consumer of the choice of an aerosol or a particular type of aerosol delivery system for certain products and that this choice and variety in the marketplace are desirable. However, as the Commissioner has stated in the FEDERAL REGISTER of April 29, 1977 (42 FR 22030), additional time for toxicity testing of effective alternative propellants provides no guarantee that any will be found to be safe and thus available for consumer use. The agency attempted to measure the social cost to consumers by identifying the upper limit of $228 million in lost sales (ref. 6). Although this is a loss to industry, it is also a proxy for the loss to consumers who can no longer buy a product that is acceptable to them. The $228 million is, in a crude sense, a measurement of the consumers' willingness to pay for products propelled by chlorofluorocarbons. This loss is expected to diminish over time both to industry and to consumers as better substitutes, and as supplies of essential materials increase. The Commissioner believes substantial progress has been made in these areas as indicated by the degree of substitution already made by industry (see comments 11 and 17), and it can be assumed that this indicates a willingness of consumers to use alternative products.

Furthermore, this is a case in which the adverse consequences of the choice do not fall solely on the individual consumer. A substantial interest exists in protecting the "right to free choice" of the individual who does not want to be exposed to the potential health and environmental impacts associated with the continued use of nonessential chlorofluorocarbon propellants.

19. Four comments stated that consumer costs may increase, not decrease as the agency estimates, as use of chlorofluorocarbons in aerosols is phased out. A chemical manufacturer elaborated on this point by suggesting that, instead of passing along savings on the cost of alternative propellants and mechanical substitutes, companies may hold their prices constant or even increase them to recoup some of the costs of the phaseout.

The Commissioner believes that the phaseout may result in somewhat lower consumer prices as manufacturers replace chlorofluorocarbons with less expensive propellants and mechanical applicators. The structure of the cosmetic industry will make it difficult for producers to maintain or increase their prices because the large number of firms in this industry create both price and product competition. Any company increasing prices is expected to face a loss of its market share to competing companies that pass along cost savings to the consumer. As the agency recognized in its economic impact statement (ref. 6), it is this competition in connection with less expensive substitutes that will allow consumers to receive some savings from the phaseout. If, however, the savings from the cheaper alternative materials are not passed on to the consumer but retained by the manufacturers to offset the cost of the phaseout, the industry will have a smaller loss as the consumer has a smaller gain. Thus the overall economic impact would be about the same magnitude.

The Commissioner concurs that chemical manufacturers will not be able to pass through the additional costs of the phaseout to its aerosol customers. Instead, the chemical producers will attempt to recoup their losses due to the phaseout by increasing chemical prices to their nonaerosol customers.

20. Two comments criticize the agency's estimate of the cost of the phaseout because certain costs to the government have not been considered. One example the comments give is that tax revenues will fall as the aerosol industry loses sales and workers are laid off due to the agency action.

The Commissioner agrees that there may be some decrease in tax revenues because of the phaseout and resulting loss of sales and employment. However, as consumers purchase other goods, either substitutes for the aerosol products or entirely different goods bought with the money not used for aerosols, new business activity and tax revenues are generated. Hence, the net tax loss caused by the phaseout of chlorofluorocarbon aerosols, although difficult to quantify, is expected to be an insignificant portion of tax collections nationally.

21. Another comment asked if the agency had considered putting a Federal tax on chlorofluorocarbon-propelled aerosol cans, presumably as a means to reduce the sale and use of the products.

The Commissioner is doubtful that a tax on chlorofluorocarbon-propelled aerosol containers would provide sufficient incentive to reduce significantly the sale and use of these products. Legislative action would be needed to impose such a tax. Lastly, in this case, it is inappropriate to allow those willing to pay more to determine the extent of risk that all must bear.

B. *Impact on employment.* 22. Comments by a chemical manufacturer criticized the agency for failing to quantify the loss of jobs in the economic impact statement. The company also felt that inadequate consideration was given to employment losses in the chemical and marketing industries.

The impact of this phaseout on employment was fully considered in the economic impact statement. The number of jobs lost was estimated as approximately 1,700 for an 18-month phaseout period for chlorofluorocarbon aerosols, with some of the loss offset by an increase in employment in nonaerosol production.

The employment loss will be concentrated in the filler, valve, and container industry because the chemical and marketing sectors of the aerosol manufacturing process can shift more easily into production of other products. The chemical industry will move into new products, including alternatives to chlorofluorocarbons, and the marketers will increase their emphasis on such things as mechanically delivered cosmetics. There may be some job losses in these industries, but it is reasonable to assume that most of the employment impact will be felt in the container industry, which is more closely tied to the use of chlorofluorocarbons as propellants.

23. Two trade associations commented that the phaseout of chlorofluorocarbon aerosols will lead to higher unemployment and that the impact of the ban would be mitigated if the compliance period were longer. Both noted that a longer phaseout period that allowed hydrochlorofluorocarbons 22 and 142B as possible alternatives would reduce the job and industry sales losses.

A longer phaseout period would diminish somewhat the job losses from the ban, as the analysis in the economic impact statement (Ref. 6) has indicated. The economic impact would probably be reduced if hydrochlorofluorocarbons 22 and 142B were available as propellants. The reasons for not postponing the effective dates of this regulation to wait for research results on alternative products have been stated in the response to comments 11 and 48. Since hydrochlorofluorocarbons 22 and 142B are not currently a viable alternative to chlorofluorocarbons, it does not appear to be meaningful to discuss what the economic advantages and disadvantages of using these substances will be.

C. *Impact on competition.* 24. Two comments urged a delay in the proposed ban to lessen the competitive impact both on the filler industry and on the aerosol marketers. The comments indicated that the filler industry has many small companies that receive the bulk of their business from a limited number of products. These small companies will have difficulty in raising capital to convert their equipment from chlorofluorocarbon to hydrocarbon systems. The comments also indicated concern that a relatively short phaseout could lead to a shift in the market shares in the marketing industry because one firm may move more quickly to find an alternative and thus attract additional customers.

The Commissioner acknowledges that some competitive impact may be caused by the phaseout of chlorofluorocarbon propellants. The economic impact statement prepared by the agency noted that, although all segments of the aerosol industry were examined for an anticompetitive effect of the agency's action, the brunt of the impact fell on the filler industry.

Within the filler industry, there are two kinds of operations. Some filler companies are affiliated with cosmetic firms, and they will probably be able to convert from chlorofluorocarbon to hydrocarbon and carbon dioxide propellants without much difficulty. The small filler firms that operate under contracts may have difficulties in securing capital to convert their lines to alternative propellants. One real cost of the phaseout is that some of these companies may go out of business. It is unclear, however, if extending the phaseout period would significantly help the filler companies to stay in business.

The Commissioner disagrees with the comments on the anticompetitive impact the phaseout will have on the aerosol marketing industry. Most products now on the market have a mechanical or nonchlorofluorocarbon propellant alternative to aerosols. As the effective date of the regulation approaches, marketers should be able to shift more of their product line into these alternatives. If one company introduces a new propellant that is more acceptable to consumers, there is no reason to believe that this will be anticompetitive.

VI. Essentially Issues

The criteria used by the agency to determine the essentiality of chlorofluorocarbon propellant uses are given in § 2.125(f) of this regulation.

A. *Food and cosmetics.* 25. One comment took the form of a petition requesting FDA to specify that dry shampoos consisting of starch propelled by chlorofluorocarbons be exempt from the regulation. These shampoos were claimed to be especially beneficial to people unable to wash themselves, i.e., many hospitalized patients and outpatients. It is claimed that chlorofluorocarbon propellants 11 and 12 are essential ingredients in this product and are used in such small amounts that only an insignificant danger is presented to the environment. The firm states that "nonaerosol, dry shampoo substitutes are, by comparison, ineffective and undesirable." The firm claims that the density of the propellant 11/12 blend "enables it to hold the starch particles in uniform suspension (after gentle shaking) during the normal consumer application process." Testimony obtained in a 1971 survey conducted among registered nurses was submitted which indicated a preference among this group for the instant shampoo product. The firm concludes by stating that they "believe that measured against the loss of patient morale and the disruptive effect this may have on the therapeutic regimen, particularly during prolonged hospitalization or chronic illness, the release of chlorofluorocarbons by these products is warranted."

The Commissioner concludes that the petitioner's contentions do not constitute sufficient grounds for exemption from this ban on chlorofluorocarbon propellants. Although the product may provide some benefit, the claim that other propellant/solvent systems do not provide the propellant's suspending property is not documented. Other propellant/solvent systems capable of delivering the starch spray in aerosol form are available, as are manual pump spray delivery systems.

26. Another comment was received from a manufacturer of antiseptic lubricants for food processing machinery. It states that the application of lubricants by aerosols containing chlorofluorocarbon propellants is more uniform than manual application. It further states that this form of application is more sanitary than "the old fashioned method of spreading lubricants by hand." The firm believes that "no satisfactory substitute for chlorofluorocarbon propellants in this application has been developed to date." The firm states that it "believes that use of chlorofluorocarbon propellants in such products provide a public health benefit not obtainable from alternative means of delivery * * *." This statement is presented as a belief and is unaccompanied by any documentation to support the claim.

The Commissioner notes that alternative solvent and delivery systems

are available to apply "sterile" lubricants to food-processing machinery. For example, pump spray applications, grease gun applicators, or metered liquid delivery systems may be used in place of self-pressurized containers. While the Commissioner does not deny that application via self-pressurized containers may be somewhat more convenient, there is no submitted evidence to support a conclusion that delivery by self-pressurized containers provides a substantial public benefit not available in other forms of delivery. Accordingly, the Commissioner is denying the request for exemption of these products from the prohibition on the use of chlorofluorocarbon propellants.

27. Six comments were received expressing concern about the effect of this action on the use of chlorofluorocarbons as blowing agents in the manufacture of polystyrene foam sheets.

This regulation does not relate to nonpropellant uses of chlorofluorocarbons and, therefore, the utilization of these compounds as blowing agents in the manufacture of polystyrene foam sheets will not be affected by this regulation. A public meeting sponsored by EPA, FDA, and CPSC was held on October 25 through 27, 1977, for the purpose of collecting information on nonpropellant uses of chlorofluorocarbons. Another joint public meeting on nonpropellant uses of chlorofluorocarbons is scheduled for February 21 through 24, 1978 (see notices in the FEDERAL REGISTER of January 13, 1978 (43 FR 1997)).

28. A citizen petition from the Michigan Department of Public Health was received requesting that the Commissioner ban foods and cosmetics containing chlorofluorocarbon compounds because of the danger these pose to the ozone layer.

The petition supports the action being taken in this order.

B. *Drugs.* 29. One comment requested that, for those drug products containing a chlorofluorocarbon for an essential use not currently covered by a new drug application (NDA), the regulation should specify that an abbreviated NDA must be submitted. The comment stated that there is no reason to require full NDA's for over-the-counter (OTC) products exempted from the phaseout regulation while requiring only abbreviated NDA's for prescription drug products covered by a DESI notice.

The Commissioner agrees that a full NDA is not needed for those few exempted OTC drug products that contain a chlorofluorocarbon for an essential use not currently covered by approved NDA's. These products include some metered-dose adrenergic bronchodilator drug products for oral inhalation and some contraceptive vaginal foams. The regulation has been revised to indicate that an abbreviated NDA may be submitted. Because of the unusual delivery system, however, the regulation will require that full manufacturing procedures be submitted as part of the abbreviated NDA.

30. One comment urged that the use of chlorofluorocarbons as propellants in all OTC medicines be considered essential uses, exempt from the phaseout regulations.

The Commissioner disagrees with this comment and concludes that the test for an essential use of a chlorofluorocarbon should remain the same as in the proposed regulation of May 13, 1977 (42 FR 24538). Under the suggested criteria, i.e., exempting any OTC medicine in which a chlorofluorocarbon is used as a propellant for more than consumer convenience, it would not even be necessary to show that whatever benefit was gained by using an aerosol product could not also be gained by using a technically feasible alternative.

31. One comment said that the five product classifications listed in proposed § 2.125(e) (21 CFR 2.125(e)) are inadequate and should be amended to include additional classes of drug products. The comment further discussed a product, currently undergoing human clinical testing, that uses a chlorofluorocarbon to propel a topical anesthetic that anesthetizes the endotracheal mucous membranes prior to endotracheal intubation. The comment said that as soon as the necessary information was collected, it would be submitted as a petition requesting FDA to include such a product on a list of essential uses of chlorofluorocarbons.

The Commissioner recognizes that the list of essential uses of chlorofluorocarbons contained in proposed § 2.125(e) may not be complete and for this reason has included in § 2.125(f) a statement pertaining to the submission of petitions to amend the list of essential uses. The Commissioner encourages interested persons to use this provision and submit such petitions with the necessary supporting data.

32. One comment requested that a product used as a powdered wound dressing, containing a chlorofluorocarbon as the propellant, be declared an essential product. The comment pointed out that: (a) The chlorofluorocarbon propellant used is the only existing propellant capable of dispensing the material from an aerosol container; (b) although the product could be dispensed from a nonaerosolized container, the aerosol use offers certain advantages, such as prevention of contamination of the product and uniform application to the wound; and (c) since extremely small quantities of the product are required even for the treatment of substantial wounds, the amount of chlorofluorocarbon released to the atmosphere would be negligible.

Although the comment said that a chlorofluorocarbon is the only existing aerosol propellant capable of dispensing this material from an aerosol container, no information was supplied indicating what other propellants were tried and why they were not suitable. To address the potential contamination problem, the Commissioner believes that a nonaerosol pump could be used, if the product were reformulated to include a bacterial preservative. While the aerosol may provide a more uniform application of the product, the comment did not establish that the size of the particles or the quantity of the drug dispensed was of a critical nature with this product. Because of these factors, along with the fact that the product can be dispensed from nonaerosolized containers, the Commissioner rejects this comment.

33. One comment requested that a surgical scrub product containing 3 percent hexachlorophene in an aerosol container and using a chlorofluorocarbon as the propellant be declared an essential product. The comment restated the provisions of the chlorofluorocarbon proposal, but did not contain any justification for finding the use of chlorofluorocarbon in this product an essential use.

The Commissioner cannot accept this comment. He is not aware of any reason to support a finding that this product provides a benefit unobtainable without the use of chlorofluorocarbon. In fact, even the comment acknowledged that the product can be dispensed in other than aerosol form.

34. One comment requested that a metered-dose ergotamine drug product, employing a chlorofluorocarbon as the propellant, be listed as an essential use of chlorofluorocarbons. The comment contained a detailed discussion supporting the position that there is a lack of any technically feasible alternative to the use of a chlorofluorocarbon in metered-dose drug products. This same information had previously been submitted in response to the notice of intent to propose rules banning nonessential uses of chlorofluorocarbons and request for information published in the FEDERAL REGISTER of November 26, 1976. The comment also argued that the product provides a substantial health benefit that would be unobtainable without the use of a chlorofluorocarbon. Data were submitted to show that the aerosol form of ergotamine had the same speed of action as an intramuscular injection of the same dose. Another advantage of the aerosol form, argued the comment, is that it can be used by the migraine patient who is experiencing nausea and has difficulty in swallowing a tablet and keeping it down.

The comment also stated that since the container consists of only 7 grams and contains a meter spray valve, the use of chlorofluorocarbons in this product does not involve a significant release of chlorofluorocarbons into the atmosphere.

As indicated in comment 45 of the final regulations requiring a warning statement on certain chlorofluorocarbon-containing products published in the FEDERAL REGISTER of April 29, 1977 (42 FR 22029), the Commissioner recognizes the importance of chlorofluorocarbons in providing effective metered doses for use in inhalation therapy for certain specific diseases. He agrees with the comment that the use of ergotamine tartrate by inhalation provides a unique benefit to the migraine patient which is not available in other forms of self-medication and has amended § 2.125(e) to include metered-dose ergotamine tartrate drug products for oral inhalation.

35. One comment requested that an aerosol product containing lidocaine, employing a chlorofluorocarbon as the propellant, in a metered-dose container, be listed as an essential use of chlorofluorocarbon. The product is used for the production of topical anesthesia of gingival and oral mucous membranes. The comment explained why other propellants are not satisfactory, either because of their potential toxicity when inhaled, or because of the unavailability of an acceptable metered aerosol delivery valve for such other propellants. It was also argued that the aerosol form of the product provides unique health benefits not achievable with alternative dosage forms. The comment further said that the use does not involve a significant release of chlorofluorocarbons into the atmosphere in that it has limited distribution to dentists and that a maximum of 120 milligrams (two actuations of the metered dose valve) of chlorofluorocarbon woud be released per patient.

The Commissioner recognizes the importance of using a metered-dose aerosol for delivering lidocaine to the oral cavity, if the product is to be administered by the aerosol route. If a nonmetered aerosol container were used, the dose could not be controlled and serious undesirable systemic side effects could be produced. Although the comment explained why an ointment product is not a suitable alternative delivery system, it did not discuss why an injectable lidocaine product, or another delivery system such as use of a cotton swab to apply the drug product, could not be used in its place. Therefore, the Commissioner is not accepting this comment. Of course, a petition may be submitted in accordance with § 2.125(f) giving the reasons why other delivery systems are not acceptable.

36. One comment requested that a benzoin spray, used as a skin protectant and as a skin antiseptic, be declared an essential use of chlorofluorocarbon. The comment included the labeling for the product, but failed to include any other supporting data.

The Commissioner cannot accept this comment. Although the intended use of the product was described in the labeling, the comment did not discuss the points set forth in the preamble to the proposed regulation (see the FEDERAL REGISTER of May 13, 1977 (42 FR 24538)) as necessary to justify an essential use of a chlorofluorocarbon.

37. One comment requested that a self-powered atomizer, used to propel anesthetics into the laryngotracheal area prior to endotracheal intubation, be declared an essential chlorofluorocarbon use. Again, other than a picture and description of the product, no supporting data were included.

As above, the Commissioner cannot accept this comment because of the lack of justification in support of the essentiality claim.

This comment, however, brought to the Commissioner's attention another type of chlorofluorocarbon propellant system, i.e., a container of chlorofluorocarbon that is used to propel the contents of a different container when the two containers are attached together.

It was the Commissioner's intent to make all nonessential propellant uses of chlorofluorocarbon in FDA-regulated products subject to this regulation. The Commissioner has previously explained that under the agency's definition of "propellant," "a chlorofluorocarbon is not considered a propellant if the pressurized container contains only chlorofluorocarbons or only gases" (see the FEDERAL REGISTER of April 29, 1977 (42 FR 22018)). This statement was made to explain the intended effect of the definition on pressurized cylinders containing chlorofluorocarbons for nonpropellant purposes. There was no intent to exclude from coverage products using chlorofluorocarbons as a propellant to expel material from a separate container. If such products were exempt, it might lead to the development of new products using chlorofluorocarbon propellants in this form. The definition of propellant has been revised to indicate clearly that the regulation applies to all products in which a chlorofluorocarbon is used as a propellant whether or not the propellant is in the same or a separate container from the material propelled. If the propellant is in a separate container, that container would be the self-pressurized container subject to the restrictions in § 2.125(c).

38. Several comments requested that specific drug products containing one or more chlorofluorocarbons as an active ingredient be exempt from the phaseout regulations. The comment alleged that chlorofluorocarbons are active ingredients because they produce a vapocoolant effect which, as a skin refrigerant, is intended to relieve muscle pain. Three of the products consisted of 100 percent chlorofluorocarbons, one product contained 83 percent dichlorotetrafluoroethane and 17 percent ethyl chloride, and another product contained two chlorofluorocarbons as well as menthol, methyl salicylate, camphor, and isopropyl alcohol. These comments stated that no other propellant system can provide the vapocoolant effect produced by the chlorofluorocarbon and that the amount of chlorofluorocarbon being released is not substantial.

In proposed § 2.125(a)(2) the term "propellant" was defined as "a liquefied or compressed gas that is used in whole or in part to expel from a self-pressurized container liquid or solid material different from the propellant * * *." Because several of the products referred to in these comments consist entirely of chlorofluorocarbons not intended for use as a propellant, they are not subject to this regulation. The final rule to require a warning statement discusses the reasons for limiting the present action to propellant uses. The nonpropellant products will be the subject of regulatory considerations on nonpropellant uses of chlorofluorocarbons.

With respect to the product containing a chlorofluorocarbon and ethyl chloride, the compressed ethyl chloride is not dependent upon the chlorofluorocarbon to be expelled from the container, but acts as a propellant itself. The chlorofluorocarbon is not used to expel a liquid or solid from the container, but is present as an active ingredient. Therefore, this product is also exempt from this regulation but will be subject to any regulation applicable to nonpropellant uses of chlorofluorocarbons when and if they are published.

The product that contains two chlorofluorocarbons for their vapocoolant effect, along with several other nonpropellant ingredients, clearly falls within this regulation since the chlorofluorocarbons act as propellants of liquid or solid material. The propellant has other functions, but many propellants have dual functions. As previously explained in the final rule to require a warning statement, if all propellants with dual functions were excluded many products might be excluded, or might claim to be excluded. Since FDA regulates most aerosol uses of chlorofluorocarbons, if the scope of its regulation were narrowed or uncertain, the regulatory purpose of reducing nonessential uses could be significantly hindered. Thus, this products is subject to the regulation because of the propellant use of the chlorofluorocarbon.

The Commissioner, however, cannot accept the comment that declares this use an essential use of a chlorofluorocarbon. Neither this product, which is an OTC product, nor the other products containing a chlorofluorocarbon as an active ingredient, which are prescription products not the subject of a new drug application, previously have been reviewed for safety and effectiveness. Furthermore, the submission did not provide data to show that the product is effective to achieve its claimed benefit or to show it is safe. A submission indicated that the product could be sold in a liquid concentrate form. The aerosol form was claimed to be more convenient and effective, but the only support cited was anecdotal. A determination that the chlorofluorocarbon in these products is for an essential use obviously cannot be made until it is found out whether the products are safe and effective as well as safe to achieve the benefit claimed to be essential.

The one product containing a chlorofluorocarbon as an active ingredient that is subject to this regulation will, upon the effective date, be a new drug in view of the provision of § 2.125(c). This section says that any drug product in a self-pressurized container that contains a chlorofluorocarbon propellant is a new drug and is adulterated and/or misbranded unless specifically exempted by § 2.125(e). As stated previously, this product cannot now be listed in § 2.125(e). Therefore, if the manufacturer wishes to continue marketing this drug product after the effective date, a new drug application in the format specified in § 314.1(c)(2) (21 CFR 314.1(c)(2)) should be submitted as soon as possible, but not later than June 15, 1978. If the new drug application is approved, the firm must then submit a petition in accordance with § 2.125(f) to specify that this use of a chlorofluorocarbon is an essential use. The Food and Drug Administration will review both the NDA and the petition as quickly as possible.

Although the other products containing chlorofluorocarbons for nonpropellant uses are not subject to this regulation, these other products will be subject to any future regulation on nonpropellant uses of chlorofluorocarbons. To be considered for exemption as an essential product from a regulation on nonpropellant uses, the firm preparing the drug product will be required to establish that the product is safe and effective to achieve the benefit claimed to be essential.

39. One comment from a dermatologist requested that cortisone sprays for topical use be exempt from the ban on chlorofluorocarbons for propellant uses. The comment stated that in an aerosol form, the product has the unique property of being able to penetrate scalp lesions in such a way as to clear them. The comment also stated that these products are used in a most sparing manner and that the tiny amount of chlorofluorocarbon escaping into the atmosphere by this prescription drug could not possibly alter the ozone layer of the atmosphere.

Although the aerosol product may have certain advantages over other dosage forms, the comment did not indicate why another dosage form, such as a lotion, could not be used. Further, the comment did not indicate why a propellant other than a chlorofluorocarbon could not be used in such a topical product. Therefore, the comment is not accepted.

40. One comment requested that proposed § 2.125(i) be modified to allow for clinical testing of chlorofluorocarbon-containing products after December 15, 1978, if the testing is performed to establish the essentiality of these drug products and, thus, is needed to support any petition submitted after that date. It was argued that as the proposal was worded, any testing to prove that an investigational new drug (IND) drug product containing a chlorofluorocarbon propellant is safe, effective, or essential, must be completed by December 15, 1978. The comment also suggested that proposed § 2.125(i) be modified to allow FDA to grant conditional approval of essentiality for an IND drug, provided the sponsor submits adequate preclinical animal or human clinical data to support a petition. This approval would be conditional upon the sponsor's proof, submitted at a later date, that the chlorofluorocarbon-containing drug product is safe and effective.

As proposed, § 2.125(i) would require a sponsor of an IND for a drug product containing a chlorofluorocarbon propellant either to reformulate the product or submit a petition to show that the use of the chlorofluorocarbon is an essential use. The Commissioner recognizes that there may be instances where the use of a chlorofluorocarbon propellant in an IND drug product is not just for convenience but may prove to be an essential use, provided sufficient time is permitted to perform the necessary testing. The Commissioner, therefore, agrees with the comment that § 2.125(i) should be revised to permit such studies to continue after December 15, 1978, and to allow new studies to begin, if the use of the chlorofluorocarbon in the drug product has a reasonable likelihood of being considered an essential use. The revision to § 2.125(i) however, must not permit a study to continue or to begin if any of the following circumstances exist: (1) The chlorofluorocarbon is used only for convenience; (2) the product could be administered by another dosage for; or (3) the use of the chlorofluorocarbon represents a use that is identical or similar to a use that has previously been determined to be a nonessential use of chlorofluorocarbon. To permit the continuation of use of a chlorofluorocarbon in an IND drug product in only appropriate instances, § 2.125(i) has been revised to provide that the sponsor of an IND or INAD for a drug product containing a chlorofluorocarbon shall either amend the IND or INAD before December 15, 1978, to remove the chlorofluorocarbon, submit a petition showing that the use of chlorofluorocarbon is essential, or submit a petition requesting permission to perform studies while collecting the data to show that the use of the chlorofluorocarbon is essential. In this latter case, the petition must describe the drug product, indicate why a chlorofluorocarbon-propelled product is being investigated rather than another dosage form, and explain the benefit of such a product.

41. One comment urged that December 1980 be the effective date to discontinue manufacturing products containing a chlorofluorocarbon, and April 15, 1978, be the effective date for the prohibition on introducing products containing a chlorofluorocarbon in interstate commerce. It was argued that this delay would not cause any significant harm to the environment and would allow industry a more reasonable time to develop alternative propellants. Another comment cited advantages of two topical aerosol products that were not declared to be essential, and requested that the proposed October 1, 1978, deadline for the submission of supplemental NDA's be extended 1 year. This additional time is needed to develop a satisfactory reformulation, provide appropriate stability data and perform sufficient testing as to the appropriateness of an alternative delivery system. This comment also requested that the other proposed dates be delayed by 1 year.

In comment 11 of this document and in comment 14 of the preamble to the proposed phaseout regulations (see the FEDERAL REGISTER of May 13, 1977 (42 FR 24539)), the Commissioner discussed the proposed effective dates and concluded that a delay to test the safety of a possible new propellant was not warranted. Likewise, he concluded that the proposed regulation provided companies a reasonable time to reformulate their products and perform the necessary testing. The Commissioner has reexamined those conclusions and reaffirms his previous position that the proposed effective dates provide a reasonable time for manufacturers. Therefore, these comments are not accepted.

42. One comment suggested that the time for obtaining final approval of an NDA for a product containing a chlorofluorocarbon for an essential use should be 2½ years after publication of the final regulation. The comment

indicated that in the past FDA has demonstrated difficulty in acting swiftly on submitted routine NDA's.

The majority of products containing a chlorofluorocarbon for an essential use are already covered by NDA's. Therefore, the agency believes it can handle expeditiously the NDA's for the few remaining products determined to contain a chlorofluorocarbon for an essential use. Further, although these NDA's must be submitted by June 15, 1978, a manufacturer may submit its NDA sooner, and, if it does so, the agency would have more than 6 months to review the application. In addition, as the comment stated, the safety and efficacy of the products listed in § 2.125(e) are not in question, which should help in the prompt review of these applications. For these reasons, the comment is not accepted.

43. The citizen petition from the Michigan Department of Public Health referred to in comment 28 also requested that the Commissioner ban drugs containing chlorofluorocarbon compounds.

The petition supports the action being taken in this order.

C. *Medical devices and diagnostic products.* 44. Two comments requested exemption from the phaseout regulation for a silicone fluid dispensed with a chlorofluorocarbon propellant to be used for the protection and lubrication of surgical instruments. It was stated that no other propellant on the market could meet the manufacturer's requirements.

The Commissioner agrees that other suitable propellants may be unavailable at the present time. However, the Commissioner does not accept the position that lubricants and protective coatings of silicone applied by spray are an essential use of chlorofluorocarbons since lubricants and protective coatings may be applied by nonspray techniques.

45. An exemption was requested for a hand lotion to protect against skin irritation and chapping for use by dentists. This product uses chlorofluorocarbons both as a propellant and as a solvent for the active ingredient, and the use of chlorofluorocarbons was felt to be essential as the only satisfactory nontoxic solvent.

The Commissioner does not agree that such a hand-protective substance using chlorofluorocarbons possesses sufficiently unique properties as to constitute an essential use of chlorofluorocarbons. As the submission itself noted, protective hand lotions are available in other forms, such as creams. For these reasons and those noted in comment 38 of this document relating to dual functions of chlorofluorocarbons, the request is denied.

46. A comment was received requesting essential use status for a chlorofluorocarbon-containing aerosol for use in checking dental occlusion, contending that no suitable replacement for the chlorofluorocarbon propellant was available.

The Commissioner does not agree that such use of chlorofluorocarbons for propelling diagnostic material for checking dental occlusion is an essential use of chlorofluorocarbons since nonspray techniques for checking dental occlusion are available.

47. One comment was received urging the Commissioner to determine that cytology fixative spray is an essential use of chlorofluorocarbons and that the health benefits of such use outweigh the ozone depletion risks.

The Commissioner does not agree that the use of chlorofluorocarbons is essential in this application. The use of chlorofluorocarbons to propel cytological fixatives had previously been considered essential and exempted from the warning label requirement (see the FEDERAL REGISTER of April 29, 1977 (42 FR 22034)) and the proposal to prohibit nonessential propellant uses of chlorofluorocarbons (see the FEDERAL REGISTER of May 13, 1977 (42 FR 24541)). Since that time, the agency reexamined the matter and finds that the effectiveness of the cytological fixative is not dependent upon chlorofluorocarbon propellants. The fixative may be applied satisfactorily by means of a spray pump bottle or a dropper, thereby obviating the need for chlorofluorocarbon propellants. In addition, for those specimens retained within a laboratory, a 95 percent alcohol fixative is a satisfactory preparation. To provide additional information to show that the use of chlorofluorocarbons in the application of fixatives to cytological preparations is essential, a citizen's petition as provided for in 21 CFR 10.30 may be filed. The Commissioner will take action on such a submission in an expeditious manner.

VII. ALTERNATIVES

48. Several comments addressed technical feasibility and health considerations of alternative delivery systems. Two companies submitted descriptions of recently invented non-gas-propelled aerosol delivery systems. Industry associations submit that: (a) Hydrochlorofluorocarbons have the greatest technical feasibility to replace chlorofluorocarbon propellant uses, but further toxicological testing is necessary to determine their safety (at least for hydrochlorofluorocarbons 22 and 142B*); (b) hydrocarbons present a flammability hazard and may have inferior spray characteristics; (c) compressed gases have inferior spray characteristics; and (d) nonaerosol alternatives may not be acceptable to many consumers and production of these units might fall short of the demand under the proposed phaseout timetable. In contrast: (a) Several consumers commented on the ease with which they have been able to switch to nonchlorofluorocarbon-propelled products; (b) intensive advertising programs have been initiated by the deodorant, antiperspirant, and hair care industries (ustin about 90 percent of the 1974 total amount of chlorofluorocarbons in FDA-regulated aerosol products (Ref. 16)) to promote hydrocarbon-propelled and nonaerosol replacement products, showing that alternatives to chlorofluorocarbon propellants in at least these products are already being marketed, and (c) no shortages of nonaerosol products at the retail level have been reported despite industry's reported 40 percent drop in the sale of chlorofluorocarbons used as propellants. Additionally, as noted in one comment, aerosolized products require 2 to 10 times as much energy to produce as nonaerosol alternatives (Ref. 17).

The Commissioner agrees with these latter comments. In addition he has already responded to comments relating to the safety of alternative product delivery systems in the following manner (see the FEDERAL REGISTER of April 29, 1977 (42 FR 22027)):

> The Commissioner recognizes that it is possible that alternative products may also pose hazards of various types. The present action relates only to the adverse effects of chlorofluorocarbons upon stratospheric ozone, and the potential physiologic hazards from other products are not within the scope of this regulation. It is the Commissioner's position that manufacturers should substantiate the safety of all their products before marketing, and under 21 CFR 740.10, cosmetic manufacturers are required to warn consumers if they have failed to perform testing to substantiate the safety of products. Furthermore, products must bear warnings necessary or appropriate to prevent a health hazard that may be associated with the product (21 CFR 740.1). If the adverse reactions associated with a product are unreasonable, in number or severity, FDA will take regulatory action. Citizens may petition FDA to take regulatory action with respect to any risk posed by regulated products. It would not be appropriate, however, to leave an unsafe product on the market, because the possible risks of alternatives were not yet fully known and might also be unacceptable. Instead, no unsafe products should be marketed. The Food and Drug Administration endeavors to ensure the safety of all cosmetics and products it regulates; FDA resources are limited, however, and in some instances, including with respect to cosmetics, FDA's statutory authority needs strengthening. Within these constraints, FDA will continue to act to ensure the safety of all the products subject to the FFDCA.

The Commissioner notes that hydrocarbon propellants are being formulated with methylene chloride in part to reduce the flammability of these propellants. Methylene chloride is a mu-

*Hydrochlorofluorocarbons 22 and 142B: $CHClF_2$ and $CClF_2—CH_3$, respectively.

tagen in bacteria (Ref. 18). Additionally, methylene chloride has been shown to induce transformations in rat embryo cells grown in vitro (Ref. 19). Methylene chloride is currently being tested for carcinogenicity by Dow Chemical and the National Cancer Institute. FDA will review the results of these tests when they become available and take appropriate action.

Final Environmental Impact Statement

The Food and Drug Administration has determined that this action will likely cause significant environmental impacts. Therefore, the agency prepared a draft environmental impact statement (DEIS) on the proposed action. Comments on the DEIS have been considered and a final EIS prepared. The final EIS is available for public inspection between 9 a.m. and 4 p.m., Monday through Friday, in the office of the Hearing Clerk (HFC-20), Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857. A limited number of copies will be available upon request from the Hearing Clerk.

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3. National Aeronautics and Space Administration, Goddard Space Flight Center, Reference Publication 1010: "Chlorofluoromethanes and the Stratosphere," 1977.

4. National Aeronautics and Space Administration, Assessment Report: "Effects of Chlorofluoromethanes on Stratospheric Ozone," 1977.

5. Food and Drug Administration, Final Environmental Impact Statement, "Fluorocarbons: Environmental and Health Implications," 1977.

6. Food and Drug Administration, Economic Impact Statement of Proposed Rule Making: "Certain Fluorocarbons (Chlorofluorocarbons) in Food, Food Additive, Drug, Animal Food, Animal Drug, Cosmetic and Medical Device Products as Prohibition on Use," 1977.

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8. Environmental Protection Agency, Food and Drug Administration, and Consumer Product Safety Commission, "International Meeting on Regulation of Chlorofluorocarbons," Washington, D.C., April 26-28, 1977.

9. National Academy of Sciences, Committee on the Impact of Stratospheric Change, "Response to the Ozone Protection Sections of the Clean Air Act Amendments of 1977: An Interim Report," 1977.

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11. Ridley, B. A., J. T. Bruin, H. I. Schiff, and J. C. McConnell, "Altitude Profile and Sunset Decay Measurements of Stratospheric Nitric Oxide," Atmosphere, 14(3):180-188.

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14. Singh, H. B., "Atmospheric Halocarbons: Evidence in Favor of Reduced Average Hydroxyl Radical Concentration in the Troposphere," Geophysical Research Letters, 4:101-104, 1977.

15. International Research and Technology Corporation, "The Economic Impact of Potential Regulation of chlorofluorocarbon-Propelled Aerosols," Prepared for Environmental Protection Agency, Food and Drug Administration, and Consumer Product Safety Commission under EPA Contract No. 68-01-1918, 1977.

16. Klauder, D. S., "Fluorocarbons in Aerosol Products Subject to the Jurisdiction of the Food and Drug Administration," (unpublished staff memorandum), 1976.

17. Center for Science in the Public Interest, "Aerosol Sprays," 1976, p. 21.

18. Simmon, U. F., K. Kauhanen, and R. G. Tardiff, "Mutagenic Activity of Chemicals Identified in Drinking Water," In "Progress in Genetic Toxicology," Edited by D. Scott, B. A. Bridges, F. H. Sobels, Elsevier-North Holland Publishing Co., New York (in press).

19. Price, P. J., E. M. Hassett, and J. I. Mansfield, "Transforming Activities of Trichloroethylene and Proposed Industrial Alternatives," (to be published in the March issue of In Vitro), 1977.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 301, 402, 409, 501, 502, 505, 507, 512, 601, 701(a), 52 Stat. 1042-1043 as amended, 1046-1047 as amended, 1049-1054 as amended, 1055, 57 Stat. 463 as amended, 72 Stat. 1785-1788 as amended, 82 Stat. 343-351 (21 U.S.C. 331, 342, 348, 351, 352, 355, 357, 360b, 361, 371(a))) and the National Environmental Policy Act of 1969 (sec. 102(2), 83 Stat. 853 (42 U.S.C. 4332)) and under authority delegated to the Commissioner (21 CFR 5.1), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

SUBCHAPTER A—GENERAL

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

1. By adding new Subpart G consisting at this time of § 2.125 to read as follows:

Subpart G—Provisions Applicable to Specific Products Subject to the Federal Food, Drug, and Cosmetic Act

§ 2.125 Use of chlorofluorocarbon propellants in self-pressurized containers.

(a) As used in this section:

(1) "Chlorofluorocarbon" means any fully halogenated chlorofluoroalkane.

(2) "Propellant" means a liquefied or compressed gas that is used in whole or in part to expel from the same self-pressurized container or from a separate container a liquid or solid material different from the propellant, but the term does not include the use of a chlorofluorocarbon as an aerating agent for foamed or sprayed food products.

(b) Chlorofluorocarbons are widely used in products subject to the Federal Food, Drug, and Cosmetic Act, with the principal use being as propellants in self-pressurized containers. Information recently developed indicates that chlorofluorocarbons may reduce the amount of ozone in the stratosphere and thus increase the amount of ultraviolet radiation reaching the earth. An increase in ultraviolet radiation may increase the incidence of skin cancer, change the climate, and produce other effects of unknown magnitude on humans, animals, and plants. Chlorofluorocarbons may also affect the climate by increasing infrared absorption in the atmosphere.

(c) Except as provided in paragraph (e) of this section, any food, drug, device, or cosmetic in a self-pressurized container that contains a chlorofluorocarbon propellant is adulterated and/or misbranded in violation of the act, and any drug product in a self-pressurized container that contains a chlorofluorocarbon propellant is a new drug or a new animal drug.

(d) The use of a chlorofluorocarbon as a propellant in a self-pressurized container of a drug product will not result in the drug product being adulterated and/or misbranded provided a new drug application or new animal drug application for the drug product has been approved, a petition has been filed as provided by paragraph (f) of this section and paragraph (e) of this section has been amended to specify the use as essential.

(e) The adulteration and misbranding provisions of paragraph (c) of this section shall not apply to the following essential uses of chlorofluorocarbons:

(1) Metered-dose steroid human drugs for nasal inhalation,

(2) Metered-dose steroid human drugs for oral inhalation,

(3) Metered-dose adrenergic bronchodilator human drugs for oral inhalation,

(4) Contraceptive vaginal foams for human use, and

(5) Metered-dose ergotamine tartrate drug products administered by oral inhalation for for use in humans.

(f) Any person may file a petition in accordance with Part 10 of this chapter to amend paragraph (e) of this section to specify a use of chlorofluorocarbons in a product as not being subject to the adulteration and misbranding provisions in paragraph (c) of this section. The petition must be supported by an adequate showing that:

(1) There are no technically feasible alternatives to the use of a chlorofluorocarbon in the product,

(2) The product provides a substantial health benefit, environmental benefit, or other public benefit that would not be obtainable without the use of the chlorofluorocarbon, and

(3) The use does not involve a significant release of chlorofluorocarbons into the atmosphere or that the release is warranted in view of the consequence if the use were not permitted.

(g) Any holder of an approved new drug application or new animal drug application for a drug product containing a chlorofluorocarbon in a self-pressurized container, except those drug products listed in paragraph (e) of this section, shall submit to the Food and Drug Administration on or before October 1, 1978, either a supplemental application providing for a revised formulation complying with the requirements of § 314.8 or § 514.8 of this chapter or a letter requesting that a new drug application or a new animal drug application for the drug product containing chlorofluorocarbon be withdrawn and that the right to a hearing on the withdrawal of the application is waived.

(h) The manufacturer of any drug product listed in paragraph (e) of this section that is not covered by an approved new drug application or new animal drug application shall submit a new drug application in accord with § 314.1(f) or § 514.1 of this chapter on or before June 15, 1978. The abbreviated new drug application submitted in accord with § 314.1(f) of this chapter shall contain full information with respect to items 6 (components), 7 (composition), 8 (methods, facilities, and controls), and 9 (samples) of new drug application form FD-356H.

(i) Any sponsor of a "Notice of Claimed Investigational New Drug" (IND) or "Notice of Claimed Exemption for a New Animal Drug" (INAD) for a drug product containing a chlorofluorocarbon shall:

(1) Amend the IND or INAD on or before December 15, 1978, to revise the formulation removing the chlorofluorocarbon.

(2) Submit the information required under paragraph (f) of this section to amend paragraph (e) of this section to show that the use of chlorofluorocarbon is essential, or

(3) Submit the information required under paragraph (j) of this section requesting that studies with the drug product containing a chlorofluorocarbon propellant be allowed to be performed.

(j) Any sponsor of an IND or INAD who wishes to initiate or continue a study beyond December 15, 1978; on a drug product containing a chlorofluorocarbon shall submit a petition in accordance with part 10 of this chapter requesting that studies be permitted to collect the data to show that the use of the chlorofluorocarbon is an essential use. The petitions must be supported by the following:

(1) A description of the drug product,

(2) An explanation why a chlorofluorocarbon propellant is used in the product rather than another propellant or another dosage form of the product, and

(3) The benefit that the investigational product is believed to have and that the sponsor hopes to demonstrate by the studies.

(k) The Commissioner will initiate action to withdraw approval of an application or terminate an IND or INAD notice in accordance with the applicable provisions of section 505 of the act and parts 312 and 314 of this chapter, or section 512 of the act and parts 511 and 514 of this chapter upon failure of a holder of an approved new drug application or approved new animal drug application or sponsor of an IND or INAD notice to comply with the applicable provisions of this section.

(l) Food, drug, device, or cosmetic products manufactured or packaged on or after December 15, 1978, and finished products initially introduced into interstate commerce on or after April 15, 1979, shall comply with this regulation.

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

Subpart D—Specific Usage Additives

2. By amending § 173.345 by revising paragraphs (b) and (c)(1)(i) to read as follows:

§ 173.345 Chloropentafluoroethane.

* * * * *

(b) The additive is used or intended for use alone or with one or more of the following substances: Carbon dioxide, nitrous oxide, propane, and octafluorocyclobutane complying with § 173.360 as an aerating agent for foamed or sprayed food products, with any propellant effect being incidental and no more than is minimally necessary to achieve the aerating function, except that use is not permitted for those standardized foods that do not provide for such use.

(c) * * *

(1) * * *

(i) The name of the additive, chloropentafluroethane.

* * * * *

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

Subpart C—Substances Prohibited From Direct Addition to Human Food Through Food-Contact Surfaces

3. By adding new § 189.191 to read as follows:

§ 189.191 Chlorofluorocarbon propellants.

The use of chlorofluorocarbons in human food as propellants in self-pressurized containers is prohibited as provided by § 2.125 of this chapter.

SUBCHAPTER D—DRUGS FOR HUMAN USE

PART 300—GENERAL

4. By adding new Subpart C consisting at this time of § 300.100 to read as follows:

Subpart C—Substances Generally Prohibited From Drugs

§ 300.100 Chlorofluorocarbon propellants.

The use of chlorofluorocarbons in human drugs as propellants in self-pressurized containers is generally prohibited except as provided by § 2.125 of this chapter.

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 500—GENERAL

Subpart B—Specific Administrative Rulings and Decisions

5. By adding new § 500.49 to read as follows:

§ 500.49 Chlorofluorocarbon propellants.

The use of chlorofluorocarbons as propellants in self-pressurized containers is prohibited from use in all animal drugs, animal food, and related products as provided by § 2.125 of this chapter.

SUBCHAPTER G—COSMETICS

PART 700—GENERAL

Subpart B—Requirements for Specific Cosmetic Products

6. By adding new § 700.23 to read as follows:

§ 700.23 Chlorofluorocarbon propellants.

The use of chlorofluorocarbons in cosmetics as propellants in self-pressurized containers is prohibited as provided in § 2.125 of this chapter.

SUBCHAPTER H—MEDICAL DEVICES

PART 801—LABELING

Subpart H—Special Requirements for Specific Devices

7. By adding new § 801.417 to read as follows:

§ 801.417 Chlorofluorocarbon propellants.

The use of chlorofluorocarbon in devices as propellants in self-pressurized containers is generally prohibited except as provided in § 2.125 of this chapter.

Effective dates. These regulations shall be effective on December 15, 1978, for the manufacturing or packaging of products subject to this regulation, and April 15, 1979, for the initial introduction into interstate commerce of products subject to this regulation.

(Secs. 301, 402, 409, 501, 502, 505, 507, 512, 601, 701(a), 52 Stat. 1042-1043 as amended, 1046-1047 as amended, 1049-1054 as amended, 1055, 57 Stat. 463 as amended, 72 Stat. 1785-1788 as amended, 82 Stat. 343-351 (21 U.S.C. 331, 342, 348, 351, 352, 355, 357, 360b, 361, 371(a)); sec. 102(2), 83 Stat. 853 (42 U.S.C. 4332).)

Dated: February 3, 1978.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc. 78-6039 Filed 3-9-78; 8:45 am]

[6560-01]

Title 40—Protection of Environment

[FRL-865-6]

CHAPTER 1—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER R—TOXIC SUBSTANCES CONTROL ACT

PARTS 712, 762—FULLY HALOGENATED CHLOROFLUOROALKANES

AGENCY: Environmental Protection Agency.

ACTION: Final rules.

SUMMARY: On May 13, 1977, the Environmental Protection Agency (EPA) proposed a rule (42 FR 24542) which would prohibit almost all of the manufacture, processing, and distribution in commerce of fully halogenated chlorofluoroalkanes (hereinafter referred to as chlorofluorocarbons) for those aerosol propellant uses which are subject to the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq. This rule and a related rule on reporting are now being promulgated in final form and will become effective October 15, 1978.

In a related action, the Food and Drug Administration (FDA) is publishing a final rule in today's FEDERAL REGISTER to ban the use of chlorofluorocarbon aerosol propellants in most food, drug, and cosmetic products.

The intent of these rules is to reduce emissions of chlorofluorocarbons to the atmosphere, thereby reducing the health and environmental risk caused by depletion of the ozone layer.

The promulgation of these rules concludes the first phase of EPA's investigation of chlorofluorocarbon emissions. A second phase investigation involving the nonaerosol propellant uses (e.g., refrigeration, foam blowing, and solvent) is ongoing.

EFFECTIVE DATES: October 15, 1978: Prohibition of Manufacturing. December 15, 1978: Prohibition of Processing and Distribution in Commerce.

INFORMATION CONTACT:

Perry Brunner, Office of Toxic Substances (TS-788), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-426-9000.

Joni T. Repasch is the Record and Hearing Clerk for this rulemaking. The official record of rulemaking is located in Room 520 WSME, EPA Headquarters, 401 M Street SW., Washington, D.C. 20460, 202-755-1188. The record is available for viewing and copying from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

SUPPLEMENTARY INFORMATION: Under TSCA § 6 and its implementing regulations, 42 CFR 750, EPA is required to publish a statement discussing the factual, legal, analytical, and policy considerations which led to issuance of the rule, including the factors listed in TSCA § 6(c)(1). This preamble, the preamble to the proposed rule, the "Final Support Document," and the "Essential Use Determinations—Revised" are intended to fulfill that requirement.

Other major documents in the record are "Chlorofluorocarbon Problem Assessment" and "Economic Impact of Potential Regulation of Fluorocarbon Aerosols".

A list of all material in the record is found at the end of this preamble. Copies of the major documents may be obtained from Mrs. Joni Repasch at the address stated above.

I. EFFECTS OF CHLOROFLUOROCARBONS ON HEALTH AND THE ENVIRONMENT

Chlorofluorocarbons produce a risk to human health and the environment by causing depletion of the ozone layer. Upon release from an aerosol product or other source, the compounds diffuse slowly to the stratosphere. When they reach the stratosphere, they undergo photochemical decomposition which liberates free chlorine radicals. The chlorine radicals enter into a catalytic chain reaction with ozone molecules, and the net result is a depletion of the ozone layer.

The ozone layer helps shield the Earth's surface from ultraviolet (UV) radiation. As the layer is depleted, the Earth's surface is bombarded with more UV radiation. Current estimates are that if chlorofluorocarbon emissions continue at the 1975 rate, the ozone layer would be depleted ultimately by 11 to 16 percent.

While the effects of ozone depletion are very difficult to quantify, they are quite serious. The major immediate concern is that increased UV radiation leads to a statistically significant increase in skin cancer. Some negative effects on plants and animals are likely. There are also predictions of adverse effects because of an increase in the Earth's temperature ("greenhouse effect") and changes in climate. The health and environmental consequences of these and other changes are not well understood. However, there is considerable concern that these consequences will produce significant adverse effects.

II. USES, BENEFITS, AND ALTERNATIVES

In 1975, approximately one-half of the chlorofluorocarbons produced in the United States were used as aerosol propellants. Since then this figure has dropped considerably. Of the nonaerosol production, approximately one-half is used as refrigerants, and most of the remainder is used as solvents and foam blowing agents.

Chlorofluorocarbons are frequently the preferred propellant in aerosol products because of their nonflammability, their excellent dissolving (solvent) ability, and their fine spray characteristics. However, hydrocarbon and carbon dioxide propellants are available as alternatives to chlorofluorocarbons for many aerosol products. In addition, there are nonaerosol

alternatives such as pump sprays, waxes, liquids, and powders for most aerosol uses. In those cases where there is no alternative to a chlorofluorocarbon spray and the use appears essential, the Administrator has provided for exemptions from this regulation.

III. Economic Considerations

Over the past few years, use of chlorofluorocarbon aerosol propellants has decreased substantially. Five years ago, chlorofluorocarbons were used in 50 percent of aerosol products; it is estimated that they are now used in 20 percent. Because of the reduction in use, the economic impact of implementing EPA's rules will be much smaller than it would have been had they become effective sooner. The economic effects will be felt by three major groups in the chlorofluorocarbon industry: manufacturers, processors (fillers), and distributors (marketers). The combined impact of the EPA and FDA rules is expected to affect significantly the manufacturers and the fillers. EPA believes that the distributors are capable of switching to other products without significant costs.

Decreased sales of chlorofluorocarbon propellants have a direct impact both on the manufacturers of chlorofluorocarbons and the manufacturers of their chemical precursors. However, most of these manufacturers are large corporations which should be able to make the financial adjustment.

Fillers, on the other hand, will be significantly affected, and some probably will be severely affected. However, singling out small fillers for special treatment would undercut the effect of this regulation, lead to other economic dislocations, and hamper the Agency's enforcement efforts.

Consumers of household products stand to gain financially. Products containing chlorofluorocarbon propellants are more expensive per application than are products containing alternative propellants and nonaerosol products. Industrial consumers may have to make adjustments in products or processes. However, the essential use exemptions should alleviate any major adverse impact on industrial production outside the chlorofluorocarbon industry. Adverse effects on technological innovation are not expected.

IV. Finding of Unreasonable Risk

The Administrator finds that the continued depletion of stratospheric ozone as the result of discharges from nonessential aerosol products containing fully halogenated chlorofluoroalkane propellants presents an unreasonable risk of injury to health and the environment. Since this finding was proposed (42 FR 24545, May 13, 1977), the Administrator has reviewed the numerous comments received and the new scientific data which has become available. The Administrator remains convinced that promulgation of this rule at this time is necessary in order to reduce the risk of injury from chlorofluorocarbon aerosol propellant emissions to an acceptable level. A full explanation of his reasons and response to comments appears in the "Final Support Document."

Because chlorofluorocarbon emissions anywhere in the world deplete the ozone layer and adversely affect health and the environment of the United States, the Administrator finds that chlorofluorocarbon discharges from aerosol propellant articles made in the United States and shipped abroad also cause an unreasonable risk of injury.

V. Least Burdensome Approach

EPA has taken steps to reduce the burden of this regulation. Foremost was the decision to postpone a finding of unreasonable risk associated with nonpropellant uses until they are investigated more fully. Secondly, exemptions have been given for certain essential uses including nonconsumer electronics/electrical and aviation uses. In addition, by making the manufacturing ban effective 18 months from the proposal date instead of making it effective sooner, the Administrator has significantly reduced the economic impact.

EPA rejects the idea of requiring warning labels on chlorofluorocarbon products as an alternative to this rule. EPA believes that a labeling requirement would be insufficient to reduce the unreasonable risk from chlorofluorocarbon aerosol emissions. In addition, the Agency believes that the continued use of chlorofluorocarbons by some consumers will result in the involuntary exposure of the entire public to hazards created by the user population.

VI. Relationship of TSCA to Other EPA Authorities

EPA previously proposed a finding under § 9(b) of TSCA that it was in the public interest to use TSCA instead of the Clean Air Act or the Federal Insecticide, Fungicide, and Rodenticide Act to regulate aerosol propellant uses of chlorofluorocarbons (42 FR 24545). EPA believes that that discussion of the disadvantages of using those acts remains applicable, and the Agency hereby adopts its proposed § 9(b) findings.

The Clean Air Act Amendments of 1977 do not affect the Agency's authority to use TSCA to regulate the aerosol uses of chlorofluorocarbons. (42 U.S.C. 7458). The Amendments specifically permit EPA to promulgate rules proposed under TSCA prior to enactment of the Amendments, and the legislative history contemplates that EPA would do so.

VII. Phase II

The Administrator recognizes that this rule and the corresponding FDA regulation may not be adequate to fully protect the ozone layer. As EPA has indicated previously, nonpropellant uses such as refrigerants and solvents are being examined in the second phase investigation. A second public meeting on Phase II uses to gather pertinent information was held by EPA, FDA, and the Consumer Product Safety Commission (CPSC) in February.

In addition to EPA's general authority under TSCA to regulate chemical substances, the 1977 Amendments to the Clean Air Act specifically address the protection of the ozone layer (42 U.S.C. 7450). These provisions require EPA and other Federal agencies to conduct research and to submit reports to Congress on the stratosphere. By August 1979, EPA must submit a report to Congress that recommends further regulatory steps that may be needed. At that time the Administrator must propose regulations "for the control of any substance, practice, process, or activity (or any combination thereof) which in his judgment may be reasonably anticipated to affect the stratosphere, especially ozone in the stratosphere, if such effect in the stratosphere may reasonably be anticipated to endanger public health or welfare." (42 U.S.C. 7457).

EPA, CPSC, and FDA consequently will be engaged in an ongoing review of the ozone problem after this regulation has been promulgated and becomes effective. Should it become apparent in the future that chlorofluorocarbons do not pose an unreasonable risk, the Agency will take appropriate action to rescind or modify this rule.

VIII. Essential Uses

During the development of this rule, a number of persons requested exemptions for the use of certain products which contain chlorofluorocarbon propellants. Essential uses that were granted exemptions are listed in § 762.21 of the rule. The criteria used, the products considered, and the information analyzed in evaluating all requests are found in the support document "Essential Use Determinations-Revised." All of the essential uses will be reevaluated during the second phase of EPA's regulation of chlorofluorocarbons.

The four most significant categories of essential uses considered by EPA were pesticides, products used by the Department of Defense (DOD), uses in the electronics/electrical industries, and uses in the aviation industry. For the reasons described in the essential

use document, only a few pesticide uses were granted exemptions. DOD uses are covered by a Memorandum of Understanding between EPA and DOD which is publicly available. Under its terms DOD will be able to use only those products necessary to maintain the military preparedness of the United States. DOD will switch to alternative products where they exist.

Electronic/electrical uses and aviation uses are broad categories of uses. These categories were given exemptions because most of the products within both of the categories are important for preserving public safety and promoting public welfare. At this time, the Agency does not have the information necessary for limiting these broad exemptions in order to identify nonessential products. However, the Agency will examine these products in depth during its Phase II examination of chlorofluorocarbons.

IX. Preemption of State Laws

This regulation affects the authority of a State to establish regulations concerning chlorofluorocarbons. Section 18 of TSCA provides that when EPA restricts the manufacture of or otherwise regulates a chemical under section 6, a State may only issue requirements which are identical, which are mandated by other Federal laws, or which prohibit the use of the chemical. Thus, this regulation preempts any less restrictive State regulation addressed to the same risk.

X. Legal Considerations

These rules are being promulgated under the authority of sections 6, 8, and 12 of TSCA (15 U.S.C. 2605, 2607, 2611).

A. Relationship of Rule to Federal Food, Drug, and Cosmetic Act

Section 762.11, as proposed, prohibited any person from manufacturing chlorofluorocarbons for any aerosol propellant use after October 15, 1978, except for those uses found to be essential by EPA and FDA. Several commenters challenged EPA's legal authority to do this under TSCA section 3(2)(B)(vi). They specifically argued that TSCA does not empower EPA to regulate all the manufacture of a chemical that has many uses if that chemical sometimes functions as a food, drug, or cosmetic.

EPA concurs in large part with these comments and has amended the regulation accordingly. Section 762.11(a)(1) no longer prohibits manufacture under TSCA for food, food additive, drug, cosmetic, or device uses (hereinafter referred to as "FFDCA substances"). However, a rule promulgated by the FDA today prohibits most uses of chlorofluorocarbons in FFDCA substances.

EPA agrees that TSCA does not provide the authority to regulate FFDCA substances insofar as a chemical is actually manufactured, processed, or distributed in commerce for use as an FFDCA substance. The Agency also recognizes that the definition of "drug" includes a chemical intended for use as a component of a drug and that components of foods, food additives, cosmetics, and devices are similarly treated in the FFDCA. Chlorofluorocarbons can, however, be used either as components of FFDCA substances or for other purposes. Because all chlorofluorocarbon propellants are manufactured in the same way, physical examination of a chlorofluorocarbon does not reveal its intended use. The manufacturer's intent determines the prospective use.

In order to be exempt from this section 6 rule, the manufacturer would have the burden of demonstrating his intent to manufacture the propellant for use as an FFDCA substance. EPA has concluded that where a chemical such as a chlorofluorocarbon is being manufactured both for use as an FFDCA substance and for other uses, the chemical will be presumed to be a chemical substance under TSCA unless it clearly can be shown that the chemical actually is being manufactured for use as an FFDCA substance. This presumption is particularly appropriate here since it is anticipated that the vast majority of chlorofluorocarbons manufactured after October 15, 1978, will be produced for uses other than uses as FFDCA substances, i.e., for propellant uses found to be essential under EPA's regulation or for nonpropellant uses such as refrigerants and solvents.

As a practical matter, EPA and FDA believe that the legal determination of whether a chlorofluorocarbon is a TSCA chemical substance or an FFDCA substance will be of minimal significance except with respect to separate enforcement of EPA's and FDA's regulations. Both rules have the same general purpose, namely, to ban most uses of chlorofluorocarbons as aerosol propellants. There is no regulatory gap. If a chlorofluorocarbon is not a TSCA chemical substance, it is an FFDCA substance, and vice versa.

B. Relationship of Rule to Federal Insecticide, Fungicide, and Rodenticide Act

Proposed § 762.12 did not prohibit processing of chlorofluorocarbon propellants for use in pesticide products. EPA requested comments on whether TSCA section 3(2)(B)(ii) permits EPA to regulate under TSCA the processing of chlorofluorocarbons which may take place as part of the manufacture of pesticide products (42 FR 24545). No comments on this point were received. Having considered the issue further, both in connection with this regulation and the TSCA section 8(a) inventory reporting regulation, EPA has concluded that there is sufficient authority under TSCA to ban the processing of chlorofluorocarbons for use in pesticides (i.e., incorporation of chlorofluorocarbons into aerosol pesticides).

In order to be considered a pesticide, a chemical substance must be intended for use as a pesticide.[1] Raw materials, intermediates, and inert ingredients such as chlorofluorocarbons used in the manufacture of a pesticide are not regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) unless they happen to be pesticides themselves. A chlorofluorocarbon would fall within the jurisdiction of FIFRA only when it has become a component of a pesticide product. This would not occur until it was actually mixed with or combined with the active ingredient (the pesticide).

The legislative history of TSCA indicates that a particular chemical could be subject to both TSCA and FIFRA at different points in time. When the bill which became TSCA was under Senate floor consideration, Senator Allen specifically addressed the interface between FIFRA and TSCA noting that the bill's provision meant that: "* * * any chemical or toxic substance would first be subject to the provisions of TSCA and yet when it becomes a component of a pesticide, it would be subject to FIFRA. In many instances, the manufacturer of the component is also the manufacturer and registrant of the pesticide." Committee on Interstate and Foreign Commerce, 94th Cong., 24 Sess. Legislative History of the Toxic Substances Control Act 232 (1976).

The change in § 762.12 does not significantly alter the practical impact of this regulation because a ban on manufacturing for pesticide uses was previously proposed (§ 762.11). It will, however, greatly aid the Agency in its enforcement efforts since the enforcement emphasis will be on processors.

C. Exports

Several commenters argued that the proposed ban on export is beyond EPA's authority under TSCA. It was stated that the export of food, drugs, and cosmetics is being regulated contrary to the intent of section 3(2) of TSCA and section 801(d) of the FFDCA. The Administrator disagrees in part with the above analysis; however, changes in the rule make it unnecessary to resolve those issues.

The only regulation of exports in the final rule appears in the processing ban provision (§ 762.12(b)). Pro-

[1] This issue is also discussed in the response to comments 37 and 39 on the section 8(a) inventory rule. (42 FR 64586-7, Dec. 23, 1977.)

cessing of chlorofluorocarbons into aerosol propellant articles intended for export is prohibited after December 15, 1978. Exemptions permitting processing for essential uses and for use in FFDCA substances apply equally to both articles intended for domestic use and articles intended for export. The final rule does not prohibit either the manufacture for export or the export of articles containing chlorofluorocarbon aerosol propellants. The Agency believes that regulation of the processing of chlorofluorocarbon propellants into export articles is adequate to reduce the risk associated with export of chlorofluror-carbon aerosol propellants.

EPA decided not to regulate the manufacture and export distribution of the unprocessed chlorofluorocarbon until Phase II or until such time as EPA discovers that increasing quantities of chlorofluorocarbons are being exported for processing abroad into propellant articles. A major factor in this decision was that the export of the unprocessed substance for propellant uses appears to be minimal, especially in contrast to the export for uses such as refrigerants, which are not subject to the Phase I regulation. EPA may also decide to use its authority under the ozone protection section of the Clean Air Act (42 U.S.C. 7450) to address the export issue. Lastly, a limited ban on the export of the bulk chemical (i.e., only for nonessential propellant uses) would be difficult to enforce.

The revisions in the rule have been made by deleting the references to "export" in the definitions of manufacture, processing, and distribution in commerce, and by adding a new § 762.12(b) which prohibits processing for export.

In addition to the concern about the scope of the export ban, commenters questioned EPA's proposed finding that the export of chlorofluorocarbon propellant articles presents an unreasonable risk of injury to health and the environment of the United States. Commenters stated that the finding was inadequate and that further quantification of the risk is necessary.

EPA disagrees with the comment. While further quantification of all risks associated with chlorofluorocarbons is desirable, it is clear that all discharges contribute to the depletion of the ozone layer, that increased emissions pose correspondingly greater risks, and that discharges anywhere in the world affect health and the environment of the United States. Thus, the Administrator believes that the export of chlorofluorocarbon aerosol propellants presents the same unreasonable risk of injury as domestic use and that steps should be taken to reduce that risk, both to protect the United States' population and environment and to emphasize the United States' concern over domestic and worldwide discharges.

Persons planning to export chlorofluorocarbons should be aware that section 12(b) of TSCA requires exporters to notify the Administrator of any exportation. Procedures for complying with this reporting requirement will be published shortly.

D. REPORTING REQUIREMENTS

The reporting rule is being issued under the authority of TSCA sections 6 and 8. It is intended to monitor compliance with the rule. On the basis of information received in the reports, EPA's Office of Enforcement will be able to direct inspections to those facilities which are most likely to be in violation of the cholorofluorocarbon ban rule. Consequently, facilities which are in compliance with the ban rule will not be required to undergo needless inspection, and EPA resources will not be devoted to unnecessary inspection tasks. In addition, top level management of facilities which manufacture or process chlorofluoroalkanes will be made continually aware of the substance and scope of the chlorofluorocarbon ban rule via the requirement that they personally sign the reports.

In connection with § 712.3, one manufacturer questioned EPA's legal authority to require businesses to submit customer lists. The manufacturer stressed that while TSCA section 8(a) specifies a number of types of information which the Administrator may require to be reported, it makes no mention of customer lists. This argument is not convincing. The legislative history clearly contemplates that the Administrator is to be given access to information necessary for effective enforcement of the Act, and further emphasizes that the types of information described in section 8(a) are only illustrative.

Manufacturers, of course, may make confidentiality claims for their customer lists in accordance with EPA procedures on disclosure of confidential business information. 40 CFR Part 2.

XI. Discussion of the Rule

Some of the reasons for changes from the proposal are discussed in the previous section on Legal Considerations. That discussion should be referred to for a fuller understanding of the revisions.

A. SCOPE

In response to a comment that § 762.1 could be construed ambiguously, the wording has been revised to reflect clearly the intended meaning.

In order for a substance to be subject to this rule, it must be (a) a fully halogenated chlorofluoroalkane, (b) used as an "aerosol propellant," and (c) a "chemical substance" as defined in section 3(2) of TSCA. A fully halogenated chlorofluoroalkane is any molecule which has only chlorine, fluorine, and carbon atoms and which does not have a double or triple bond between two carbon atoms.

B. DEFINITIONS

"Aerosol propellant" means a gas which is used to expel different material from a container. Therefore, if a chlorofluorocarbon is used as an active ingredient, it is not an "aerosol propellant" within the meaning of this rule. If, for example, chlorofluorocarbon F-12 is used to expel chlorofluorocarbon F-113 from the container, only the propellant F-12 would be subject to this regulation. Similarly, if the entire contents in this container consist of one type of chlorofluorocarbon, such as F-12 in a chiller, the product is not subject to Phase I regulation. The nonpropellant aerosol uses will be addressed in the Phase II investigation.

The definitions for "Administrator," "chemical substance," "commerce," "processor," "State," and "United States" have been deleted from the rule. These words have the exact definitions given to them in TSCA (15 U.S.C. 2602), and there is no need to repeat the definitions in the rule.

The definitions for "manufacture," "processing," "distribute in commerce," and "distribution in commerce" also have been omitted. The deletions of the special provisions relating to exports which were included in the proposed rule now make these definitions identical to the ones appearing in TSCA. (A discussion of the regulation of exports is found above under Legal Considerations.)

Definitions for "person" and "nonconsumer article" have been added. The definition for "bulk distributor" has been deleted because the term is not used in the final rule.

C. BANS AND EXEMPTIONS

In general, manufacture of chlorofluorocarbons for aerosol propellant uses is prohibited after October 15, 1978. Processing and distribution of unprocessed chlorofluorocarbons are prohibited after December 15, 1978. Exemptions from these general prohibitions are discussed below.

The manufacturing ban (§ 762.11) contains three exemptions. First, manufacture for use in FFDCA substances is not prohibited by this rule. Second, essential uses are exempt. Third, unprocessed chlorofluorocarbons and articles containing chlorofluorocarbon propellants may be imported before December 16, 1978. As discussed at proposal (42 FR 24546), this third exemption alleviates an economic disparity that would otherwise occur in the

treatment of foreign and domestically produced chlorofluorocarbons.

The wording of the third exemption has been changed since proposal to clarify the Agency's intent that the import of chlorofluorocarbons in any form for aerosol propellant uses is prohibited. If EPA exempted the importation of chlorofluorocarbon propellant substances and articles, the effect of this rule could be rendered meaningless by the mass production abroad and importation into the United States of aerosol products for which the manufacture and processing are banned here.

A new § 762.11(c) requires manufacturers of chlorofluorocarbons for aerosol propellant uses to obtain signed statements from their customers that the chlorofluorocarbons are being purchased for aerosol propellant uses permitted by EPA or FDA, or for other uses. These statements will enable the manufacturers to assure themselves that they are manufacturing chlorofluorocarbons in compliance with this rule.

As long as a manufacturer makes chlorofluorocarbons for any propellant use, he must obtain a statement from all his customers (although he need not report nonpropellant customers to EPA under 40 CFR 712.3). While manufacturers who do not make any chlorofluorocarbons for aerosol propellant uses are not required to report to EPA, they are still subject to § 762.11(a). Hence, such manufacturers still have the burden of being able to demonstrate that they are manufacturing chlorofluorocarbons legally.

The processing ban (§ 762.12), as, in the proposal, prohibits processing chlorofluorocarbon propellants for domestic or foreign distribution, but it exempts FFDCA substances and essential uses. The final rule also has been changed to prohibit the processing of chlorofluorocarbons for use in pesticide products (as discussed in the Legal Consideration section).

The distribution ban (§ 762.13(a)) prohibits any person from distributing chlorofluorocarbons for processing into aerosol propellant articles after December 15, 1978. Use in FFDCA substances and essential uses are exempted from this section.

The final rule does not regulate the distribution in commerce of articles containing chlorofluorocarbon aerosol propellants (proposed § 762.13(b)). EPA believes that regulation of manufacturing, processing, and distribution in commerce of the unprocessed chemical will be sufficent to eliminate the unreasonable risk to health and the environment.

D. REPORTING

The reporting requirements have been revised in order to reduce and clarify them. They will cover fewer than 100 businesses, and the annual cost of compliance to most of these businesses will range from $20 for one processor to $5,000 for the one of the larger manufacturers.

Annual reports must be submitted by all persons who manufacture and/or process chlorofluorocarbons for aerosol propellant uses subject to TSCA. (Importers are included within the definition of manufacturer by virtue of section 3(7) of TSCA.) If a manufacturer or processor closes his business in 1979, 1980, or 1981, he must submit an annual report for his last calendar year of operations.

Manufacturers reports must list customers who purchase chlorofluorocarbons for aerosol propellant uses, the quantity sold to each of those customers, and the total quantity manufactured for all uses. If none of a manufacturer's customers purchase chlorofluorocarbons for aerosol propellant uses, the manufacturer is not required to submit an annual report to EPA. If a customer purchases chlorofluorocarbons for propellant and nonpropellant uses, the quantities purchased for each category must be indicated. Manufacturers will be able to determine the purpose for which the chlorofluorocarbons are being purchased by examining the signed statements obtained in accordance with § 762.11(c). A manufacturer must submit one annual report covering manufacture in all of his facilities, and the report must conform to the format indicated in the rule.

Processors reports must list the manufacturers or distributors from whom they purchased chlorofluorocarbons, the quantity purchased from each seller, and the quantity processed for each aerosol propellant use. The final rule has been revised so that processors are not required to report the names of their customers. A processor must submit a separate report for each one of his processing facilities, and each report must conform to the format indicated in the rule.

Processors who do not process for aerosol propellant uses are not required to report. If all of the aerosol propellant articles processed by a processor are regulated solely by FDA, the processor does not have to comply with these reporting requirements. If a processor processes both for aerosol propellant uses regulated by FDA and for aerosol propellant uses regulated by EPA, he must report to EPA. Reports submitted to EPA need not specify particular food, drug, and cosmetic uses.

The final rule requires that annual reports be submitted in March of 1980, 1981, and 1982. The 1980 manufacturers report must cover manufacturing from October 16, 1978, through December 31, 1979. The 1980 processors report must cover processing from December 16, 1978, through December 31, 1979. Subsequent annual reports must provide information for the preceding calendar year. Reports must be submitted by registered mail to EPA's headquarters in Washington, D.C. In order to facilitate reading the reports, new provisions require that the reports be written according to a specified format.

ECONOMIC IMPACT ANALYSIS STATEMENT

The economic support document "The Economic Impact of Potential Regulation of Fluorocarbon Aerosols" comprises the economic impact analysis statement required by Executive Order 11821 and OMB Circular A-107.

Dated: March 10, 1978.

DOUGLAS M. COSTLE,
Administrator.

A part 762 is established to read as follows:

OFFICIAL RECORD OF RULEMAKING—FULLY HALOGENATED CHLOROFLUOROALKANES

Section 19(a)(3) of TSCA defines the term "rulemaking record" for purposes of judicial review as follows:

For purposes of this section, the term "rulemaking record" means—

(A) The rule being reviewed under this section;

(B) In the case of a rule under section 4(a), the finding required by such section, in the case of a rule under section 5(b)(4), the finding required by such section, in the case of a rule under section 6(a), the finding required by section 5(f) or 6(a), as the case may be, in the case of a rule under section 6(a), the statement required by section 6(c)(1), and in the case of a rule under section 6(e), the findings required by paragraph (2)(B) or (3)(B) of such section, as the case may be;

(C) Any transcript required to be made of oral presentations made in proceedings for the promulgation of such rule;

(D) Any written submission of interested parties respecting the promulgation of such rule; and

(E) Any other information which the Administrator considers to be relevant to such rule and which the Administrator identified, on or before the date of the promulgation of such rule, in a notice published in the FEDERAL REGISTER.

In accordance with the requirements of section 19(a)(3)(E) quoted above, EPA is publishing the following list of documents constituting the record of this rulemaking. Public comments and submissions made at the rulemaking hearing and in connection with it are exempt from the FEDERAL REGISTER listing under section 19(a)(3) and therefore have not been listed. However, a full listing of these materials is available on request from the Record and Hearing Clerk.

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Sec.

762.1 Scope.
762.2 Definitions.
762.11 Manufacture: Prohibitions, Exemptions, and Certification Requirements.
762.12 Processing: Prohibitions and Exemptions.
762.13 Distribution in Commerce: Prohibitions and Exemptions.
762.21 Essential Use Exemptions.

AUTHORITY: Toxic Substances Control Act, 15 U.S.C. 2605, 2611.

§ 762.1 Scope.

This part prohibits the manufacture, processing, and distribution in commerce of fully halogenated chlorofluoroalkanes for those aerosol propellant uses which are subject to the Toxic Substances Control Act (TSCA) and lists the exemptions to the prohibitions.

§ 762.2 Definitions.

For the purposes of this Part:

(a) The term "aerosol propellant" means a liquefied or compressed gas in a container where the purpose of the liquefied or compressed gas is to expel from the container liquid or solid material different from the aerosol propellant.

(b) The term "person" includes any natural person, corporation, firm, company, joint venture, partnership, sole proprietorship, association, or any other business entity, any State or political subdivision thereof, any municipality, any interstate body and any department, agency, or instrumentality of the Federal Government.

(c) The term "nonconsumer article" means any article subject to TSCA which is not a "consumer product" within the meaning of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052.

(d) The terms "Administrator," "chemical substance," "commerce," "distribute in commerce," "manufacture," "process," "processor," "State," and "United States" have the same meanings as in 15 U.S.C. 2602.

§ 762.11 Manufacture: prohibitions, exemptions, and certification requirements.

(a) After October 15, 1978, no person may manufacture, except to import, any fully halogenated chlorofluoroalkane for any aerosol propellant use except as follows:

(1) For use in an article which is a food, food additive, drug, cosmetic, or device exempted under 15 U.S.C. 2602;[1] or

(2) For those essential uses listed in § 762.21.

(b) After December 15, 1978, no person may import into the customs territory of the United States any fully halogenated chlorofluoroalkane, whether as a chemical substance or as a component of a mixture or article, for any aerosol propellant use except as follows:

(1) For use in an article which is a food, food additive, drug cosmetic, or device exempted under U.S.C. 15 2602; or

(2) For those essential uses listed in § 762.21.

(c) Every person manufacturing fully halogenated chlorofluoroalkanes for aerosol propellant uses after October 15, 1978, must obtain a signed statement from every person purchasing the fully halogenated chlorofluoroalkanes from him for any use. This statement must specify whether the fully halogenated chlorofluoroalkanes are being purchased (1) for aerosol propellant uses permitted under either 40 CFR Part 762 or 21 CFR 2.125 or (2) for other uses.

§ 762.12 Processing: prohibitions and exemptions.

(a) After December 15, 1978, no person may process any fully halogenated chlorofluoroalkane into any aerosol propellant article except as follows:

(1) For use in an article which is a food, food additive, drug, cosmetic, or device exempted under 15 U.S.C. 2602; or

(2) For those essential uses listed in § 762.21.

(b) After December 15, 1978, no person may process any fully halogenated chlorofluoroalkane into any aerosol propellant article intended for export except as follows:

(1) For use in an article which is a food, food additive, drug, cosmetic, or device exempted under 15 U.S.C. 2602; or

(2) For those essential uses listed in § 762.21.

§ 762.13 Distribution in commerce: prohibitions and exemptions.

After December 15, 1978, no person may distribute in commerce any fully halogenated chlorofluoroalkane for processing into any aerosol propellant article except as follows:

(a) For use in an article which is a food, food additive, drug, cosmetic, or device exempted under 15 U.S.C. 2602; or

(b) For those essential uses listed in § 762.21.

§ 762.21 Essential use exemptions.

The following aerosol propellant uses of fully halogenated chlorofluoroalkanes are essential and exempt from §§ 762.11–762.13:

(a) Mercaptan stench warning devices.

(b) Release agent for molds used in the production of plastic and elastomeric materials.

(c) Flying insect pesticides for use in nonresidential food handling areas except when applied by total release or metered valve aerosol devices, and for space spraying of aircraft.

(d) Diamond-grit spray.

(e) Nonconsumer articles used as cleaner-solvents, lubricants, or coatings for electrical or electronic equipment.

(f) Articles necessary for safe maintenance and operation of aircraft.

(g) Uses essential to the military preparedness of the United States as determined by the Administrator and the Secretary of Defense.

Sec.

712.1 Scope.
712.2 Definitions.
712.3 Reporting requirements for manufacturers of fully halogenated chlorofluoroalkanes for aerosol propellant uses.
712.4 Reporting requirements for processors of fully halogenated chlorofluoroalkanes for aerosol propellant uses.
712.5 General reporting requirements.

AUTHORITY: Toxic Substances Control Act, 15 U.S.C. 2605, 2607.

§ 712.1 Scope.

This Part requires manufacturers and processors of fully halogenated chlorofluoroalkanes for aerosol propellant uses to submit annual reports to the Environmental Protection Agency. It is intended to facilitate the enforcement of Part 762 of this chapter.

[1] The Food and Drug Administration has promulgated separate regulations on use of fully halogenated chlorofluoroalkanes in these articles at 21 CFR 2.125.

§ 712.2 Definitions.

The terms used in this Part shall have the same meanings as in Part 762.2 of this chapter.

§ 712.3 Reporting requirements for manufacturers of fully halogenated chlorofluoroalkanes for aerosol propellant uses.

(a) Every person who after October 15, 1978, manufactures fully halogenated chlorofluoroalkanes for aerosol propellant uses subject to the Toxic Substances Control Act (TSCA) must submit an annual report.

(b) Every annual report submitted by a manufacturer must contain the following information and conform to the following format:

(1) Page one:

(i) Name of business,

(ii) Business address,

(iii) Chief executive officer,

(iv) Addresses of all facilities at which fully halogenated chlorofluoroalkanes are manufactured,

(v) Name, business address, and telephone number of individual most knowledgeable of the contents of this report.

This report covers manufacture of fully halogenated chlorofluoroalkanes for aerosol propellant uses from (date to date).

(2) Page two (and subsequent pages is necessary):

Purchaser	Shipping addresses	Total quantity purchased (in pounds)	Quantity for aerosol propellant uses (in pounds)	Quantity for other uses (in pounds)
List name of customers who purchased for aerosol propellant uses.	(List)	(List)	(List)	(List)

State total quantity in pounds of fully halogenated chlorofluoroalkanes manufactured for all uses for the time period covered by this report.

(3) At the bottom of the last page make the following statement and certification:

I understand that I may assert a claim of business confidentiality by marking any part or all of this information as "TSCA Confidential Business Information" and that information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR Part 2. I further understand that if I do not mark this information as confidential, EPA may disclose it publicly without providing me notice of an opportunity to object.

I certify that to the best of my knowledge the contents of this report are accurate and complete.

Date _____
Signed _____
Position Title _____

(4) The statement and certification required by paragraph 3 of this section must be signed by the chief executive officer of the manufacturer.

§ 712.4 Reporting requirements for processors of fully halogenated chlorofluoroalkanes for aerosol propellant uses.

(a) Every person who after December 15, 1978, processes fully halogenated chlorofluoroalkanes for aerosol propellant uses subject to the Toxic Substances Control Act must submit an annual report. A separate report must be submitted for each processing facility.

(b) Every report submitted by a processor must contain the following information and conform to the following format:

(1) Page one:

(i) Name of business,

(ii) Business address,

(iii) Chief executive officer,

(iv) Facility address,

(v) Name, business address, and telephone number of individual most knowledgeable of the contents of this report.

This report covers purchases and processing of fully halogenated chlorofluoroalkanes for aerosol propellant uses from (date to date).

(2) Page 2 (and subsequent pages if necessary):

Purchases of fully halogenated chlorofluoroalkanes:

Purchased from and quantity purchased (in pounds)

(list names and business addresses) (list).

Processing of fully halogenated chlorofluoroalkanes:

Use and Quantity (in pounds)

1. Mercaptan mine warning device (list).
2. Release agent.
3. Pesticides.
4. Diamond-grit spray.
5. Electrical/electronic.
6. Aviation.
7. Defense.
8. Food, food additives, drugs, cosmetics, and devices.
9. Other (explain).

(3) At the bottom of the last page make the following statement and certification:

I understand that I may assert a claim of business confidentiality by marking any part or all of this information as "TSCA Confidential Business Information" and that information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR Part 2. I further understand that if I do not mark this information as confidential, EPA may disclose it publicly without providing me notice of an opportunity to object.

I certify that to the best of my knowledge the contents of this report are accurate and complete.

Date _____
Signed _____
Position Title _____

(4) The statement and certification required by paragraph 3 of this section must be signed by the highest offical at the processing facility for which the report is being submitted.

§ 712.5 General reporting requirements.

(a) Annual reports must be submitted by March 31, 1980, 1981, and 1982. The 1980 manufacturers report must cover maufacturing from October 16, 1978 through December 31, 1979. The 1980 processors report must cover processing from December 16, 1978, through December 31, 1979. Subsequent annual reports must provide information for the preceding calendar year.

(b) Annual reports must be submitted to the Pesticides and Toxic Substances Enforcement Division, Office of Enforcement (EN-342), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

(c) Annual reports must be submitted by registered mail.

[FR Doc. 78-7120 Filed 3-16-78; 8:45 am]

[6355-01]

CONSUMER PRODUCT SAFETY COMMISSION

FULLY HALOGENATED CHLOROFLUOROALKANES AS PROPELLANTS IN AEROSOL CONSUMER PRODUCTS

Commission Action in Response to the Environmental Protection Agency's Ban

In this document, the Consumer Product Safety Commission (CPSC) announces that, in view of the Environmental Protection Agency's (EPA) final rules appearing elsewhere in this issue of the FEDERAL REGISTER prohibiting almost all of the manufacture, processing, and distribution in commerce of fully halogenated chlorofluoroalkanes (chlorofluorocarbons) for those aerosol propellant uses which are subject to the Toxic Substances Control Act (TSCA), banning action by the CPSC is unnecessary.

Previously, the Commission had preliminarily concluded that aerosol consumer products which use certain chlorofluorocarbon propellants should be banned because they present an unreasonable risk of injury to consumers from the destruction of the stratospheric ozone layer and no feasible consumer product safety standard would adequately protect the public. The Commission's staff was directed to work with EPA and the Food and Drug Administration (FDA), which had announced their intentions to phase out the non-essential uses of fluorocarbons in products under their jurisdiction. Subsequently, the Commission reviewed the ban that was proposed by EPA and determined that banning action by the Commission was unnecessary at that time (42 FR 24550, May 13, 1977).

Except for those products that have been deemed by EPA to be "essential," the final EPA ban applies to all products using these chlorofluorocarbons as propellants to expel other materials from a container that are subject to the jurisdiction of the Commission. After considering the terms of the final ban issued by EPA, the Commission still believes that it is not necessary for it to take any banning action in addition to that already taken by EPA.

The Commission did, however, issue a final rule (16 CFR Part 1401, 42 FR 42780, August 24, 1977), effective February 20, 1978, that requires labeling of consumer products containing these chorofluorocarbon propellants and requires the manufacturers of such products to submit product identifying information to the Commission. This labeling rule is somewhat broader than the EPA ban in that it applies to "essential" as well as nonessential products and to products in which the propellant is the only substance expelled.

The Commission's staff is continuing to cooperate closely with the EPA and the FDA through the Interagency Chlorofluorocarbon Work Group (a committee including EPA, FDA and CPSC representatives) as it explores the possible regulation of certain chlorofluorocarbons in non-aerosol uses.

Dated: February 23, 1978.

SADYE E. DUNN,
Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 78-7121 Filed 3-16-78; 8:45 am]

federal register

FRIDAY, MARCH 17, 1978
PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

PROTECTION OF HUMAN SUBJECTS

Research Involving Those Institutionalized as Mentally Infirm; Report and Recommendations for Public Comment

[4110-12]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

PROTECTION OF HUMAN SUBJECTS

Research Involving Those Institutionalized as Mentally Infirm: Report and Recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research

AGENCY: Department of Health, Education, and Welfare.

ACTION: Notice of report and recommendations for public comment.

SUMMARY: This report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research notes that in no other area subject to its scrutiny has the need for research been so clearly manifest. At the same time, it recognizes that the mentally infirm have long been victims of abuse and exploitation. The Commission's recommendations call for careful review of research projects to establish the appropriateness and safety of the proposed procedures, the competence of the investigator, the adequacy of procedures to protect privacy, and the actual need to involve the institutionalized mentally infirm. The recommendations call for the informed consent of all competent subjects or, where the subjects are incompetent, the assent of the subject and the informed consent of guardians or the authorization of a court. The safeguards required would become increasingly rigorous as the risks to be encountered increase. Where risks were more than minimal, or unrelated to direct benefit to the subjects, approval of a project would require consideration by a national ethical advisory board and by the Secretary of HEW.

DATES: Written comments, views, arguments, and data with respect to the Commission's recommendations are requested and should be received on or before May 16, 1978, if they are to receive full consideration.

ADDRESSES: Send comments to: Office for Protection from Research Risks, National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014. Additional copies of this Report and Recommendations may be obtained from the same address. All comments received will be available for inspection at room 303, Westwood Building, 5333 Westbard Avenue, Bethesda, Md., weekdays (Federal holidays excepted) between the hours of 9 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT:

Dr. D. T. Chalkley, Director, Office for Protection from Research Risks, National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, 301-496-7005.

SUPPLEMENTARY INFORMATION: on July 12, 1974, the National Research Act (Pub. L. 93-348) was signed into law, thereby creating the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. Among the charges to the Commission were: (1) Identify the requirements for informed consent to participation in biomedical and behavioral research by the institutionalized mentally infirm, and (2) investigate and study biomedical and behavioral research conducted or supported under programs administered by the Secretary of HEW and involving the institutionalized mentally infirm to determine the nature of the consent obtained. In discharging this last responsibility, the Commission was to determine the adequacy of the information given the institutionalized mentally infirm respecting the nature and purposes of research, the risks and discomforts, anticipated benefits, and other matters necessary for informed consent, and the competence and the freedom of the institutionalized mentally infirm to make a choice for or against involvement in research.

On the basis of such investigation and study, the Commission was required to make recommendations to the Secretary to assure that biomedical and behavioral research conducted or supported under programs administered by him met the requirements respecting informed consent identified by the Commission.

The Secretary is required to publish any such recommendations of the Commission in the FEDERAL REGISTER, which he does herewith, and to provide an opportunity for interested persons, institutions, organizations, and groups to submit written comments, views, arguments, and data with respect to these recommendations. Comments should be identified by the number of the recommendation, (1)-(5).

The Secretary is further required to consider the Commission's recommendations and any relevant comments or other matter submitted to him, on or before September 13, 1978, to: (1) Determine whether the administrative action proposed by such recommendations is appropriate to assure the protection of human subjects of biomedical and behavioral research conducted or sponsored under programs administered by him, and (2) if he determines that such action is not so appropriate, publish in the FEDERAL REGISTER such determination together with an adequate statement of the reasons for his determination. Since the Department has not yet completed its own review of this report, the views set forth in it

are not necessarily those of the Department of Health, Education, and Welfare. The Department will be evaluating the report during the comment period.

Dated: March 1, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: March 6, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

THE NATIONAL COMMISSION FOR THE PROTECTION OF HUMAN SUBJECTS OF BIOMEDICAL AND BEHAVIORAL RESEARCH

RESEARCH INVOLVING THOSE INSTITUTIONALIZED AS MENTALLY INFIRM: REPORT AND RECOMMENDATIONS

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INTRODUCTION

The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research was established in 1974 under the National Research Act (Pub. L. 93-348) to develop ethical guidelines for the conduct of research involving human subjects and to make recommendations for the application of such guidelines to research conducted or supported by the Department of Health, Education, and Welfare (DHEW). The legislative mandate also directs the Commission to make recommendations to Congress regarding the protection of human subjects in research not subject to regulation by DHEW. Classes of subjects that must receive the Commission's particular attention include children, prisoners and those institutionalized as mentally infirm.

The duties of the Commission with regard to research involving those institutionalized as mentally infirm are as follows:

> The Commission shall identify the requirements for informed consent to participation in biomedical and behavioral research by * * * the institutionalized mentally infirm. The Commission shall investigate and study biomedical and behavioral research conducted or supported under programs administered by the Secretary [DHEW] and involving * * * the institutionalized mentally infirm to determine the nature of the consent obtained from such persons or their legal representatives before such persons were involved in such research; the adequacy of the information given them respecting the nature and purpose of the research, procedures to be used, risks and discomforts, anticipated benefits from the research, and other matters necesary for informed consent; and the competence and the freedom of the persons to make a choice for or against involvement in such research. On the basis of such investigation and study the Commission shall make such recommendations to the Secretary as it determines appropriate to assure that biomedical and behavioral research conducted or supported under programs administered by him meets the requirements respecting informed consent identified by the Commission.

This responsibility is broadened by a provision that the Commission make recommendations to Congress rgarding the protection of subjects (including those institutionalized as mentally infirm) involved in research not subject to regulation by DHEW.

To discharge its duties under this mandate, the Commission studied the nature and extent of research in mental health and illness and retardation and the issues surrounding the participation in research of those institutionalized as mentally infirm. Commission members and staff visited a school for the mentally retarded and a large, urban mental hospital (both with research units) and talked with residents, staff, research personnel, members of the review committees, and administgrators. Representatives from professional societies, federal agencies and public interest groups, as well as members of the public, presented their views to the Commission at public hearing. The national Minority Conference on Human Experimentation, convoked by the Commission to assure that viewpoints of minorities would be expressed, made recommendations to the Commission on research involving those institutionalized as mentally infirm. The Commission also reviewed papers and reports prepared under contract, including papers on informed consent and a survey of actual review and consent practices in research involving institutionalized subjects. Finally, the Commission conducted extensive deliberations in public and developed recommendations on the participation of those institutionalized as mentally infirm in research.

The Commission's recommendations are set forth at the outset of this report, followed by chapters presenting background information, summaries of reports and views presented to the Commission, and analysis of the law with respect to reserch involving those institutionalized as mentally infirm, and an analysis of various ethical arguments. An appendix to this report contains the text of reports and papers prepared under contract, other materials reviewed by the Commission in the course of its study and deliberations, and a selective bibliography.

* * * * *

Definitions

The term "institutionalized mentally infirm" as used in section 202(a)(2) of the National Research Act is defined to include "individuals who are mentally ill, mentally retarded, emotionally disturbed, psychotic, or senile, or who have other impairments of a similar nature and who reside as patients in an institution." Thus, the term "mentally infirm" was apparently intended to encompass a broad array of people who, because of cognitive or emotional handicaps, reside in stitutins and are subject to institutional constraints. Several problems with this term should be noted.

First, the term "mentally infirm" is not in current clinical use.* There is no reference to it in the "Diagnostic and Statistical Manual of Mental Disorders" published by the American Psychiatric Association. Second, there is considerable debate about whether symptoms that may result in institutionalization are properly characterized as diseases or illnesses in the conventional sense, or whether they represent problems in social adaptation. Research findings and current theories of personal adjustment recognize an interaction between biological and environmental factors resulting in behavior that society defines as illness and disability An alternative to psychiatric diagnoses, which assume a medical or disease model, is the view that disturbing behavior is more appropriately described in terms of the immediate antecedent and consequent conditions that evoke, reinforce and perpetuate that behavior. The use of the archaic term "infirm" is thus problematic since it implies limited physical functioning. Third, it is increasingly recognized that labelling may lead to stereotyped conceptions of people and their problems. Finally, it must be recognized that some persons are institutionalized as mentally infirm because of misdiagnosis or by error. Therefore, the Commission uses the term "those institutionalized as mentally infirm" to avoid endorsing any particular theory of cause or intervention.

The phrase "who reside as patients in an institution" refers, for the purpose of this report, to residents, either by voluntary admission or involuntary commitment, in public or private mental hospitals, psychiatric wards of general hospitals, community mental health centers, half-way houses or nursing homes for the mentally disabled, and similar institutions. It should be noted that such institutions may house individuals not mentioned specifically in the definition of the institutionalized mentally infirm, most notably alcoholics and drug abusers. The Commission's recommendations are applicable to research involving such individuals when they are residents of such institutions.

National policies toward deinstitutionalization and the use of alternative treatment modalities have resulted in an increase in the number of mentally disabled persons who reside outside traditional institutions. Such persons may be discharged from institutions or may be on "leave" or "furlough" status. They may reside in foster homes, group homes or other facilities. If they remain on an institution's census and are therefore under the administrative responsibility of the institution, such persons are considered to be covered by the recommendations in this report.

*Many individuals who commented on DHEW's November 16, 1973 proposed policy objected to the use of the term "mentally infirm" because it reflects an antiquated notion of mental illness and its scope is unclear, e.g., some felt it included those incapacitated as a result of physical conditions. DHEW substituted the term "mentally disabled" in the proposed rulemaking of August 23, 1974.

Recommendations

The following recommendations are directed to:

The Secretary of Health, Education, and Welfare with respect to research that is conducted or supported under programs administered by DHEW and reported to DHEW in fulfillment of regulatory requirements; and

The Congress, with respect to research that is not subject to regulation by the Secretary of Health, Education, and Welfare.

Recommendation (1). Research involving those institutionalized as mentally infirm may be conducted or supported provided an Institutional Review Board has determined that:

(A) the research methods are appropriate to the objectives of the research;

(B) the competence of the investigator(s) and the quality of the research facility are sufficient for the conduct of the research;

(C) appropriate studies in nonhuman systems have been conducted prior to the involvement of human subjects;

(D) there are good reasons to involve institutionalized persons in the conduct of the research;

(E) risk of harm or discomfort is minimized by using the safest procedures consistent with sound research design and by using procedures performed for diagnostic or treatment purposes whenever possible;

(F) adequate provisions are made to protect the privacy of the subjects and to maintain confidentiality of data;

(G) selection of subjects among those institutionalized as mentally infirm will be equitable;

(H) adequate provisions are made to assure that no prospective subject will be approached to participate in the research unless a person who is responsible for the health care of the subject has determined that the invitation to participate in the research and such participation itself will not interfere with the health care of the subject; and

(I) the conditions of all applicable subsequent recommendations are met.

Comment: In this recommendation, the Commission establishes general conditions that should apply to the conduct of all research involving those institutionalized as mentally infirm. Subsequent recommendations impose additional conditions for different categories of such research. Comments on the individual sections of this recommendation follow.

(A) Research should be judged according to the methodology of the relevant discipline to assure that the proposed procedures are appropriate for obtaining the information sought in the research. The biomedical aspects of a research protocol should be evaluated according to the methodology of the relevant biomedical sciences, and the behavioral aspects should be assessed according to the methodology of the relevant behavioral sciences. Biomedical research methods or designs should not be imposed inappropriately on observational or behavioral research protocols or on the behavioral portions of protocols involving both biomedical and behavioral approaches to an inquiry.

(B) The experience and expertise of the principal investigator and research staff should be such that they will be able to perform competently the procedures involved in the research and deal with any reasonably foreseeable adverse reactions that may arise in the course of the research. Also, the facilities where the research will take place should be adequate to meet any contingencies reasonably foreseeable in the conduct of the research and to assure the safety of the research subjects.

(C) Where appropriate, drugs, devices and behavioral interventions should be studied first in nonhuman systems (e.g., animals, tissue, cells) in order to obtain sufficient data to justify introduction into humans. In some instances (e.g., when the study involves cognitive functiions or psychiatric conditions that have no parallel in animals, or when the research focuses on the nature and effects of institutionalization) it is clearly impossible to perform studies on animals. The investigator proposing a study that will involve those institutionalized as mentally infirm should document the performance of prior studies in nonhuman systems or indicate why such studies are not feasible or appropriate.

(D) In reviewing proposals to involve institutionalized persons in research, the IRB should evaluate the appropriateness of involving alternative, noninstitutionalized populations in the study instead of, or along with, the institutionalized individuals. Sometimes the participation of alternative populations will not be possible or relevant, as when the research is designed to study problems or functions that have no parallel in free-living persons, (e.g., studies of the effects of institutionalization or studies related to persons, such as the profoundly retarded or the severely multiply handicapped, who are almost always found in residential facilities). There may be times when the research design requires the participation of both institutionalized and noninstitutionalized subjects. This might occur, for example, in studies to determine the effectiveness of a given therapeutic approach on both moderately and severly disabled individuals, or to compare the effect of a patient's residential situation on therapeutic response.

The IRB should determine whether the involvement of institutionalized individuals in the research would be exploitive, and the burden should be on the investigator to show that it is appropriate to involve such individuals in the research. General factors to be considered in assessing the appropriateness of conducting research in an institution include whether the research is relevant to the subjects' emotional or cognitive disability, whether individuals with the same disability are reasonably accessible to the investigator outside the institutional setting, and whether the research is designed to study the nature of the institutional process or the effect of some aspect of institutionalization on persons with a particular disability.

Length of stay in an institution should be extended for the purpose of participating in or completing a research project only if a subject knowledgeably agrees. The IRB should review with special care any proposal to institutionalize subjects or to extend their stay in an institution solely for research purposes, to determine whether the nature of the research in fact requires that it be conducted in such a setting. In making such a determination, the IRB should consider whether the facilities or personnel necessary to conduct the research or to protect the subjects' well-being are available only in an institutional setting, and whether, even if such is the case, part-time stay in a general hospital might suffice.

(E) In order to minimize the risk of harm or discomfort to which persons in institutions are subjected, it is important to design research so as to use materials (e.g., blood or urine samples) or information (e.g., measures of intellectual, psychiatric or neurological functioning) that are obtained for diagnostic or therapeutic purposes, whenever possible. Moreover, when additional information or procedures are required, the investigator should use the safest means of accomplishing the objective, consistent with the research goal, information requirements and time constraints.

(F) Adequate measures should be taken to protect the privacy of institutionalized subjects and to maintain the confidentiality of the data that are produced. The very fact of institutionalization, if divulged, may itself be harmful. Therefore, personally identifiable information should not be recorded, except as necessary, and such information should be coded as soon as possible so that the research records will not identify the subjects. Access to the code should be restricted to a "need to know" basis. Individually identifiable information should not be released to individuals unrelated to the research or the patient's treatment without written authorization of the patient or the patient's guardian of the person. Beyond this fundamental protection for all institutionalized subjects, further procedures for protecting confidentiality of particular data should be developed commensurate with the sensitivity of the information.

(G) It is the responsibility of the IRB to monitor the overall distribution of research burdens and benefits in the institution under its authority, and to guard against the inequitable distribution of either. Subjects in an institution should be selected so that any burdens of research do not fall disproportionately on those who are least able to make decisions regarding participation in research. Further, one group of patients should not be offered opportunities to participate in research involving procedures or therapies from which they may derive benefit to the unfair exclusion of other, equally suitable, groups of patients.

(H) The IRB should determine, for each protocol, the appropriate person from whom to request permission to approach prospective subjects. The purpose of this recommendation is to assure that the well-being of a patient is not adversely affected by the request to participate in research, and that participation does not interfere with patient care. In addition, the provision is designed to assure that patients do not become involved in research that would pose additional risk to them as a consequence, for example, of drug interactions with their medical therapy.

It is not necessary for the IRB to designate a particular individual to make the determination with respect to each patient, but rather the category of persons or relationship between the person making the determination and the patient. Where the proposed research involves mere observation, the superintendent of the institution or ward may be the appropriate person to give permission. Where the research involves some degree of risk, someone more immediately involved with the provision of care for the patients should be consulted. In some cases, a social worker or psychologist may be the most qualified person; in other instances the IRB may determine that the investigator should request such permission from the physician of record.

When a potential subject's physician or therapist of record is involved in the proposed research, independent

clinical judgment should be obtained regarding the appropriateness of including that patient in the research. This will avoid conflict of interest between the objectives of health care and those of research, while still permitting clinicians, who may be especially knowledgeable regarding promising avenues of research, to apply their expertise in both enterprises.

(I) Recommendation (1) sets forth general provisions that should apply to all research involving those institutionalized as mentally infirm. Subsequent recommendations provide additional conditions that must be met for the conduct or support of certain kinds of such research. Research protocols should satisfy the conditions of one or more of the subsequent recommendations, as applicable.

Recommendation (2). Research that does not present more than minimal risk to subjects who are institutionalized as mentally infirm may be conducted or supported provided an Institutional Review Board has determined that: (A) the conditions of recommendation (1) are met; and (B) adequate provisions are made to assure that no subject will participate in the research unless: (i) the subject consents to participation;

(ii) if the subject is incapable of consenting, the research is relevant to the subject's condition and the subject assents or does not object to participation; or

(iii) if the subject objects to participation, the research includes an intervention that holds out the prospect of direct benefit for the individual subject or a monitoring procedure required for the well-being of the subject, and the subject's participation is specifically authorized by a court of competent jurisdiction.

Where appropriate, the Institutional Review Board should appoint a consent auditor to observe the consent process and determine whether each subject (i) consents, or (ii) is incapable of consenting and either assents or does not object, or (iii) objects to participation.

Comment: For the purposes of this report, "minimal risk" means the risk (probability and magnitude of physical or psychological harm or discomfort) that is normally encountered in the daily lives, or in the routine medical or psychological examination, of normal persons. Thus, for subjects who are institutionalized as mentally infirm, routine examination procedures present no more than minimal risk if the likely impact of such procedures on them is similar to what would be experienced by normal persons undergoing the procedures. The IRB may determine that prospective subjects who are institutionalized as mentally infirm are likely to react more severely than normal persons to certain routine procedures; in such instances, the procedures present more than minimal risk to the subjects. On the other hand, information that is known about certain subjects, or their prior experience, may establish that the risk presented to them by routine procedures is equivalent to what would be presented to normal persons. For each research protocol, the IRB must determine the degree of risk that would be presented to normal persons and then consider whether such risk is heightened by the illness or institutionalization of the prospective subjects or class of subjects.

The standard for "consent" by an institutionalized subject under this and the following recommendations is the general standard for informed consent (see the Commission's forthcoming reports on the ethical principles that should underlie research involving human subjects, and the performance of Institutional Review Boards). If the subject, because of illness or institutionalization, is incapable of giving informed consent to participate in research presenting no more than minimal risk, the subject's "assent" should be sufficient to authorize participation, provided the research is relevant to the subject's condition.

The Commission has chosen the term "assent" to describe authorization by a person whose capacity to understand and judge is somewhat impaired by illness or institutionalization, but who remains functional. The standard for "assent" requires that the subject know what procedures will be performed in the research, choose freely to undergo those procedures, communicate this choice unambiguously, and be aware that subjects may withdraw from participation. This standard for assent is intended to require a lesser degree of comprehension by the subject than would generally support informed consent, and it is not related to judicial determination of incompetency or commitment status. Assent is not intended to serve as a substitute for informed consent, but rather as the applicable standard for agreement to participate where the subject is incapable of giving informed consent and certain other conditions are satisfied. Under Recommendation (2), those conditions require that the research be relevant to the subject's condition and present no more than minimal risk. Additional circumstances under which assent may authorize participation in research are set forth in the following recommendations.

Where the subject is incapable even of assenting, absence of objection should be sufficient to permit participation in research that is relevant to the subject's condition and presents no more than minimal risk.

If the subject objects to participation in research presenting no more than minimal risk, such participation may not be authorized except by a court of competent jurisdiction, and such authorization should not be sought except in cases where the research includes an intervention or monitoring procedure that is directly beneficial to the subject. The desires of a caring parent with respect to a subject's participation should be presented for the court's consideration.

The Institutional Review Board should determine whether it is appropriate to appoint someone to audit the process of consent to participation in research presenting no more than minimal risk. Such a person, or "consent auditor," should observe the consent process and determine on behalf of the Institutional Review Board whether each prospective subject consents, or, being incapable of consenting, assents, or objects to participation in the research. The function of the consent auditor, whose appointment is discretionary under Recommendations (2) and (3) but mandatory under Recommendation (4), is discussed more fully in following comments.

Recommendation (3). Research in which more than minimal risk to subjects who are institutionalized as mentally infirm is presented by an intervention that holds out the prospect of direct benefit for the individual subjects, or by a monitoring procedure required for the well-being of the subjects, may be conducted or supported provided an Institutional Review Board has determined that:

(A) the conditions of Recommendation (1) are met;

(B) such risk is justified by the anticipated benefit to the subjects;

(C) the relation of such risk to anticipated benefit to subjects is at least as favorable as that presented by alternative approaches;

(D) adequate provisions are made to assure that no adult subject will participate in the research unless:

(i) the subject consents to participation;

(ii) if the subject is incapable of consenting, the subject assents to participation (if there has been an adjudication of incompetency, the permission of a guardian may also be required by state law);

(iii) if the subject is incapable of assenting, a guardian of the person gives permission (if a guardian of the person has not been appointed, such appointment should be requested at a court of competent jurisdiction) or the subject's participation is specifically authorized by a court of competent jurisdiction; or

(iv) if the subject objects to participation, the intervention holding out the prospect of direct benefit for the subject is available only in the context of the research and the subject's participation is specifically authorized by a court of competent jurisdiction; and

(E) adequate provisions are made to assure that no child will participate in the research unless:

(i) the subject assents (if capable) and the subject's parent(s) or guardian give permission; or

(ii) if the subject objects to participation, the intervention holding out the prospect of direct benefit for the subject is available only in the context of the research and the subject's participation is specifically authorized by a court of competent jurisdiction.

Where appropriate, the Institutional Review Board should appoint a consent auditor to observe the consent process and determine whether each subject consents, or is incapable of consenting and assents, or objects to participation, and whether the permission of the guardian of an adult subject, or parent(s) of a child, who objects should be supplemented by court authorization.

Comment. Greater than minimal risk is permissible under this recommendation only if it is presented by an intervention that holds out the prospect of direct benefit to the individual subjects or by a monitoring procedure necessary to maintain the well-being of those subjects. Such risk is acceptable, for example, when all available treatments for a serious condition have been tried without success, and the remaining option is a new intervention under investigation. To be considered "direct," the possibility of benefit to the subject must be fairly immediate. The expectation of success should be well-founded scientifically in order to justify undertaking whatever risk is involved. It is also appropriate to involve institutionalized individuals in research when new biomedical or behavioral procedures under investigation present at least an equally favorable risk-benefit ratio as accepted therapeutic, diagnostic or preventive methods.

The IRB should evaluate research protocols of this sort in the same way that comparable decisions are made in clinical practice. It should compare the anticipated benefits of the intervention under investigation (including the monitoring procedures necessary for care of the patient) with those of available alternative methods for achieving the same goal, and should also consider the risk and possible benefit of attempting no intervention whatsoever. In evaluating anticipated benefits of such research, the IRB should consider only benefits that will in fact accrue to the subjects of the research, rather than to their caretakers. If the research also includes an investigative procedure that does not hold out the prospect of direct benefit to the subjects and presents more than minimal risk, the research should be reviewed under Recommendation (4) with respect to such procedure.

An adult subject's consent or assent, under the standards described in the Comment to Recommendation (2), above, should be sufficient to authorize participation in research that is reviewed under Recommendation (3). If the subject is incapable of consenting or assenting but does not object to participation, the permission of a guardian should be required to authorize participation; mere absence of objection does not constitute sufficient grounds to proceed with research whenever that research presents more than minimal risk. If the subject is incapable of assenting and does not have a legally appointed guardian of the person, arrangements should be made for requesting the appointment of a guardian following a court hearing in which the potential subject is represented by a guardian ad litem and has the right to be present, to present witnesses, and to cross-examine witnesses. The patient may then be included as a research subject if the guardian gives permission. Alternatively, the court may specifically authorize such participation. It is the Commission's intent that guardianships established pursuant to this recommendation be limited, with authority extending only to the provision and continuance or withdrawal of permission for the subject's participation in the research. An official serving in an institutional capacity should not be considered a guardian for the purposes of these recommendations.

The objection of an adult subject should not be overridden unless a court of competent jurisdiction specifically authorizes participation and, in addition, the intervention expected to provide direct benefit to the subject is available only in the context of research. Such would be the case, for example, with a new drug that the Food and Drug Administration restricts to controlled clinical trails until safety and efficacy have been demonstrated. This condition would not be satisfied by an intervention that the investigator, at his or her discretion, determines to make available only to participants in a research project. Further, in jurisdictions that grant institutionalized individuals an unqualified right to refuse therapy, their objection to participation in research will be binding.

Generally, a child capable of assenting should be asked if he or she is willing to participate in the research. A child should not be included over his or her objection unless there is court permission and, as with adult subjects, the therapeutic intervention being studied is available only in the context of research. The desires of a caring parent regarding a child's participation should be presented for the court's consideration.

The Institutional Review Board should determine whether it is appropriate to appoint an auditor to observe and assure the adequacy of the consent process for research reviewed under this recommendation. The IRB's determination should be based on the nature of the subject population and the risks that are involved. If there is a substantial question about the ability of the subjects to assent or there is a significant degree of risk involved in the research, the appointment of a consent auditor by the IRB would be appropriate.

The auditor should determine whether subjects consent, assent or object to participation in research. In some instances it may be appropriate for the auditor to observe the conduct of the research after a subject has assented, in order to determine whether the subject continues to assent. The auditor should be responsible only to the Institutional Review Board with respect to such determinations and should not be involved (except in the capacity of consent auditor) with the research for which subjects are being sought. The auditor should be a person who is familiar with the physical, psychological and social needs of the class of prospective subjects, as well as their legal status.

In determining the ability of a subject to assent, the auditor should take into consideration not only the individual's ability to realize what procedures will be performed and to communicate a judgment regarding participation, but also the individual's length of stay in the institution and the opportunities that have been available during that period for making choices. Thus, the consent auditor should be sensitive to the effects of prolonged institutionalization on a person's ability to make choices regarding any aspect of his or her life.

Recommendation (4). Research in which more than minimal risk to subjects who are institutionalized as mentally infirm is present by an intervention that does not hold out the prospect of direct benefit for the individual subjects, or by a monitoring procedure that is not required for the well-being of the subjects, may be conducted or supported provided an Institutional Review Board has determined that:

(A) the conditions of Recommendation (1) are met;

(B) such risk represents a minor increasde over minimal risk;

(C) The anticipated knowledge (i) is of vital importance for the understanding or amelioration of the type of disorder or condition of the subjects, or (ii) may reasonably be expected to benefit the subjects in the future;

(D) Adequate provisions are made to assure that no adult subject will participate in the research unless:

(I) The subject consents to participation;

(II) If the subject is incapable of consenting, the subject assents to participation (if there has been an adjudication of incompetency, the permission of a guardian may also be required by State law); or

(III) If the subject is incapable of assenting, a guardian of the person gives permission (if a guardian of the person has not been appointed, such appointment should be requested at a court of competent jurisdiction).

The subject should not be involved in research over his or her objection.

(E) If the subject is a child, the requirements of the Commission's Recommendations (5), (7) and (8) on research involving children are satisfied.

The Institutional Review Board should appoint a consent auditor to observe the consent process and determine whether each subject consents, or is incapable of consenting and assents, or objects to participation.

Comment. In determining whether an intervention presents only a minor increment over minimal risk, the IRB should consider the degree of risk presented from at least the following four perspectives: A common-sense estimation of the risk; an estimation based upon investigators' experience with similar interventions or procedures; any statistical information that is available regarding such interventions or procedures; and the situation of the proposed subjects.

Individuals who are institutionalized as mentally infirm may participate in research presenting a minor increment of risk above minimal, even if there is no expectation that they will derive direct (i.e., fairly immediate) benefit from such participation: *Provided,* There is good reason to believe the research will yield information of vital importance for the understanding of the condition for which the subjects have been institutionalized, or there is a possibility of remote benefit to the subjects, such as the eventual development of better treatment for their condition. In the former case, the expectation may be only the development of better methods of diagnosis or prevention, so that others who are at risk for the disorder, or a future generation of persons suffering from the disorder, will be the ones to benefit from the research.

An adult subject's consent or assent, under the standards described in the Comment to Recommendation (2), above, should be sufficient to authorize participation in research that is reviewed under Recommendation (4). If the subject is incapable of assenting but does not object to participation, the permission of a guardian of the person should be required to authorize participation. As noted previously, an official serving in an institutional capacity should not be considered a guardian for the purposes of these recommendations. A subject's objection to research that is reviewed under Recommendation (4) should be binding.

In its "Report and Recommendations: Research Involving Children," the Commission recommended conditions that must be met before children may participate in research that involves more than minimal risk and a procedure from which the subjects are not expected to benefit. Such conditions include a limitation on the amount of permissible risk (a minor increment above minimal), a limitation on the nature of permissible risk (reasonably commensurate with experiences inherent in the subject's actual or expected medical, psychological or social situations), and specific provisions for the assent of the children and the permission of their parents or guardians. For this kind of research (i.e., where the subjects will derive no direct benefit as a result of participation), a child's objection to participation should be binding. (See Recommendations (5), (7) and (8) of the Commission's "Report and Recommendations: Research Involving Children.")

For research that is reviewed under Recommendation (4), the Institutional Review Board should appoint an auditor to observe and assure the adequacy of the consent process. Whereas the appointment of an auditor is at the discretion of the IRB under the previous recommendations, it should be mandatory for research that presents more than minimal risk and does not hold out the prospect of direct benefit. The auditor should determine whether subjects are capable of assenting and do in fact assent to participate; where appropriate, the auditor should also observe the conduct of the research to determine whether the subjects continue to assent. The auditor should assure that any objection by a subject is honored; there are no conditions under Recommendation (4) for overriding an objection. As stated previously, the auditor should be responsible only to the Institutional Review Board and should not be involved (except in the capacity of consent auditor) in the conduct of the research. (Further statements regarding the qualifications and function of the consent auditor are set forth in the Comment to Recommendation (3).)

Recommendation (5). Research that cannot be approved by an Institutional Review Board under Recommendations (2), (3), and (4), as applicable, may be conducted or supported provided:

(A) An Institutional Review Board has determined the following:

(I) The conditions of Recommendation (1) are met; and

(II) The research presents an opportunity to understand, prevent or alleviate a serious problem affecting the health or welfare of persons institutionalized as mentally infirm; and

(B) A national ethical advisory board and, following opportunity for public review and comment, the head of the responsible Federal department or agency have determined that:

(I) The conduct of the research will be in accord with the basic ethical principles that should underlie the conduct of research involving human subjects; and

(II) Adequate provisions are made for obtaining consent or assent of each subject or permission from a guardian of the person.

Comment. If an IRB is unable to approve a proposed research project under the conditions of Recommendations (2), (3), and (4), as applicable, in certain circumstances the IRB may nevertheless certify the research for review and possible approval by a national ethical advisory board and the head of the responsible department or agency. Such review is contigent upon an IRB's determination that the research presents an opportunity to understand, prevent or alleviate a serious problem affecting the health or welfare of those institutionalized as mentally infirm, and that the provisions of Recommendation (1) are fulfilled. Thereafter, the research should be reviewed by the national board and head of department or agency, with opportunity for public comment, to determine whether the research is justified by the importance of the knowledge sought and is in accord with basic ethical principles that should underlie the conduct of research involving human subjects. Because of the importance of the ethical issues at stake, debate should be in a public forum, and conduct of the research should be delayed pending Congressional notification and a reasonable opportunity for Congress to take action regarding the proposed research.

The Commission believes that only research of major significance, in the presence of a serious health problem, would justify the approval of research under recommendation (5). The problem addressed must be a grave one, there must be a reasonable expectation of developing needed scientific information, and an equitable method should be used for selecting subjects who will be invited to participate. The Commission believes that generally the authorization requirements of Recommendation (4) (D) and (E) should prevail; however, the ethical advisory board may recommend otherwise if it feels that the importance of the research justifies such a recommendation and that basic ethical principles will not be violated by so doing.

Chapter 1. Background

Mental illness. It is difficult to estimate the extent of mental illness in

the United States. There is no national registry, and there are difficulties in distinguishing psychiatric disorders from problems in living. Most authorities state that about 10 percent of the people in this country experience an incapacitating episode at some point in their lives. Of course, the number of individuals handicapped at a given time is much lower. The most recent data (1973) indicate that about 2.5 percent of the U.S. population receives mental health treatment in a given year. (*1*)

There has been a radical shift of the locus of treatment over the past two decades. In 1955, 49 percent of patient care episodes were in state and county mental hospitals. By 1973, only 12 percent of the episodes were in such institutions, while 49 percent were provided through outpatient psychiatric services and 23 percent through community mental health centers. (*2*) The general decline in the number of hospital beds in the United States has been most pronounced for psychiatric beds. While two decades ago half of the nation's bed capacity was allocated to psychiatric patients, this proportion was reduced to 25 percent by 1974. (*3*)

The declining role of state and county mental hospitals is related not only to expanded use of outpatient treatment, but also to an increased reliance on nursing homes for those with long-term disabilities. From 1963 to 1969, the proportion of resident patients with mental disorders who reside in nursing homes, rather than in psychiatric hospitals, increased from 53 percent to 75 percent, and the trend presumably has continued. (*4*)

The majority of inpatient beds in psychiatric facilities are in state hospitals which, along with the few remaining county hospitals, account for 71 percent of these beds. Other facilities provide the following proportion of beds for inpatient psychiatric care: The Veterans Administration (10 percent), general hospitals (6 percent), residential treatment centers for emotionally disturbed children (5 percent), private/nonprofit psychiatric hospitals (4 percent), and federally funded comprehensive community mental health centers (3 percent). (*5*) In 1973, inpatient facilities cared for 1,679,608 psychiatric episodes. (*6*) Most people admitted to these facilities are between 18 and 64 years old. (*7*)

The following table shows the distribution of admissions by diagnostic category for 1971. (*8*)

PERCENT DISTRIBUTION

	All inpatient*	Public	Nonpublic
All diagnoses[1]	100.0	100.0	100.0
Mental retardation	1.2	1.7	.3
Organic brain syndromes	6.3	7.0	4.8
Schizophrenia	27.0	31.0	18.5
Depressive disorders	22.5	13.8	41.0
Other psychotic disorders	1.6	1.4	2.2
Alcoholism	15.8	20.0	6.6
Drug abuse	5.1	6.2	2.6
All other disorders	18.6	16.3	23.4
Undiagnosed	1.9	2.6	.6

[1] Excludes residential treatment centers for emotionally disturbed children and other multi-service facilities for which the demographic characteristics of admissions were not available.

[2] The diagnostic groupings used in this Table are defined in terms of the Diagnostic and Statistical Manual—DSM II, American Psychiatric Association, as follows: Mental Retardation 310-315; Organic Brain Syndromes 290, 292, 293, 294 (except 294.3), 309 (except 309.18, 309.14); Schizophrenia 295; Depressive Disorders 296, 298.0, 300.4; Other Psychotic Disorders 297, 298.1-298.9; Alcohol Disorders 291, 309.13, 303; Drug Disorders 294.3, 309.14, 304.

The roles of sex and race are suggested by the observation that males are admitted more often than females, and nonwhites at a higher rate than whites. Nonwhite males are admitted to public mental health facilities at a rate eight times that for white males. It can also be noted from the above table that people diagnosed as schizophrenic tend to be admitted to public facilities, while depressive patients are more often admitted to nonpublic hospitals.

Except for the residents of nursing homes, the duration of inpatient treatment has decreased dramatically. The median lengths of stay for public nonfederal general hospitals, private and voluntary general hospitals, private mental hospitals, and Veterans Administration general hospitals, range from 7 to 24 days, while the median stay in state and county hospitals is 44 days. The latter facilities discharge over 75 percent of their patients within three months and over 85 percent by the end of six months. (*9*) It is clear that some stereotyped notions about the location and duration of psychiatric treatment no longer apply. Many variables account for these changes, including an emphasis on community-based services, the use of psychotropic medications, a recognition of the episodic nature of most illnesses, and a general liberalization of attitudes toward the care of the mentally ill.

Mental retardation. There are four to six million retarded persons in the United States. Although mental retardation occurs among all socioeconomic groups, it appears disproportionately more often among the socially and economically disadvantaged. More than 20 million family members are directly involved with retarded persons. (*10*)

Approximately 200,000 persons reside in 176 public institutions for the retarded, and 28,000 reside in 1,031 private facilities.(*11*) In addition, it has been estimated that 8 percent of nursing home residents are retarded, including 27 percent of those under age 65 who reside in skilled nursing homes.(*12*) There are 30,000 retarded persons in state mental hospitals.(*13*) They are predominantly mildly and moderately retarded adults, in contrast to residents of institutions specifically for the retarded, 70 percent of whom are severely or profoundly retarded. Half of those with severe and profound retardation have at least one additional handicap, and over a third have two or more additional handicaps.(*14*)

The number of institutions for the mentally retarded has increased at an accelerating pace as a consequence of federal legislation (Mental Retardation Facilities and Construction Act of 1962, Pub. L. 88-164). New facilities, however, are so much smaller than the older institutions that there has been an overall 10 percent decline in the total population of public residential facilities since 1970. This is a reflection of the "normalization" policy which asserts that most of the retarded can function in supervised community settings.(*15*) Progress is being made toward the national goal to deinstitutionalize about one-third of the retarded persons living in public institutions and return them to the community.(*16*) "Normalization" is the policy underlying many approaches to retardation including housing, employment, treatment and education, as well as standards for accreditation of facilities.(*17*)

Admission Procedures: Mentally Ill. Procedures for admission to institutions for the mentally ill vary from state to state. Admissions are designated as voluntary or involuntary. By and large, involuntary commitment occurs only after a judicial or administrative determination that an individual is dangerous to self or others, or is in need of treatment.(*18*) Involuntarily committed persons, because they have been deprived of liberty, are provided with some constitutional safeguards (for example, due process requirements such as periodic review), but their freedom of choice with regard to treatment may be substantially curtailed. Voluntary residents are presumed to have entered the institution on their own initiative or to have acquiesced to the judgment of others who have brought them to the institution, although some voluntarily admitted persons have agreed to institutionalization only when threatened with involuntary commitment. Voluntarily admitted persons usually must give notice to the institution before they may leave. They may have freedom to participate in treatment decisions.

Admission Procedures: Mentally Retarded. Admission procedures for the retarded also vary among states. In

some states, admission procedures parallel those for the mentally ill. In others, the states take the position that they provide protective services for the retarded and thus do not require periodic judicial or administrative review for continued residence. The majority of institutionalized retarded persons are admitted without any legal proceedings; most enter a residential facility before their twenty-first birthday, most of them placed there by parents or guardians.(*19*)

The severely and profoundly retarded and the senile are more likely to be long-term residents than are those experiencing acute symptoms of mental illness. There are no data available on the average length of stay of retarded residents in public facilities, nor are there data which show the extent to which discharged persons move to other kinds of institutions.(*20*)

Thus, mentally infirm persons may be institutionalized for short or long periods. Commitment is usually for an indefinite term. Increasingly, however, legal restrictions are being placed on the length of time an involuntarily committed person may be kept for care or treatment without periodic review and evaluation.

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CHAPTER 2. NATURE OF RESEARCH INVOLVING THOSE INSTITUTIONALIZED AS MENTALLY INFIRM*

Research involving the mentally infirm is broad in scope, extending from cell physiology to social systems, from normal developmental processes to behaviors associated with specific disorders. The research may be biomedical, behavioral or biobehavioral. As in studies of normal functioning, the current trend is to focus on the interaction of physiological and behavioral processes. Studies involving those institutionalized as mentally infirm may involve interventions that benefit the subjects directly, may be designed to contribute knowledge about the class of subjects, or may be unrelated to the conditions of the mental infirmity. Even in research not involving procedures designed to provide direct benefit to the health or well-being of the research subjects, however, there may be incidental or indirect benefits.

Research that may benefit the subjects includes studies to improve existing methods of biomedical or behavioral therapy, or to develop new educational or training methods. The studies may evalute somatic or behavioral therapies, such as research designed to determine differential responsiveness to a particular drug therapy, or to match particular clients with the most effective treatment. Studies may also assess the efficacy of techniques for remedial education, job training, elimination of self-destructive and endangering behaviors, and teaching of personal hygiene and social skills.

Typical procedures for evaluating therapies include systematic observation of behavior; interviews or administration of questionnaires to residents, families, employers, etc.; psychological, educational and vocational testing; and the compilation of data regarding length of stay, duration of community care following discharge from resident services, and number of readmissions, as these relate to individual outcome. Evaluation fo therapeutic procedures may also involve random allocation of subjects to treatments.

A sizable proportion of research involving those institutionalized as mentally infirm is designed to produce knowledge about various disabilities, the factors underlying or precipitating them, the accompanying biobehavioral changes, and their incidence or distribution. Biological aspects of such research may involve biochemical evaluation or analyses, such as comparison of metabolism or biochemistry of schizophrenics with that of normal or depressed persons, investigation of the role of neurotransmitters in psychoses, and attempts to identify biochemical defects hypothesized to be genetically transmitted. Procedures typically used in such research include the collection of urine, blood and spinal fluid samples. Behaviorally oriented research projects may investigate motor, perceptual or cognitive behavior of the mentally infirm as compared to normals, such as studies of maze performance, visual or auditory thresholds, sentence completion and recall of serial digits. Although such research may benefit the class of subjects in the long run, much of it does not provide any immediate benefit to the participating subject (except to the extent that additional attention, personal interaction and monitoring of progress is beneficial to instutionalized persons).

Other research involves evaluation of alternatives to institutionalization of the mentally infirm, such as outpatient treatment, half-way houses, community care and other community-support programs. Alternative modes of institutionalization, such as increased resident-staff interaction, are also studied. Such studies may provide direct benefit to the individual subjects or may benefit long-term residents indirectly by demonstrating the harmful effects of institutionalization and encouraging improvements in the organization or administration of institutional facilities or the development of alternative treatment settings.

A study conducted for the Commission by the Survey Research Center, Institute for Social Research, University of Michigan, collected data regarding risks and benefits in research involving the mentally infirm. The findings of the Michigan study are summarized in Chapter 4 of this report.

CHAPTER 3. EXTENT OF RESEARCH INVOLVING THOSE INSTITUTIONALIZED AS MENTALLY INFIRM

Most federally sponsored research on mental health and illness is supported or conducted by the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), and within that agency by the National Institute

*For fuller descriptions of research involving those institutionalized as mentally infirm see: National Institute of Health, *Research in the Service of Mental Health: Report of the Research Task Force of the National Institute of Mental Health*, DHEW No. ADM-4-236, Washington, D.C., 1975.

of Mental Health (NIMH). NIMH supported approximately 1,050 research project grants in fiscal year 1975, at a cost of $62.7 million. Sixty-five percent of these grants in fiscal year 1975 were devoted to problem-oriented research and 35 percent to basic research. The total support of NIMH intramural and extramural research grants and contracts for fiscal year 1975 was distributed as follows:

Research focus	*Percent research funds*
Causes and prevention	63
Amelioration	19
Diagnosis and epidemiology	9
Services delivery	8
Dissemination and use of findings	2

Problem-oriented research included such areas as (1) diagnosis, description, etiology and treatment of major psychiatric disorders; (2) developmental and adjustment problems associated with divorce, aging, school and sexual development; and (3) mental health aspects of crime, poverty, urban living and delinquency. Basic research related to such areas as preclinical drug research and fundamental biological, psychological and sociocultural processes (see figure 1).

In order to identify the extent of NIMH supported research with the institutionalized, NIMH searched its active project grants in five research support program areas (clinical research, applied research, psychopharmacology, epidemiology, and services development research) and found that approximately 100 projects of 500 in these areas involved an inpatient population in fiscal year 1975. (*1*)

The Veterans Administration (VA) is the next largest sponsor of mental health research involving the institutionalized and conducts the greatest number of research projects. VA support for research on mental illness was $6.3 million (less that 10 percent of the VA research budget) for fiscal year 1973. Of the approximately 700 research projects concerning mental health or illness conducted by the VA in 1973, 230 were directly related to the nonretarded mentally ill. Of these, 70 percent were behavioral (for example, studies of the effects of institutionalization, attitude and motivation assessment, and behavior modification using operant conditioning procedures), and 30 percent were biobehavioral (for example, drug studies, psychophysiological measures, sleep and EEG studies) (see figure 2). (*2*)

Figure 3 identifies federal agencies, in addition to those discussed above, which conduct or support research relating to mental health illness. The nature of research supported by other agencies does not differ, in any pertinent way, from that supported by ADAMHA and the VA. (*3*)

Most of the federally sponsored research relating to mental retardation is conducted by twelve Mental Retardation Research Centers administered by the National Institute of Child Health and Human Development (NICHD), and by University Affiliated Facilities administered by the Division of Developmental Disabilities with support from the Bureau of Education for the Handicapped (Office of Education) and from Maternal and Child Health Service (Health Services Administration). NICHD also supports biobehavioral and behavioral research not affiliated with the Centers. Research sponsored by the Mental Retardation Branch, NICHD, is summarized in Figure 4. (*4*) Of the $5 billion annually expended for programs serving the retarded, less than one and one-half percent, or $62 million, is spent on research. (*5*) The National Institute of Neurological and Communicative Disorders and Stroke and the Rehabilitation Services Administration also fund some retardation research. The total mental retardation research budget of DHEW was $31 million for 1973.

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FIGURE 1
DISTRIBUTION OF BASIC AND PROBLEM ORIENTED RESEARCH
NATIONAL INSTITUTE OF MENTAL HEALTH – 1975

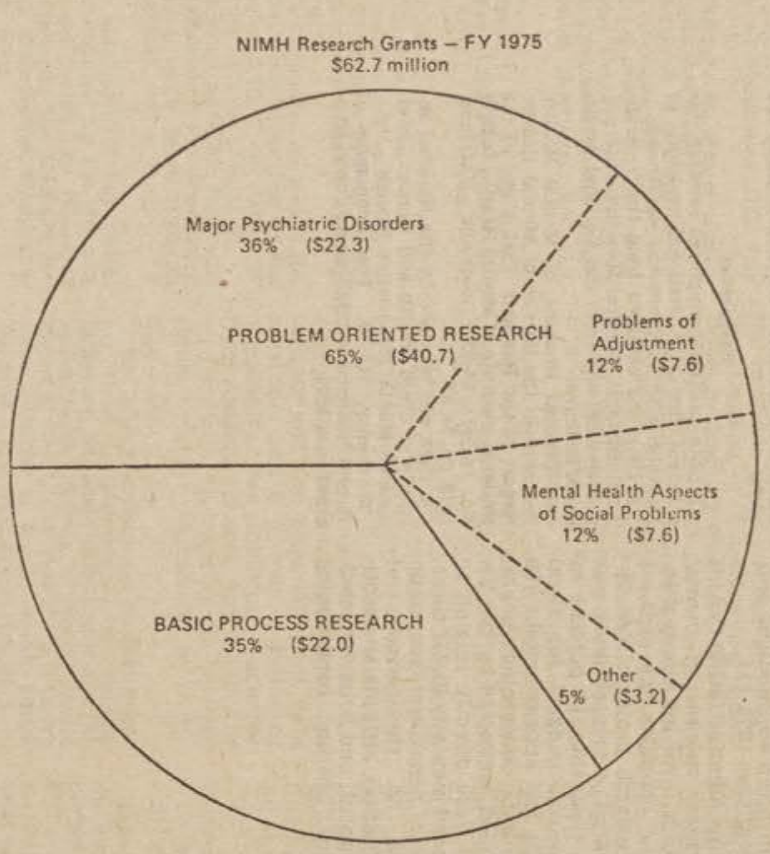


Fig. 1A

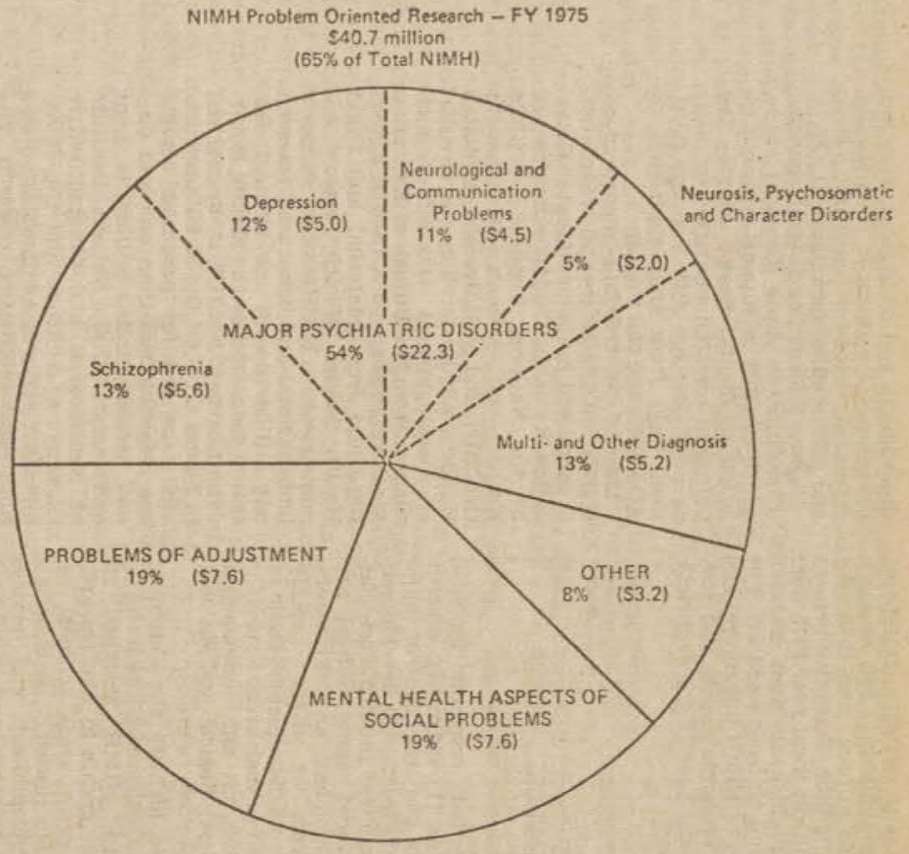
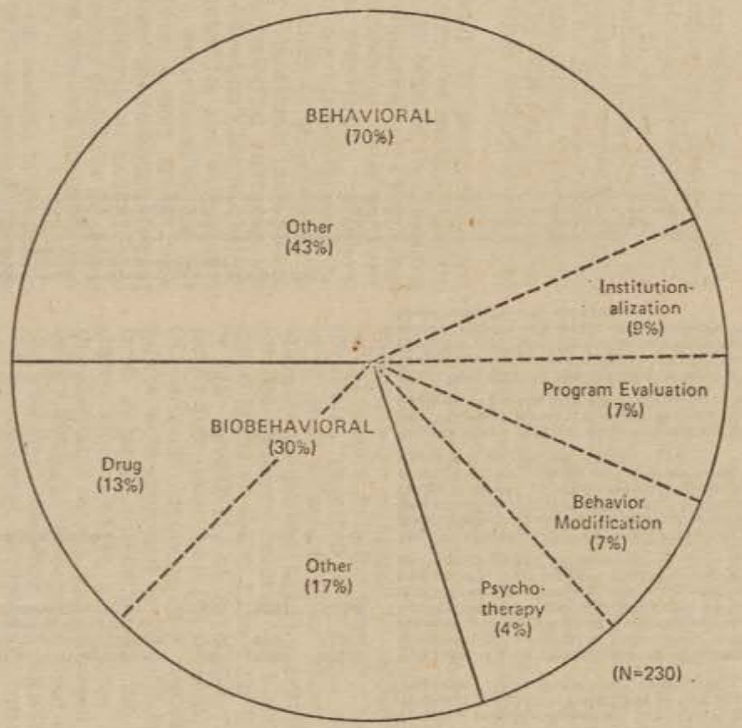


Fig. 1B

FIGURE 2

VETERANS ADMINISTRATION RESEARCH PROJECTS INVOLVING THE INSTITUTIONALIZED MENTALLY INFIRM

Fiscal Year 1974[1]



Behavioral: "Nonintrusive" behavioral research. The "other" category includes paper and pencil tests; interviews; questionnaires; measurements of attitude, motivation, mood, intelligence, aptitude, personality, etc.

Institutionalization: Research on the nature, process and effects of institutionalization.

Program Evaluation: Studies of rehabilitation or educational programs.

Behavior Modification: Projects utilizing behavior contingent management techniques.

Psychotherapy: Studies of the process and/or effects of therapeutic techniques.

Biobehavioral: Studies on psychophysiological and neuropsychological measures. The "other" category includes sleep, biofeedback, EEG, metabolism, etc.

1. Source: Veterans Administration

Reprinted from: National Institute of Mental Health, Research in the Service of Mental Health (1975), pp. 54-57.

Figure 3

1971 Extramural Projects Identified by the Smithsonian Science Information Exchange, as Relevant to NIMH Research
(Amounts in thousands, rounded)

	No.	Amount	Total 1971 Extramural Budget	Comments
National Institute of Mental Health	1,267	$73,669	$ 73,957	Note the close correspondence with internal NIMH figures for 1971.
National Institutes of Health (Total)	573	44,564	671,000*	
National Institute of Child Health and Human Development	225	19,372	46,900	Program interests focus on all human development, including population studies, pregnancy and birth, infant mortality; most pertinent to NIMH are studies in mental retardation, behavioral, cognitive, and social development, and social and intellectual aspects of aging.
National Institute of Neurological Diseases and Strokes	185	9,495	53,700	Program interests focus on neurological problems, epilepsy, cerebrovascular and muscular disorders; most pertinent to NIMH are studies of neural aspects of learning and behavior, and normal nervous system function.
National Heart and Lung Institute	25	2,794	109,800	Program interests cover cardiovascular and lung problems; most pertinent to NIMH are studies of behavioral aspects of hypertension.
National Institute of General Medical Sciences	16	2,537	77,800	Program interests center on nonacategorical health research, such as biomedical technology and clinical studies of trauma, surgery, anesthesiology; most pertinent to NIMH are studies on genetics, endocrine functioning, and chemical correlates of memory.
National Eye Institute	51	1,970	19,200	Program interests focus on visual disorders; most pertinent to NIMH are visual perception studies and pyschophysiological investigations.
National Institutes of Health (Other)	68	8,366	364,200	
Maternal and Child Health Service	23	2,156	5,735*	Research program centers on applied studies aimed at improving the health of children and mothers; pertinence to NIMH research is in general developmental area. MCHS is now a component of the Health Resources Administration.
National Center for Health Services Research and Development	21	1,933	47,000*	Research program focuses on health services organization, delivery, and financing, consumer education, and data systems; relevance to NIMH arrives from the extent to which general health delivery studies provide models for delivery of mental health services. NCHSR &D is now a component of the Health Services Administration.
Office of Education	24	8,052	61,262*	SSIE reports an additional 760 projects, without dollar values. Research focuses on the full range of educational issues, including curriculum development and testing and innovations. Most pertinent to NIMH are projects on learning disabilities. Many OE research efforts have been transferred to the National Institute of Education.
Social and Rehabilitation Service	114	7,752	31,764*	Research and development activities cover all aspects of welfare and social services: administration, service

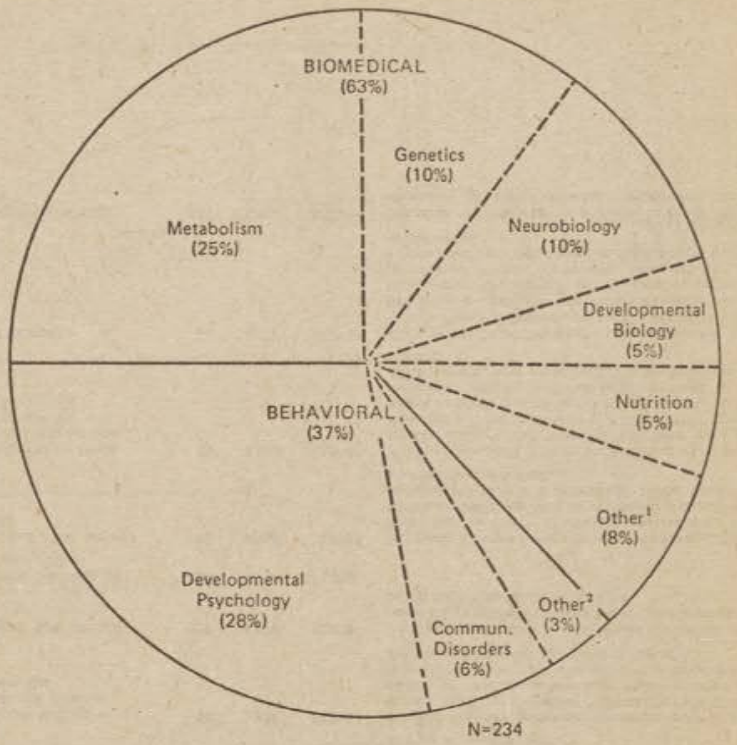
Figure 3 (con't.)

1971 Extramural Projects Identified by the Smithsonian Science Information Exchange, as Relevant to NIMH Research
(Amounts in thousands, rounded)

	No.	Amount	Total 1971 Extramural Budget	Comments
				development and evaluation, quality and standards. Most pertinent to NIMH are projects on the special service needs of children, the aged, and other special groups.
Department of Defence	84	$ 5,101	$703,213[1]	SSIE information underestimates DOD research, since classified projects are not included. DOD research activities emphasize military technology, but some fundamental biological, and behavioral research is included. Also, there has been recent focus on drug addiction and rehabilitation studies.
USAF	17	1,318	530,377[2]	
USA	26	1,409	115,502[3]	
USN	41	2,354	117,334[4]	
Office of Economic Opportunity	46	21,366	57,187[4]	Large-scale demonstration and evaluation programs in poverty typify research here. Studies of delivering health services to the poor are most pertinent to NIMH.
Department of Justice	18	1,096	6,033[4]	In the Justice Department's Law Enforcement Assistance Administration, research and demonstration projects center on the reduction of crime; alleviating conditions which promote crime; intervening in criminal careers; etc. Most pertinent to NIMH are studies of the characteristics of juvenile and adult offenders, of release and probation techniques, and of drug abuse prevention. Research in the Bureau of Narcotics and Dangerous Drugs is also of relevance to NIMH.
National Science Foundation	531	13,405	60,750[5]	NSF supports a complete range of scientific endeavor in their psychology programs. The Division of Social Sciences and the Division of Biological and Medical Sciences support fundamental studies that are pertinent to NIMH research. Some projects in the international program (e.g., genetic studies of primitive populations) also are relevant to NIMH activities.
Division of Social Sciences	354	9,122	17,390	
Division of Biological and Medical Sciences	177	4,283	43,360	
Veterans Administration	—	$ —	$ —	The VA's research program is almost exclusively intramural; 5,283 research projects were conducted in VA installations in 1971. The SSIE search identified 980 studies as related to NIMH research. Projects in psychiatry, psychology, social work, and endocrine functioning are most pertinent to NIMH.
Private Nonprofit	240	20,308	—	Over 60 private nonprofit organizations supported at least one project identified as mental health related. An additional 45 projects were listed without dollar values.
State Governments	28	1,255	—	Additionally, SSIE includes 348 State government projects but has no information about costs. The National Association for Mental Health has begun and hopes to expand a project to assess State-supported mental health research more accurately.

[1] Source: National Institutes of Health Basic Data 1972, p. 28.
[2] Source: DHEW Publication No. HSM 72-3002, p. 30.
[3] Source: NCHSHD Focus, p. 8.
[4] Source: Federal Funds for Research Development and Other Scientific Activities (NSF publication 72-317, v. XXII), Table C-10.
[5] Total for USAF, USA, and USN only; does not include $530,704,000 and servicewide defense agency expenditures.
[6] Total for individual project support in the Division of Social Sciences and Division of Biological & Medical Sciences only; does not include $113,813,000 of individual project support in other science fields. Source: National Science Foundation Annual Report, 1971 (NSF publication 72-1), p. 6-7.

FIGURE 4
NICHD, MENTAL RETARDATION BRANCH, RESEARCH PROJECTS (1975)*



1 Epidemiology, Infectious Disease, Teratology, Endocrinology, Toxic Agents, Ambulatory Pediatrics, Neonatology.

2 Behavioral Genetics, Behavioral Teratology, Social Psychology, Psychophysiology.

* Source: NICHD
N.B. No data is available on subject populations. Research participants may include normals, non-institutionalized, and institutionalized.

CHAPTER 4. SURVEY OF RESEARCH PROCEDURES, RISKS AND BENEFITS, INFORMED CONSENT AND REVIEW PROCEDURES

Research involving the mentally infirm was the subject of a report and supplementary information prepared for the Commission by the Survey Research Center (SRC) at the University of Michigan. This report was not confined to studies involving institutionalized persons, but included studies in which an investigator used a label such as mentally ill or retarded to describe those involved as research subjects. The data came from SRC's larger study of research involving human subjects, informed consent and review procedures at a probability sample of 61 institutions drawn from the more than 420 institutions that had Institutional Review Boards (IRB's) approved by the Department of Health, Education, and Welfare.* The SRC report on research involving the mentally infirm was based primarily on analysis of consent forms used in this research and interviews with 151 investigators, and 33 subjects, 12 other individuals who provided third-party consent on the behalf of subjects, and a representative of each of the 13 IRB's that reviewed research involving the mentally infirm between July 1974 and June 1975. With the exception of data from subjects and third-parties, SRC believed the data to be statistically representative of the population from which the sample was drawn.

Research involving the mentally infirm constituted nine percent of the research that was reviewed by the IRB's at the 61 institutions in the sample. Sixty-four percent of the research involving the mentally infirm was reviewed by IRB's at institutions for the mentally infirm; the remainder was reviewed by IRB's at other institutions, primarily at medical schools and hospitals.

Approximately 60 percent of the studies involving the mentally infirm were behavioral. Most of these studies involved psychological or educational testing, interviews or questionnaires, or behavioral observation, but about 25 percent of the behavioral research entailed the study of an intervention of some kind (educational innovations, social or psychological therapies, or behavior modification). Biomedical research accounted for approximately a third of the projects involving the mentally infirm. Almost all of these projects involved the administration of drugs or the analysis of bodily fluids or tissue. Analyses of data or materials that had been obtained for other purposes accounted for the remaining small fraction (about seven percent) of the research involving the mentally infirm.

Subject selection. Subjects of this research were generally selected because of their mental condition. The presence of a specific mental disorder was a selection criterion in 74 percent of the project reviewed by IRB's in institutions for the mentally infirm, and in 94 percent of the projects in other institutions. In institutions for the mentally infirm, a diagnosis of psychosis was the most frequent selection criterion, being reported in half of the studies. Psychoses and neuroses were each a selection criterion in about a third of the studies in other institutions. Mental retardation was listed as a selection criterion in 13 percent of the studies involving the mentally infirm (although the retarded were subjects in 20 percent of the studies involving the mentally infirm). In 13 percent of the projects involving the mentally infirm, the investigator did not mention mental condition of the subjects as a factor in subject selection; it is possible some of this research could have been conducted on other populations. In about one-fourth of the projects involving the mentally infirm, investigators involved their own patients in the research.

Risks and benefits of research involving the mentally infirm. Investigators provided assessments of the probability and magnitude of the risks and benefits of their research. Most risks to subjects were described as pertaining to minor psychological stress, embarrassment or minor medical complications, and most risks were assessed as of "very low" probability of occurrence. Fewer than five percent of the studies involving the mentally infirm presented higher probabilities of more serious harms. More than one-third of the projects involving the mentally infirm were assessed by investigators as completely without risk.

In analyzing the risks of research involving the mentally infirm, studies that were expected to be beneficial to subjects were compared to studies in which no such benefits were expected. (Projects "expected to benefit subjects" were defined as those which investigators reported (a) to be conduted for the "primary purpose" of benefiting subjects or (b) to have a medium or high probability of benefiting subjects.) Just under half (46 percent) of the projects involving the mentally infirm were expected to benefit subjects. A larger percentage of the research conducted in institutions for the mentally infirm was expected to benefit subjects (49 percent) than was the research involving the mentally infirm conducted in other institutions (40 percent). Investigators' assessments of most risks of research not expected to benefit subjects were substantially lower than for research in which benefit to subjects was expected. For example, in studies expected to benefit subjects, investigators reported a "very low" probability of "serious medical complications" in 15 percent of the studies and a "low" probability in an additional two percent of the studies. In studies not expected to benefit subjects, comparable figures were one percent of each category. Similarly, in studies expected to benefit subjects, investigators reported a "very low" probability of "serious psychological stress" in 14 percent of the studies and a "low" probability in an additional two percent. Comparable figures in studies not expected to benefit subjects were nine percent and three percent.

*Informed consent.** IRB requests that changes be made in consent procedures were relatively common in research involving the mentally infirm, occurring in about one-fifth of the projects. Consent changes were required less frequently (11 percent) in projects in institutions for the mentally infirm than in projects at other institutions (27 percent). Most of the consent changes pertained to consent forms rather than to the setting or circumstances under which consent would be obtained. Consent changes were requested most frequently in studies that involved a behavioral intervention; the most frequent change in such projects was the requirement that consent be obtained in writing rather than orally.

Oral or written consent was sought in more than 80 percent of the projects involving the mentally infirm; the exceptions were reported to be due to (1) the investigator not having the names of subjects in a study of records, (2) consent having been obtained elsewhere, (3) the absence of risk, and (4) the IRB not having required it. In about one-third of the projects involving the mentally infirm, consent was obtained from a third party (or "proxy"); third-party consent was involved most frequently in research involving the retarded (80 percent) and was used most commonly in studies of behavioral interventions (59 percent). Third parties were usually parents, relatives or legal guardians. In institutions for the mentally infirm, consent by the subject's physician and

*The study was confined to institutions from which DHEW had accepted a "general assurance" of compliance with DHEW regulations for protection of human subjects.

*Because the terms "consent" and "proxy consent" were used in the survey, they appear in this section. As is explained in the Commission's recommendations, the Commission has generally used the term "assent" to refer to the agreement to participate in research by an individual who is not competent to give legally effective informed consent. Similarly, the Commission has generally referred to "third-party permission," which it believes to be a more accurate term than "third-party consent."

by an institutional representative each occurred in one case (out of 83 studies). Courts provided consent in about three percent of the studies involving the mentally infirm. In projects in which third-party consent was used, consent was obtained only from the third party about twice as often as it was obtained from subjects as well as the third party. Most investigators reported that third-party consent served to protect subjects "very well" or "fairly well," but almost one-fifth of the investigators indicated otherwise. Reasons given included the third party's not being able to understand the research or not caring about protecting the subject's rights.

The major criteria for determining whether third-party consent would be used were the subject's age and degree of illness. When age was a criterion, third-party consent was generally obtained for subjects 18 years or younger; the age below which consent was not obtained from subjects as well as third parties was about nine years. Degree of illness, rather than age or intellect, was usually cited as the criterion for a third party to provide consent. In studies in which subjects were the patients of a physician other than the principal investigator, approval for a subject's participation was obtained from the subject's physician in a majority of cases.

Although consent forms were used in more than 80 percent of the research involving the mentally infirm, these forms tended to be incomplete and difficult to read. On an index of six consent elements mentioned in DHEW regulations (45 CFR 46.103(c))—the purpose of the research, the procedures involved, the risks, the benefits, a statement that the subjects are free to withdraw from the research, and an invitation to ask questions—only five percent of the forms from institutions for the mentally infirm and 21 percent of forms from other institutions were complete or nearly complete. Descriptions by investigators of the topics covered in oral explanations added only negligibly to the report of information transmitted to subjects or proxies.

Some elements appeared more frequently than others in consent forms. Most consent forms mentioned, at least briefly, the procedures and the purpose of the research. However, the benefits of the research (or the absence of benefits to subjects) were mentioned in only about half of the consent forms. There was no mention of risk (or absence of risk) on about 40 percent of the forms; of the studies in which risk was not mentioned either on the consent form or in the description of material presented orally to subjects and proxies, almost two-thirds were described by investigators as entailing at least a "very low" probability of minor harm to the subject. The instruction regarding withdrawal was present in most forms, and an offer to answer questions appeared in more than half of the consent forms. A description of alternative treatments might have been expected in projects designed primarily to benefit subjects; however, alternatives were mentioned only rarely on consent forms in such studies.

The "reading-ease" of each consent form was measured using the Flesch Readability Yardstick.* The consent forms tended to be difficult to read. The "reading-ease" of most consent forms was comparable to that found in scholarly, academic material. Furthermore, medical and technical terms appeared in most consent forms, and very few of such terms were accompanied by a lay explanation. It is questionable whether many subjects or proxies would find these consent forms useful in making decisions regarding participation in research. No information is available on the degree to which the difficult language of the consent forms was mitigated by oral explanations in simpler terms.

Attitudes and suggestions of investigators. Most investigators conducting research involving the mentally infirm felt that the review procedure protects the rights of subjects and operates with reasonable efficiency, and a majority indicated that the review procedure improves the quality of research. However, some investigators found the review procedure to be an unwarranted intrusion on the investigator's autonomy and charged review committees with straying from their purpose, making judgments for which they are not qualified, and impeding the progress of research. They offered suggestions for reducing "bureaucratic problems" such as the time-consuming nature of the review process, proposed that parts of the review process be eliminated (e.g., the review of research with little risk), proposed that IRBs should include more experienced investigators as members, and called for better communication between the IRBs and investigators. A small number of investigators called for the strengthening of the review process through, for example, more extensive follow-up on the conduct of research approved by the IRBs.

Attitudes and suggestions of subjects and proxies. Only a limited number of subjects (33) and proxies (12) were interviewed, and they do not comprise a representative sample; thus, responses must be treated with caution. In general, these subjects and proxies indicated that they were satisfied with the clarity, sufficiency and accuracy of the information they had received regarding the research in which they were involved. About one-fourth would have liked more information. Several of the proxies indicated that the researchers had not explained the research to the subject, who did not have a good understanding of what was going on. Decisions regarding participation were apparently not difficult in most cases, with most respondents citing expectations of benefit to the subject as the reason for agreeing.

Approximately one-fourth of the respondents reported that unexpected difficulties had occurred as a result of the study. These difficulties included side-effects, physical discomforts and emotional problems. Several subjects described these difficulties as "somewhat serious," and one described them as "very serious." On the other hand, more than two-thirds of the respondents said that the subject benefited from participation in the research, and most subjects reported that the actual experience of participating in the research was better than expected or the same as expected. More than two-thirds indicated willingness to participate in similar future studies. Reasons for not wanting to participate included the inconvenience involved, the lack of personal benefits, fear of side-effects, and belief that inadequate explanations were provided.

About half of the subjects or proxies offered suggestions. The most frequent suggestions concerned the desire for more or better information in the consent process and for more kindness and courtesy in the conduct of the research. A small number called for improvements in the risk/benefit ratio of research.

Chapter 5. Ethical Issues

The general purpose of research involving those institutionalized as mentally infirm is to increase knowlege about their disorders and institutionalization. The research often provides direct benefit to subjects, but some research may produce benefits for the subjects only in the future or may benefit only other persons at risk for, or suffering from, a mental disablility. When there is a reasonable probability that the subjects will benefit, the research is generally considered justifiable. However, research in which procedures present no prospect of direct benefit to the subjects raises a variety of ethical problems about the protections and the rights of those institutionalized as mentally infirm and about the responsibilities of those charged with their care.

The application of basic ethical principles to research involving those insti-

* Rudolf Flesch, A New Readability Yardstick, Journal of Applied Psychology, Vol. 18, No 3, June 1948, pp. 221-233. The "reading-ease score" is based on word length, i.e., the average number of syllables per 100 words, and sentence length, i.e., the average number of words per sentence.

tutionalized as mentally infirm suggest possible solutions to the ethical problems presented by this type of research. The Commission has identified three such principles that should underlie the conduct of research involving human subjects: respect for persons, beneficence and justice.

RESPECT FOR PERSONS

The requirement to obtain informed consent from reseach praticipants is perhaps the least controversial and, some have argued, most significant ethical imperative incumbent upon investigators. This requirement has its moral basis in the principle of respect for persons. Thefunction of informed consent is to respect the preferences and choices of the potential research subject or, other words, to respect individual autonomy. Even if others think that one's choice is foolish or wrong, they should also respect that choice. As John Stuart Mill put it:

> The only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily, or mental and spiritual. (*1*)

When individuals have diminished autonomy and may be unable to exercise their right to self-determination, the principles of respect for persons and beneficence both require that they be protected from harm. The principle of beneficence, whic encourages avoidance of harm and promotion of good, underlies many models for third-party consent on behalf of incompetent subjects. (*2*) However, even with third-party consent, the principle of respect for persons requires consideration of how the incompetent person whould have acted if able. If it is known that a person would have acted in a specific way, then a substitute decision maker may be required to act accordingly, thus respecting the choices that the person would have made. Robert Veatch argues that since some persons institutionalized as mentally infirm are intermittently competent informed consent based on the right to self-determination would require that a "formerly competent patient's wishes clearly expressed while competent should be determinative when the patient is no longer competent." (*3*) This model of informed consent emphasizes respect for persons rather than beneficence, and seeks to broaden to the maximum extent possible the area in which autonomy should be operative.

Some have argued that research that does not hold out the prospect of direct benefit to subjects should never involve incompetent persons. Paul Ramsey, for example, has written that:

> Nontherapeutic, nondiagnostic experimentation involving human subjects must be based on true consent if it is to proceed as a human enterprise. No child or adult incompetent can choose to become a participating member of medical undertakings, and no one else on earth should decide to subject these people to investigations having no relation to their own treatment. That is a canon of loyalty to them. This they claim of us simply by being a human child or incompetent * * *.
>
> By insisting on a voluntary consent of the human subject for all experimentation, the Nuremberg Code seemed to rule out altogether nontherapeutic experimentation on children or the incompetent. (*4*)

This view has not gone unchallenged in ethical literature; moreover, the author of a memorandum to the war crimes court, from which the Nuremberg Code was derived, had originally proposed that:

> In the case of mentally ill patients, for the purpose of experiments concerning the nature and treatment of nervous and mental illness or related subjects, such consent of the next of kin or legal guardian is required; whenever the mental state of the patient permits (that is, in those mentally ill patients who are not delirious or confused), his own consent should be obtained in addition. (*5*)

Such a provision was not included in the final code, possibly because it did not apply to the specific cases under trial.

In the case of "beneficial research," Ramsey considers third-party consent a proper fulfillment of the obligation to protect vulnerable subjects, while in the case of "nonbeneficial research," he considers third-party permission a breach of the duty to care and protect. It is not merely the exposure to possible risk that he finds unacceptable; rather, it is the violation of a perceived right to determine the extent to which we shall share ourselves with others. It is thus an alleged violation of respect for persons (by treating others as means only) that is morally unacceptable to Ramsey.

The most serious objection that can be raised regarding Ramsey's view is that those who refuse to consent to participation in research should be distinguished from those who are not able or legally qualified to consent. It is not a matter of serious controversy that those who are institutionalized as mentally infirm and refuse to participate in "nonbeneficial" research should not be involved. But Ramsey neglects to distinguish, within the class of persons unable to consent legally, between those unable to make any decision and those who are able to make choices and who clearly agree or object to participate in research.

Hans Jonas has injected another element of controversy into the discussion of research and respect for persons by suggesting that those persons most able to understand the nature of the research are most likely to be able to give adequately informed consent, and those persons least dependent or captive are most likely to give their consent freely.(*6*) However, one possible criticism of Jonas' selection criterion is that, if carried to its extreme, it could actually violate the principle of respect for persons. As the understanding and freedom of a class of subjects decreases, then additional safeguards may be imposed to insure that potential subjects' decisions, whatever they may be, are autonomous. Yet it should not be assumed that the "most highly motivated, the most highly educated and the least 'captive' members of the community" are alone capable of making rational and autonomous decisions to participate in research. Such an assumption could unduly limit the choices of others.

Respect for persons means in part that people should be allowed to make and pursue their own decisions so long as basic conditions of information, communication and voluntariness can be met. For this reason, Jonas' proposed absolute prohibition on research that is unrelated to a patient's illness is also open to criticism. There may be some individuals institutionalized as mentally infirm who possess sufficient powers of understanding and are sufficiently free from coercion to give valid consent.

BENEFICENCE

As previously noted, the principle of beneficence requires that subjects be protected from harm and that there be positive benefits from the research. This means that the possible good to be produced must justify the risk of harm to the subjects. Thus, beneficence requires a careful comparative analysis of possible harms to individual subjects and possible benefits either to the subjects or to others.

This application of risk/benefit analysis to the involvement of those institutionalized as mentally infirm raises no substantial controversy if applied exclusively to research involving interventions from which the subjects may derive direct benefit. The major controversies arise over the involvement of persons for whom the research holds out no immediate prospect of direct benefit. Robert Veatch(*7*) and H. Tristram Engelhardt, Jr.,(*8*) both argue that because of certain minimal duties each of us owes to society, we may reasonably be expected to bear minor risks for the general welfare of all. Richard McCormick also emphasizes the duty to benefit others as the specific justification for research with subjects incapable of consent.(*9*)

Furthermore, since some research involving the mentally infirm cannot be undertaken with any other group, and since this research may yield significant knowledge about the causes and treatment of mental disabilities, it is necessary to consider the conse-

quences of prohibiting such research. Some argue that prohibiting such research might harm the class of mentally infirm persons as a whole by depriving them of benefits they could have received if the research had proceeded. Moreover, it is sometimes unclear whether the subjects of a particular research project will derive some indirect or future benefit from their participation.

The ethical principle of beneficence thus provides several justifications for the general involvement of those institutionalized as mentally infirm in research; however, most who acknowledge the importance of the principle of beneficence are also careful to set limits to what it may justify. David Hume remarked, for example, that one is not obliged to do a small good to society at the expense of a great harm to oneself.(*10*) Applying the principle to the research context, Engelhardt and Veatch have attempted to outline the specific circumstances in which beneficence justifies participation.

JUSTICE

Questions of justice relevant to the selection of subjects of research occur at two levels—the levels of social justice and individual justice. Social justice demands a consideration of which classes of subjects ought and ought not to participate in research. Specific questions of social justice are: whether there should be an order of preferability in the selection of classes of subjects (e.g., adults before children, the competent before the incompetent), and whether those institutionalized as mentally infirm should be research subjects, and, if so, under what conditions they may be involved. Answers to these questions of social justice require a theory about how to distribute benefits and burdens to various social classes.

Individual justice demands a consideration of which individuals ought and ought not to participate in research. Thus, individual justice requires that after it has been determined that a particular class of subjects such as children or those institutionalized as mentally infirm may legitimately participate in research, it must be determined which specific members of the class may participate. Answers to the questions of individual justice require a theory about how to distribute benefits and burdens to particular individuals. Thus, in addition to a theory of social distributive justice, a theory of individual distributive justice is necessary.

Problems of social and individual justice are brought into sharp focus by the Willowbrook studies. (*11*) The first question, one of social justice, is whether research on an infectious disease should involve those institutionalized as mentally infirm. The American Bar Association (ABA) Commission on the Mentally Disabled has recommended that:

> The proposed research should relate directly to the etiology, pathogenesis, prevention, diagnosis or treatment of mental disability, and should seek only such information as cannot be obtained from other types of subjects. (*12*)

The ABA Commission further concluded that involving institutionalized persons in research on the causes or treatment of infections such as hepatitis, which can be contracted by anyone, cannot be justified merely on the ground that such infections are widespread in some institutions. It said: "There is no acceptable reason why such research cannot be conducted with [noninstitutionalized] subjects who are free and fully informed." Although the ABA Commission does not attempt to justify its position on philosophical grounds, one could argue that the principle of justice, in a strict interpretation, requires that risks and burdens be distributed equally, so that no class of persons is unjustly required to bear an unequal distribution of burdens. If there are two classes of subjects, one of which is already severely burdened and the other of which is much less burdened, then in order to equalize the distribution of burdens, the latter class ought to accept any additional risks. Because those institutionalized as mentally infirm are already burdened by their disabilities, other less burdened classes of persons should accept the risks of research.

On the other hand, some theories would not prohibit participation of those institutionalized as mentally infirm in such research. One argument based on the considerations advanced by Engelhardt, Veatch and McCormick is the following: All persons, insofar as they are members of a social community, have a duty to help others in that community. As an expression of common humanity, every person ought to benefit others and ought to be benefited by others. Because these reciprocal duties of beneficence apply to all persons, an enhancement of benefits for society as a whole will result. Thus, persons who are mentally infirm share to an equal degree with other persons this duty of beneficence; and it might even be argued that it would be a violation of their right to pursue their moral obligations if this class of individuals were categorically excluded from such participation. Research entailing only minimal risk could, according to this theory, legitimately involve those institutionalized as mentally infirm even if other subjects were available—so long as there was equal involvement.

Assuming for the mement that an acceptable theory of social justice would justify at least limited involvement of those institutionalized as mentally infirm in research, it would then be necessary to determine those criteria that are relevant to selecting individual subjects. With respect to a specific research project, it might be asked whether certain persons insitutionalized as mentally infirm, perhaps because of the nature of their infirmity, are more likely to be harmed by participating in the research than other individuals. It might also be the case that some persons who are mentally infirm have already participated in research and so should not be asked to participate again. If all persons have a duty of beneficence to help others, then it is morally relevant to know which individuals may have already fulfilled this duty.

THE CONFLICT BETWEEN AUTONOMY, JUSTICE AND BENEFICENCE

When the three ethical principles—respect for persons, justice and beneficence—come into conflict, one must be given priority over the others (unless some compromise is possible), and the priority that is established will determine how the related ethical problems are resolved.

Considering, first, possible conflicts between respect for persons and justice, one who gives absolute priority to respect for persons over justice would argue that there should be no restrictions on the types of research in which those institutionalized as mentally infirm should be allowed to participate, so long as they are able to give informed consent. The freedom to choose should not be restricted. In this view, problems about unfair distributions of burdens are not morally relevant, so long as individuals freely and knowledgeably choose to participate in the research, because the right to self-determination is so significant that it should not be restricted by a principle requiring equalization of burdens. In other words, even if a disproportionate number of persons institutionalized as mentally infirm choose to participate in research, one has no moral right to prevent them from doing so.

By contrast, those who give priority to justice claim that self-determination is important, but not absolute. Freedom of choice may be restricted legitimately when the demands of distributive justice so require. In this view, one must first develop a theory of distributive justice; then, persons will be granted the maximum autonomy consistent with the correct distributive principles. In other words, in order to avoid disproportionately unequal or unfair distributions of research burdens, the right to exercise self-determination may be restricted, since the value of fairness has moral priority over freedom of choice.

Thus, when the research involves no direct benefit for the individual sub-

jects and is not related to the prevention or amelioration of mental disability, justice may require that no one class of persons, such as those institutionalized as mentally infirm, may be disproportionately used as subjects. However, if participation in the research may benefit the subjects, or if the research is directly related to the prevention or amelioration of their mental infirmity, then the decision to participate ought to rest with the individual subject or his designated surrogate.

There may be conflicts related to the principle of beneficence. For example, conflicts between beneficence and respect for persons are at the root of the problem of paternalism. Paternalism is the doctrine that one is justified in interfering with a person's actions based on another's judgment about that person's own welfare or good. There is a wide divergence of opinion about the conditions, if any, under which paternalism is justified. (*13*) Those who emphasize the importance of autonomy argue, as does Veatch, that:

> Blocking of experiments in which there is free and informed consent solely on the independent grounds of paternalism seems rarely, if ever, justified. (*14*)

In this view, beneficence is rarely, if ever, a sufficient reason to limit a person's liberty, so long as the person is competent (and his actions do not cause harm to others). Even this view, however, is compatible with the belief that a weaker form of paternalism that applies to persons whose choices are uninformed or nonvoluntary is justified. Thus, even those who stress autonomy may believe that paternalism is justified for individuals institutionalized as mentally infirm and who are incapable of meaningful consent or dissent. Others may go even further and argue for the general priority of the principle of beneficence over autonomy, believing that any person's autonomy may be restricted justifiably to prevent that person from undertaking actions that are unreasonably risky. Thus, the extent to which paternalism seems justified depends upon the relative priority one gives to autonomy and beneficence, and upon the way in which autonomy is conceived.

Serious ethical dilemmas are created by the conflicts between principles mentioned above. Move of the controversial ethical issues involving those institutionalized as mentally infirm could be structured in the form of such dilemmas. The resolution of those dilemmas requires striking a balance among competing ethical obligations.

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Chapter 6. Legal Perspectives

Legal effects of incompetence and institutionalization generally

The law with regard to those institutionalized as mentally infirm is complicated and in transition, and the law regarding research with this population is sparse. Case law is meager, and most state legislatures have yet to address themselves to this area; yet the issues are important. Because institutionalized individuals have restrictions placed on their liberty, their ability to give voluntary consent is placed in doubt (as is the case with prisoners). Further, because most forms of mental illness and retardation are viewed as disrupting cognitive or affective functioning, there is concern whether persons suffering from these disabilities can consent to research, especially if it involves risk of harm. Therefore, consent of a third party is usually considered necessary and sufficient (as has been the case with children) for persons with diminished capacity to consent on their own.

Third-party consent, however, brings two principles of law into conflict. The first is the underlying premise of the informed consent doctrine, reflected in Cardozo's oft-quoted statement that "every human being of adult years and sound mind has a right to determine what shall be done with his own body." (*1*) The second is the parens patriae doctrine, expressing the state's traditional concern for those in need of special protection, primarily children and the mentally infirm. In furtherance of that concern, the state has attenuated or abolished for some individuals certain rights generally accorded others, including the right personally to consent (or refuse to consent) to medical care or participation in research.

It is difficult to present a clear view of the legal rights of persons institutionalized as mentally infirm because there is great disparity among the states, first, in defining incompetence, and second, in limiting or protecting the rights of individuals either judged to be incompetent or institutionalized without such an adjudication. Competency as a legal concept is multidimensional and arises in both the criminal and civil arenas. It takes many forms, and standards for determining competency may vary with the context in which it is judged, e.g., competency to stand trial, to plead guilty, to manage one's affairs, to form a contract, to make a will.

Competency to consent to participation in research may be viewed as a specific aspect of the ability to manage one's affairs. Incompetency in this broader setting generally results in the appointment of guardians to protect persons or their property. However, a survey of the 50 states and the District of Columbia reveals that statutory provisions for the adjudication of competency vary widely. Almost all statutes have what might be called a status component (i.e., some mental or physical condition) and a consequence component (i.e., a substantive standard). For example, appointment of a guardian may be permitted if the person is mentally ill (the status component) and is unable therefore to care for his physical well-being (the consequence component). Table One depicts the conditions required by statute in each jurisdiction for an adjudication of incompetency.

Table Two summarizes the requisite substantive standard for each jurisdiction. Sometimes the substantive standard must be met in addition to proving that the status component exists; in a few jurisdictions, only the substantive standard need exist.

Many state statutes are irrelevant to the issue of competency to consent to research; they have provisions pertaining solely to property, estate and business affairs. Only those provisions relating to the ability to care for or make decisions concerning oneself, and perhaps those general provisions regarding the conduct of one's personal affairs, can be interpreted as applying to participation as a research subject.

Court definitions of competency also vary. (2) Some courts determine competency according to the capacity to reach a decision based on rational reasons, i.e., whether the person has the ability to understand the nature of the procedure, to weigh its risks and benefits, and come to a reasonable determination. Other courts determine competency according to the capacity to reach a reasonable result, i.e., one a reasonable competent person might have made. Thus, if a person makes a decision that may result in substantial damage to mental or physical wellbeing, the court employed this standard will consider that person incompetent. Finally, a minority of courts determine competency according to the capacity to make a decision. This approach avoids the difficulties inherent in evaluating whether a person's thinking is rational or irrational but precludes the aparent consent of those clearly out of touch with reality. According to this standard, a person is judged competent if he or she has sufficient understanding of the nature of the procedures, its risks and benefits, and possible alternatives. If so, any decision, provided there is a decision, would be honored.

Another problem area is the relationship between the commitment process and the adjudication of incompetency. Institutionalization and incompetence are not necessarily synonymous; mere commitment of an individual to an institution does not necessarily mean that person is incompetent to consent, according to some state statutes and a number of courts. (3) Some states have statutes that presume that institutionalized persons retain certain rights, e.g., the right to vote in Alaska, Georgia, Kentucky, Louisiana, Maryland, New Mexico, New York, South Carolina, and South Dakota; the right to contract in Alaska, Kentucky, Louisiana, and South Carolina; the right to marry in South Carolina; and the right to make a will in Georgia and South Carolina. (4) By contrast, other states provide that "commitment to a hospital for the insane pursuant to statute is equivalent to a prior adjudication of incompetency" (5) or apply blanket restrictions on the right of institutionalized persons to marry, vote, contract, drive, or conduct their affairs, without any evidentiary hearing concerning the particular individual's ability to exercise those rights.

As a summary statement with regard to the relationship of institutionalization and competency, Allen, Ferster and Weihofen's conclusion of a decade ago is as applicable today:

> The effect in law of a hospitalization order on the competency status of a patient varies from state to state. In a few states the hospitalization order is also an adjudication of incompetency; in others, it results in at least presumptive incapacity; and in still others, there is a complete separation of hospitalization and incompetency * * *. In many states the effect of a hospitalization order cannot be determined from the written law, but the trend in legislation * * * has been toward the complete separation of hospitalization and incompetency. (6)

The disparity among the states regarding the effect on individual rights of institutionalization per se and of adjudication of incompetency is complicated further by very different approaches courts have taken in resolving questions regarding the relative rights of patients, guardians and the state in matters relating to biomedical and behaviorial interventions. Although there has been a discernible trend in recent years for courts to protect the rights of mental patients in specific areas, that trend is obscure at best in cases most relevant to research (e.g., those involving the imposition of therapy, the transplantation of organs or tissue, sterilization and, in a very few cases, participation in research).

THE RIGHTS OF PATIENTS TO REFUSE THERAPEUTIC INTERVENTION

Generally, informed consent is necessary before physicians or therapists may perform procedures intended to benefit their patients. While the law usually permits third-party consent to these procedures on behalf of persons adjudicated as incompetent, a few states have passed statutes that specifically limit the performance of certain medical procedures without personal consent, and some courts have restricted the imposition of certain therapies on unwilling or nonconsenting patients. The most frequently regulated treatments are surgery, psychosurgery, "experimental" therapies and electro-convulsive therapy (ECT). In addition, developing case law has severely circumscribed the power of the state to sterilize involuntarily committed, incompetent persons without their consent, even though the procedure may be deemed therapeutic and in their best interest.

The requirement of personal consent appears related to the severity, intrusiveness, irreversibility and experimental (novel, untested) nature of the proposed interventions, regardless of whether or not they are viewed as beneficial. The outer reach of protection imposed under such conditions is found in *Kaimowitz* v. *Department of Mental Health.*(7) This case concerned a patient, committed to a state mental hospital as a sexual psychopath, who agreed to participate in research designed to study the effects of amygdalotomy (a form of psychosurgery) on agressive behavior. The court held that the combined effects of institutionalization and the hazardous and unknown effects of the proposed operation precluded a finding of adequate consent by the patient. The "inherently coercive atmosphere" was said to prevent consent from being either "competent" or "voluntary," while the lack of scientific basis for predicting the outcome of such a novel procedure was said to render consent "unknowledgeable." The court also refused to acknowledge the validity of parental consent (which had also been given in this case) on the unelaborated ground that guardians may not consent to treatments to which the patient could not consent.

A number of courts have required a patient's consent prior to the administration of ECT. For example, in *New York City Health and Hospitals Corp.* v. *Stein,* (8) the court rejected the application of a director of a public hospital to perform the procedure without personal consent. Although the court noted that without the proposed treatment the patient's condition might become irreversible, it balanced this possibility against its concern that ECT was still "the subject of great controversy within the psychiatric profession, both as to its efficacy, and as to its dangers."(9) Of particular importance in this case was the court's determination that althought the patient still met the standard for involutary commitment, she maintained the ability to consent or refuse to consent to such an intrusive form of intervention regardless of whether the court or the institutional staff agreed with the reasonableness of her decision. California, New York and Washington have enacted legislation to the same effect.(10)

Under certain conditions, especially when "experimentation" is involved, the administration of drugs to involuntarily committed mental patients without consent has also been prohibited. In *Knecht* v. *Gillman,*(11) a vomit-inducing drug, apomorphine, was injected into two unconsenting adults as part of an aversive conditioning program in the Iowa Security Medical Facility. Concluding that the purpose of administering the drug in this case had been disciplinary rather than as treatment, the court held that

its administration to unwilling patients was violation of the Eighth Amendment's prohibition against cruel and unusual punishment. It then indicated that administration of apomorphine would be permissible only if a physcian certified that each patient knowingly and voluntarily consented, understood the risks and purposes of the procedure, and if consent could be revoked at any time. Similarly, in *Mackey* v. *Procunier*,(12) a prisoner, transferred to the California medical facility at Vacaville, alleged that his constitutional rights were violated by the administration of a drug (without his consent) causing temporary paralysis and inability to breath, as part of psychiatric experimentation in aversive conditioning. The Ninth Circuit Court of Appeals held that proof of such allegations "could * * * raise serious constitutional questions respecting cruel and unusual punishment or impermissible tinkering with mental processes."(13)

The most widely known case in which experimentation with institutionalized mentally infirm subjects was an issue is *Wyatt* v. *Stickney*, (14) a far-ranging decision in which conditions at Alabama's institutions for the mentally ill and retarded were thoroughly scrutinized. Concluding that conditions in the facilities were so inadequate as to violate the residents' constitutional right to treatment, the court developed an extensive set of minimal standards to correct the deficiencies. Included in these standards was a provision declaring that mentally ill patients had "a right not to be subjected to treatment procedures such as lobotomy, electro-convulsive treatment, adversive [sic] reinforcement conditions or other unusual or hazardous treatment procedures without their express and informed consent after consultation with counsel or interested party of the patient's choice." (15) The court mandated that with regard to research:

> Patients shall have a right not to be subjected to experimental research without the express and informed consent of the patient if the patient is able to give such consent, and of his guardian or next of kin, after opportunities for consultation with independent specialists and with legal counsel. Such proposed research shall first have been reviewed and approved by the institution's Human Rights Committee before such consent shall be sought. Prior to such approval the Committee shall determine that such research complies with the principles of the statement on the Use of Human Subjects for Research of the American Association of Mental Deficiency and with the principles for research involving human subjects required by the United States Department of Health, Education, and Welfare for projects supported by that agency. (16)

In a companion decision concerning mentally retarded residents, the *Wyatt* court imposed the same restrictions on research, including review by the Human Rights Committee and personal or third-party consent (depending on the capacity of the resident) before the use of behavior modification programs involving noxious or aversive stimuli. The court also held that ECT was to be considered an experimental technique and this subject to the review and consent procedures prescribed for both research and aversive stimuli. Further, ECT could be administered only "in extraordinary circumstances to prevent self-nutilation leading to repeated and possibly permanent physical damage * * * and only after alternative techniques have failed." (17) Thus, even when the intervention in question is designed to benefit an incompetent patient, added layers of protection such as institutional and court review, or total prohibition, may be imposed when the proposed procedure is risky, invasive, noxious or permanent.

It appears that there is a recent trend, both judicially and legislatively, to guarantee patients the right to refuse hazardous or "experimental" therapies. The implications of this trend for research suggest a requirement to seek the affirmative consent of institutionalized patients prior to enrolling them in research involving therapeutic interventions, at least where any appreciable risk is involved.

THE RIGHTS OF GUARDIANS REGARDING INTERVENTIONS NOT FOR THE BENEFIT OF THE INCOMPETENT

When the proposed intervention is not perceived as directly benefiting the incompetent subject, there are greater constraints on proceeding without the consent of the subject. In fact, it has been argued that third-party consent should be permitted only when the patient will derive direct benefit; thus, theoretically, institutionalized persons considered incompetent could never particpate in "nontherapeutic" endeavors. However, once again, there are few cases in this area.

The most commonly litigated situations concern sterilization and organ transplants. With regard to the former, for example, in *Frazier* v. *Levi*, (18) the mother of a mentally retarded woman with two illegitimate retarded children was denied permission to consent to sterilization of her daughter because there was no evidence that it was medically necessary and the woman herself lacked the mental capacity to consent. On the other hand, 24 states have laws permitting sterilization of persons with mental disorders in state institutions. (19) While the statutes vary in their provisions, most permit the institution superintendent to initiate a judicial or administrative proceeding to hear the matter, while some also permit relatives, guardians, physicians or state welfare boards to initiate a hearing. Most statutes provide notice to the persons to be sterilized and entitle them to an opportunity to be heard. Newer statutes amplify the procedural safeguards, and some even provide for either personal or third-person consent. (20) Proposed federal regulations would prohibit the performance of sterilization in DHEW programs for any mentally incompetent or institutionalized individual unless the individual has given a court-sanctioned informed consent; and alternative proposal would absolutely prohibit such sterilization on a mentally incompetent person. (21)

Although the cases are not uniform with regard to organ transplants, the decisions frequently rest on whether the court can find some benefit to the incompetent donor. A Louisiana court in *In re Richardson* (22) refused to allow a kidney transplant from a mentally retarded child to his older sister arguing, by analogy to property rights, that a guardian is not permitted to make a donation that is not in the best interests of the incompetent. Finding no benefit to the child from the proposed bodily intrusion, it refused to recognize the validity of parental consent. On the other hand, in *Strunk* v. *Strunk* (23) a Kentucky court permitted a kidney transplant to an older brother from a severely retarded man who was institutionalized and incapable of consenting for himself. The court permitted the procedure by finding benefit in the avoidance of psychological injury, relying on psychiatric testimony that the death of the brother would have been traumatic for the incompetent. The court here also invalidated parental consent, however, finding authority for the operation in its equitable powers under the parens patriae doctrine.

The most publicized example of research involving the institutionalized mentally retarded is the hepatitis experiment at the Willowbrook State School in New York. The crowded and unsanitary conditions at Willowbrook, coupled with lack of training in personal hygiene, led to an epidemic of fecally borne infectious hepatitis. In an attempt to develop a vaccine for the disease, researchers infected newly admitted retarded children whose parents had apparently consented to the procedure. All of the children risked serious illness, and many became sick. In subsequent litigation challenging the inhumane conditions and care of the residents generally, the court held that institutionalized retarded persons were constitutionally guaranteed protection from harm (as carefully distinguished by the court from the right to treatment). (24) Equating to some degree the rights of the institutionalized retarded with those of prisoners,

the court stated that as "Willowbrook residents are for the most part confined behind locked gates, and are held without the posibility of a meaningful waiver of their right to freedom, they must be entitled to at least the same living conditions as prisoners. (*25*) A consent decree was approved by the court in 1975 designed to insure enforcement of this right; included in that decree was an absolute prohibition against medical experimentation. (*26*)

In sum, the conditions under which a guardian may consent to the performance of a nontherapeutic medical procedure on an incompetent individual are not clear; and the law gives no guidance with respect to behavioral interventions. It is apparent, however, that where nontherapeutic biomedical procedures are permitted, additional layers of review may be imposed to evaluate the reasonableness of the guardian's consent.

THE RIGHT OF THE STATE TO IMPOSE THERAPY

Under some conditions, the state may impose therapy on patients against their will. A significant case in point is *Price* v. *Sheppard.* (*27*) The plaintiff was committed to a state hospital as a "mentally ill-inebriate" upon petition by his mother. His diagnosis was changed subsequently to "simple schizophrenia" after he allegedly attempted to strangle one of the staff. After tranquilizers and antidepressants failed to reduce his assaultive behavior, ECT was then prescribed and the consent of the plaintiff's mother was sought prior to its administration. She refused on the advice of another psychiatrist, and drug treatment continued. When Price continued to be aggressive, the hospital administered shock treatments without either his consent or that of his mother. Mrs. Price promptly filed a compliant, and the hospital defended its action of parens patriae grounds. While the court required judical review with representation for the patient before invasive forms of treatment could be administered, it agreed that the state could make decisions regarding psychiatric treatment for those who were "presumptively, based on the fact of commitment on the ground of mentalillness,* * * unable rationally [to] do so for themselves." (*28*) The court reached this conclusion notwithstanding a state statute to the effect that commitment was not a judicial determination of incompetency. The court reasoned, in a footnote, that because commitment required clear evidence that the person's ability to control himself, conduct his affairs and use good judgment was lessened to such an extent that hospitalization was necessary, the state was able to act for such an individual even in the absence of an adjudication of incompetency.

The crucial question in such cases is the extent to which a presumption of rationality and autonomy will be enforced. Clearly, any wholly arbitrary or unreasonable practice that permits nonconsensual invasion of one's body is unconstitutional. The question is whether the state merely needs to show a reasonable basis for its practice and demonstrate that its action is related to some legitimate state purpose, or whether courts will require that the state meet the more stringent test of demonstrating that it has some compelling (not merely reasonable) interest in interfering with autonomy, and can find no less drastic alternative for so doing.

SOME DEVELOPING OPTIONS

Because existing decisional and statutory law provides no clear answer regarding the conditions under which those institutionalized as mentally infirm may be included in research, courts, commentators and legislators have proposed various means for balancing self-determination of the mental patient and the paternalistic role of the state in this area. Among the options proposed are the following:

1. *Greater recognition of the concept of limited incompetency.* One writer has suggested that "consent * * * should not depend upon the form of the patient's illness, but rather, should depend upon the effect the illness has on the patient's ability to understand the problems connected with his [participation]."(*29*) Washington's statute is an example of a law explicitly recognizing the concept of limited incompetency:

> [T]he court shall impose * * * only such specific limitations and disabilities on a disabled person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incompetent nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship.(*30*)

Under this standard, persons institutionalized as mentally infirm would retain the right to consent or refuse to consent to research absent specific evidence concerning inability to exercise that right.

2. *Strict limitation of the concept of incompetency.* Some commentators have offered the more radical proposal that standards concerning competency either be abolished or be established at a very low threshhold. For example, Friedman(*31*) suggests that the inquiry should go simply to whether the individual is willing to consent and is able to answer affirmatively or negatively. As long as both of those conditions exist, all answers should be honored despite the fact that they might have been evoked by reality distortions or stated in a perseverative, automatic manner.

Goldstein suggests a similar test, not as an option, but as a requirement:

> The burden in law for incompetence should be very high. No evidence other than a showing that the patient is comatose should ordinarily be accepted as proof of incompetence * * *. To accept proxy consent is to authorize invasions of persons and personality without regard to the wishes of the research subject—that is to deny them freedom to choose without saying so.(*32*)

No courts have adopted either Goldstein's or Friedman's proposals. However, in *Wyatt* v. *Aderholt*(*33*) the court ordered that before an incompetent mentally retarded resident could be sterilized, a review committee must determine that the resident "formed, without coercion, a genuine desire to be sterilized,"(*34*) not that he or she understood the procedure and arrived at a "rational" decision.

3. *Application of the doctrine of substituted judgment.* There are times when personal consent is impossible or extremely difficult (*e.g.*, with mute, unconscious or profoundly retarded subjects). Assuming that an intervention is warranted, third-party consent may be accepted on the theory that "such paternalism is justified by the fact that it is rational to choose to have someone behave paternalistically toward us should we become incapable of looking out for ourselves."(*35*)

One traditional method of accomplishing this purpose is the doctrine of substituted judgment, a concept usually invoked in transfers of property. Under this rule, "the court may substitute its own judgment for the impaired judgment of the incompetent, if * * * the result achieved is what the incompetent almost certainly would have desired * * *."(*36*) Particularly relevant is the criterion, first announced in a nineteenth centry British case, Ex parte *Whitbread,* that the court act, "looking at what it is likely the Lunatic himself would do, if he were in a capacity to act * * *."(*37*)

The substituted judgment doctrine can be distinguished from what has been called the benefit rule, commonly applied in the context of third-party consent to research and treatment. As the earlier summary of case law indicates, the benefit rule would preclude all research involving incompetent subjects unless the subjects would derive a benefit from their participation, even if competent persons in their position might have chosen otherwise. By contrast, the doctrine of substituted judgment would permit decisions to be made according to an incompetent person's conception of his or her interests, based on an actual indication in the past of a willingness to

participate as a research subject or a communication of present willingness. This suggests that the substitute decision-maker should know the institutionalized person well enough to be able to discern such willingness.

TABLE 1.—Required Conditions for the Appointment of Guardians in Incompetency Adjudications

DEFINITION OF TERMS

1. *Mental Illness:* includes such terms as mental disorder, mental disease, insanity and the outmoded term "lunacy" still used by 5 states.

2. *Mental Retardation:* includes mental deficiency, mental defective, and such outmoded terms as idiocy (9 states), imbecility (5 states), and feeblemindedness (1 state).

3. *Terms Connoting MI or MR:* some statutes used such vague terms that they are difficult to classify in the first or second column. They include mental infirmity, mental weakness, unsound mind, mental incapacity, mental disability, noncompos, want of understanding, deterioration of mentality. These may be taken to include both mental incompetency and mental retardation.

4. *Mental Incompetence:* the term is included here to indicate the circularity of some incompetency provisions. In these states incompetency is adduced by proof of mental incompetency.

5. *Senility:* includes terms such as age, advanced age, old age, extreme old age.

6., *Physical Illness:* includes physical incapacity, bodily infirmity, disease.

7. *Drug Use:* includes such diverse standards as chronic drug use, excessive drug use, drug addiction, drug dependence.

8. *Alcohol Use:* includes such diverse standards as habitual intoxication, chronic intoxication, drunkenness, inebriety, alcoholism, excessive use of intoxicants.

9. *"Spendthrift" provisions:* allow for adjudication of incompetence when there is proof of "gaming," "idleness," "debauchery," "improvidence," or "vicious habits."

10. *Other:* this category includes catchall provisions (e.g., "and other causes") as well as unclassifiable conditions such as compulsory hospitalization, distracted person, imprisonment, confinement in mental institution for 1 year or more.

TABLE ONE
REQUIRED CONDITIONS FOR THE APPOINTMENT OF GUARDIANS IN INCOMPETENCY ADJUDICATIONS

Jurisdiction	Mental Illness	Mental Retardation	Terms Connoting MI or MR	Mental Incompetence	Senility	Physical Illness	Drug Use	Alcohol Use	Spendthrift	Other
Alabama	●	●								
Alaska	●	●			●	●	●	●		●
Arizona	●	●			●	●	●	●		●
Arkansas	●	●			●	●	●	●		●
*California										
Colorado	●	●			●	●	●	●		●
Connecticut		●	●							
Delaware	●		●		●	●				
Dist. of Col.	●		●		●	●				
Florida	●	●			●		●	●		●
Georgia	●	●		●						
Hawaii	●	●	●				●		●	●
Idaho	●	●			●	●	●	●		●
Illinois	●	●	●				●	●	●	
Indiana	●	●			●			●		
*Iowa										
Kansas	●	●			●	●	●	●		●
Kentucky	●		●		●	●				
Louisiana	●	●	●		●	●				
Maine	●	●	●		●	●			●	
Maryland	●		●		●	●	●	●		●
Massachusetts	●	●	●		●	●				
Michigan	●	●			●	●			●	
Minnesota			●		●			●		●
Mississippi			●							●
Missouri	●	●			●		●	●		●

TABLE ONE
REQUIRED CONDITIONS FOR THE APPOINTMENT OF GUARDIANS IN INCOMPETENCY ADJUDICATIONS

Jurisdiction	Mental Illness	Mental Retardation	Terms Connoting MI or MR	Mental Incompetence	Senility	Physical Illness	Drug Use	Alcohol Use	Spendthrift	Other
Montana	●	●			●	●	●	●		●
Nebraska	●				●				●	●
Nevada	●	●	●		●	●				●
New Hampshire				●					●	
New Jersey	●	●	●					●		
New Mexico			●					●		
New York	●				●			●		●
North Carolina	●	●	●					●		
North Dakota	●	●			●	●	●	●		●
Ohio	●	●	●		●	●		●	●	●
Oklahoma	●									●
Oregon	●	●	●		●	●				●
Pennsylvania	●	●			●		●	●		
Rhode Island	●	●	●				●	●	●	
South Carolina		●								
South Dakota	●			●		●				
Tennessee	●	●	●				●	●		
Texas	●	●						●		
Utah			●		●					●
Vermont				●					●	
Virginia	●	●								
Washington	●	●			●		●	●		●
West Virginia		●								
Wisconsin	●	●	●				●	●		
Wyoming	●	●			●	●	●	●		
Totals	40	33	22	4	29	21	19	26	9	22

TABLE 2.—REQUIRED SUBSTANTIVE STANDARDS FOR THE APPOINTMENT OF GUARDIANS IN INCOMPETENCY ADJUDICATIONS

SELF AND STATE

Lacks sufficient understanding or capacity to make (or communicate) responsible decisions concerning his person—Alaska, Arizona, Colorado, Idaho, Kansas, Maine, Maryland, Montana, North Dakota.
Incapable of caring for (or taking care of) himself—Arkansas, Florida, Indiana, Iowa, Mississippi, Missouri, Texas, Vermont, Washington, Wisconsin.
Incapable of taking proper care of himself—Ohio, Virginia.
Incapable/incompetent to manage his person—Illinois, Minnesota.
Unable, without assistance properly to manage and take care of himself—Nevada, Oregon, Utah, Wyoming.
Unable properly to manage and care for his person and in consequence thereof is in danger of becoming victim of designing persons—Delaware.
Incapable of governing (or managing) himself—Connecticut, New Jersey, New York.
Unable to care for his physical well-being—West Virginia.
Unable properly to provide for his own personal needs for physical health, food, clothing or shelter—California.
In danger of substantially endangering his health or of becoming subject of abuse by other persons or becoming the victim of designing persons—Delaware.
Lessened or unacquired capacity to use customary self-control, judgment, and discretion in conduct of social relations as to make it necessary or advisable for him to be under care, supervision, guidance, or control—Louisiana.
Incapable of managing himself independently and requires supervision and care (mentally retarded only)—Maine.
Unable to care for himself or manage his affairs and requires care, treatment, training in a developmental center (mentally retarded only)—Tennessee.
Incompetent to protect his rights—Maine.

REQUIRED SUBSTANTIVE STANDARDS FOR THE APPOINTMENT OF GUARDIANS IN INCOMPETENCY ADJUDICATIONS

PROPERTY AND STATE

Incapable of managing his property—Arkansas, Florida, Indiana, Iowa, Missouri, Oklahoma, Louisiana, South Dakota, Texas, Washington, Wisconsin.
Unable, without assistance properly to manage and take care of his property—Nevada, Wyoming, Oregon, Utah.
Unable properly to care for (or take care of) his property—District of Columbia, Massachusetts, Mississippi, Ohio, Vermont.
Unable to manage his property effectively—Maryland.
Incompetent to have charge and management of his property—Nebraska.
Unable properly to manage and care for his property and in consequence thereof is in danger of dissipating or losing such property or of becoming the victim of designing persons—Delaware.
Incapable of managing or taking care of his estate—Georgia, Kentucky, Mississippi, South Carolina.
Incapable of properly handling or managing his estate—Virginia.
Incompetent to manage his own estate—Maine, Minnesota.
Incompetent to have care, custody, management of his estate—Michigan.
Lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his estate—Kansas.
Cannot effectively manage/apply his estate to necessary ends—Alaska.

REQUIRED SUBSTANTIVE STANDARDS FOR THE APPOINTMENT OF GUARDIANS IN INCOMPETENCY ADJUDICATIONS

PERSONAL AND BUSINESS AFFAIRS GENERALLY AND STATE

Incapable of managing his affairs—Connecticut, New Jersey, New York, Maine, North Carolina, Wyoming.
Unable to manage his affairs effectively—Maryland.
Unable to manage his affairs with prudence—New Hampshire.
Lessened or unacquired capacity to use customary self-control, judgment, and discretion in conduct of his affairs as to make it necessary or advisable for him to be under care, supervision, guidance or control—Louisiana.
Incapable of managing his affairs independently and requires supervision and care (mentally retarded only)—Maine.
Unable to conduct his personal or business affairs (patients only)—New York.
Unable to manage his business affairs—West Virginia.
Incapable of managing his financial affairs—Texas
Substantially unable to manage his own financial resources—California

Family or Community (Spendthrift Provisions)

So spends or wastes his estate as to expose himself or his family to want or suffering—Illinois, Maine, New Hampshire, Rhode Island.
So spends or wastes his estate or injures his person as to likely expose himself or his family to want or suffering—Minnesota.
So spends or wastes his estate as to expose his town to expense—Maine, New Hampshire, Rhode Island.
Fails to provide for his family or other persons for whom he is charged by law to provide—Ohio.
Liable to dissipate property or become victim of designing persons—Pennsylvania.
Lack of discretion in managing benefits received from public funds—Nebraska.

NOTE.—One state, Hawaii, has no substantive standard. Determinations are made, in part, by a review committee of the Dept. of Social Services. Vermont also has a provision for voluntary appointment of a guardian for persons who deem themselves unable to prudently manage their affairs.

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CHAPTER 7. SITE VISITS

The Commission made site visits to the Fernald State School for the Retarded and the associated Eunice Kennedy Shriver Center in Waltham, Mass., as well as to St. Elizabeths Hos-

pital in Washington, D.C. Both are institutions for the mentally infirm at which research is conducted.

"The Fernald School" is a state institution for the mentally retarded which houses approximately 1,200 residents, 900 of whom are adults. The Shriver Center is a research unit which is independently incorporated but located on school grounds. In addition to research activities, the Center is involved in service and training programs for the school.

Research conducted at the school includes metabolic studies, behavior modification studies, sociological studies, evaluation of treatment, and neurological studies. A basic principle underlying research conducted at the school is that it must either be related to mental retardation (including etiology, care and treatment) or be directly therapeutic for the individual.

The Commission members toured the school and spoke at length with residents, parents of residents, primary care staff, research investigators and Institutional Review Board members. The Commission observed a behavioral treatment program in which self-abusive and severely retarded persons were positively reinforced for appropriate behavior.

The Commission learned that in Massachusetts retarded individuals over the age of 21 typically are in a consent limbo, in which they themselves are functionally incompetent to give informed consent and no guardian, with authority to consent on their behalf, has been appointed by a court. This situation prevails even among retarded persons who are institutionalized. Other issues which emerged during the visit include problems with identifying the point at which innovations in training methods cease to be considered research and become accepted treatment practice, and the extent to which it is ethical not to conduct research when there is a clear need to improve the care and training of retarded persons, as well as to prevent retardation, and to prevent the deterioration which may result from an institutional setting.

"St. Elizabeths" is a federally owned hospital currently operated under the auspices of the National Institute of Mental Health. It houses approximately 2,700 patients, most of whom are involuntarily committed. The hospital treats approximately 3,000 outpatients annually and sees an additional 4,000 patients for screening or referral. To implement its objective of providing treatment for the mentally ill, the hospital conducts training and research programs.

At St. Elizabeths research is reviewed by the Research Review Executive Board, a policy-making body comprised of senior hospital staff, and the larger Research Advisory Panel which reviews individual protocols. Protocols are submitted by professional staff, trainees and outside investigators. The Review Board, as a matter of policy, construes the review process as educational for the investigator as well as to protect the research participants.

For review purposes, research is defined broadly at St. Elizabeths and includes observational, intervention, outcome and records studies. In actuality, very little research of any kind is being conducted; St. Elizabeth's staff reported that in fiscal 1975, only 29 protocols (of 49 submitted for review) were approved. In discussions with research staff, the Commission learned that all research conducted at St. Elizabeths Hospital relates to mental health care or diagnosis including, for example, research to develop basic information about the metabolism and brain function of people with particular illnesses.

The Commission toured parts of the hospital including the community mental health center, a behavior modification treatment and research program, geriatric and youth units, the Forensic Program Division and the NIMH intramural research division.

All research participants in the William Alanson White Building (the principal research unit at St. Elizabeths) are voluntary patients who retain all their civil rights. The clinical and research staff must respect these rights, even when patients appear to be too disturbed to exercise them rationally. A voluntary patient who refuses treatment may be asked to leave the hospital, whereas an involuntary patient may be treated against his or her will.

During discussions with research staff, Commission members explored the impact of FDA regulations which require that most drugs be tested first on normal volunteers. The St. Elizabeths' staff expressed doubt that the major drugs currently used for treating psychiatric illnesses could be developed in the U.S. today, given such requirements.

Hospital staff viewed the presence of research as having a positive impact on patient care. Patients on research units benefit from the high staff-to-patient ratio, especially when the research involves careful monitoring of biochemical interventions. However, a dilemma arises in the testing of new drug therapies because of possible interaction with drug treatment that the patient normally receives. If regular treatment is maintained concurrently with the experimental drugs, synergistic effects may result; but if regular treatment is withheld, regression may occur.

Commission members met with participants in psychopharmacological research to assess their understanding of the purpose and nature of the research, the voluntariness of their participation, and the extent to which they seemed able to give informed consent. In addition, the Commission asked research staff about the nature and meaning of the concept of informed consent for severely disturbed individuals. Investigators replied that informed consent, as generally understood, may be impossible for acute psychotics to give. The reality of this problem was apparent. Patients' thinking may be fragmented, and they may be suspicious or uncommunicative. On the other hand, depressive patients may be dependent upon others and may consent too freely. The Commission was urged to find a new way to conceptualize informed consent for research involving the insitutionalized mentally infirm, taking into account potential impact on the physician-patient relationships.

Chapter 8. Public Hearing

On April 10, 1976, the Commission conducted a public hearing on the issue of research involving the mentally infirm. Summaries of presentations that were made to the Commission follow.

Roger Meyer, M.D. (Harvard Medical School), speaking for himself, said the current environment is hostile toward needed research in biology and behavioral sciences. He pointed out that to apply the notion of diminished capacity to give consent to all mental disabled persons runs counter to modern concepts of mental illness and to court decisions which have restored their civil rights and limited judgments of incompetency. Issues of diminished capacity and guardianship should apply only following judicial determinations of incompetency. Another consent issue involves the concept of coercion as it relates to institutionalization. He submitted that coercion does not apply only to the mentally disabled, but to all chronically ill persons under the care of health professionals whom they trust, whether the persons are institutionalized or not.

Dr. Meyer cautioned that invoking the adversary process to protect research subjects may run counter to medical ethics and diminish accountability of professionals. Further, he said, consent negotiated with community groups is unworkable. Consent should be negotiated by the investigator with individual subjects. Dr. Meyer urged the Commission to address the need for research with the mentally disabled and to prepare a balanced current state of the art document that would include a review of consent issues and ethical implications of research.

Michael S. Lottman, J.D. (American Bar Association Commission on the Mentally Disabled (ABA/CMD)) supported the continuation of quality ex-

perimentation in mental disability under conditions that would prevent abuses. (The ABA/CMD defines "research" as any activity that places the subject "at risk" as defined by DHEW regulations, and distinguishes this from "behavior modification.")

The ABA/CMD would permit exposure of institutionalized mentally disabled research subjects to risk only when the proposed experiment is justified in terms of compelling societal interest and is conducted with scientific and procedural safeguards.

The ABA/CMD would allow nontherapeutic experimentation on the institutionalized only when certain conditions are met: (1) The protocol has scientific merit, verified by an independent multidisciplinary committee; (2) medical care, direct care and other institutional services are sufficient; (3) the experimentation will not reduce the amount or quality of therapy available to research subjects or to other residents; (4) the research poses no more than minimal risk; (5) the research is related to mental disability and seeks information that cannot be obtained from other subject groups; and (6) the information sought is of significance for the advancement of acknowledged scientific or medical goals.

With regard to nontherapeutic research, any objection, however expressed, by a competent or incompetent patient or resident should be an absolute bar to such individual's participation. Consent should be obtained, to the extent possible, from patients or residents competent to make such a decision, as well as from such persons' guardians, if any. Nonobjecting incompetent individuals should be used as research subjects, with appropriate third-party consent, only in those rare instances where special necessity can be demonstrated for their participation.

Therapeutic experimentation would be permissible when the above conditions are met, with two major exceptions: (1) More than minimal risk could be imposed if absolutely necessary to preserve the life, health or physical safety of the research subject; and (2) given a high level of therapeutic justification, the objections of an incompetent (but not a competent) subject could overridden with proper third-party consent and review procedures. (The term "therapeutic" must be strictly defined in terms of individual necessity and benefits.)

Philip Roos, Ph.D. (representing the National Association for Retarded Citizens (NARC)) addressed two issues: Conduct of biomedical and pharmacological research in residential facilities for the retarded, and behavior modification research in such facilities. NARC is committed both to the protection of mentally retarded persons from exploitation and to encouraging research on prevention and amelioration of mental retardation. NARC's guidelines for research involving the retarded provide that: (1) Biomedical research in residential facilities for the retarded must be directed toward retardation, be potentially therapeutic or, if nontherapeutic, pose no substantial danger to participants; (2) all such proposed research should undergo scientific review by an independent professional committee which should approve the project in writing prior to selection of subjects and should determine that another appropriate population is not available; (3) approved research should also be reviewed by a "local committee on legal and ethical protection" (with "citizen" membership), which would provide written approval prior to selection of subjects; (4) the protection committee should also supervise and monitor consent procedures; (5) adequate medical facilities and supervision of participants by qualified clinical staff must be present; (6) multi-level continuous review should occur, and variations in procedures should be monitored; (7) the rights of individuals not to participate or to withdraw from research must be respected and protected; and (8) enforcement mechanisms must exist to assure that participants' rights are observed.

NARC approves the use of behavior modification procedures although there is concern about the specific programmatic procedures used and behavioral objectives that are selected. Therefore, NARC has developed specific guidelines for the use of adversive procedures and for selecting goals of behavior modification. In addition, NARC proposes that two independent review bodies be established to approve and monitor all behavior modification programs in institutions for the mentally retarded. Functions and procedures for these review bodies are described in "Guidelines for the Use of Behavior Procedures in State Programs for Retarded Persons" (NARC, 1975).

Dr. Roos also commented on the concept of competency. He said that competency is not an absolute dimension but is relative to a particular experiment. In each experiment, subjects should be questioned to see if they understand the research purposes and procedures. In addition, he proposed licensing of investigators and accreditation of institutions.

Johs Clausen, Dr. Philos. (Institute for Basic Research in Mental Retardation), speaking for himself, stated that aspects of federal protection regulations impede research in mental retardation. Regulations designed to protect subjects from physical risk, he said, should not be required for innocuous procedures. A realistic definition of risk is required. Written consent should not be required where no risk is involved; in such cases, research participants can be adequately protected by IRB approval.

Most of the research conducted by the N.Y.S. Institute for Basic Research in Mental Retardation entails no manipulation of behavior or administration of drugs. Nevertheless, detailed requirements for informed consent have led parents and administrators to be very suspicious of the research and to see risk where it does not exist. Given this atmosphere, it is safer for them to refuse to allow retarded persons to participate. He observed that although the Institute was placed adjacent to Willowbrook Development Center in order to facilitate research with a population of retarded persons, the Willowbrook consent decree has made this impossible.

Neil Chayet, J. D. (Chayet and Sonnenreich), speaking for himself, said that the current protection system has created major barriers to research without really protecting the patient. It is erroneous to structure the issue in terms of individual rights versus research interests. Mr. Chayet criticized the concept of informed consent as outdated and overused. Emphasis on adherence to the letter of the law (e.g., preoccupation with written consent forms) often leads to disregard for the spirit of the law. DHEW consent regulations do not take into account "psychological factors" (e.g., full disclosure may not be in the patient's best interests).

For the mentally infirm, the legal presumption of competency is problematic since one cannot ordinarily act for another unless a determination of incompetency has been made and a guardianship established. The dilemma is that many mental patients are in need of treatment, are legally considered competent to consent, but in fact are unable to do so. To escape this dilemma, Mr. Chayet suggested that (1) the law must develop a set of criteria for determining competency to give consent; and (2) requirements for the consent process should be tailored to the nature of the research and the extent of subject involvement. For sociological research and noninvasive procedures (e.g., urine samples) IRB approval (assuming there exist adequate confidentiality provisions) ought to suffice. In projects that involve measurable risk of harm and where the patient is deemed incompetent either by current legal standards or in accordance with established criteria, a "patient-surrogate" should be utilized. In most cases, the surrogate, working with patients, physicians and researchers, should have ultimate legal responsibility for deciding upon the appropriateness of participation in research for

the incompetent. The legal function of the surrogate would be to permit the conduct of research rather than to "consent" (in the legal sense). The patient-surrogates should be paid professionals who are caring, well-meaning persons.

The peer review system, including self-policing, should be strengthened, rather than externally imposing accreditation or licensing standards.

Sue Allen Warren, Ph.D. (testifying for the American Association on Mental Deficiency (AAMD)) suggested that guidelines for the protection of human subjects should reflect variations in degree of risk and benefit inherent in research. Review committees need guidance for determining what constitutes "risk." Excessive regulation of minimal or no-risk studies is counterproductive. Increased regulation makes research less attractive to investigators and thereby threatens to reduce research that is necessary to solve the problems of retardation.

The AAMD's Social and Legislative Committee believes that it is the obligation of scientists to conduct research and to protect research subjects. Retarded persons should be afforded special protections because of the likelihood that they are less competent to evaluate the consequences of their participation in research, and they are likely to live in situations in which they are identifiable and not free from coercion. However, institutionalized persons should not be categorically excluded from research that can be carried out with noninstitutionalized persons. In such cases, the degree of difficulty in conducting the research (including financial costs and incidence of disease in the two populations) is a relevant consideration in deciding whether or not to allow institutionalized persons to participate. Similarly, the institutionalized retarded should not be categortically excluded from research done in other residential facilities or schools. Such studies are justifiable provided there is: (1) Minimal risk; (2) probability of "high yield"; and (3) "markedly improved efficiency from using this population in contrast to others." Mentally retarded persons may make important contributions to the welfare of the general public by their participation in research. When retarded persons participate in studies, the investigator should be particularly careful to attend to cues that indicate whether the retarded person is consenting to participate or continue in research because of a felt coersion. It is particularly important that review groups help to safeguard rights of retarded research subjects, and that there are reviews of procedures to be used. Guidelines for review committees would be very helpful.

David Reiss, M.D. (George Washington University Medical Center), speaking for himself, supported an active, on-going review process, while recognizing that good review will be expensive and therefore require adequate funding. Review boards should not make a priori or indirect assumptions about a mentally impaired individual's competence to consent based upon supposed consequences of institutionalization or diagnostic categorization. Rather, review ought to focus upon the negotiation and consent process, considering the unique characteristics of the individuals involved, research setting, protocol, etc.

Dr. Reiss suggested that the ideally negotiated consent process should include: (1) Patients in a group setting serving as advocates for one another; (2) a close working relationship with the patient's family so as to effectuate the right to withdraw from a study; and (3) a satisfactory end-phase consisting of follow-up and dissemination of research findings. He also suggested the following improvements in the research process: (1) Emphasis on the positive function of review for the investigator seeking to act in an ethically and socially responsible manner; (2) expansion of the review format to include site visits, subject interviews, etc.; and (3) special attention to the composition and membership patterns of review boards.

Daniel X. Freedman, M.D. (representing the American College of Neuropsychopharmacology (ACNP)) urged that regulations be flexible enough to allow investigators to conduct needed research in a wide variety of contexts, and said that there is need for continuing assessment of the effectiveness of regulations. Regulations must take account of the sequence of interactions involved in the research process, namely the dynamic interplay between researchers and practitioners. Excessive regulation tends to discourage researchers from undertaking formal research studies of observational or anecdotal findings reported by practitioners.

No blanket statements can be made about the competency of the mentally infirm to consent to experimentation because there is a wide range of capability. The problem of valid consent in the case of a patient whose lucidity varies can be overcome by the existence of a long-term, trusting relationship between physician-investigator and patient-subject.

Dr. Freedman stated that the objective of psychiatric research that employs new techniques and psychopharmacological agents is not to control minds but rather to extend the range of options available to disturbed people and therby increase their degrees of freedom.

Robert Plotkin, J.D. (Mental Health Law Project), testifying for himself, stated that the mentally ill and retarded have a right to take advantage of and benefit from medical advances and therefore should not be categorically excluded from research. Because diminished capacity can negatively affect a person's ability to make responsible decisions, however, and because the institutionalized may be more vulnerable to coercion, special scrutiny is required for research involving these groups.

Mr. Plotkin recommended a two-step review process: (1) A review of the scientific soundness of protocols; and (2) a separate committee to scrutinize the involvement of particular subjects in scientifically-approved research. The second, "humanistic" committee would review the adequacy of consent and make an independent assessment as to whether or not the proposed research would be in the "best interest" of the individual subject. All proposed actions that pose potential harm to the subject must be reviewed, not merely those labeled "research" by an investigator. A national registry of protocols should be established.

Research may be undertaken inside an institution when it is intended to directly benefit the individual subject or to advance knowledge about the subject's disability, provided certain requirements are met, such as review and consent. Mr. Plotkin said, however, that research intended to advance general scientific knowledge should not be conducted on institutionalized mentally ill or retarded persons.

H. Carl Haywood, Ph.D. (representing the Division of Mental Retardation of the American Psychological Association) underscored benefits of research involving the mentally retarded and cautioned against generalizing from a few abuses to the whole research enterprise (e.g., prohibiting all aversive stimulation). Placing unreasonable restrictions on the ability of scientists to carry out research with human subjects constitutes, in itself, a systematic infringement upon the human rights of those same mentally retarded persons who might serve as participants in research by hindering the development of better services. Adding regulations increases the cost of doing research, which in turn reduces the volume of research conducted, given present funding trends.

An institution should never be accepted as the sole representative of the individual, regardless of his or her competence. Informed consent procedures should be overseen by a local review committee, especially because of the acquiescence response set found frequently in institutionalized persons. The frequency and duration of participation in research that might deprive a resident of rehabilitative programs should be considered by review committees in deciding whether or not to permit a project.

Jonathan D. Cole, M.D. (testifying for the American Psychopathological Association) suggested that protection regulations should reflect variations in the level of risk. For many minimal risk procedures, formal procedures for informed consent are unnecessary; rather, the patient's acquienscence should be adequate. Ground rules permitting "noninvasive" research in mentally impaired patients who are incapable of giving informed consent are particularly needed. The local review board should decide what level of consent, assent or acquiescence is appropriate, commensurate with the level of risk. For studies posing greater risk (e.g., phase II trials), informed consent should always be sought from the patient (most psychiatric patients are capable of giving informed consent), or if the patient is impaired, from the responsible relative.

Eleanor Kohn (testifying for the National Association for Mental Health, Inc. (NAMH)) stated that the incidence of mental illness and the degree of suffering it engenders can ultimately be diminished only be research into the causes, course and treatment of the diseases. Therefore, NAMH encourages research, provided proper safeguards (i.e., regulations no less stringent than the present DHEW regulations and the November 16, 1973 proposed DHEW policy) are enforced. Protective guidelines should take into account the significant difference in types of research and be flexible enough to be appropriate to those important differences. All review or protection bodies should include informed consumer representation.

Frederick K. Goodwin, M.D. (representing the National Institute of Mental Health) stated that research in the mental health field should be encouraged because the "knowledge base" is thin and the efficacy of many treatments has not been established. Any proposal for protecting human subjects must take cognizance of potential impact on the research enterprise, particularly effects on the physician-patient relationship. He warned that some mechanism which have been proposed for protecting research participants run the risk of diluting the physician's sense of primary responsibility for the patient's well-being. Emphasis on the letter of the law can lead to violations of the spirit of the law. "Outside" individuals have a legitimate and useful role to play on review boards, but they should never come directly between physician and patient.

Dr. Goodwin expressed concern about singling out persons for special protection because they have a certain psychiatric diagnosis. Being a psychiatric in-patient, he said, is not necessarily associated with a decreased ability to consent.

Research unrelated to conditions of mental illness should not be categorically prohibited for institutionalized persons. In some studies, the effect of institutionalization is the subject of investigation. Involuntarily committee patients should not be categorically prohibited from participating in research because there may be anomalies or conditions that are peculiar to the involuntarily committed.

Stewart Brown (representing the Pennsylvania Association for Retarded Citizens) stated that research should not be permitted on institutionalized retarded persons unless it is directly related to the individuals' condition or to mental retardation. Since April 1973, Pennsylvania has had a moratorium on human experimentation in state institutions for children, retarded persons and the mentally infirm because of "horrendous" institutional conditions. Past abuses indicate disregard for the health and safety of institutionalized persons by researchers. Disproportionate use of institutionalized retarded persons as subjects for research is both scientifically unsound, because of the skewed sample involved, and morally reprehensible.

Voluntary, informed consent of institutionalized persons is a misnomer, Mr. Brown said. Voluntariness is suspect because institutionalized persons are dependent upon the institution for life itself. "Informed" consent is dubious because institutionalized retarded persons are usually the most severely retarded persons, who often lack communicative skills.

Mr. Brown recommended that researchers should be qualified and licensed. A regulatory-type agency should enforce regulations and impose sanctions where violations are discovered. Facilities in which research is carried out should meet relevant JCAH standards.

Chapter 9. National Minority Conference on Human Experimentation

The National Minority Conference on Human Experimentation included three papers and two workshops that discussed research involving the institutionalized mentally infirm.

Henry W. Foster, M.D., in "Children and the Institutionalized Mentally Infirm," pointed out that the research community often falsely assumes a common national life-style in its research design. This would influence a definition of mental infirmity, though it would not present difficulties defining the institutionalized mentally infirm. Dr. Foster recommended that "for groups placed at greatest risk because of their 'captive state,' a moratorium be effected." He believes that those clearly incapable of providing voluntary informed consent constitute people at greatest risk, *e.g.*, the functionally illiterate, the senile, those with poor command of the English language, and the mentally incompetent. Mental retardates, whether institutionalized or not, should not participate in any nontherapeutic research.

Crystall A. Kuykendall, Ph.D., in a paper on "Children and the Mentally Infirm," defined mental infirmity or mental retardation as "a condition of inadequately developed intelligence." She discussed sociopolitical influences on the concept of normalcy and the consequences of labelling as retarded those children who do not conform to majority culture norms. She reviewed the literature about negative effects of institutionalization such as deprivation of human dignity, stigmatization, and both physical and mental abuses, and summarized the rights of the handicapped, as determined by the courts. In addition, she surveyed alternatives to institutionalization, such as community care programs and the cascade system of educational alternatives. She recommended specific criteria for institutionalization, mechanisms to improve institutions, and procedures for "mainstreaming" all but the profoundly retarded. She did not deal specifically with research participation of those institutionalized as mentally retarded.

Jacquelyne J. Jackson, Ph.D., in a paper on "Informed Consent: Ethical Issues in Behavioral Research," said that informed consent procedures for the mentally infirm should include a determination by a panel, composed of physician, a psychiatrist, a biomedical scientist and an attorney, that the individuals may participate in research without violation of their rights or, alternatively, that the potential benefit to the individuals or to the class of persons outweighs the harm. Concurrence from next of kin or appropriate legal guardian would be mandatory. When feasible in terms of mental status, institutionalized individuals should, in addition, provide their own informed consent.

* * * * *

The recommendations of the National Minority Conference workshops on research involving the institutionalized mentally infirm include the following:

With respect to the selection of subjects: Biomedical or behavioral research should not be conducted on the institutionalized mentally infirm unless the subjects have a relevant condition that requires treatment and may be ameliorated by the research, no acceptable alternative treatment procedures are available, and the research cannot be accomplished outside the institutional setting. In addition, there should be safeguards against disproportionate use of certain groups as subjects, and the appropriateness of the institutionalization of research

participants should be reviewed by two clinicians who are independent of the institution.

With respect to informed consent, the Conference recommended that persons should not be research subjects against their will, regardless of competency; participants should be able to obtain outside advice at no cost to themselves; evidence that informed consent guidelines are followed must be available to the public; two people who are unaffiliated with either the institution or the research should witness consent procedures; the consent form should specify the financial liability of the federal government in federally sponsored research; minor subjects who are at least seven years old should sign the consent form; and subjects should be given a copy of the consent form.

Other recommendations provided for protection of confidentiality, adequate disclosure (including results of other studies and the possibility of being a control subject), appropriate language and comprehension level of consent forms, and explicit notice of the right to withdraw at any time.

Recommendations concerning institutional review committees stipulated that a majority of the members should be community representatives who reflect the sociological characteristics of the subject populations. In addition, the committees should include representatives of consumers and former subjects, and the membership should rotate. Review of proposals should take into account risks and benefits, acceptability of the research procedures and subject selection. The committees should conduct periodic review of research and reevaluation of the subjects' institutionalization as well as monitoring the consent process and assuring feedback to subjects about the research.

Chapter 10. Deliberations and Conclusions

From a review of the pertinent literature and site visits to institutions for the mentally ill and the retarded, the Commission is profoundly impressed by the paucity of knowledge relating to the care and treatment of persons institutionalized as mentally infirm, and by the historical role of such persons as social outcasts. In no other area of the Commission's mandate has the need for research been so clearly manifest. So little is known about the factors that cause mental retardation and the conditions known as mental illness, that efforts to prevent such disabilities are in the primitive stages. This paucity of knowledge extends to all aspects of diagnosis, medical and behavioral therapy, and even routine care. There is widespread uncertainty regarding the nature of the disabilities, the proper identification of persons who are disabled, the appropriate treatment of such persons, and the best approaches to their daily care. Clearly improvements are in order; and these improvements are strongly dependent upon research.

At the same time, the mentally infirm have long been victims of negative social responses ranging from outright fear and abuse, through isolation, neglect and abandonment. They have been placed in institutions usually far removed from sight or mind of the rest of society, making them vulnerable to exploitation. Only recently has society begun to recognize that the moral ideal of treating such persons with dignity means more than kindness; it has implications for the exercise of their civil rights.

Various proponents have different views on how best to help these individuals. Some emphasize protecting the institutionalized from exploitation and abuse, and thus take a paternalistic stance. Others emphasize autonomy and urge that the rights of decision-making be restored to those institutionalized as mentally infirm. Each of these responses recognizes a legitimate claim of such persons upon the community, but the two may come into conflict. The Commission's debate involved, in large measure, attempts to reconcile differences of opinion among Commission members as to the proper balance between these two considerations. The different positions that were proposed, and the resolution of those differences, are described in the following discussion.

One primary consideration must be borne in mind: The class of people identified in the Commission's mandate as the "institutionalized mentally infirm" is not homogeneous. It includes the profoundly retarded, who may spend most of their lives in institutions, the senile, who will probably live out their lives in institutions, and individuals who enter such settings for short-term relief from crisis-induced stress or for periodic care of intermittent difficulties. Some members of the class of subjects under consideration are clearly competent, both functionally and in the legal sense, to make decisions regarding their participation in research. Others clearly are not. In addition, some patient retain a constant level of competency (or lack thereof) while others may fluctuate with respect to their capacity to understand information, to respond to the real world, or to communicate choices. Finally, the kinds of institutions in which such persons reside vary considerably. They include the large and dismal stereotype of the past, as well as small units such as half-way houses and community mental health centers, set within the community and not nearly so affected by isolation or impersonal care as the older institutions. Consequently, the Commission's recommendations provide a certain amount of flexibility and room for judgment by local Institutional Review Boards in order to accommodate the diverse situations to which the recommendations must apply.

The issues surrounding the conduct of research involving those institutionalized as mental infirm can be viewed in terms of a conflict between the obligation to develop better methods of diagnosis and treatment, and the duty to refrain from interventions that present unjustified risk, or exploit the vulnerability of patients. The problem facing the Commission, therefore, was to formulate recommendations that would permit the conduct of responsible investigations designed to improve methods of diagnosis, prevention and care of mental disabilities, and at the same time protect institutionalized individuals from unwarranted or unfair interference. The Commission's deliberations focused on three issues: (1) Whether research involving this class of subjects must always be relevant to their condition or to some aspect of their institutionalized; (2) how to protect the autonomy of such individuals while still affording protection to those unable to protect themselves; and (3) how must risk is ethically permissible to ask such persons to assume for the benefit of others.

The question of relevance. There was a difference of opinion among Commission members as to (1) whether institutionalized individuals should participate in research when suitable noninstitutionalized subjects are available; and (2) whether institutionalized individuals should participate in research that is not relevant to their particular condition. Some members of the Commission felt strongly that an individual who is institutionalized as mentally infirm should not participate, or be asked to participate, in research for which noninstitutionalized persons would be suitable subjects. The rationale for this position is twofold: first, that institutionalized individuals are particularly vulnerable to exploitation, and second, that they already carry burdens from their disability and their institutionalization, and it is therefore unjust to ask them to assume any additional burdens. It is feared that persons in institutions will be involved disproportionately and unfairly in research because they are convenient and because their presence in an institutional setting might reduce the expense of conducting research. Further, it was suggested that those outside the institution, although perhaps also burdened by disabilities, are likely to have caring persons to assist and protect them, if necessary. Therefore, some members of the Commission proposed that even for research that is relevant to a mental dis-

ability, selection of subjects should be limited to individuals who are not institutionalized, where possible.

On the other hand, some Commission members felt just as strongly that it is incorrect to assume that participation in research is always a burden or that being in an institution is always a damaging experience. They suggested that participation in research may have beneficial effects, such as interaction with people from outside the institution or, at least, additional attention. Research tasks may be interesting and a welcome change from the boredom of institutional life, although relief from boredom does not in itself justify participation in research. One Commission member also observed that deinstitutionalization of mental patients has resulted in the abandonment of many such persons to ghettos, where they have no one to look after their personal, health and social needs. Thus, they may be even worse off than those who remain inside the institutions.

The resolution reached by the Commission was (1) to put the burden on each investigator proposing to recruit subjects from an institution to justify the involvement of such subjects, and (2) to permit institutionalized individuals to participate in research that is not relevant to their condition only if they are capable of giving informed consent and the research presents no more than minimal risk. Justification of the involvement of institutionalized subjects should be based on such factors as the availability of suitable subjects outside the institution, the nature of the research, the risks and benefits involved, and the probable competence of the class of subjects who will be asked to participate. As the risk increases, justification in the way of relevance to the subjects' condition is required.

Protecting autonomy. Some institutionalized individuals are capable of giving a legally valid informed consent. Others, with diminished capacity, are able nonetheless to understand what they are being asked to do, to make a reasonably free choice and to communicate that choice unambiguously. The Commission has chosen to describe this ability as the ability to "assent," in order to distinguish it from the more considered judgments of those who are not impaired. A judicial determination of incompetency or involuntary commitment has no implication for the concept of "assent." The capacity to assent may be related, however, to the length of institutional confinement. An individual may be involuntarily committed to an institution, and even have been adjudicated incompetent, yet still be able to make a knowledgeable choice to participate in research. On the other hand, an individual may have entered an institution voluntarily and never undergone incompetency proceedings, but after living for several years in an institutional setting may become quite incapable of making an autonomous choice. It is not uncommon for institutionalized individuals to do only as they are asked. There are two additional concerns that should be borne in mind. First, potential subjects may agree to participate in research out of fear that necessary services or attention will be withheld if such permission is denied. Second, when the research involves participation over an extended period of time, one cannot presume from initial assent that there will be continuing willingness to participate, and capacity to exercise the right to withdraw may fluctuate.

In view of the different factors that may impinge on a person's autonomy in an institution, there was some disagreement among Commission members as to where the presumption should lie regarding capacity to assent. Some felt that because individuals institutionalized as mentally infirm may suffer both from their disability and also from the effects of institutionalization, their capacity to assent is in doubt. Others felt that all individuals should be presumed to be capable of making decisions affecting their lives unless there is clear evidence to the contrary. All agreed, however, that the capacity to assent should be determined without reference to court adjudications or mode of admission. It was also agreed that assent or even lack of objection would be sufficient authorization for an individual institutionalized as mentally infirm to participate in research presenting no more than minimal risk, so long as the research is relevant to the subject's condition, and that assent would be sufficient for research involving an intervention from which the subject is expected to derive direct benefit, and for research presenting no more than a minor increment above minimal risk and designed to yield important knowledge about the subjects' condition. For research in the last two categories, the permission of a legal guardian may also be required by state law.

The Commission also concluded that a consent auditor should be appointed for projects deemed by the Institutional Review Board to require additional protection of subjects (e.g., if the research presents more than minimal risk or if the capacity of the proposed subjects to assent is in doubt) and that the auditor, once appointed, should be available on a continuing basis to protect the rights and the interests of patients. Further, appointment of a consent auditor should be mandatory for all research presenting more than minimal risk and no prospect of direct benefit for the subjects. Observation of the consent process by an auditor who is independent of the research team will assist in assuring the adequacy of an authorization that is based on the subject's consent or assent.

A difficult question arose regarding the circumstances in which an individual's objection to participation in research might be overridden. Some Commission members felt that individuals lacking the ability to assent nevertheless should be permitted to exercise an absolute veto over participation in any research. Others felt that when the research involves a potential benefit for the subjects, a veto might be overridden if overriding a particular patient's objection is specifically authorized by a court. In response, if was suggested that the requirement of such a cumbersome procedure might deny to many individuals the benefits of new treatments under evaluation, simply because of the time and expense involved in obtaining court permission.

Ultimately, the Commission recommended that an institutionalized person's objection to participation in research should be binding unless (1) the research involves an intervention that may directly benefit that person, (2) that intervention is available only in the research context, and (3) the subject's participation is authorized by a court.

Permissible risk. Occasionally, research is proposed that presents more than minimal risk and includes no procedures from which institutionalized subjects may derive direct benefit, but which nevertheless may provide important information about a specific disease or disorder from which they suffer. Some Commissioners felt that it is never justified to expose institutionalized patients to risk for the sole benefit of others, even if that benefit appears to be significant and probable. Others felt that the risk could be justified only if there were a remote possibility that the subjects, themselves, might eventually receive some benefit (if only in the far future). Still others would limit participation in such research to institutionalized individuals who are capable of consenting. Several Commission members suggested that if the proposed subjects are the only ones suitable for the conduct of the research, and thus in a position to make a unique contribution to the benefit of others, individuals incapable even of objecting might also be included in such research if the risk involved is not unreasonable.

The Commission concluded, after considerable debate, that individuals institutionalized as mentally infirm should be able to participate in research presenting more than minimal risk and no direct benefit to them under very limited conditions: Only a

minor increment of risk (over minimal) may be presented, and the anticipated knowledge to be gained from the research must be of vital importance for the understanding of the condition for which the subjects have been institutionalized or be expected to provide some benefit for the subjects in the future. In addition, appropriate conditions for the consent or assent of the subjects must be met (including supervision of the process by a consent auditor) and no subject may be included in such research over his or her objection.

It is not possible for any set of recommendations to provide for all possible contingencies. Unusual circumstances may arise in which a research proposal presenting an opportunity to learn important information about a serious disorder may be designed in such a way that an Institutional Review Board will be unable to approve it under the standards recommended by the Commission. In such instances, the Commission believes that there should be an opportunity for debate at the national level and for public comment regarding the ethical acceptability of the proposal. This can be accomplished by forwarding such protocols to a national ethics advisory board for review. Further, because of the importance of the issues involved, the conduct of any research approved by such an advisory board and subsequently by the head of the responsible federal agency should be delayed to provide a reasonable opportunity for Congress to take action regarding the proposal.

Dissenting Statement of Commissioner Cooke

(Dr. Cooke voted against section (C) of Recommendation (4). His explanation of this dissent follows.)

Research in which there is more than minimal risk to a subject presented by an intervention that does not hold out the prospect of fairly immediate direct benefit or by a monitoring procedure that is not required for the well-being of the subject should not be performed unless, in addition to the requirements of sections (A), (B) and (C)(i) of Recommendation (4), the anticipated knowledge might reasonably benefit the individual subjects in the future (section (C)(ii)). There is no greater moral obligation for an institutionalized mentally infirm subject toward others of his disease class, present or future, than any other person in society, even though in biological terms there may be some closer relationship. Since it is accepted that normal persons should not be enrolled in nontherapeutic research with more than minimal risk unless they can give informed and meaningful consent, it is doubly unreasonable that the institutionalized mentally infirm should be so enrolled when society has had so much recent concern for their greater protection, and when they live in environments which seriously discourage any kind of decision making and the nature of their illnesses weakens their abilities to choose responsibly in most of life's usual situations.

To offer the choice of being a research subject to the institutionalized mentally infirm, who are inconsistent and eratic in behavior and limited in almost all the choices most normal persons experience daily, greatly exaggerates the psychic benefits of being a subject and projects on the institutionalized mentally infirm values not generally considered important by most people in society.

Greater protection and concern for the institutionalized mentally infirm, not less, was an important reason for the formation of the National Commission. No evidence has been presented in our hearings that would reverse those concerns.

Dissenting Statement of Commissioner King

(Ms. King voted against section (B)(iii) of Recommendation (2) and sections (D)(iv) and (E)(ii) of Recommendation (3).)

I am dissenting from the Commission's requirement of court authorization in Recommendation (2)(B)(iii) and Recommendation (3)(D)(iv) and (E)(ii) to enroll an objecting subject in a research project. I should emphasize at the outset that any dissent must take into account at least two possible interpretations of these sections, since the Commission's reasons for this requirement are not easily discernible. I am, however, in disagreement with both interpretations.

I disagree with the Commission's recommendation, either because (1) a court should never be able to overrule the valid objection (by valid objection, I mean the knowing and understanding refusal by a patient of a possible benefit for whatever reason) of an institutionalized patient or (2) a court is not necessarily in the best position in all cases to determine the quality of an objection.

As pointed out in the legal chapter of the Commission's report, "it appears that there is a trend, both judicially and legislatively, to guarantee patients the right to refuse hazardous or 'experimental' therapies." If that is so, then it appears particularly absured for the Commission to suggest or encourage a court to overrule a patients' valid refusal to participate in a research project.

Perhaps the Commission required court authorization to insure as fair and objective an assessment of the quality of the objection as possible. I certainly share the Commission's concern about insuring a fair and objective assessment of the quality of the prospective subject's objection. Most forms of mental illness and mental retardation are viewed as possible imparing a patient's ability to make sound personal decisions. We should be concerned therefore about a subject's ability to refuse as well as to assent to participation in research activities. I differ with the Commission because I do not believe that a court is necessarily in the best position to make such an assessment.

There appears to me to be no reason to mandate court participation in every case where there is some behavior indication an objection. By the time the matter comes before the court, the patient's original behavior might be radically different; thereby leaving the court with a skewed impression. Since the court would have to depend to a large degree upon institutional records and data in reaching a decision, it is not immediately apparent that its decision would be any fairer than that of a consent auditor or an Institutional Review Board (IRB), who would have a continuing relationship with the patient and the project.

The Commission has given the IRB the basic responsibility for determining the quality of a patient's assent, and provided that an IRB in its descretion could appoint a consent auditor to assist it in carrying out its responsibilities. It seems to me that the same process should be used to ascertain the quality of a patient's objection. If the IRB or consent auditor decides that there is a valid objection, that should end the matter. If a patient is determined to be incapable or either assenting or objecting to enrollemt in a research project that seeks to directly benefit the patient, then an appropriate third party (someone other than an institutional guardian) can give permission or refusal. If a consent auditor and/or the IRB is not sure of the quality of the assent or objection, then the IRB can seek assistance from a court.

For the reasons stated above, I have serious concern about the Commission's requirement that court authorization be obtained before enrolling an objecting patient in a research protocol—thus my votes against parts of Recommendations (2) and (3).

[FR Doc. 78-6469 Filed 3-16-78; 8:45 am]

BOOK 2 OF 2 BOOKS
FRIDAY, MARCH 17, 1978
PART IV

federal register

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

[4510-27]

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determinations Decisons of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates. (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 573 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rule-making procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Arizona:	
AZ77-5058; AZ77-5059; AZ77-5060.	June 17, 1977.
Georgia:	
GA78-1016	Mar. 3, 1978.
Missouri:	
MO77-4279	Sept. 30, 1977.
New Mexico:	
NM78-4012	Feb. 10, 1978.
NM78-4021	Mar. 10, 1978.
Oklahoma:	
OK77-4270; OK77-4273; OK77-4274; OK77-4275; OK77-4276; OK77-4277; OK77-4283; OK77-4284.	Sept. 30, 1977.
Pennsylvania:	
PA77-3043	Apr. 8, 1977.
PA77-3050; PA77-3053; PA77-3054; PA77-3057; PA77-3058.	May 13, 1977.
PA77-3059	May 20, 1977.
PA77-3061	June 10, 1977.
PA77-3078	June 4, 1977.
PA77-3128	Sept. 16, 1977.
PA78-3005	Feb. 24, 1978.

SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being superseded and their dates of publication in the FEDERAL REGISTER are listed with each State.

Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Hawaii:	
HI77-5087 (HI78-5016)	Sept. 23, 1977.
Illinois:	
IL76-2078 (IL78-2031); IL76-2080 (IL78-2040).	Aug. 13, 1976.
IL76-2120 (IL78-2017)	Oct. 1, 1976.
IL76-2124 (IL78-2022); IL76-2125 (IL78-2024); IL76-2126 (IL78-2026); IL76-2127 (IL78-2027); IL76-2129 (IL78-2034).	Oct. 8, 1976.
IL76-2128 (IL78-2028); IL76-2131 (IL78-2037); IL76-2133 (IL78-2039).	Oct. 22, 1976.
IL77-2029 (IL78-2021)	Feb. 25, 1977.
IL77-2030 (IL78-2041)	Mar. 4, 1977.
IL77-2068 (IL78-2020)	June 10, 1977.
IL77-2100 (IL78-2019)	July 8, 1977.
IL77-2112 (IL78-2035); IL77-2113 (IL78-2018).	Aug. 5, 1977.
IL77-2114 (IL78-2036); IL77-2115 (IL78-2038).	Aug. 12, 1977.
Oklahoma:	
OK77-4278 (OK78-4022)	Sept. 30, 1977.
Maryland:	
DC78-3006 (DC78-3008)	Mar. 3, 1978.
Nevada:	
NV77-5085 (NV78-5018); NV77-5089 (NV78-5011).	Sept. 23, 1977.
Utah:	
UT77-5075 (UT78-5012)	Aug. 5, 1977.
Virginia:	
DC78-3006 (DC78-3008)	Mar. 3, 1978.
Washington, D.C.:	
DC78-3006 (DC78-3008)	Mar. 3, 1978.

CANCELLATION OF GENERAL WAGE DETERMINATION DECISIONS

NONE

Signed at Washington, D.C. this 10th day of March 1978.

RAY J. DOLAN,
Assistant Administrator,
Wage and Hour Division.

DECISION #AZ77-5058 - Mod. #7
(42 FR 31056 - June 17, 1977)
Statewide, Arizona

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$13.625	$1.075	$1.00	.75	.02

DECISION #AZ77-5059 - Mod. #6
(42 FR 31065 - June 17, 1977)
Maricopa County, Arizona

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$13.625	$1.075	$1.00	.75	.02

DECISION #AZ77-5060 - Mod. #5
(42 FR 31070 - June 17, 1977)
Pima County, Arizona

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$13.625	$1.075	$1.00	.75	.02

DECISION #GA78-1016 - Mod. #1
(43 FR 9074 - March 3, 1978)
Clayton, DeKalb, and Fulton Counties, Georgia

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Omit:					
Roofers	$ 6.32				

DECISION #MO77-4279 - Mod. #3
(42 FR 53074 - September 30, 1977)
Description of Work and Location:
Heavy and Highway Construction, Missouri

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Ironworkers:					
Zone 2	$10.80	.70	1.40	1.00	.05
Zone 3	10.685	.70	1.40	1.00	.05

DECISION NO. NM78-4012 - Mod. #3
(43 FR 5978 - February 10, 1978)
Statewide, New Mexico

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADD:					
PAINTERS (ZONE II)					
Zone 2-A	$ 7.95	.35	.20		.05
Zone 2-B	9.17	.35	.20		.05
Zone 2-C	8.60	.35	.20		.05
Zone 2-D					
Zone 2-E	8.70	.35	.20		.05
Zone 2-F	7.95	.35	.20		.05
Zone 2-G	8.45	.35	.20		.05
Painters Industrial Work:					
Brush, roller, sandblast and grinders operators	9.82	.35	.20		.05
LINE CONSTRUCTION - AREA II:					
AREA II-A					
Lineman	10.90	.60	3%+.70		1/2%
Cable splicers	11.99	.60	3%+.70		1/2%
Equipment operators (includes helicopter op.)	10.36	.60	3%+.70		1/2%
Equipment mechanic (includes helicopter mechanic)& Powderman	9.48	.60	3%+.70		1/2%
Groundman & Jackhammer Operator:					
1st 6 months	5.89	.60	3%+.70		1/2%
2nd 6 months	6.65	.60	3%+.70		1/2%
Experienced	7.74	.60	3%+.70		1/2%
AREA II-B					
Lineman	11.66	.60	3%+.70		1/2%
Cable splicers	12.75	.60	3%+.70		1/2%
Equipment operators (includes helicopter op.)	11.12	.60	3%+.70		1/2%
Equipment mechanics (includes helicopter mechanic)& Powderman	10.24	.60	3%+.70		1/2%
GROUNDman & Jackhammer Operator:					
1st 6 months	6.65	.60	3%+.70		1/2%
2nd 6 months	7.41	.60	3%+.70		1/2%
Experienced	8.50	.60	3%+.70		1/2%
AREA II-C					
Lineman	12.32	.60	3%+.70		1/2%
Cable splicers	13.41	.60	3%+.70		1/2%
Equipment operator (includes helicopter operator)	11.78	.60	3%+.70		1/2%
Equipment mechanic (includes helicopter mechanic)& Powderman	10.90	.60	3%+.70		1/2%

MODIFICATIONS P. 3

DECISION NO. NM78-4012	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION AREA II-C(Contd)					
Groundman & Jackhammer Operator:					
1st 6 months	7.31	.60	3%+.70		1/2%
2nd 6 months	8.07	.60	3%+.70		1/2%
Experienced	9.16	.60	3%+.70		1/2%
AREA II-D					
Lineman	13.08	.60	3%+.70		1/2%
Cable splicers	14.17	.60	3%+.70		1/2%
Equipment operator (includes helicopter operator)	12.54	.60	3%+.70		1/2%
Equipment mechanic (includes helicopter mechanic)& Powderman	11.66	.60	3%+.70		1/2%
Groundman and Jackhammer Op.:					
1st 6 months	8.07	.60	3%+.70		1/2%
2nd 6 months	8.83	.60	3%+.70		1/2%
Experienced	9.92	.60	3%+.70		1/2%
DECISION NO. NM78-4021 - Mod. #1					
(43 FR - March 10, 1978)					
Statewide, New Mexico.					
CHANGE:					
LINE CONSTRUCTION - AREA II					
AREA II-A					
Lineman	$10.90	.60	3%+.70		½%
Cable splicers	11.99	.60	3%+.70		½%
Equipment op. (includes helicopter operator	10.36	.60	3%+.70		½%
Equipment mechanic (includes helicopter mechanic) & powderman	9.48	.60	3%+.70		½%
Groundman & Jackhammer Op.:					
1st 6 months	5.89	.60	3%+.70		½%
2nd 6 months	6.65	.60	3%+.70		½%
Experienced	7.74	.60	3%+.70		½%
AREA II-B					
Lineman	11.66	.60	3%+.70		½%
Cable splicers	12.75	.60	3%+.70		½%
Equipment op. (includes helicopter operator)	11.12	.60	3%+.70		½%
Equipment mechanic (includes helicopter mechanic) & powderman	10.24	.60	3%+.70		½%
Groundman & Jackhammer Op.:					
1st 6 months	6.65	.60	3%+.70		½%
2nd 6 months	7.41	.60	3%+.70		½%
Experienced	8.50	.60	3%+.70		½%
AREA II-C					
Lineman	12.32	.60	3%+.70		½%
Cable splicers	13.41	.60	3%+.70		½%
Equipment operator (includes helicopter operator)	11.78	.60	3%+.70		½%
Equipment mechanic (includes helicopter operator) & powderman	10.90	.60	3%+.70		½%

MODIFICATIONS P. 4

DECISION NO. NM78-4021

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION CONTD:					
AREA II-C (Cont'd)					
Groundman & Jackhammer Op.:					
1st 6 months	7.31	.60	3%+.70		½%
2nd 6 months	8.07	.60	3%+.70		½%
Experienced	9.16	.60	3%+.70		½%
AREA II-D					
Lineman	$13.08	.60	3%+.70		½%
Cable splicers	14.17	.60	3%+.70		½%
Equipment op. (includes helicopter operator	12.54	.60	3%+.70		½%
Equipment mechanic (includes helicopter mechanic) & powderman	11.66	.60	3%+.70		½%
Groundman & Jackhammer op.:					
1st 6 months	8.07	.60	3%+.70		½%
2nd 6 months	8.83	.60	3%+.70		½%
Experienced	9.92	.60	3%+.70		½%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. OK77-4270 - Mod. #2 (42 FR 52878 - September 30, 1977) Latimer, Leflore, Haskell, Sequoyah and Pushmataha Cos., Oklahoma.					
CHANGE: BOILERMAKERS	$10.55	.80	1.00		.02
DECISION NO. OK77-4273 - Mod. #6 (42 FR 53091 - September 30, 1977) Oklahoma, Cleveland, Caddo, Grady, Canadian, Kingfisher, Logan, Lincoln, McClain, Seminole, and Pottawatomie Cos. Oklahoma.					
CHANGE: BOILERMAKERS	10.55	.80	1.00		.02
DECISION NO. OK77-4274 - Mod. #6 (42 FR 53094 - September 30, 1977) Garfield County, Oklahoma					
CHANGE: BOILERMAKERS	10.55	.80	1.00		.02
DECISION NO. OK77-4275 - Mod. #6 (42 FR 53097 - September 30, 1977) Comanche County, Oklahoma					
CHANGE: BOILERMAKERS	10.55	.80	1.00		.02
DECISION NO. OK77-4276 - Mod. #4 (42 FR 53099 - September 30, 1977) Wagoner County, Oklahoma					
CHANGE: BOILERMAKERS	10.55	.80	1.00		.02

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. OK77-4277 - Mod. #2 (42 FR 53101 - September 30, 1977) Pittsburg County, Oklahoma					
CHANGE: BOILERMAKERS	10.55	.80	1.00		.02
DECISION NO. OK77-4283 - Mod. #3 (42 FR 53106 - September 30,1977) McIntosh County, Oklahoma					
CHANGE: BOILERMAKERS	10.55	.80	1.00		.02
DECISION NO. OK77-4284 - Mod. #3 (42 FR 53109 - September 30, 1977) Muskogee, Adair, Cherokee, and Okmulgee Counties, Oklahoma					
CHANGE: BOILERMAKERS	10.55	.80	1.00		.02

MODIFICATIONS P. 7

DECISION #PA77-3043- Mod. #9 (42 FR 18783 - April 8, 1977) Carbon, Monroe County, including Tobyhanna Army Depot, and Pike County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Glaziers					
Zone 2	$ 9.75	.40	.70		
Line Construction:					
Linemen, dynamite man, heavy Equipment operators	10.80	.50	3%		3/8 of 1%
Winch truck operator	7.59	.50	3%		3/8 of 1%
Groundman	7.26	.50	3%		3/8 of 1%
Roofers					
Zone 3					
Composition & Kettleman	10.63	.72			
Omit:					
Roofers Helpers					
Zone 1	7.21	.15	.30		
Zone 3	9.585	.42	.47		

DECISION #PA77-3050- Mod. #8 (42 FR 24669 - May 13, 1977) Lackawanna, Susquehanna, Wayne, and Wyoming Counties, Pennsylvania					
Change:					
Glaziers	$ 9.75	.40	.70		
Line Construction:					
Linemen, dynamite man, heavy equipment operators	10.80	.50	3%		3/8 of 1%
Winch truck operator	7.59	.50	3%		3/8 of 1%
Groundman	7.26	.50	3%		3/8 of 1%
Roofers:					
Composition & Kettleman	10.63	.72			
Omit:					
Roofers Helpers	9.58	.42	.47		

MODIFICATIONS P. 8

DECISION #PA77-3053 - Mod. #8 (42 FR 24672 - May 13, 1977) Elk, Forest, McKean & Warren Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers					
Zone 3	$11.31	1.17	.80		.04
Line Construction:					
Linemen, dynamite man, heavy equipment operators	10.80	.50	3%		3/8 of 1%
Winch truck operator	7.59	.50	3%		3/8 of 1%
Groundman	7.26	.50	3%		3/8 of 1%

DECISION #PA 77-3054 - Mod. #9 (42 FR 24677 - May 13, 1977) Bedford, Cambria, Cameron, Clarion, CLearfield, Jefferson, Crawford and Venango Counties, Pennsylvania					
Change:					
Cement Masons					
Zone 2	10.45	12%	6%		
Area covered by Cement Masons Zone 2 - Cameron, Cambria, Bedford Counties					
Lathers					
Zone 2	11.00		.35		.01
Line Construction					
Zone 2					
Linemen, dynamite man, heavy equipment operators	10.80	.50	3%		3/8 of 1%
Winch truck operator	7.59	.50	3%		3/8 of 1%
Groundman	7.26	.50	3%		3/8 of 1%
Plumbers & Steamfitters					
Zone 2	11.17	.55	.50		.04
Roofers					
Zone 1	9.89	.60	.30		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #PA77 3057 - Mod. #6 (42 FR 24700 - May 13, 1977) Sullivan COunty, Pennsylvania					
Change:					
Line Construction:					
Linemen, dynamite man, heavy equipment operators	$10.80	.50	3%		3/8 of 1%
Winch truck operator	7.59	.50	3%		3/8 of 1%
Groundman	7.26	.50	3%		3/8 of 1%
DECISION #PA77-3058 - Mod. #7 (42 FR 24702 - May 13, 1977) Erie County, Pennsylvania					
Change:					
Line Construction:					
Linemen, dynamite man, heavy equipment operators	10.80	.50	3%		3/8 of 1%
Winch truck operators	7.59	.50	3%		3/8 of 1%
Groundman	7.26	.50	3%		3/8 of 1%
DECISION #PA77-3059 - Mod. #7 (42 FR 26176 - May 20, 1977) Luzerne County, Pennsylvania					
Change:					
Line Construction:					
Linemen, dynamite man, heavy equipment operators	10.80	.50	3%		3/8 of 1%
Winch truck operator	7.59	.50	3%		3/8 of 1%
Groundman	7.26	.50	3%		3/8 of 1%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
DECISION #PA77-3061 - Mod. #8 (42 FR 30113 - June 10, 1977) Armstrong, Allegheny, Beaver, Butler, Fayette, Indiana, Washington and Westmoreland Counties, Pennsylvania					
Change:					
Electricians					
Zone 2	$11.51	6%	5%	1.00	1½%
Line Construction					
Zone 2					
Linemen, dynamite man, heavy equipment operators	10.80	.50	3%		3/8 of 1%
Winch truck operators	7.59	.50	3%		3/8 of 1%
Groundman	7.26	.50	3%		3/8 of 1%
DECISION #PA77-3078 - Mod. #4 (42 FR 32478 - June 4, 1977) Lawrence & Mercer Counties, Pennsylvania					
Change:					
Line Construction:					
Linemen, dynamite man, heavy equipment operators	10.80	.50	3%		3/8 of 1%
Winch truck operator	7.59	.50	3%		3/8 of 1%
Groundman	7.26	.50	3%		3/8 of 1%
DECISION #PA77-3128- Mod. #5 (42 FR 46901 - September 16, 1977) Adams & York Counties, Pennsylvania					
Change:					
Electricians	$10.55	.45	3%+.15		.01

MODIFICATIONS P. 11

DECISION #. PA78-3005 - Mod. #1
(42 FR 7923 - February 24, 1978)
Butler, Cambria, Erie, Fayetee, Mercer, Washington, Westmoreland, Lawrence, Somerset, Allegheny, Beaver, Armstrong, Blair, Cameron, Centre, Clarion, Clearfield, Crawford, Forest, Greene, Indiana, McKean, Vanango, Warren, Bedford, Jefferson, Clinton, Elk, Franklin, Fulton, Huntingdon, Mifflin and Potter Counties, Pennsylvania

	BASIC HOURLY RATES ZONE 1	BASIC HOURLY RATES ZONE 2	FRINGES BENEFITS H&W	PEN
Change:				
Landscape:				
Landscape Laborer	$ 6.15	6.05	.75	.60
Skilled Landscape Laborer	6.30	6.20	.75	.60
Landscape Tractor Operator	6.65	6.55	.75	.60
Piledrivermen	11.29		5.5%	10%

SUPERSEDEAS DECISION

STATE: Hawaii
DECISION NUMBER: HI78-5016
COUNTIES: Statewide
DATE : Date of Publication
Supersedes Decison No. HI77-5087 dated September 23, 1977, in 42 FR 48663.
DESCRIPTION OF WORK: Building (including single family homes and garden type apartments up to and including 4 stories), heavy and highway construction and dredging

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 10.54	.65	$ 2.00	.85	.06
BOILERMAKERS	9.73	.65	1.00		.03
BRICKLAYERS; Stonemasons	10.50	1.10	1.45		.10
CARPENTERS:					
Carpenters; Hardwood Floorlayers; Patent Scaffold Erectors; Pneumatic Nailer; Shinglers	10.15	1.14	1.70	1.00	.06
Power Saw Operator (2 HP & over)	10.30	1.14	1.70	1.00	.06
Millwrights	10.40	1.14	1.70	1.00	.06
CEMENT MASONS:					
Cement Masons	9.33	1.10	1.45	.60	.10
Trowel Machine Operators	9.48	1.10	1.45	.60	.10
DRAPERY INSTALLERS	6.45	.50	.40	b	
DRYWALL APPLICATOR	10.25	1.14	1.70	1.00	.07
ELECTRICIANS:					
Electricians; Linemen	10.97	.83	15%+1.74	11.2%	.45
Technicians	11.30	.83	15%+1.74	11.2%	.45
Line Equipment Men	9.87	.83	15%+1.74	11.2%	.45
Groundmen	8.23	.83	15%+1.74	11.2%	.45
Cable Splicers	12.07	.83	15%+1.74	11.2%	.45
ELEVATOR CONSTRUCTORS	12.98	.745	.56	3%+a	.025
ELEVATOR CONSTRUCTORS' HELPERS	9.09	.745	.56	3%+a	.025
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	6.49				
FENCE ERECTORS (Chain Link)	5.39	.23	.29	.10	.03
GLAZIERS	9.64	.96	.85	.97	.12
IRONWORKERS:					
Bridge; Ornamental; Reinforcing; Structural	10.65	.90	1.37	1.00	.15
LATHERS	10.09	.85	1.25		.16
LINE CONSTRUCTION WORKERS:					
Electricians; Linemen	10.97	.83	15%+1.74	11.2%	.45
Technicians	11.30	.83	15%+1.74	11.2%	.45
Line Equipment Men	9.87	.83	15%+1.74	11.2%	.45
Groundmen	8.23	.83	15%+1.74	11.2%	.45
Cable Splicers	12.07	.83	15%+1.74	11.2%	.45
MARBLE SETTERS	10.47	1.10	1.45		.10
PAINTERS:					
Brush	9.00	.79	3.00	.75	.10
Tapers	9.20	.79	3.00	.75	.10
Spray	9.50	.79	3.00	.75	.10
PLASTERERS	9.74	1.10	1.75	.60	.16

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
PLUMBERS; Steamfitters	$ 10.40	$ 1.20	$ 2.05	$ 1.45	.20
ROOFERS	10.90	.95	1.00	.50	.10
SHEET METAL WORKERS	11.45	.86	2.21		.37
SOFT FLOOR LAYERS	11.44	.65	.75	.15	.12
SPRINKLER FITTERS	11.51	.85	.95		.08
TERRAZZO WORKERS & TILE SETTERS:					
Ceramic Tile Finisher	7.17	1.10	1.45		.10
Terrazzo Base Finisher	8.49	1.10	1.45		.10
Terrazzo Floor Grinder & Finisher	7.17	1.10	1.45		.10
Terrazzo Workers & Tile Setters	10.47	1.10	1.45		.10
TRUCK DRIVERS:					
Flatbed	7.93	.90	2.20	.75	.15
Dump, 8 yds. and under; Water Truck (up to and including 2000 gallons)	8.20	.90	2.20	.75	.15
Water Truck (over 2000 gallons)	8.51	.90	2.20	.75	.15
Tandem, Semi-trailer or Semi-Dump	9.16	.90	2.20	.75	.15
Slip-in or pup	9.48	.90	2.20	.75	.15
End Dumps, unlicensed (Euclid, Mack, Caterpillar or similar); Tractor Trailer (hauling equipment)	9.59	.90	2.20	.75	.15

RIGGERS; WELDERS: Receive rate prescribed for craft performing operation to which rigging or welding is incidental.

FOOTNOTES:

a. Employer contributes 4% of basic hourly rate for 5 years' service and 2% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F.

b. Seven Paid Holidays: A through F plus Kamehaha Day. In order to be eligible for a Paid Holiday, employees must work the last working day before the holiday and the first working day following the holiday. If the employee did not work either of these two days due to illness or layoff, he shall be entitled to holiday pay. In case of illness, the Company may require proof of illness.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
DREDGING: Hydraulic suction dredges; Clamshell dredges; Boat Operators; Derricks:					
Leverman	$ 10.29	.90	$ 2.20	.75	.15
Operators (Derricks, Pile-drivers and Cranes)	10.54	.90	2.20	.75	.15
Assistant Engineer (steam or electric)	9.93	.90	2.20	.75	.15
Welder	9.93	.90	2.20	.75	.15
Boat Operator	9.99	.90	2.20	.75	.15
Deckmate; Barge Mate (seagoing)	9.48	.90	2.20	.75	.15
Winchman (stern winch on dredge)	9.16	.90	2.20	.75	.15
Fireman	8.20	.90	2.20	.75	.15
Oiler; Deckhand (can operate anchor scow under direction of deckmate)	7.93	.90	2.20	.75	.15
Boat Deckhand	7.28	.90	2.20	.75	.15
Leveeman; Bargeman	7.76	.90	2.20	.75	.15
Master Boat Operator	10.29	.90	2.20	.75	.15

LABORERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 7.61	.64	$ 1.06	.38	.13
Group 1-a	7.66	.64	1.06	.38	.13
Group 1-b	8.01	.64	1.06	.38	.13
Group 1-c	8.21	.64	1.06	.38	.13
Group 1-d	8.11	.64	1.06	.38	.13
Group 1-e	8.31	.64	1.06	.38	.13
Group 1-f	8.36	.64	1.06	.38	.13
Group 1-g	8.36	.64	1.06	.38	.13
Group 1-h	6.00	.64	.10	.38	
Group 2	7.86	.64	1.06	.38	.13
Group 3	8.06	.64	1.06	.38	.13

LABORERS

Group 1: All clean-up work of debris, grounds, buildings; Bridge Laborers; Construction Laborers; Dumpman; General Laborers; Limbers, Brush Loaders and Pilers

Group 1-A: Plaster Laborers

Group 1-B: Plaster Hod Carrier

Group 1-C: Plaster Mortar Mixer

Group 1-D: Mason Tender

Group 1-E: High Scaler

Group 1-F: Gunnite Operator

Group 1-G: Powderman

Group 1-H: Landscape and Irrigation Laborer

Group 2: Asphalt Shovelers; Cement Dumpers; Choke-setter and Rigger (clearing work); Concrete Chipping; Driller's Helper, Chuck Tender, Outside Nipper; Guinea Chaser (Stakeman); High Pressure Nozzleman-hydraulic monitor (over 100# pressure) excluding levee work; Loading and unloading, carrying and handling of all rods and materials for use in reinforcing concrete construction; Sloper; All pneumatic, gas and electric tools not listed in Group 1

Group 3: Asphalt Ironers, rakers and hand rollers; Barko and similar type tampers; Buggymobile; Chainsaw, Faller, Logloader and Bucker; Concrete and Magnesite Mixer under 1/2 yard; Concrete Grinder; Concrete Pan Work; Concrete Saw (walking or hand type); Cribbers; Cut Granite Curb Setters; Form Raisers; Header Board; Mortar Mixers (block-brick-masonry); Jackhammer Operator; Jackson and similar type Compactors; Lagging, Sheeting, Whaling, Bracing, Trench-jacking, Hand-guided Lagging Hammer; Magnesite and Mastic Workers (wet or dry); Mechanical Drillers not covered elsewhere; Pavement Breakers; Pipe-layers, Caulkers, Bander; Pipewrappers, Kettlemen, Potmen and men applying asphalt, Lay-Kold, Creosote and similar type materials; Post Hole Diggers (hand held-gas, air and electric); Riprap, Stonepaver and Rockslinger, including placing of sacked concrete (wet or dry); Rotary Scarifier; Roto-tiller; Sandblasters; Tank Cleaners; Tree Climbers; Vibra-screed (bull float in connection with Laborers' work); Vibrator; Burning, welding, Signaling and Rigging in connection with Laborers' work; Concrete Pump Machine; Joy Drill Model TWM-2A, Gardner Denver DH-143 and similar type drills; Track Drillers, Diamond Core and Wagon Drillers; Davis Trencher T-66 or similar types; Concrete Laborers (wet or dry), including Bucket Tender for Concrete

POWER EQUIPMENT OPERATORS (Except Piledriving and Steel Erection)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 7.65	.90	$ 2.20	.75	.15
Group 2	7.76	.90	2.20	.75	.15
Group 3	7.93	.90	2.20	.75	.15
Group 4	8.20	.90	2.20	.75	.15
Group 5	8.51	.90	2.20	.75	.15
Group 6	9.16	.90	2.20	.75	.15
Group 7	9.48	.90	2.20	.75	.15
Group 8	9.59	.90	2.20	.75	.15
Group 9	9.70	.90	2.20	.75	.15
Group 9-A	9.93	.90	2.20	.75	.15
Group 10	9.99	.90	2.20	.75	.15
Group 10-A	10.14	.90	2.20	.75	.15
Group 11	10.29	.90	2.20	.75	.15
Group 12	10.65	.90	2.20	.75	.15
Asphalt Paving Group:					
Asphalt Raker	8.20	.90	2.25	a	
Asphalt Roller	9.16	.90	2.25	a	
Asphalt Spreader	9.48	.90	2.25	a	

FOOTNOTE:

a. An employee who has completed two to five years' service shall receive a vacation of one week with pay; each additional year an additional one day vacation with pay; ten or more years, a vacation for two weeks each year; for each year of completed service thereafter to and including fifteen years' service, an addition of one day vacation with pay; fifteen or more years of service, a vacation of three weeks each year with pay.

POWER EQUIPMENT OPERATORS
(Except Piledriving and Steel Erection)

Group 1: Partsman (heavy duty repair shop parts room when needed); Repairman Helper

Group 2: Compressor, electrically, diesel or gas powered etc.; Hydraulic Monitor; Material Loader and/or Conveyor Operator (handling building material); Mixer Box Operator (concrete Plant); Pump Operator; Spreader Boxman (with screeds); Tar Pot Fireman (power agitated)

Group 3: Oiler; Fireman; Switchman; Brakeman; Deckhand; Tar Pot Fireman; Box Operator (bunker); Locomotive (up to and including 30 tons); Roller (5 tons and under); Screedman (except asphaltic concrete paving); Self-propelled, automatically applied concrete curing machine (on streets, highways, airports and canals); Tugger Hoist, single drum

Group 4: Boom Truck or Dual Purpose "A" Frame Truck; Dinky Operator; Fork Lift or Lumber Stacker (construction job site); Material Hoist (1 drum); Straddle Truck; Ross Carrier and similar (job-site)

Group 5: Agri-Cat (mini-cat); Concrete Mixer (up to 2 yards); Concrete Pumps or Pumpcrete Guns; Generators, gasoline or diesel driven (100 K.W.); Lubrication and Service Engineer (mobile and grease rack); Towermobile; Welding Machine (gasoline or diesel)

Group 6: Combination Loader and Backhoe including Hopto (up to and including 1/2 yard); Concrete Batch Plants (wet or dry); Concrete Saws and/or Grinder (self-propelled unit on streets, highways, airports and canals); Drilling Machinery (not to apply to waterliners, wagon drills or jackhammers); Highline Cableway Signalman; Loader (up to and including 2½ cu. yds.); Lull High Lift; Maginnis Internal Full Slab Vibrator (on airports, highways, canals and warehouses); Mechanical Finishers (concrete) (large Clary, Johnson Bidwell Bridge Deck or similar types); Mobile Crane Driver; Pavement Breakers; Portable Crushers; Power Jumbo Operator (setting slip forms, etc. in tunnels); Rollers (over 5 tons); Self-propelled Compactor (single engine); Slip Form Pumps (power driven hydraulic, electric, air, gas, etc. lifting device for concrete forms); Small Rubber-tired Tractors; Trencher (up to and including 6 feet)

POWER EQUIPMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection)

Group 7: Crusher Plant; Dual Drum Mixer; Gradesetter (mechanical or otherwise); Hoist (2 drums); Loader (over 2½ cu. yds. up to and including 5 cu. yds.); Mechanical Finishers or Spreader Machine, Asphalt (Barber Greene and similar); Mine or Shaft Hoist; Mixer-mobile (over 5 tons); Pavement Breaker, Truck mounted, with Compressor Combination; Pavement Breaker with Compressor Combination (operates 1 or 2); Pipe Cleaning Machine (tractor propelled and supported); Pipe Wrapping Machine (tractor propelled and supported); Pipe Bending Machine (pipe lines only); Self-propelled Elevating Grade Plane; Slusher Operator; Small Tractor (with boom D-6 or similar); Trencher (over 6 ft.); Water Tanker (pulled by Euclids, T-Pulls, DW-10, 20, 21 or similar)

Group 8: Boring Machine; Cast-in-place Pipe Laying Machine; Concrete Batch Plant (multiple units); Combination Loader and Hydraulic Backhoe (over 1/2 yd. up to and including 3/4 yd.); Conveyor (tunnel); Engineer, Locomotive (over 30 tons up to and including 100 tons); Finishing Machine Operator (airports and highways); Hydraulic Backhoe (over 1/2 yard to and including 3/4 yard); Kolman Loader; Mechanic Trench Shield; Mucking Machine; No-joint Pipe Laying Machine; Portable Crushing and Screening Plants; Saurman type Dragline (under 5 yards); Self-propelled Boom type Lifting Device; Stationary Pipe Wrapping, Cleaning and Bending Machine; Surface Heater and Planer; Tunnel Badger; Tri-batch Paver

Group 9: Boom type Backfilling Machine; Combination Mixer and Compressor (gunite); Do-more Loader and Adams Elegrader; Lull Hi-lift (40' or over); Rubber-tired Earthmoving Equipment (up to 12 cu. yds.); Wheel Trencher (over 6")

Group 9-A: Dozers; Heavy Duty Repairman or Welder; Push Cats; Scrapers; Self-propelled Compactor with dozer; Sheep Foot; Tractors; Tractors (with boom, larger than D-6 and similar)

Group 10: Chicago Boom; Hoist (3 drums); Koehring Skooper; Loader (over 5 yards up to and including 12 yards); Locomotive (over 100 tons) (single or multiple units); Power Blade Operator; Rubber-tired Earthmoving Equipment (up to and including 35 cu. yds., Euclid, T-Pulls, DW-10, 20, 21 and similar); Saurman type Dragline (5 yards or over); Soil Stabilizer (P & H equal); Sub-grader (Gurriers or other automatic type); Track-laying type Earthmoving Machine (single engine with tandem scraper); Tractor, Compressor, Drill Combination; Tractor (tandem scraper); Tractors (D-9 or equivalent)

POWER EQUIPMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection)

Group 10-A: Cranes (not over 25 tons); Power Shovels, Clamshells, Draglines, Backhoes, Gradealls (up to and including 1 cu. yd.)

Group 11: Automatic Slip Form Paver (concrete or asphalt); Cranes (over 25 tons); DW-10, 20, etc. (Tandem); Earthmoving Machine (multiple propulsion power units and two or more scrapers) (up to and including 35 cu. yds. struck "MRC"); Highline Cableway; Lift Slab Machine; Loader (over 12 yards); Power Shovels, Clamshells, Draglines, Backhoes, Gradealls (over 1 yard and up to 7 yards); Power Blade Operator (16 or over); Pre-stress Wire Wrapping Machine; Self-propelled Compactor (with multiple propulsion power units); Single Engine Rubber Tired Earth Moving Machine (with tandem scraper); Tandem Cats; Tower Cranes, Mobile; Trencher (pulling attached shield); Universal, Liebher, Linden and similar types of tower cranes; Wheel Excavator (up to and including 750 cu. yds. per hour)

Group 12: Band Wagon (in conjunction with wheel excavator); Derricks; Drill Rigs; Multi-propulsion Earth Moving Machines (2 or more scrapers) (over 35 cu. yds. "struck" MRC); Power Shovels and Draglines (7 cu. yds. m.r.c. and over); Rubber-tired Earthmoving Equipment (over 35 cu. yds., Euclids, T-Pulls, DW-10, 20, 21 and similar); Wheel Excavator (over 750 cu. yds.)

SUPERSEDEAS DECISION

STATE: Illinois COUNTIES: Adams, Brown & Pike
DECISION NUMBER: IL78-2017 DATE: Date of Pulication
Supersedes Decision No.: IL76-2120, dated October 1, 1976 in 41 FR 43570
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.18	.45	.62		
BOILERMAKERS	11.45	.95	1.20		.03
BRICKLAYERS:					
Bricklayers, Stonemasons, Marble Setters, Terrazzo Workers, Tile Setters, Pointers, Caulkers & Cleaners	10.75		.20		
CARPENTERS:					
Adams County:	*				
Carpenters & Soft Floor Layers	9.95	.55	.35		.02
Millwrights & Piledrivermen	10.20	.55	.35		.02
Brown County & Pike County:					
Carpenters & Soft Floor Layers	9.75	.55	.25		.02
Millwrights	10.00	.55	.25		.02
Piledrivermen	10.25	.55	.25		.02
CEMENT MASONS	8.85		1.00		
ELECTRICIANS:					
Electricians	11.00	.50	3%+.50		
ELEVATOR CONSTRUCTORS:					
Constructors	11.34	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR				
GLAZIERS	9.94	.45	.15		
IRONWORKERS:					
Brown County, Pike County & the S. E. corner of Adams County	11.10	.55	.90		.08
Remainder of Adams County	10.75	.55	.65		
LATHERS:					
Brown & Pike Counties	11.40				
PAINTERS:					
Adams & Brown Counties:					
Brush	8.00				
Sand & Water Blasting; Spray & Steamcleaning	9.00	*			
Pike County:					
Commercial	10.55	.55	.35		
Industrial	10.80	.55	.35		
PLASTERERS	$10.20		1.00		.01
PLUMBERS & STEAMFITTERS:					
Adams & Brown Counties	11.45	.35	.50		.03
Pike County	11.53	.35	.88		.05
ROOFERS	9.90				
SHEET METAL WORKERS:					
Adams & Pike Counties	10.11	.45	.44		.10
Brown County	10.91	3%+.50	.78		.05
SPRINKLER FITTERS	11.65	.65	.95		.08
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. IL78-2017

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day

FOOTNOTES:
a. Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years.

b. 7 Paid Holidays: A through G

DECISION NO. IL78-2017

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Adams County					
Unskilled	$ 8.83	.45	.36		.035
Semi-skilled	9.03	.45	.36		.035
Skilled	9.18	.45	.36		.035
Brown and Pike Counties					
Unskilled	8.89	.30	.45		.035
Semi-skilled	9.09	.30	.45		.035
Skilled	9.24	.30	.45		.035

CLASSIFICATIONS

UNSKILLED: Allsewer workers plus depth pay, Asphalt Plant Laborers, Bankmen on Floating Plant, Batch Dumpers, Carpenters, Tenders, Cleaning Lumber, Cofferdam workers plus depth pay, Deck Hand, Dredge Hand and Shore Laborers, Dispatchers; Driving of stakes, Stringlines for all machinery, Fencing Laborers, Firemen or Salamander Tenders, Fireproofing Laborers, Fire Shop Laborers; Flagman, Form Handlers, Gravel Box Men, Dumpmen and Spotters, Janitors, Laborers with De-watering systems, Landscapers, Laying of Sod, Material Checkers, Material Handlers, Pit Men, Plaster Installers, Planting of Trees, Removal of Trees, Rip Rap Men, Rod and Chairmen, Scaffold Workers, Tool Cribmen, Track Laborers, Unloading explosives, Unloading and carrying Lath, Unloading and carrying or re-bars, Wrecking, Dismantlling Building, Wallmen and Housemovers, Wrecking Laborers, Wreter or Scale Tickets.

SEMI-SKILLED: Asphalt Workers with machine, Asphalt Raker, and Layers, Cement Handlers, Cement Silica, Clay, Fly Ash, Lime and Plasters, Handler (Bulk or Bag) Chain Saw, Chloride Handlers, Concrete Workers (wet); Grade Checker, Handling or material treated with oil, creosote, asphalt and/or any foreign material harmful to skin or clothing, Kettle and Tar Men, Mason Tenders, Mortar Micer Operators, Motorized Buggies or Motorized Union used for wet concrete to handling of building materials, On concrete paving, placing, cutting and typing or Reinforcing, Signal man on Crane Tank cleaning helpers in free air, Vibrator Operators

SKILLED: Air Tamping Hammerman, Caisson workers plus depth, Concrete Burning Machine Operator, Concrete Saw Operator, Corming Machine Operator, Gunnite Nozzlemen, Jackhammer and drill Operators, Laborers handling masterplante or similar materials, Laborers Tending Masons with hot material or where foreign material are used, Laster Beam Operator, Layout Man/or Tile Layer Leadman on sewer work Luteman, Multiple Concrete Duct - Leadman, Plasterer Tenders, Ready Mix Scalemen, Portable or temporary plant, Screenman on Asphalt Paver, Steel Form Setters - street and highway, Welders, Cutters, Burners, and Torchmen

DECISION NO. IL78-2017

ILL-5-PEO-1-2-3

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
CLASS I	$ 9.75	.30	.40		.05
CLASS II	8.775	.30	.40		.05
CLASS III	8.15	.30	.40		.05

POWER EQUIPMENT OPERATORS:

CLASS I - Asphalt screed man, Aspco concrete spreaders, Asphalt pavers, Asphalt rollers on bituminous concrete, athey loaders, backfillers, crane type, backhoes, cableways, cherry pickers, claim shell, C.M.E. & similar type autograde formless paver, autograde placer & finisher, concrete breakers, concrete plant operators, concrete pumps, cranes, derrick, derrick boats, draglines, earth augeror boring machines, levating graders eingeers on dredge, gravel processing machines, high list or fork lists, hoist w/two drums or two or more loadlines locomotives (all) mechanics, motar graders or auto patrols, operators or levelman on dredges, operators power boat, operators pug mill (asphalt plants), orange peels, overhead cranes, paving mixers, piledrivers, pipe wrapping & painting machines, push dozers, or push cats, rock crushers, ross carriers or similar machines, scoops, skimmer, 2 cu. yd. capacity & under, sheep foot foller (self propelled) shovels, skimmer scoops, test holedrilling machines, tower cranes, tower machines, tower mixers, track type and loaders, track type fork lists or high lifts, track jacks & tamper, tractor, sideboom, trenching machine, ditching machine, tunnelluggers, wheel type end loaders, winch cat, scoops, all or tournapull.

CLASS II - Asphalt boosters & heaters, asphalt distributors, asphalt plant fireman, oiler on 2 paving mixers when used in tandem boom or winch truck, building elevator, bull floats or flexplanes, concrete finishing machines, concrete saws, self propeller, concrete saws, self propeller, concrete spreader machines, gravel or stone spreader, power operated, head equipment greaser, hoist automatic, hoist w/1 drum & 1 load line, mud jacks, post holediggers, mechanical, road or street sweeper-self propelled, seaman tiller, straw machine, vibratory compactor, well drill machines scissors hoist.

CLASS III - Air compressor*, air compressors, track or self-propelled, asphalt plant engineers, bulk cement batching plants, conveyors,* concrete mixers (except plant, paver, tower) firemen, generators*, greasers, helper on single paving mixer, light plants*, mechanic helpers, mechanical heaters*, oilers, power from graders, power sub-graders, pug mills, when used for other than asphalt operation, rollers (except bituminous concrete) tractors w/o power attachments regardless of size of type) truck crane oiler & driver 1 (man), water pumps*, welding machines (one 300 amp. or over*)* welding machines*

*COMBINATIONS OF ONE TO FIVE OF ANY AIR COMPRESSORS, CONVEYORS. WELDING MACHINES, WATER PUMPS, LIGHT PLANTS OR GENERATORS SHALL BE IN BATTERIES OR WITHIN 300 FT.

DECISION NO. IL78-2017

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.85	.60	a28.00		
GROUP II	10.25	.60	a28.00		
GROUP III	10.45	.60	a28.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II: - 2 or 3 axle trucks hauling more than 9 tons, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment shen used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III: - 2,3 or 4 axle trucks hauling 16 tons or more, drivers on oil distributores, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: Illinois COUNTIES: Champaign & Vermillion
DECISION NUMBER: IL78-2018 DATE: Date of Publication
Supersedes Decision No.: IL77-2113, dated August 5, 1977, in 42 FR 39877
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.00	.50	.55		.01
BOILERMAKERS	11.45	.95	1.00		.03
BRICKLAYERS:					
Champaign County:					
Bricklayers; Stonemasons	10.90	.45	.50		.05
Marble, Tile, Terrazzo Workers	11.75		.50		
Vermillion County:					
Bricklayers; Stonemasons; Marble, Terrazzo Workers	10.88	.45	.50		
Tile Setters	10.63	.45	.50		
CARPENTERS:					
Champaign County:					
Carpenters & Soft Floor Layers	11.015	.45	.90		.08
Millwrights & Piledrivermen	11.515	.45	.90		.08
Vermillion County:					
North of Rossville					
Carpenters; Soft Floor Layers; Millwrights & Piledrivermen	11.04	.65	.80		.01
Remainder of County					
Carpenters & Soft Floor Layers	10.845	.75	.80		.05
Millwrights & Piledrivermen	11.345	.75	.80		.05
CEMENT MASONS & PLASTERERS:					
Champaign County:					
Cement Masons	11.775	.45	.25		.025
Plasterers	11.165	.45			.025
Vermillion County:					
Cement Masons & Plasterers	7.75				
ELECTRICIANS:					
Champaign County	11.70	.50	3%+.30		.3%
Vermillion County	11.42	.50	3%+.50		.25%
ELEVATOR CONSTRUCTORS:					
Constructors	11.34	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR				
GLAZIERS:					
Champaign County	9.94	.45	.15		
IRONWORKERS	10.80	.65	1.00		.08
LATHERS	10.84	.45	.30		.01

DECISION NO. IL78-2018

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Champaign County:					
Brush	$10.77	.55	.40		.04
Open and Erected Steel	11.77	.55	.40		.04
Vermillion County:					
Brush	10.80				
Spray	11.80				
PLUMBERS & STEAMFITTERS:					
Champaign County	11.40	.35	1.15		.12
Vermillion County	10.62	.35	1.05		.25
ROOFERS:					
Champaign County:					
Roofers	10.90	.55	.30		.03
Vermillion County	10.45				
SHEET METAL WORKERS	11.39	3%+.60	.67		.12
SPRINKLER FITTERS	11.65	.65	.95		.08
WELDERS: receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Thanksgiving Day; G-Christmas Day

FOOTNOTES:
a. 7 Paid Holidays: A through G

b. Employer contibutes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.

DECISION NO. IL78-2018

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Champaign County:					
Unskilled	9.95	.30	.30		.035
Semi-skilled	10.15	.30	.30		.035
Skilled	10.30	.30	.30		.035
Vermillion County:					
Unskilled	9.50	.45	.60		.035
Semi-skilled	9.70	.45	.60		.035
Skilled	9.85	.45	.60		.035

UNSKILLED - All sewer workers plus depth pay, Asphlat plant laborers, Bankmen on floating plant, Barch dumpers, Carpenters tenders, Cleaning lumber, Cofferdam workers plus depth pay, Deck hand, Dredge hand and shore laborer, Dispatchers, Driving of stakes, Stringlines for all machinery, Fencing laborers, Firemen or Salamander tenders; Fireproofing laborers; Fire shop laborers; Flagmen; Form handlers, Gravel box men, Dumpmen and Spotters; Janitors, Laborers with de-watering systems; Landscapers, Laying of sod, Material checkers, Material handlers, Pit men, Plaster installers, Planting of trees, Removal of trees, Rip rap men, Rod and chairemen, Scaffold workers, Tool cribmen, Tractor laborers, Unloading explosives, Unloading and carrying Lath, Unlaoding and carrying re-bars, wrecking, dismanteling building, Wallmen and housemovers, Wrecking laborers, Writer or scale tickets

SEMI-SKILLED - Asphalt workers with machine, asphalt raker and layers, Cement handlers, cement silica, clay, Fly ash, line and plasters handler (bulk or bay) Chain saw; Chloride handlers, concrete workers (wet); Grade checker; Handling of materials treated with oil, creosote, asphalt and/or any foreign material harmful to skin or clothing; Kettle and Tar men; Mason tenders; Mortar mixer operators; Motorized buggies or motorized unit used for wet concrete or handling of building materials, On concrete paving, placing, Cutting and Typing or Reinforcing, Signal man on crane tank cleaning, Tunnel helpers in free, air, Vibrator operators

SKILLED: - Air tamping hammerman, Caisson workers plus depth, Concrete burning machine operator, Concrete saw operator, corming machine operator, Gunnite nozzle men, Jackhammer and drill operators, Laborers handling masterplate or similar materials, Laborers tending masons with hot material or where foreign material are used, Laser beam operator, Layout man and/or tile Layer leadman on sewer work lutemen, Multiple concrete duct - Leadman, Plasterer tenders, ready mix scalemen, portable or temporary plant, Screenman on asphalt pavers, Steel form setters - street and highway, Welders, cutters, burners and torchmen

DECISION NO. IL78-2018

ILL-1-PEO-1-2-3

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$11.75	.40	.75		.13
CLASS II	11.70	.40	.75		.13
CLASS III	10.50	.40	.75		.13
CLASS IV	7.50	.40	.75		.13

CLASS I - Master Mechanic

CLASS II - Utility Operator

CLASS III - Power cranes, Draglines, Electric overhead cranes, Shovels, Gradall, Mehcanics, Repair and Maintenance of all equipment, Tractor highlift shovel, Forklifts, Tournamixer, 2 drums machine or 2 cage hoist, Cableways, Tower machines, Motor Patrol, Boom tractor, Boom or winch truck, Truck Crane, Tournapull, Tractor operating scoops, Bulldozer, Push Tractor, Finishing machine on asphalt, Large rollers & rollers on asphalt, Geavel Macadam & brick surface, Ross carrier or similar machine, Asphalt Plant Engineer or Pug Mill, Two (2) air compressors, Hetherington paver operator, farm tractor with ½ yard bucket and/or backhoe attachment, Trench machine cutting over 24" Dredging equipment, Central mix plant engineer, concrete spreader, Air compressors 200 cu. ft. or over, Standard or Dinkey locomotives, Scoopmobiles, Euclid loader, Soil cement machine, Mixers 14S capacity or less, trench Machine cutting 24" & under, backfiller, Elevating machine, Power Blade, asphalt Plant Engineer, Well drilling machines, Paint Machine, Pipe cleaning machine, Pipe wrapping machine, Pipe bending machine, Apsco paver, Boring machine, w/o winch, Head equipment, Greasers, Barger Green Loaders, Formless paver, farm Tractor with less than half-yard bucket and other attachments except backhow, Well point System

CLASS IV - Power Sub-Grader, Bull Float, Form grader, finishing machine, Pavement breaker, Rock Crushers, One drum machine, air compressor less than 20 cu. ft. capacity, Concrete pump, Gunnite machine, Air tuggers, Truck crane drivers, House Elevators when used for temporary heat, Samll rollers on earth, Engine tenders, Fireman on pain pots, Fireman, Wagon Drill Flexa-plane, Conveyor, 2 to 4 Water Pumps, Siphon & Pulsometer, Switchman, Fireman on Asphalt plants, Distributor operator on trucks, Tampers, Power Broom, Post Hole Digger, Self propelled concrete saw, Striping machine (Motor driven), Form tamper, seaman tiller, Bulk cement Plant Equipment Greaser

DECISION NO. IL78-2018

ILL-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.85	.60	a28.00		
GROUP II	10.25	.60	a28.00		
GROUP III	10.45	.60	a28.00		

GROUP I - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including pulled by separate units, truck drirer helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tolls, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II - 2 or 3 axle truckd hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III - 2, 3 or 4 axle trucks hauling 16 ton or more, drivers on oil distributors, water pulls, mechanics & working foreman; 5-xzle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: Illinois COUNTY: Cook
DECISION NUMBER: IL78-2019 DATE: Date of Publication
Supersedes Decision No.: IL77-2100, dated July 8, 1977, in 42 FR 35540
DESCRIPTION OF WORK: Building (Including Residential), Heavy and Highway Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOR WORKERS	$12.11	.81	.72		.12
BOILERMAKERS	12.30	.95+.40	1.00	5%	.03
BRICKLAYERS & STONEMASONS	11.21	.80	.75		.05
CARPENTERS:					
Building, Heavy & Highway					
Carpenters & Soft Floor Layers	10.55	.78	.88		.06
Millwrights & Piledrivermen	10.55	.78	.88		.06
CEMENT MASONS:					
Building	10.50	.95	.85		.05
Heavy & Highway	10.05	.82	.85		.05
ELECTRICIANS	11.75	8.24%	9.63%	.80	.88%
ELEVATOR CONSTRUCTORS:					
Constructors	12.455	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR				
GLAZIERS	11.23	.28	.79		.01
IRONWORKERS:					
Metal Fence Erector	11.60	.65	.805		.10
Structural & Reinforcing	11.80	1.14	1.13		.09
Ornamental	11.60	.65	.805		.10
Riggers & Machinery Movers	9.60	.65	1.525	1.20	.15
Red Book Fence Erector	8.62	.65	.805		.10
LATHERS	11.02	.58	.445		.04
LINE CONSTRUCTION:					
Linemen	11.80	.5%	.6%	8.50%	½%
Groundmen	9.05	.5%	.6%	8.50%	½%
MARBLE SETTERS	12.05	.80			
MARBLE SETTERS' FINISHERS & POLISHER	9.00	.62		.33	
PAINTERS:					
Brush, Decorators, Paperhangers & Tapers	9.65	.575	.45		.013
PLASTERERS	10.37	.68	.92		.045
PIPEFITTERS	11.90	.80	1.00		.02
PLUMBERS	11.92	.75	.75		.10
POINTERS, CAULKERS & CLEANERS	11.10	.95	.85		

DECISION NO. IL78-2019

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Composition & Waterproofers	$11.50	1.06	.85		.02
Slate & Tile	11.69	1.06	.50		.02
SHEET METAL WORKERS	11.80	.55	.59	.25	.05
SPRINKLER FITTERS	11.75	.75	.90		.15
SURVEY CREW:					
Layout Technician	11.30	.80	.25		
Instrument Man	9.30	.80	.25		
Rodman	7.71	.80	.25		
TERRAZZO WORKERS	8.95	.30	.30		
TILE SETTERS	10.85	.425	.45625		
TILE SETTERS' FINISHERS	8.10	d2.45	d3.40		
TRUCK DRIVERS:					
Building & Residential					
2-3 Axle Trucks	9.80	c26.00	c30.00		
4 Axle Trucks	9.95	c26.00	c30.00		
5 Axle Trucks	10.15	c26.00	c30.00		
6 Axle Trucks	10.35	c26.00	c30.00		
Heavy & Highway					
2-3 Axle Trucks	9.30	.75	.65		
4 Axle Trucks	9.55	.75	.65		
5 Axle Trucks	9.75	.75	.65		
6 Axle Trucks	9.95	.75	.65		
WELL DRILLERS:					
Driller, Pump Installer, Welder & Mechanic	8.75	.50	.50	e	
Tool Dresser, Helper	8.10	.50	.50	e	

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day

FOOTNOTES:
a. 7 Paid Holidays A through G
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
c. Per week per employee.
d. Per Day
e. 6 Paid Holidays: New Years Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day.

DECISION NO. IL78-2019

ILL-9-LAB-1-2-3

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1					
Common Laborers, Plasterer Laborers, Pumps for DeWatering & other Unclassified Laborers	$ 8.55	.57	1.10		
CLASS 2					
Cement Gun Laborers	8.625	.57	1.10		
CLASS 3					
Scaffold Laborers & Chimney Laborers over 40'	8.65	.57	1.10		
CLASS 4					
Windlass & Cement Gun Nozzle Laborers - Gunnite	8.70	.57	1.10		
CLASS 5					
Stone Handlers & Derrickmen	8.75	.57	1.10		
CLASS 6					
Jackhammermen	8.775	.57	1.10		
CLASS 7					
Concrete Vibrator, Plumbers' Laborer & Chain Saw Operator	8.80	.57	1.10		
CLASS 8					
Firebrick & Boiler Setters' Laborers	8.87	.57	1.10		
CLASS 9					
Chimney Laborers on Firebrick, Caisson Diggers & Well Point System Men	8.90	.57	1.10		
CLASS 10					
Boiler Setter Plastic Laborers	9.00	.57	1.10		
CLASS 11					
Jackhammer on Firebrick Only	9.125	.57	1.10		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
WRECKING LABORERS:					
General Laborers	$ 7.82	.57	1.10		
Wallmen, Wreckers, Burners, Air Hammermen	8.47	.57	1.10		
Smokestack or High Man	8.82	.57	1.10		
LANDSCAPE WORK:					
Landscape Plantsmen	5.63				
Maintenance Men	5.32				
Truck Driver - Tractor Trailer (3 Axle of more) and Equipment Operator	6.11				
Truck Driver - 2 Axle	5.69				

DECISION NO. IL78-2019 ILL-12-PEO-1

POWER EQUIPENT OPERATORS: BUILDING & RESIDENTIAL CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	11.85	.75	.85	.40	.05
CLASS II	10.55	.75	.85	.40	.05
CLASS III	9.40	.75	.85	.40	.05
CLASS IV	8.15	.75	.85	.40	.05

CLASS I - Asphalt plant, asphalt spreader, auto-grad, batch plant, Benoto (requires two engineers), boiler & throttle valve, caisson rigs, central redi-mix plant, combination backhoe breaker (truckmounted), conveyor, concrete paver, concrete placer, concrete tower, cranes (all), derricks (all), grader, elevating, grouting machines, highlift shovels or front endloader 2¼ yd. & over, hoists, one, two & three drum, hoists, two & three, drum, hoists, two tugger one floor, hydraulic boom trucks, locomotives (all), mechanic, motor patrol, pile drivers & skid rig, post-hole digger, pre-stress machine, pump cretes dual ram (requiring frequent lubrication & water), pumpcretes, squeeze cretes, - screw types pumps, Gysum bulker & pump, rock drill (self-propelled), rock drill (truck mounted), scoopes - tractor drawn, slipform paver, straddle buggies, tournapull, tractor with boom & side boom, trenching machines

CLASS II - Boiler, bulldozers, broom all power propelled, concrete mixer (2 bag & over), conveyor portable, forklift truck greaser engineer, highlift shovels or front endloaders under 2¼ yd., hoists, automatic, hoists, all elevator, hoists, tugger single drum, roller, all, steam generators, stone crushers, tractor, all winch trucks with "A" frame

CLASS III - Air compressor - small 150 & under (1) to 5 not to exceed a total of 300 Ft.), Air compressor - large over 150, combination - small equipment opr., generators under & over 50 KW heaters, mechanical pumps, over 3" (1 to 3 not to exceed a total of 300 ft.), pumps, well points, welding machines (2 through 5), winches, 4 small electric drill winches

CLASS IV -Oilers

DECISION NO. IL78-2019 ILL-10-PEO-2-3

POWER EQUIPMENT OPERATORS; SEWER, HEAVY & HIGHWAY CONST.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	11.50	.75	.85	.40	.05
CLASS II	10.95	.75	.85	.40	.05
CLASS III	10.20	.75	.85	.40	.05
CLASS IV	9.10	.75	.85	.40	.05
CLASS V	8.10	.75	.85	.40	.05

CLASS I - Asphlat plant, asphalt heater & planer combination, asphalt spreader, autograde, belt loader, ciasson rigs, central redimix plant, concrete breaker (truck mounted), concrete conveyor, concrete paver over 27E cu. ft., concrete placer, concrete tube float, cranes, all attachments, cranes, Linden, Peco & machines of alike nature, derricks, traveling, dredges, euclid loader, elevating type, gradall, & mechanics of a like nature, derricks, all derrick boats, derricks, traveling, dredges, euclid loader,elevating type gradall, and mechines of a like nature, 1 cu. yd. & over, mucking machine, under 1 cu. yd., piledrivers & skid rig, pre-stress machine, pump cretes dual ram (requiring frequent lubrication & water), rock drill crane type, slip form paver, straddle buggies, tractor w/boom tractaire w/attachments, trenchingmachine, undergound boring &/or mining machine under 5 ft., wheel exactor widener (Apsco)

CLASS II - Mechanic-welder, batch plant, bituminous mixer, bulldozer, combination backhoe front endloader machine, concrete breaker or hydro-hammer, concrete grinding machine, concrete mxier or paver 7S Series to & including 27 cu. ft., concrete spreader, concrete curing machine, burlap machine, belting machine & sealing machine, finishing machine, concrete grader, motor patrol auto patrol, form grader, pull grader, subgrader, highlift shovels or front endloader, hydraulic boom trucks (all attachments), locomotives, dinky, pump cretes; Squeeze cretes; srew type pumps Cypsum bulker & pump, rock drill (self-propelled), roto-tiller, seaman, etc. self-propelled scoops; tractor drawn, self-propelled compactor, spreader, chipstone, etc., scraper, tank car heater, tractor, push, pulling sheeps foot, disc., compactor, etc. tug boats

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POWER EQUIPMENT OPERATORS (CONT'D)

CLASS III - Boilers, boiler & throttle valve, brooms, all power propelled, cement supply tender, compressor throttle valve, concrete mixer (2 bags & over) conveyor, portable, fireman on boiler, forklift trucks, greaser engineer, grouting machine hoists, automatic, hoists, all elevators, hoists, tugger, single drum, jeep diggers, pipe power saw, concrete, power-driven, pug mills, rollers, all, steam generators, stone crushers, stump machine, winch truck with "A" frame, work boats, tamper, form motor driven

CLASS IV - Air Compressors, all, generators, heaters, mechanical, light plants, all (1 through 5), pmps, all, pumps well points, tractaire, welding machines (2 through 6)

CLASS V - Oilers

STATE: Illinois COUNTIES: Dupage, Grundy, Kane, Kendall, Lake, McHenry and Will

DECISION NUMBER: IL78-2020 DATE: Date of Publication

Supersedes Decision No.: IL77-2068, dated June 10, 1977, in 42 FR 30108

DESCRIPTION OF WORK: Building Construction (Including Residential Construction)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.11	.81	.72		.12
BOILERMAKERS	12.30	.95+.40	1.00	5%	.03
BRICKLAYERS & STONEMASONS:					
Dupage County:					
North of Butterfield Road; Argonne Vicinity (National Accl. Lab.) AEC Plant	11.21	.75	.80		.05
South of Butterfield Road from East to West	11.25	.75	.80		.05
Kane, Kendall & McHenry Cos.	11.30	.65	.60		
Lake County	11.21	.75	.80		.05
Will and Grundy Counties	11.66	.80	.35		
MARBLE, TILE & TERRAZZO WORKERS:					
Kane, Dupage, Lake & Will Cos.:					
Marble Setters	12.05	.80			
Terrazzo Workers	8.95	.30	.30		
Tile Setters	10.85	.425	.45625		
Tile Setters' Finishers	9.55	D3.25	D3.40		
CARPENTERS:					
Carpenters, Soft Floor Layers, Millwrights and Piledrivermen					
Dupage and Lake Counties	10.55	.78	.88		.06
Kane, Kendall & McHenry Cos.	11.13	.65	.40		.01
Will County:					
Building	11.18	.80	1.00		
Residential	11.16	.80	1.00		
Grundy County	11.225	.55	.53		.04
CEMENT MASONS:					
Dupage County	10.90	.68	.70		.06
Kane, Kendall and McHenry Cos.	11.60	.65	.70		
Lake County	11.25	.75	.95		.03
Will and Grundy Counties	11.02	.65	1.28		.05
ELECTRICIANS:					
Dupage County	12.50	4%	9%	8%	.5%
McHenry Co. and Northern half of Kane County	13.30	5%	9%		.5% of 1%
Kendall Co. & southern half of Kane County	13.15	5%	9%		½% of 1%
Will & Grundy Cos.:					
Building	13.43	.50	3%+.50		.2 of 1%
Residential	9.90	.50	3%+.20		.2%
Lake County	12.19	.65	1%+.75		.03

DECISION NO. IL78-2020

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS:					
Dupage, Lake and Will Counties					
Constructors	$12.455	.745	.56		.025
Helpers	70%JR	.745	.56		.025
Helpers (Prob.)	50%JR				
IRONWORKERS:					
Kane County; Kendall (Northern ½ County, including Bristol & Yorkville County; McHenry (S. E. ½ of County, including Huntley) County; and the remainder of Dupage County	12.95	.65	.525		.08
Will and Grundy Counties; Dupage (Argonne) County; and Southern half of Kendall County	11.07	2.65	.525		.02
N. W. ½ of McHenry County	12.60	.65	.375		.10
Lake County; McHenry (Heborn, Woodstock and east thereof) County	11.80	1.14	1.13		.09
LATHERS:					
Dupage and Lake Counties	11.02	.58	.445		.04
Kane County and eastern ½ of McHenry County	11.05	.65	.50		.01
Will and Grundy Counties	11.20		.65		
Western ½ of McHenry County	9.84	.40	.35		
LINE CONSTRUCTION:					
Dupage County:					
Linemen	11.85	.45	3%		.50%
Equipment Operator	10.08	.45	3%		.50%
Groundman Truck Driver	8.02	.45	3%		.50%
Groundman	7.75	.45	3%		.50%
PAINTERS:					
Dupage; Kand; Kendall; McHenry Counties					
Brush, Spray and Taper	9.34	.60	.70		.06
Lake County:					
Brush, Paperhangers and Tapers	9.65	.575	.45		.013

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (CONT'D)					
Will and Grundy Counties:					
Residential and Commercial	$10.24	.52	.45		.04
PLASTERERS:					
Dupage County	10.46	.75	.80		
Kane, Kendall and McHenry Cos.	10.85	.60	.50		
Lake County	10.035	.65	.90		.01
Will and Grundy Counties	10.17	.68	.92		.045
PLUMBERS, PIPEFITTERS & STEAMFITTERS:					
Dupage County: (Argonne-AEC Plant)					
Plumbers	12.00	.60	.86		.07
Pipefitters	11.90	.80	1.00		.02
Dupage County: (Remainder of Co.)					
Plumbers and Pipefitters:					
Wheaton and N. Dupage County	12.00	.60	.86		.07
Naperville and S. Dupage Co.	11.90	.65	.90		.05
Kane County:					
Plumbers; Steamfitters and Pipefitters:					
Elgin and Vicinity	11.47	.60	.60	.80	.05
Aurora and Vicinity	12.46	.55	.29	.25	.02
Kendall (Cities of Oswego and Plano) County	12.46	.55	.29	.25	.02
Kendall (City of Yorkville) County; and Grundy (W. of Rt. #47) County	12.08	.55	.45		.09
Lake and McHenry Counties:					
Plumbers	11.75	.75	.82		.22
Steamfitters and Pipefitters	11.90	.80	1.00		.02
Will (City limits of Joliet) County; and Grundy (E. of Rt. #47) County:					
Plumbers and Pipefitters	11.90	.85	.87		.10
Remainder of Will County:					
Plumbers	11.92	.75	.75		.10
Pipefitters	11.90	.80	1.00		.02
ROOFERS:					
Dupage and Lake Counties:					
Composition and Waterproof	11.50	1.06	.85		.02
Slate and Tile	11.69	1.06	.50		.02

DECISION NO. IL78-2020

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS: (CONT'D)					
Kane; Kandall; McHenry (Southern part including Cities of McHenry, Woodstock & Crystal Lake) County	$12.08	.65	.45		.02
Will and Grundy Counties	11.89	.86	.80		
Remainder of McHenry Counties	11.20	.40			
SPRINKLERFITTERS:					
Dupage County	11.75	.75	.90		.15
Lake County:					
Within 20 mile radius of Chicago City Hall	11.75	.75	.90		.15
Kane, Will, Grundy, McHenry, Kendall and Remainder of Lake County	11.65	.65	.95		.08
SHEET METAL WORKERS:					
Dupage County	10.80	.55	.45	.20	
Kane, Kendall and McHenry Cos.	11.35	.50	.35	.92	.06
Lake County	11.80	.55	.59	.25	.05
Will and Grundy Counties	12.07	.45	.75		.07
TRUCK DRVIERS: LAKE COUNTY					
2-3 Axle	9.725	a29.00	a30.00		
4 Axle	9.875	a29.00	a30.00		
5 Axle	10.075	a29.00	a30.00		
6 Axle	10.275	a29.00	a30.00		
TRUCK DRIVERS: (Remainder of Cos.)					
2-3 Axle Trucks	9.80	c26.00	c30.00		
4 Axle Trucks	9.95	c26.00	c30.00		
5 Axle Trucks	10.15	c26.00	c30.00		
6 Axle Trucks	10.35	c26.00	c30.00		
GLAZIERS	11.23	.28	.79		.01
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. IL78-2020

PAID HOLIDAYS: (*WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day

FOOTNOTES:

a. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular rate to vacation pay credit for employee who has worked in business less than 5 years.
b. 7 Paid Holidays; A through G
c. Per week per employee
d. Per Day

DECISION NO IL78-2020

ILL 4 LAB-1

LABORERS: Kane, Kendall & McHenry	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Class 1 - Laborers	7.95	.57	1.10		
Class 2 - Power Vibrator	8.05	.57	1.10		
Class 3 - Mortar Men, Torchmen (on Demolition Only)	8.10	.57	1.10		
Class 4 - Power Tampers	8.15	.57	1.10		
Class 5 - Chain saw Men, Swinging State & Boatswin Chairs, Cement Gun Nozzlemen, Hod carriers, Plasterer Tenders, tunnelmen, Tree Surgeons (Toppers)	8.20	.57	1.10		
Class 6 - Tile Layers & Bottom Men	8.30	.57	1.10		
Class 7 - Caisson Laborers & Dynamiters	8.45	.57	1.10		

DECISION NO. IL78-2020

ILL-9 LAB-1-2-3

LABORERS: DUPAGE, GRUNDY, & WILL	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1 - Common Laborers, Plasterer, Laborers, Pumps or DeWatering & other Unclassified Laborers	$ 8.55	.57	1.10		
CLASS 2 - Cement Gun Laborers	8.625	.57	1.10		
CLASS 3 - Scaffold Laborers & Chimney Laborers over 40'	8.65	.57	1.10		
CLASS 4 - Windlass & Cement Gun Nozzle Laborers - Gunnite	8.70	.57	1.10		
CLASS 5 - Stone Handler & Derrickmen	8.75	.57	1.10		
CLASS 6 - Jackhammermen	8.775	.57	1.10		
CLASS 7 - Concrete Vibrator, Plumbers' Laborer & Chain Saw Operator	8.80	.57	1.10		
CLASS 8 - Firebrick & Boiler Setters' Laborers	8.87	.57	1.10		
CLASS 9 - Chimney Laborers on Firebrick, Caisson Diggers & Well Point System Men	8.90	.57	1.10		
CLASS 10 - Boiler Setters Plastic Laborers	9.00	.57	1.10		
CLASS 11 - Jackhammer on Firebrick Only	9.125	.57	1.10		
LANDSCAPE WORK:					
Landscape Plantsmen	5.63				
Maintence Men	5.87				
Equipment Operator & Truck Driver, Tractor Trailer (3 axle or more)	6.11				
Truck Driver	5.69				

DECISION NO. IL78-2020

ILL-49-LAB-1

LABORERS: LAKE COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1 Building & Plasters Laborers; General Laborers (Wrecking & Demolition) Fireproofing & Fire Shop Laborers	$ 8.55	.57	1.10		
CLASS 2 Cement Gun Laborers & Hose	8.625	.57	1.10		
CLASS 3 Chimney Laborers (Over 40'); Scaffold Laborers; Wall Men or Wreckers	8.65	.57	1.10		
CLASS 4 Stone Derrickmen & Handlers	8.75	.57	1.10		
CLASS 5 Jackhammer Men (Tampers & Vibrators) Power Driven Concrete Saws	8.775	.57	1.10		
CLASS 6 Caisson Diggers, Well Point System; Chimney Laborers (on Firebrick)	8.90	.57	1.10		

DECISION NO. IL77-2068

ILL-12-PEO-1

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	11.85	.75	.85	.40	.05
CLASS II	10.55	.75	.85	.40	.05
CLASS III	9.40	.75	.85	.40	.05
CLASS IV	8.15	.75	.85	.40	.05

POWER EQUIPMENT OPERATORS:

CLASS I - Asphalt plant, asphalt spreader, auto-grad, batch plant, Benoto (requires two engineers), boiler & throttle valve, caisson rigs, central redi-mix plant, combination backhoe front end-loader machine compressor & throttle valve, concrete breaker (truck mounted), conveyor, concrete paver, concrete placer, concrete tower, cranes (all), derricks (all), grader, elevating, grouting machines, highlift shovels or front endloader 2½ yd. & over, hoists, one, two & three drum hoists, two & three drum hoists, two tugger one floor, hydraulic boom truck, locomotives (all), mechanic, motor patrol, pile drivers & skid rig, post-hole digger pre-stress machine, pump cretes dual ram (requiring frequent Lubrication & water), pumpcretes, squeeze cretes - screw type pumps, Gysum bulker & pump, rock drill (self-propelled), rock drill (truck mounted), scoopes - tractor drawn, slip form paver, straddle buggies, tournapull, tractor with boom & side boom, trenchingmachines

CLASS II - Boilers, bulldozers, broom all power propelled, concrete mixer (2 bag & over), Conveyor portable, forklift truck greaser engineer, highlift shovels or front end loaders under 2½ yd., hoists, automatic, hoists,a ll elevators, hoists, tugger single drum, rollers, all steam generators, stone crushers, tractors, all winch trucks with "A" frame

CLASS III - Air compressor - small 150 & under (1) to 5 not to exceed a total of 300 ft.), Air compressor - large over 1½), combination - small equipment opr., generators under & over 50 KW, heaters, mechanical pumps over 3" (1 to 3 not to exceed a total of 300 ft.), pumps, well points, welding machine (2 through 5), winches, 4 small electric drill winches

CLASS IV - Oilers

STATE: Illinois

COUNTIES: Fulton, Hancock, McDonough & Schuyler

DECISION NUMBER: IL78-2021

DATE: Date of Publication

Supersedes Decision No.: IL77-2029, dated February 25, 1977, in 42 FR 11206

DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Fulton & Schuyler Counties	$12.18	.45	.62		
Hancock & McDonough Counties	11.55	.40	.60		.10
BOILERMAKERS	11.45	.95	1.00		.03
BRICKLAYERS:					
Schuyler County					
Bricklayers, Stonemasons, Plasterers, Marble-Tile-Terrazzo Workers, Cement Blocklayers, Pointers-Caulkers-Cleaners	10.10	.50	.52		.02
Marble & Tile Setters' Finishers	10.25				
Fulton County					
Bricklayers, Stonemasons, Cement Blocklayers, Cleaners-Pointers & Caulkers	11.06	.60	.85		.01
Marble-Tile-Terrazzo Workers	10.81	.60	.85		.01
Marble & Tile Setters' Finishers	10.10	.60	.25		
Hancock & McDonough Counties					
Bricklayers, Stonemasons, Cement Block Layers, Marble-Tile & Terrazzo Workers	11.65				
Marble & Tile Setters' Finishers	10.10	.60	.25		
CARPENTERS:					
Schuyler County					
Carpenters & Soft Floor Layers	9.75	.55	.25		.02
Millwrights	10.00	.55	.25		.02
Piledrivermen	10.25	.55	.25		.02
Fulton County					
Carpenters & Soft Floor Layers	10.21	.40	.40		.05
Millwrights & Piledrivermen	11.11	.40	.50		.05
McDonough Co. & Eastern 1/3 of Hancock Co.					
Carpenters & Soft Floor Layers	11.11	.40	.50		.05
Millwrights & Piledrivermen	11.61	.40	.50		.05
Remainder of Hancock County					
Carpenters & Soft Floor Layers	9.45	.45	.40		.02
Millwrights & Piledrivermen	10.13	.45	.40		.02

DECISION NO. IL78-2021

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS & PLASTERERS:					
Hancock, McDonough & Schuyler Counties					
Cement Masons	$11.65				
Hancock & McDonough Counties					
Plasterers	11.40				
Fulton County					
Cement Masons	10.60	.70	.80		.05
Plasterers	10.60	.70	.80		.01
ELECTRICIANS:					
Hancock & Schuyler Cos., Twps. of Lamoine, Bethel, Industry & Eldorado in McDonough County	11.00	.50	3%+.50		.1%
Twps. of Cass, Deerfield, Ellisville, Harris, Lee, Union, Young & Hickory in Fulton Co., & the Northern 2/3 of McDonough County	11.25	.40	3%+.50		.25%
Remainder of Fulton County	11.67	.50	3%+.50		1%
IRONWORKERS:					
Hancock & McDonough Cos., the Western ½ of Schuyler County	10.75	.55	.65		
Eastern ½ of Schuyler Co.	10.75	.55	.65		
The Southern Tip of Fulton Co., incl. Marbletown, Astoria, Summum, & Remainder of Fulton Co.	11.10	.55	.90		.08
LABORERS:					
Hancock & McDonough Counties					
Unskilled	8.60	.40	.42		.035
Semi-Skilled	8.80	.40	.42		.035
Skilled	9.00	.40	.42		.035
Schuyler County					
Unskilled	8.89	.30	.45		.035
Semi-Skilled	9.09	.30	.45		.035
Skilled	9.24	.30	.45		.035
Fulton County					
Projects Under $375,000					
Unskilled	9.25	.60	.60		.035
Semi-Skilled	9.45	.60	.60		.035
Skilled	9.65	.60	.60		.035

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LABORERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Projects in Excess of $375,000					
Unskilled	$ 9.65	.60	.60		.035
Semi-Skilled	9.85	.60	.60		.035
Skilled	10.05	.60	.60		.035
PAINTERS:					
Fulton County					
Brush	10.30	.55	.30		.03
Structural Steel & Spray	10.80	.55	.30		.03
Remainder of Counties					
Brush	9.85				
Structural Steel & Spray	10.35				
PLUMBERS & STEAMFITTERS:					
Fulton & McDonough Counties	11.42	.35	.35	4%	
Hancock & Schuyler Counties	11.45	.35	.50		.03
ROOFERS:					
Schuyler County					
Composition	11.78				
Slate-Tile & Precast Slab	12.03				
Fulton Co., & Eastern ½ of McDonough Co., excluding Macomb					
Slate-Tile-Comopsition-Damp & Waterproof	11.10	.70	.40		.025
Hancock Co., & Western ½ of McDonough including Macomb					
Slate-Tile-Damp & Waterproof	9.30				
SHEET METAL WORKERS:					
Fulton & McDonough Counties	10.66	.45	.44		.10
Hancock County	10.11	.45	.44		.10
Schuyler County	10.91	3%+.50	.78		.05
SPRINKLER FITTERS	11.65	.65	.95		.08
Welders - Receive rate prescribed for craft performing operation to which welding is incidental.					

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SCHUYLER COUNTY

POWER EQUIPMENT OPERATORS:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App Tr
CLASS I	$ 9.75	.30	.40		.05
CLASS II	8.775	.30	.40		.05
CLASS III	8.15	.30	.40		.05

POWER EQUIPMENT OPERATORS:

CLASS I - Asphalt screed man, Aspco concrete spreaders, Asphalt pavers, Asphalt rollers on bituminous concrete, athey loaders, backfillers, crane type, backhoes, cableways, cherry pickers, claim shell, C.N.E. & similar type autograde formless paver, autograde placer & finisher, concrete breakers, concrete plant operators, concrete pumps, cranes, derrick, derrick boats, draglines, earth augeror boring machines, levating graders eingeers on dredge, gravel processing machines, high list or fork lists, hoist w/two drums or two or more loadlines locomotives (all) mechanics, motar graders or auto patrols, operators or levelman on dredges, operators power boat, operators pug mill (asphalt plants), orange peels, overhead cranes, paving mixers, piledrivers, pipe wrapping & painting machines, push dozers, or push cats, rock crushers, ross carriers or similar machines, scoops, skimmer, 2 cu. yd. capacity & under, sheep foot foller (self propelled) shovels, skimmer scoops, test holedrilling machines, tower cranes, tower machines, tower mixers, track type and loaders, track type fork lists or high lifts, track jacks & tamper, tractor, sideboom, trenching machine, ditching machine, tunnelluggers, wheel type end loaders, winch cat, scoops, all or tournapull.

CLASS II - Asphalt boosters & heaters, asphalt distributors, asphalt plant fireman, oiler on 2 paving mixers when used in tandem boom or winch truck, building elevator, bull floats or flexplanes, concrete finishing machines, concrete saws, self propeller, concrete saws, self propeller, concrete spreader machines, gravel or stone spreader, power operated, head equipment greaser, hoist automatic, hoist w/1 drum & 1 load line, mud jacks, post holediggers, mechanical, road or street sweeper-self propelled, seaman tiller, straw machine, vibratory compactor, well drill machines scissors hoist.

CLASS III - Air compressor*, air compressors, track or self-propelled, asphalt plant engineers, bulk cement batching plants, conveyors,* concrete mixers (except plant, paver, tower) firemen, generators*, greasers, helper on single paving mixer, light plants*, mechanic helpers, mechanical heaters*, oilers, power from graders, power sub-graders, pug mills, when used for other than asphalt operation, rollers (except bituminous concrete) tractors w/o power attachments regardless of size of type) truck crane oiler & driver 1 (man), water pumps*, welding machines (one 300 amp. or over*)* welding machines*

*COMBINATIONS OF ONE TO FIVE OF ANY AIR COMPRESSORS, CONVEYORS. WELDING MACHINES, WATER PUMPS, LIGHT PLANTS OR GENERATORS SHALL BE IN BATTERIES OR WITHIN 300 FT.

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POWER EQUIPMENT OPERATORS REMAINDER OF COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$11.32	.45	.80		.05
GROUP 2	11.12	.45	.80		.05
GROUP 3	10.745	.45	.80		.05
GROUP 4	10.47	.45	.80		.05
GROUP 5	9.86	.45	.80		.05

POWER EQUIPMENT OPERATORS:

GROUP 1 - Cranes, escalated rate on crane, derricks, booms, $.01 per hour, per foot, after 80 feet or boom including jib, overhead cranes, gradall, cherry pickers (and similar types, over 15 ton lifting capacity) require oiler, mechanics, central concrete mixing plant operator, road pavers (27E-dual drum-tri batchers), blacktop plant operators and plant engineers, 3 drum hoist, derricks, hydro cranes, shovels skimmer scoops, koehring scoopers, draglines, backhoe, hopties-crane-type that require oilers, derrick boats, pile drivers and skid rigs, clamshells, locomotive cranes, dredge (all types), motor patrol, power blades dumore-elevating and similar types tower cranes (crawler mobile) and stationary, crane-type backfiller, drott yumbo and similar types considered as cranes, caisson rigs (require oilers) dozer, tourna-dozer, work boats, ross carrier and helicopter

GROUP 2 - Trench machine, pumpcrete-belt-wqueeze cretes-screw-type pumps and gysum bulker and pump, dinkeys, power launches, tournapulls (all), multiple unit earth movers, $.25 per hour for each scoop over one, scoops (all sizes), push cats, endloaders (all types), side boon, P-H one pass soil-cement machine (all similar types), wheel tractors (industrial or farm type w/dozer-hoe-end-loader or other attachments), pugmill with pump backfillers, asphalt surfacing machine euclid loader, forklifts, formless finishing machine, jeeps w/ditching machine, or other attachments, tuneluger, rock crushers, automatic cement gravel batching plants, mobile drills (soil testing and similar types), (require oilers), flaherty spreader or similar types (require oilers), heavy equipment greaser (top greaser on spread), gurries and similar type), 1 and 2 drum hoists (buck hoists and similar types freight and passenger elevators Chicago boom, boring machine and pipe jacking, machine, hydro boom, statting engineer on pipeline, C.M.I. and similar types (require oiler) Straw blower, hydro seeder and F.W.D. and similar types

POWER EQUIPMENT OPERATORS (Cont'd)

Group 3: Tractor (track type) without power unit pulling rollers, rollers on asphalt, brick or macadam, concrete breakers, concrete spreaders, mule pulling rollers, center stripper, cement finishing machines, barber greene or similar loaders, vibro tamper (all similar types), self-propelled, winch or boom truck, mechanical bull floats, mixer over 3 bags to 27E, tractor pulling power blade or elevating grader, porter rex rail, clary screed, pugmill (without pump) screed man on laydown machine, firemen and spray machine on paving

Group 4: Air compressor, all air and steam valves, power subgrader, oil distributor, straight tractor, trac-air without attachments, curb machines, truck crane oilers, and truck type hoptoe oilers

Group 5: Herman Nelson heater, Dravo, Warner, Silent glo, and similar types, one engineer will operate 1-5 and after 5, two operators will be required, self-propelled concrete saws, assistant heavy equipment greaser on spreed, roller, 5 tons and under on earth or gravel, form grader, pump 1 or 2, generator (1) or (2), welding machine (1) or (2) - 300 amp. or over, mixer (3) bag and under (standard capacity), bulk cement plant, crawler crane and skid rig oilers

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TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.85	.60	a28.00		
GROUP II	10.25	.60	a28.00		
GROUP III	10.45	.60	a28.00		

TRUCK DRIVERS

GROUP I - Drivers on 2 axle truck hauling less than 9 tons, air compressor and welding machine including those pulled by separate units truck driver helpers, warehousemen, mechanics helpers, greasers & tiremen, pick-up trucks when hauling materials, tolls, or men to and from and on the jobs site; Fork lifts up to 6,000lbs., capacity.

GROUP II - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used tranportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4 axle combination units; ticket writers

GROUP III - 2,3 or 4 axle truck hauling 16 ton or more, drivers on oil distributors, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatcher

FOOTNOTES

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: Illinois
DECISION NUMBER: IL78-2022
COUNTIES: Ford, Iroquios & Kankakee
DATE: Date of Publication
Supersedes Decision No.: IL76-2124, dated October 8, 1976, in 41 FR 44616
DESCRIPTION OF WORK: Building Construction, (excluding single family himes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.11	.81	.72		.12
BOILERMAKERS:					
Kankakee County	12.30	.95+.40	1.00	5%	.03
Ford & Iroquois Counties	11.45	.95	1.00		.03
BRICKLAYERS, STONEMASONS, MARBLE SETTERS, TERRAZZO WORKERS, TILE SETTERS, POINTERS, CAULKERS & CLEANERS:					
Kankakee County:					
Bricklayers, Stonemasons, Marble Setters, Terrazzo Workers, Tile Setters, Pointers, Caulkers & Cleaners, Cement Masons	10.80	.80	.75		
South of Roberts in Ford County:					
Bricklayers & Stonemasons	10.90	.45	.50		.05
Marble-Tile & Terrazzo Workers	11.75				
Remainder of Ford County:					
Bricklayers & Stonemasons	10.80	.80	.75		
Marble Setters	10.81	.60	.85		.01
Iroqouis County:					
Bricklayers & Stonemasons	10.80	.80	.75		
Marble-Tile & Terrazzo Workers	10.81	.60	.85		.01
CARPENTERS:					
Ford County:					
Carpenters & Soft Floor Layers	11.015	.45	1.00		.08
Millwrights & Piledrivermen	11.515	.45	.90		.08
Iroquois & Kankakee Counties:					
Carpenters, Millwrights, Soft Floor Layers & Piledrivermen	11.04	.65	.70		.01
CEMENT MASONS:					
Ford County	11.775	.45	.25		.025
Iroquois County	10.80	.80	.75		
ELECTRICIANS:					
Twps. of Fountain Creek, Love Joy & Praitie Green in Iroqouis County	11.42	.50	3%+.50		.25%
Area S. of Roberts Twps in Ford County, Twps of Artesia, Pigeon Grove & Loda in Iroquois County	11.70	.50	3%+.50		.3%

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS (CONT'D)					
Kankakee County & Remainder of Ford & Iroquios Counties	$11.67	.50	3%+.50		.2 of 1%
ELEVATOR CONSTRUCTORS:					
Kankakee County:					
Constructors	12.455	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR				
GLAZIERS:					
Piper City & North therof in Ford County & Area East of Cabery in Kankakee County	9.65			.65	
Remainder of Kankakee County	11.23	.28	.79		.01
Remainder of Ford County	10.73	.55	.45		
IRONWORKERS:					
Ford County	10.80	.65	1.00		.08
Iroquios & Kankakee Counties	10.85	.65	.65		.05
LATHERS:					
Ford County	10.84	.45	.30		.01
PAINTERS					
Ford County:					
Brush & Roller	10.35	.45			.06
Paperhanging	10.55	.45			.06
Structural Steel	10.85	.45			.06
Iroquois & Kankakee Counties:					
Brush & Roller	9.40	.45	.50		
Spray	10.90	.45	.50		
PLASTERERS:					
Ford County	11.165	.45			.025
Iroquois & Kankakee Counties	10.60	.80	.75		
PLUMBERS & STEAMFITTERS:					
Ford County	11.40	.35	1.15		.12
Iroquois & Kankakee Counties	12.03	.35	1.00		.08
ROOFERS:					
Ford County	10.90	.55	.30		.03
Iroquois County	10.45				
Kankakee County:					
Roofers	11.10			3%	

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS:					
Ford County	$11.39	3%+.60	.67		.12
Iroquois & Kankakee Counties	10.80	.35	.65		.07
SPRINKLER FITTERS	11.65	.65	.95		.08
TRUCKDRIVERS:					
Kankakee County; Remainder of Iroquois County & Northern ⅓ of Ford Co.					
2-3 Axle Trucks	9.80	c26.00	c30.00		
4 Axle Trucks	9.95	c26.00	c30.00		
5 Axle Trucks	10.15	c26.00	c30.00		
6 Axle Trucks	10.35	c26.00	c30.00		
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day

FOOTNOTES:
a. 6 paid holidays: A through G
b. Per week - Per Employee

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Unskilled	$ 9.45	.40	.42		.035
Semi skilled	9.65	.40	.42		.035
Skilled	9.85	.40	.42		.035

UNSKILLED: Common Laborer; carpenter tenders; tool cribmen firemen or salamander tenders; flagmen; gravel bo men; dumpmen & spotters; form handlers; material patchers; landscapers; unloading explosives; laying of sod; planting of trees; asphalt plant laborers; wrecking laborers; writer of scale tickest; fire shop laborers; fireproofing laborers; janitors; wrecking-dismantling buildings; wallmen & housemovers; driving of stakes; stringlines for all machinery

SEMI-SKILLED: Handling of materials treated with oil, creosote, asphalt or any foreign material, track laborers; cement handlers; chloride handlers; the unloading and laborers w/steel workers / rebars; concrete workers (wet); tunnel helpers in free air; batch dumpers; mason & plasterer tenders & material wheelers kettlemen & tarmen; tank cleaners; plastic instrillers; scaffold workers; motorized buggies or motorized unit used for wet concrete or handling of building materials laborers w/dewatering systems; all sewer workers plus depth; rod & chainmen with land surveyors; vibrator operators; mortar mixer operator; cement silica; clay, fly ash, lime & plasters; handlers (bulk or bag); rotterdam workers plus depth; (on concrete paving) placing, cutting & trying or reinforcing, deck hand; dredge hand & shore laborers; bankmen on floating plant; asphalt workers w/machine; asphalt raker; grade checker

SKILLED: Dynamite man or blasters; caisson workers plus depth; gunnite; nozzle men leadman on sewer work; welder; cutters; burners; torchmen; chain saw operator, jackhammer & drill operators; layout man; steel form setters (street & highway); air tamping hammerman; signal man on crane, concrete saw operator; screenman on asphalt pavers; laborers tending masons w/hot materials are used: multiple concrete duct-leadmen; curb asphalt machine operator; ready-mix scalemen; portable or temporary plant; laborers handling masterplate or similar materials; laser beam operator; coring machine operator

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: FORD & IROQUOIS COUNTIES					
CLASS I	$11.75	.40	.75		.13
CLASS II	11.70	.40	.75		.13
CLASS III	11.50	.40	.75		.13
CLASS IV	7.50	.40	.75		.13

POWER EQUIPMENT OPERATORS:

CLASS I: Master Mechanic

CLASS II: Utility Operator

CLASS III: Power cranes, Draglines, Electric overhead cranes, Shovels, Gradall, Mechanics, Repair and Maintenance of all equipment, Tractor highlift shovel, Forklifts, Tournamixer, 2 drums machine or 2 cage hoist, Cableways, Tower machines, Motor Patrol, Boom tractor, Boom or winch truck, Truck Crane, Tournapull, Tractor operating scoops, Bulldozer, Push Tractor, Finishing machine on Asphalt, Large rollers & rollers on asphalt, Gravel Macadam & Brick surface, Ross carrier or similar machine, Asphalt Plant Engineer or Pug Mill, Two (2) air compressors, Hetherington paver operator, Farm tractor with ½ yard bucket and/or backhoe attachment, Trench machines cutting over 24", Dredging equipment, Central mix plant engineer, concrete spreader, Air compressors 200cu. ft. or over, Standard or Dinkey locomotives, Scoopmobiles, Euclid loader, Soil cement machine, Mixers 14S capacity or less, Trench Machine cutting 24" & under, Backfiller, Elevating machine, Power Blade, Asphalt Plant Engineer, Well drilling Machines, Paint Machine, Pipe Cleaning Machine, Pipe wraping machine, Pipe Bending Machine, Apsco paver, Boring Machine, w/o winch, Head equipment, Greasers, Barber Green Loaders, Formless paver, Farm Tractor with less than half-yard bucket and other attachments except backhoe, Well Point System

CLASS IV: Power Sub-Grader, Bull Float, Form Grader, Finishing machine, Pavement breaker, Rock Crushers, One drum machine, air compressor less than 20 cu. ft. capacity, Concrete pump, Gunnite machine, Air Tuggers, Truck crane drivers, House Elevators when used for temporary heat, Small rollers on earth, Engine tenders, Fireman on pain pots, Fireman, Wagon Drill, Flexaplane, Conveyor, 2 to 4 Water Pumps, Siphon & Pulsometer, Switchman, Fireman on Asphalt plants, Distrbutor operator on trucks, Tampers, Power Broom, Post Hole Digger, Self Propelled Concrete Saw, Striping Machine (Motor Driven), Form Tamper, Seaman Tiller, Bulk Cement Plant Equipment Greaser

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POWER EQUIPMENT OPERATORS: KANKAKEE COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CLASS I	$11.85	.75	.85	.40	.05
CLASS II	10.55	.75	.85	.40	.05
CLASS III	9.40	.75	.85	.40	.05
CLASS IV	8.15	.75	.85	.40	.05

POWER EQUIPMENT OPERATORS:

CLASS I: Asphalt plant, asphalt spreader, auto grad, batch plant, Benoto (requires two engineers), boiler & throttle valve, caisson rigs, central redi mix plant, combination backhoe front end loader machine, compressor & throttle valve, concrete breaker (truck mounted), conveyor, concrete paver- concrete placer, concrete tower, cranes (all), derricks (all), grader, elevating, grouting machines, highlift shovels or front endloader 2¼ yd. & over, hoists, one, two & three drum, hoists, two & three, drum, hoists, two tugger one floor, hydraulic boom trucks, loco motives (all), mechanic, motor patrol, pile drivers & skid rig, post hole digger, pre stress machine, pump cretes dual ram (requiring frequent lu brication & water), pumpcretes, squeeze cretes screw types pumps, vacuum bulker & pump, rock drill (self propelled), rock drill (truck mounted), scoopes tractor drawn, slip form paver, straddle buggies, tournapull, tractor with boom & side boom, trenching machines

CLASS II: Boilers, bulldozers, broom all power propelled, concrete mixer (2 bag & over), conveyor portable, forklift truck greaser engineer, highlift shovels or front endloaders under 2¼ yd., hoists, automatic, hoists, all elevators, hoists, tugger single drum, rollers, all, steam generators, stone crushers, tractors, all, winch trucks with "A" frame

CLASS III: Air compressor small 150 & under (1 to 5 not to exceed a total of 300 ft.), Air compressor large over 150, combination small equipment opr., generators under & over 50 Kw, heaters, mechanical, pumps, over 6" (1 to 5 not to exceed a total of 600 ft.), pumps, well points, welding machines (2 through 5), winches, 4 small electric drill winches

CLASS IV: Oilers

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TLL-82-TD-1 2 3

TRUCK DRIVERS - S.E. CORNER OF IROQUOIS CO., & S. ½ OF FORD CO.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
GROUP I	$ 9.85	.60	a/8.00		
GROUP II	10.25	.60	a/8.00		
GROUP III	10.45	.60	a/8.00		

TRUCK DRIVERS

GROUP I Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine, including those pulled by separate units, truck driver helper, watchman, mechanic helpers, greasers & fitmen, pick up trucks when hauling materials, tools, or men to and from and on the jobsite, field tank trucks up to 6,000 lbs. capacity

GROUP II 2 or 3 axle trucks hauling more than 9 tons, but hauling less than 16 tons, A frame winch trucks, hydraulic trucks, or similar equipment when used for transportation purposes, fork lifts over 6,000 lb. capacity, winch trucks, 4 axle combination units, ticket writers

GROUP III 2, 3 or 4 axle trucks hauling 16 tons or more, drivers on oil distributors, water pull, mechanic & welding foreman, 5 axle or more combination units, dirt hog

FOOTNOTES:

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: Illinois

COUNTIES: Bureau, LaSalle, Livingston, Marshall, Putnam Marshall, Putnam and Woodford

DECISION NUMBER: IL78-2024

DATE: Date of Publication

Supersedes Decision NO. IL76-2125, dated October 8, 1976, in 41 FR 44620

DESCRIPTION OF WORK: Building Construction, (excluding single family homes anf garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WOKRERS	$12.11	.81	.72		.12
BOILERMAKERS	11.45	.95	1.00		.03
BRICKLAYERS AND STONEMASONS:					
LaSalle county					
Peru and Vicinity	11.25	.50	.70		
Streator and Vicinity	10.95	.60	.50		
Ottawa and Vicinity	11.50	.65	.50		
Woodford & Marshall Counties	11.06	.60	.25		
Livingston County	10.75	.75	.50		
CARPENTERS:					
LaSalle, Marshall, Bureau Cos. The Northern half of Putnam County and Northwestern corner of Livingston County					
Carpenters; Piledrivermen and Soft Floor Layers	10.98	.65	.60		.03
Millwrights	11.23	.65	.60		.03
Remainder of Livingston County					
Carpenters; soft Floor Layers	11.11	.40	.50		.05
Millwrights and Piledrivermen	11.61	.40	.50		.05
Woodford County					
Carpenters and Soft Floor Layers	11.11	.40	.50		.05
Millwrights & Piledrivermen	11.61	.40	.50		.05
CEMENT MASONS:					
LaSalle, Bureau, Putnam Cos. and the Northern part of Livingston County	11.00		1.00		
Southern part of Livingston County and that portion East of Roanoke in Woodford Co.	11.63	.55			
Marshall County & the Remainder of Woodford county	10.60	.70	.80		.05
ELECTRICIANS:					
Northern half and Central Southern part of LaSalle Co. Walnut; Ohio, LaMoille, Clarion, Bureau, Dover, Berlin and Westville Townships in Bureau county	13.43	.50	3%+.50		.2 of 1%

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ELECTRICIANS: (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Vicinity of LaSalle - S. W. part of County; Remainder of Putnam County; Arispe, Concord, Fairfield, Gold, Greenville, Hall, Indiantown, Leepertown, Macon, Manilus, Milo, Mineral, Neponset, Princeton, Sibly, Wheatland, and Waynet Townships, in Bureau County	11.55	.50	3%+.30		.25%
Area West of Bell Plain and Roberts Townships in Marshall County; Area West to but not including Linn, Kansas, Palestone, Roanoke, Cazenovia and Metamora Townships in Woodford County	11.67	.50	3%+.50		1%
Livingston County; Vicinity of Streator S. E. part of County South of Eden in LaSalle County, Magnolia Township in Putnam County; Area East of Cazenovia and Metamora Townships, including Linn, Clayton, Minak, Roanoke, Green & Panola Townships in Woodford County; Remainder of Marshall County	11.70	.50	3%+.30		.3%
El Paso, Kansas and Palstine Townships S. E. corner of Woodford County	11.20	.50	3%+.40		.002
IRONWORKERS:					
LaSalle, Bureau, Putnam and the Remainder of Marshall County	11.54	.65	.375		.02
Woodford County; and the S. W. corner of Marshall County	11.075	.65	.925		.025
Livingston County	10.80	.65	1.00		.08
LATHERS.					
LaSalle, Bureau, Putnam and N. E. half of Marshall County	8.00		.20		.01
S. W. half of Marshall County	10.21	.40	.40		.01

DECISION NO. IL78-2024

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
PAINTERS:					
Livingston County:					
Brush	8.00				
Structural Steel	8.50				
Vicinity of Ottawa, Streator and Marseilles in LaSalle Co.					
Brush	9.00	.45	.15		
Spray	10.00	.45	.15		
Putnam County and the Vicinity of LaSalle, Mendota, Oglesby, Utica and Peru in LaSalle Co.					
Brush	8.00	.45	.15		
Spray and Taping	9.00	.45	.15		
Woodford and Marshall Counties:					
Brush	10.30	.55	.30		.03
Spray	10.80	.55	.30		.03
Bureau County:					
Brush and Roller	9.82	.45	.65		.12
Spray	10.07	.45	.65		.12
PLASTERERS:					
Vicinity of LaSalle and Peru in LaSalle County	11.25		.50		.70
Vicinity of Ottawa, Earlville, Seneca and Marseilles - LaSalle County	11.50		.65		.70
Vicinity of Streator; LaSalle County and Northern part of Livingston County	10.95		.60		.50
Portion East of Roanoke in Woodford County & the Southern part of Livingston County	12.15				
Marshall County & the Remainder of Woodford County	10.60	.70	.80		.01
Putnam and Bureau Counties	11.60	.60	.25		
PLUMBERS AND STEAMFITTERS:					
LaSalle, Putnam and Bureau Cos. and North of Pontiac in Livingston County	12.08	.55	.45		.09
City of Pontiac and South thereof Livingston County	11.20	.50	1.10		.15
Illinois State Prison (Pontiac) in Livingston county	12.03	.35	1.00		.08

DECISION NO. IL78-2024

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
LaSalle, Bureau, Putnam, Livingston and N. E. half of Marshall County	11.13		.30		
Woodford County and S. E. half of Marshall County	11.10	.70	.40		.025
SHEET METAL WORKERS:					
Woodford County	11.22	.50	.75		.08
LaSalle, Bureau, Marshall, Putnam and Southern part of Livingston County	11.95	.38	.35		
Northern portion of Livingston County	12.07	.45	.75		.07
SPRINKLER FITTERS	11.65	.65	.95		.08
TRUCK DRIVERS:					
Remainder of Woodford and Livingston Counties					
2-3 Axle Trucks	9.80	a26.00	a30.00		
4 Axle Trucks	9.95	a26.00	a30.00		
5 Axle Trucks	10.15	a26.00	a30.00		
6 Axle Trucks	10.35	a26.00	a30.00		
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTE:

a. Per week per employee

DECISION NO. IL78-2024

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Unskilled	$9.45	.40	.42		.035
Semi-skilled	9.65	.40	.42		.035
Skilled	9.85	.40	.42		.035

UNSKILLED: Common Laborer; Carpenter Tenders; Tool Cribmen; Fireman or Salamander Tenders; Flagmen; Gravel Box Men; Dumpmen and Spotters; Form Handlers; Material Handlers; Fencing Laborers; Cleaning Lumber; Pit Men; Material Checkers; Dispatchers; Landscapers; Unloading explosives; Laying of sod; Panting of trees; Asphalt Plant Laborers; Wrecking Laborers; Writer or scale tickets; Fire shop Laborers; Fireproofing Laborers; Janitors; Wrecking-dismantling buildings; Wallmen and Housemovers; Driving of Stakes; Stringlines for all Machinery

SEMI-SKILLED: Handling of Materials treated with oil, creosote, asphalt or any foreign material, track Laborers; Cement Handlers; Chloride Handlers; the unloading and Laborers w/steel workers and rebard; Concrete Workers (wet); Tunnel Helpers in free air; Batch Dumpers; Mason and Plasterer Tenders and material wheelers; Kettlemen and Tarmen; Tank Cleaners; Plastic Installers; Scaffold Workers; Motorized buggies or motorized unit used for wet concrete or handling of building materials; Laborers w/dewatering systems; All sewer workers plus depth; Rod and Chainmen with land surveyors; Vibrator Operators; Mortar Mixer Operator; Cement Silica, Clay, Fly Ash, Lime and Plasters; Handlers (bulk or bag); Cofferdam Workers plu depth; (on concrete paving); Placing, Cutting and trying or Reinforcing; Deck Hand; Dredge hand or Shore Laborers; Bankmen on floating plant; Asphalt Workers w/machine; Asphalt Raker; Grade Checker

SKILLED: Dynamite Man or Blasters; caisson workers plus depth; Gunnite Nozzle Men; Leadmen on sewer work; Welders; Cutters; Burners; Torchmen; Chain Saw Operator; Jackhammer and Drill Operators; Layout man; Steel Form Setters (street and highway); Air Tamping Hammerman; Signalman on crane, Concrete Saw Operator; Screenman on Asphalt Pavers; Laborers tneding Masons w/hot materials are used; Multiple Concrete Duct-Leadmen; Lutemen; Curb Asphalt Machine Operator; Ready-mix Scalemen; Portable or temporary plant; Laborers handling master plate or similar materials; Laser Beam Operator; Coring Machine Operator

DECISION NO. IL78-2024 ILL-12-PEO-1

POWER EQUIPMENT OPERATORS: Bureau (e. of Rt. #26); LaSalle; Livingston; Putnam (e. of Illinois River)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	11.85	.75	.85	.40	.05
CLASS II	10.55	.75	.85	.40	.05
CLASS III	7.50	.75	.85	.40	.05
CLASS IV	8.15	.75	.85	.40	.05

CLASS I - Asphalt plant, asphalt spreader, auto-grade, batch plant, Benoto (requires two engineers), boiler & throttle valve, caisson tugs, central ready-mix plant, combination backhoe front end-loader machine, compressor & throttle valve, concrete breaker (truck mounted), conveyor, concrete paver, concrete placer, concrete tower, cranes (all), derricks (all), grader, elevating, grouting machines, highlift shovels or front endloader 2¼ yd. & over, hoists, one, two & three drum, hoists, two & three, drum, hoists, two tugger one floor, hydraulic boom trucks, locomotives (all) mechanic, motor patrol, pile drivers & skid rig, post-hole digger, pre-stress machine, pump cretes dual ram (requiring frequent lubrication & water), pumpcretes, squeeze cretes - screw types pumps, Gysum bulker & pump, rock drill (self-propelled), rock drill (truck mounted), scoopes - tractor drawn, slip form paver, straddle buggies, tournapull, tractor with boom & side, trenching machines

CLASS II - Boilers, bulldozers, broom all power propelled, concrete mixer (2 bag & over), conveyor portable, forklift truck greaser engineer, highlift shovels or front endloaders under 2¼ yd., hoists, automatic, hoists, all elevators, hoists, tugger single drum, rollers, all steam generators, stone crushers, tractors, all winch trucks with "A" frame

CLASS III - Air compressor - small 150 & under (1) to 5 not to exceed a total of 300 ft.), Air compressor - large over 150, combination - small equipment opr., generators under & over 50 KW, heaters, mechanical pumps, over 3" (1 to 3 not to exceed a total of 300 ft.), pumps, well points, welding machines (2 through 5), winches, 4 small electric drill winches

CLASS IV - Oilers

DECISION NO. IL78-2024

ILL-6-PEO-1

POWER EQUIPMENT OPERATORS: Bureau (w. of Rt. #26); Marshall; Putnam (W. of Illinois River); & Woodford Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	11.32	.45	.80		.05
GROUP 2	11.12	.45	.80		.05
GROUP 3	10.745	.45	.80		.05
GROUP 4	10.47	.45	.80		.05
GROUP 5	9.86	.45	.80		.05

GROUP 1 - Cranes, escalated rate on crane, derricks, booms, $.01 per hour, per foot, after 80 feet or boom including jib, overhead cranes, gradall, cherry pickers (and similar types, over 15 ton lifting capacity (require oiler), mechanics, central concrete mixing plant operator, road pavers (27e-dual drum-tri batchers), blacktop plant operators and plant engineers, 3 drum hoist, derricks, hydro cranes, shovels skimmer scoops, kohring scoopers, draglines, backhoe, loptoes-crane-type that require oilers, derrick boats, pile drivers and skid rigs, clamshells, locomotives, cranes, dredge (all types), motor patrol, power blades dumore-elevating and similar types tower cranes (crawler mobile) and stationary, crane-type backfiller, drott yumbo and similar types considered as cranes caisson rigs (require oilers) dozer, tourna-dozer, work boats, ross carrier and helicopter

GROUP 2 - Trench machine, pumpcrete-belt-crete-squeeze cretes-screw-type pumps and gypsum bulker and pump, dinkey, power launches, tournapulls (all), multiple unit, earth mover, $.25 per hour for each scoop over one, scoops (all sizes), push cats, endloaders (all types), side boom, P-H one pass soil-cement machine (all similar types), wheel tractors (industrial or farm type w/dozer-hoe-end-loader or other attachments), pugmill with pump backfillers, asphalt surfacing machine euclid loader, forklifts, formless finishing machine jeeps w/ditching machine, or other attachments, tuneluger, rock crushers, automatic cement and gravel batching plants, mobile drills (soil testing and similar types), require oiler), flaherty spreader or similar types (require oiler), heavy equipment greaser (top greaser on spread), gurries and similar type), 1 and 2 drum hoists (buck hoists and similar types freight and passenger elevators Chicago boom, boring machine and pipe jacking, machine, hydro boom, starting engineer on pipeline, C.M.I. and similar types (require oiler) straw blower, hydro seedeer and F.W.D. and similar types

DECISION NO. IL78-2024

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 3 - Tractor (track type) without power unit pulling rollers, rollers on asphalt, brick or macadam, concrete breakers, concrete spreaders, mule pulling roller, center stripper, cement finishing machines, barger greene or similar loaders, vibro tamper (all similar types), self-propelled, winch or boom truck, mechanical bull floats, mixer over 3 bags to 27E, tractor pulling power blade or elevating grader, porter rex rail, clary screed, pugmill (without pump) screed man on laydown machine, firemen and spray machine on paving

GROUP 4 - Air compressor, all air and steam falves, power subgrader, oil distributor, straight tractor, trac-air without attachments, surb machines, truck crane oilers, and truck type hoptoe oilers

GROUP 5 - Herman Nelson heater, Dravo, Warner, Silent flo, and similar types, one engineer will opera 1-5 and after 5, two operators will be required, self-propelled concrete saws, assistant heavy equipment greaser on spread, roller, 5 tons and under on earth or gravel, form grader, pump 1 Or 2, generator (1) or (2), welding machine (1) or (2) - 300 amp. or over, mixer (3) bag and umder (standard capacity), bulk cement plant, crawler crane and skid rig oilers

DECISION NO. IL78-2024

TRUCK DIRVERS: Bureau, LaSalle, Marshall & Putnam Cos., Woodford Co: (NW Corner) Livingston Co: (SW Corner)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	9.86	.60	a28.00		
GROUP II	10.23	.60	a28.00		
GROUP III	10.45	.60	a28.00		

GROUP I - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity

GROUP II - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III - 2,3, or 4 axle trucks hauling 16 tons or more, drivers on oil distributors, water pulls, mehcanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week per employee

SUPERSEDEAS DECISION

STATE: Illinois COUNTIES: Logan, Mason, and Menard

DECISION NUMBER: IL78-2026 DATE: Date of Publication

Supersedes Decision No. IL76-2126, dated October 8, 1976, in 41 FR 46630

DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.18	.45	.62		
BOILERMAKERS:					
Menard County	11.45	.90	1.20		.03
Logan and Mason	11.45	.95	1.00		.03
BRICKLAYERS:					
Logan and Mason Counties					
Bricklayers, Stonemason, Cement Blocklayers, Caulkers, Pointers, Cleaners and Plasterers	11.25				
Marble-Tile and Terrazzo Workers	10.80				
Marble-Tile Finishers	10.25				
Menard County					
Bricklayers, Stonemasons, Marble-Tile and Terrazzo Workers, Pointers, Caulkers and Cleaners	10.10	.50	1.00		.02
Plasterers	11.46	.65	1.00		.01
Marble and Tile Finishers	10.35				
CARPENTERS:					
Logan County					
Carpenters and Soft Floor Layers	11.11	.40	.50		.05
Millwrights and Piledrivermen	11.61	.40	.50		.05
Menard County					
Carpenters and Soft Floor Layers	10.90	.45	.55		.06
Millwrights and Piledrivermen	11.40	.45	.55		.06
Mason County					
Carpenters and Soft Floor Layers	11.11	.40	.50		.05
Millwrights and Piledrivermen	11.61	.40	.50		.05
CEMENT MASONS:					
Logan County	10.80				
Menard County	9.98	.35	.35		.02
Mason County	10.60	.70	.80		.05

DECISION NO. IL78-2026

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
Logan and Menard Counties; the Towhnsips of Bath, Crane Creek, Kilbourne, Lynchburg, Mason City and Salt Creek					
in Mason County	11.67	.50	3%+.40		.1 of 1%
Remainder of Mason County	11.67	.50	3 %+.50		1%
GLAZIERS	9.94	.45	.15		
IRONWORKERS	11.10	.55	.90		.08
LABORERS:					
Logan County and Northern half of Menard County					
Unskilled	9.30	.45	.40		.035
Semi-Skilled	9.50	.45	.40		.035
Skilled	9.65	.45	.40		.035
Southern half of Menard County					
Unskilled	9.85	.40	.40		.035
Semi-killed	10.05	.40	.40		.035
Skilled	10.40	.40	.40		.035
Mason County					
Unskilled	8.89	.30	.45		.035
Semi-Skilled	8.34	.30	.45		.035
Skilled	9.24	.30	.45		.035
LATHERS	11.40				
PAINTERS:					
Logan and Menard Counties					
Brush and Roller	9.80	.45	.15		
Spray	10.30	.45	.15		
Mason County					
Brush	10.30	.45	.30		.03
Spray	10.80	.45	.30		.03
PLUMBERS and PIPEFITTERS	11.53	.35	.88		.05
ROOFERS:					
Composition	11.78				
Slate, Tile, Precast Slab	12.03				
SHEET METAL WORKERS	10.91	3%+.50	.78		.05
SPRINKLER FITTERS	11.65	.65	.95		.08
WELDERS: Receive rate prescrived for craft performing operation to which welding is incidental.					

DECISION NO. IL78-2026

ILL-5-PEO-1-2-3

POWER EQUIPMENT OPERATORS: LOGAN & MENARD COUNTIES

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	9.75	.30	.40		.05
CLASS II	8.775	.30	.40		.05
CLASS III	8.15	.30	.40		.04

CLASS I - Asphalt screed man, Aspco concrete spreaders, Asphalt paver, Asphalt rollers on bituminous concrete, athey loaders, backfiller, crane type, backhoes, cableways, cherry pickers, claim shell, C.N.E. & similar type autograde formless paver, autograde placer & finisher, concrete breakers, concrete plant operators, concrete pumps, cranes, derrick, derrick baots, draglines, earth augeror boring machines, levating graders engineers on dredge, gravel processing machines, high lifts or fork lifts, hoist w/two drums or two or more loadlines locomotive (all) mechanics, motar graders or auto patrols, operators or levelman on dredges, operator power boat, operators pug mill (asphalt plants), orange peels, overhead cranes, paving mixers, piledrivers, pipe wrapping & painting machines, push dozer, or push cats, rock crushers, ross carriers or similar machines, scoops, skimmer, 2 cu. yd. capacity & under, sheep foot roller (self propelled) shovels, skimmer scoops, test hole drilling machines, tower cranes, tower machines, tower mixers, track type and loaders, track type form lifts or high lifts, track jacks & tamper, tractor, sideboom, trenching machine, ditching machine, tunnel luggers, wheel type end laoders, winch cat, scoops, all or turnapull.

CLASS - Asphalt boosters & heaters, asphalt distributors, asphalt plant fireman, oiler on 2 paving mixers when used in tandem boom or winch truck, building elevator, bull floats or flexplanes, concrete finishing machines, concrete saws, self propeller, concrete saws, self propeller, concrete spreader machines, gravel or stone spreader, power operated, head equipment greaser, hoist automatic, hoist w/1 rum & 1 load line, mud jacks, post hole diggers, mechanical, road or street sweeper-self propelled, seaman tiller, straw machine vibratory compactor, well drill machines scissors hoist.

CLASS III - Air compressor*, air compressor, track or self-propelled, asphalt plant engineers, bulk cement batching plants, conveyors,* concrete mixers (except plant, paver, tower) firemen, generators*, greasers, helper on single paving mixer, light plants*, mechanic pug mills, when used for other than asphalt operation, rollers (except bituminous concrete) tractors w/o power attachments regardless of size or type) truck crane oiler & driver 1 (man), water pumps*, welding machines (300 amp. or over)* welding machines

*COMBINATIONS OF ONE TO FIVE OF ANY AIR COMPRESSORS, CONVEYORS. WELDING MACHINES, WATER PUMPS, LIGHT PLANTS OR GENERATORS SHALL BE IN BATTIERS OR WINTIN 300 FT.

DECISION NO. IL78 2026

POWER EQUIPMENT OPERATORS MASON COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and or Appr Tr
GROUP 1	11.32	.45	.80		.05
GROUP 2	11.12	.45	.80		.05
GROUP 3	10.745	.45	.80		.05
GROUP 4	10.47	.45	.80		.05
GROUP 5	9.86	.45	.80		.05

GROUP 1 - Cranes, escalated rate on crane, derricks, booms, $.01 per hour, per foot, after 80 feet or boom including jib, overhead cranes, gredall, cherry pickers (and similar types, over 15 tons lifting capacity (require oiler), mechanics, central concrete mixing plant operator, road pavers (27E-dual drum tri-batchers), blacktop plant operators and plant engineers 3 drum hoist, derricks, hydro cranes,shovels skimmer scoops, kochring scoopers, draglines, badkhoe, hoptoes-cranes-type that require oilers, derrick boats, pile drivers and skid rigs, clamshells, locomotive cranes, dredge (all types), motor patrol, power blades dumore-elevating and similar types tower cranes (crawler mobile) and stationary, -rane-type backfiller, drott yumbo and similar type considered as cranes, caisson rigs (require oilers) dozer, tourna-dozer, work boats, ross carrier and helicopter

GROUP 2 - Trench machine, pumpcrete-belt crete-squeese crete-screw-type pumps and gysum bulker and pump, dinkeys, power launches, tournapulls (all), multiple unit, earth mover, $.25 per hour for each scoop over one, scoops (all sizes), push cats, endloaders (all types), side boom, P-H one pass soil-cement machine (all similar types), wheel tractors (industrial or farm type w/dozer-hoe-end-loader or other attachments), pugmill with pump backfillers, asphalt surfacing machine, euclid loader, forklifts, formless finishing machine, jeeps w/ditching machine, or other attachments, tuneluger, rock crushers, automatic cement and gravel batching plants, mobile drills (soil testing and similar types), require oiler), flaherty spreader or similar types (require oiler), heavy equipment greaers (top greaser on spread), gurries and similar type), 1 and 2 drum hoists (buck hoists and similar types freight and passenger elevators Chicago boom, boring machine and pipe jacking, machine, hydro boom, starting engineer on pipeline, C.M.I and similar types (require oilers) straw blower, hydro seeder and F.W.D. and similar types

DECISION NO. IL78 2026

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 3 - Tractor (track type) without power unit pulling rollers, rollers on asphalt, brick or macadam, concrete breakers, concrete spreaders, mule pulling rollers, center stripper, cement finishing machines, barger greene or similar loaders, vibro tamper (all similar types), self propelled, winch or boom truck mechanical bull floats, mixer over 3 bags to 27F, tractor pulling power blade or elevating grader, porter rex rail, clary screed, pugmill (without pump) screed man on laydown machine, firemen and spray machine on paving

GROUP 4 - Air compressor, all air and steam valves, power subgrader, oil distributor, straight tractor, trac-air without attachments, curb machines, truck crane oilers, ad trucktype hoptoe oilers

GROUP 5 - Herman Nelson heater, Dravo, Warner, Silent glo, and similar types, one engineer will operate 1-5 and after 5, two operators will be required, self-propelled concrete saws, assistnat heavy equipment greaser on spreed, roller, 5 tons and under on earth or gravel, form grader, pump 1 or 2, generator (1) or (2), welding machine (1) or (2) - 300 amp. or over, mixer (3) bag and under (stnadard capacity), bulk cement plant, crawler crane and skid rig oilers

DECISION NO. IL78-2026

ILL-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	9.85	.60	a28.00		
GROUP II	10.25	.60	a28.00		
GROUP III	10.45	.60	a28.00		

TRUCK DRIVERS

GROUP I - Drivers on 2 axle truckd hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehousemen, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or ment to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity

GROUP II - 2 or 3 axle truck hauling more than 9 tons, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units. ticket writers

GROUP III - 2,3 or 4 axle truck hauling 16 tons or more, drivers on oil distributors, water pulls, mechanic & working foremen; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

STATE: Illinois COUNTY: McLean

DECISION NUMBER: IL78-2027 DATE: Date of Publication

Supersedes Decision No. IL76-2127 dated October 8, 1976, in 41 FR 44627

DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.11	.81	.72		.12
BOILERMAKERS	11.45	.95	1.00		.03
BRICKLAYERS:					
Bricklayers, Stonemasons, Marble, Tile, Terrazzo Workers	11.00	.60	.50		
CARPENTERS:					
Carpenters and Soft Floor Layers	11.11	.40	.90		.05
Millwrights and Piledrivermen	11.61	.40	.50		.05
CEMENT MASONS:	11.63	.55			
ELECTRICIANS:					
Cropsey, Anchor, Cheney Grove and Bell Flower Townships	11.70	.50	3%+.30		.3%
Remainder of County	11.20	.50	3%+.40		.002
ELEVATOR CONSTRUCTORS:					
Constructors	11.34	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR				
GLAZIERS	10.73	.55	.45		
IRONWORKERS:					
Eastern Part of County	10.80	.65	1.00		.08
Western Part of County	11.075	.65	.925		.025
LABORERS:					
Unskilled	8.60	.40	.42		.035
Semi-Skilled	8.80	.40	.42		.035
Skilled	9.00	.40	.42		.035
LATHERS	11.12	.40	.40		.01
PAINTERS:					
Brush	10.35	.45			.06
Structural Steel and Spray	10.85	.45			.06
PLASTERERS	12.15				.01
PLUMBERS and STEAMFITTERS	11.20	.50	1.10		.15
ROOFERS:					
Composition, slate, tile and Asbestos Damp and Waterproof	10.25		.45		
SHEET METAL WORKERS	11.22	.50	.75		.08
SPRINKLER FITTERS	11.65	.65	.95		.08
WELDERS; Receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. IL78 2027

PAID HOLIDAYS: (WHERE APPLICABLE)
A New Year's Day; B Memorial Day; C Independence Day; D Labor Day;
E Thanksgiving Day; F Day after Thanksgiving; G Christmas Day

FOOTNOTES:
a. 7 Paid Holidays: A through G

b. Employer contributes 8% of Regular Hourly Rate to Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes 6% of Regular Hourly Rate to Vacation Pay Credit for employee who has worked in Business less than 5 years.

DECISION NO. IL78 2027

ILL 6 PFO 1

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
GROUP 1	11.32	.45	.80		.05
GROUP 2	11.12	.45	.80		.05
GROUP 3	10.745	.45	.80		.05
GROUP 4	10.47	.45	.80		.05
GROUP 5	9.86	.45	.80		.05

GROUP 1 - Cranes, escalated rate on crane, derricks, booms, $.01 per hour, per foot, after 80 feet or boom including jib, overhead cranes, gradall, cherry pickers (and similar types, over 15 ton lifting capacity (require oiler), mechanics, central concrete mixing plant operator, road pavers (27e-dual drum-tri batchers), blacktop plant operators and plant engineers, 3 drum hoist, derricks, hydro cranes, shovels skimmer scoops, kohring scoopers, draglines, backhoe, loptoes-crane-type that require oilers, derrick boats, pile drivers and skid rigs, clamshells, locomotives, cranes, dredge (all types), motor patrol, power blades dumore-elevating and similar types tower cranes (crawler mobile) and stationary, crane-type backfiller, drott yumbo and similar types considered as cranes caisson rigs (require oilers) dozer, tourna-dozer, work boats, ross carrier and helicopter

GROUP 2 - Trench machine, pumperete-belt-crete-squeeze cretes-screw-type pumps and gypsum bulker and pump, dinkey, power launches, tournapulls (all), multiple unit, earth mover, $.25 per hour for each scoop over one, scoops (all sizes), push cats, endloaders (all types), side boom, P-H one pass soil-cement machine (all similar types), wheel tractors (industrial or farm type w/dozer-hoe-end-loader or other attachments), pugmill with pump backfillers, asphalt surfacing machine euclid loader, forklifts, formless finishing machine jeeps w/ditching machine, or other attachments, tuneluger, rock crushers, automatic cement and gravel batching plants, mobile drills (soil testing and similar types), require oiler), flaherty spreader or similar types (require oiler), heavy equipment greaser (top greaser on spread), gurries and similar type), 1 and 2 drum hoists (buck hoists and similar types freight and passenger elevators Chicago boom, boring machine and pipe jacking, machine, hydro boom, starting engineer on pipeline, C.M.I. and similar types (require oiler) straw blower, hydro seedeer and F.W.D. and similar types

DECISION NO. IL78-2027

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 3 - Tractor (track type) without power unit pulling rollers, rollers on asphalt, brick or macadam, concrete breakers, concrete spreaders, mule pulling roller, center stripper, cement finishing machines, barger greene or similar loaders, vibro tamper (all similar types), self-propelled, winch or boom truck, mechanical bull floats, mixer over 3 bags to 27E, tractor pulling power blade or elevating grader, porter rex rail, clary screed, pugmill (without pump) screed man on laydown machine, firemen and spray machine on paving

GROUP 4 - Air compressor, dl air and steam falves, power subgrader, oil distributor, straight tractor, trac-air without attachments, surb machines, truck crane oilers, and truck type hoptoe oilers

GROUP 5 - Herman Nelson heater, Dravo, Warner, Silent flo, and similar types, one engineer will opera 1-5 and after 5, two operators will be required, self-propelled concrete saws, assistant heavy equipment greaser on spread, roller, 5 tons and under on arth or gravel, form grader, pump 1 Or 2, generator (1) or (2), welding machine (1) or (2) - 300 amp. or over, mixer (3) bag and umder (standard capacity), bulk cement plant, crawler crane and skid rig oilers

DECISION NO 1L78-2027

ILL-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.85	.60	a28.00		
GROUP II	10.25	.60	a28.00		
GROUP III	10.45	.60	a28.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity

GROUP II: - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units;

GROUP III: - 2,3 or 4 axle trucks hauling 16 ton or more, drivers on oil distributores, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

STATE: Illinois

COUNTIES: Cristian, DeWitt, Macon, Macoupin, Moultrie, Piatt, and Shelby

DECISION NUMBER: IL78-2028

DATE: Date of Publication

Supersedes Decision No. IL76-2128 dated October 22, 1976, in 41 FR 46823

DESCRIPTION OF WORK: Building Construction, (excluding single family homes and graden type apartments up to and including 4 stories.)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.18	.45	.62		
BOILERMAKERS:					
DeWitt County	11.45	.95	1.00		.03
Remainder of Counties	11.45	.95	1.20		.03
BRICKLAYERS and STONEMASONS:					
Macoupin County:					
East ½ of County, including Gillespie, Benld, Mt. Olive and Stauton	9.85	.70	.75	1.00	.05
Balance of the County	10.10	.50	.52		.02
Christian County	10.10	.50	1.00		.02
DeWitt County	11.00	.60	.50		
Piatt County	10.90	.45	.50		.05
Macon, Moultrie and Shilby Cos.	11.05	.60	.50		.005
CARPENTERS:					
Macoupin County:					
S.W. Corner of the County Carpenters, Soft Floor Layers, Millwrights and Piledrivermer	11.335	.60	.50		
Girard and North thereof Carpenters and Soft Floor Layers	10.90	.55	.45		.06
Millwrights and Piledrivermen	11.40	.55	.45		.06
Remainder of the County Carpenters, Soft Floor Layers, Millwrights and Pilderivermen	10.935	.50	.50		
Shelby County, Remainder of Moultrie County, Millerville, Rosamond, Radford and Pana in Christian County Carpenters and Soft Floor Layers	11.525	.55	.30		.07
Millwrights and Piledrivermen	12.025	.55	.30		.07
Remainder of Christian County Carpenters, Piledrivermen and Soft Floor Layers	6.90	.40	.30		
Millwrights	7.40	.40	.30		
DeWitt County Carpenters and Soft Floor Layers	11.11	.40	.50		.05
Millwrights and Piledrivermen	11.61	.40	.50		.05

DECISION NUMBER: IL78-2028

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS: (Cont'd)					
Macon County, Moultrie County: (Bethany, Okaw River, Lovington, Williamsbury, Lake City and all Areas north; Piatt County: (Cisco, Bement, Allerton Park and all Areas south therof: Carpenters and Soft Floor Layers	$11.185	.60	.60		.06
Millwrights & Piledrivermen	11.685	.60	.60		.06
Remainder of Piatt County: Carpenters and Soft Floor Layers	11.015	.45	.90		.08
Millwrights and Piledrivermen	11.515	.45	.90		.08
CEMENT MASONS:					
Macoupin County	9.855	.50	.52		.02
Macon County, Christina County: (Norhtern part-south to a line running east and west established north of Humphrey and including Stonington); Shelby County: (Northern part including Moweaqua); Moultrie County: (Northeastern part including Lovington) Piatt County: (Southern portion) DeWitt County: (Southern half of County, including Clinton	11.25	.60	.425		
Remainder of DeWitt County	11.63	.55			.10
Remainder of Moultrie and Shelby Counties	11.18				
Remainder of Christian County	10.55		.65		
Norhtern half of Piatt County	11.25	.60	.425		
ELECTRICIANS:					
Macoupin County: Athenville, Scottville, Girard and Areas north therof	11.67	.50	3%+.40		.1 of 1%
Remainder of County	11.23	4%	1%+.65	6%	.25%

DECISION NO. IL78-2028

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
Macon and Christian Counties; DeWitt County (Townships of Wapella, Barnett, Clintonia, Harp, DeWitt, Turnbridge, Texas, Creek and Nixon); Piatt County: (Goose Creek, Willow Branch, Cerro Gordo, Bement and Unity); Shelby County: (Townships of Moweaqua, Penn, Flat Branch, Pickaway, Todds Point, Rural, Ridge, Okaw, Tower Hill, Rose, Shelbyville, Oconee, Cold Spring, Lakewood, Clarkburg, Herrick, Dry Point and Holland); Moultrie County: (Townships of Dora, Lovington, Marrowbone and Sullivan at the Illinois Masonis Home and Farm in East Nelson	$11.70	.50	3%+.40		.35%
Remainder of Moultrie and Shelby Counties	9.90	.40	1%+.20		.2%
Remainder of DeWitt County	11.20	.50	3%+.40		.002
Remainder of Piatt County	11.70	.50	3%+.30		.3%
IRONWORKERS:					
Macoupin County:					
Northern part of County	11.10	.55	.90		.08
Southern part of County	11.35	.55	.90		
Moultrie, Piatt, DeWitt (Eastern half of County) Macon (East of Decatur) Shelby (Eastern half of County)	10.80	.65	1.00		.08
Christian County, DeWitt (Western half of County) Macon (Remainder of County)	11.10	.55	.90		.08

DECISION NO. IL78-2028

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Macoupin County:					
Carlinville, Mt. Olive and Shipman and Vicinity					
Common	$10.25		.20		.035
All Brick and Plaster Mason Tender	10.75		.20		.035
Workmen cutting and burning w/a torch; Men working on the bottom of sewer trenches, etc.	10.50		.20		.035
Dynamite Men	11.85		.20		.035
Gillespie and Vicinity:					
Common	10.05		.40		.035
All Brick and Plaster Mason Tenders	10.55		.40		.035
Workmen cutting and burning w/a torch; Men working on the bottom of sewer trenches, etc.	10.30		.40		.035
Dynamite Men	11.65		.40		.035
Staunton and Vicinity:					
Common	10.15		.30		.035
All Brick and Plaster Mason Tenders	10.65		.30		.035
Workmen cutting and burning w/a Torch Men working on the bottom of sewer trenches, etc.	10.40		.30		.035
Dynamite Men	11.75		.30		.035
Shelby County:					
Unskilled	9.80	.35	.40		.035
Semi-Skilled	10.00	.35	.40		.035
Skilled	10.15	.35	.40		.035
Christian County:					
Unskilled	8.79	.45	.40		.035
Semi-Skilled	8.99	.45	.40		.035
Skilled	10.54	.45	.40		.035
Macon County & the Western ½ of Moultrie County:					
Unskilled	9.70	.35	.50		.035
Semi-Skilled	9.90	.35	.50		.035
Skilled	10.05	.35	.50		.035

DECISION NO. IL78-2028

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS: (Cont'd)					
Ivesdale & South Thereof in Piatt County & all area east of Rt. #21 in Moultrie County					
Unskilled	$ 9.50	.45	.60		.035
Semi-Skilled	9.70	.45	.60		.035
Skilled	9.85	.45	.60		.035
DeWitt County & the Remainder of Piatt County					
Unskilled	9.95	.30	.30		.035
Semi-Skilled	10.15	.30	.30		.035
Skilled	10.30	.30	.30		.035

DECISION NO. IL78-2028

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS:					
Macoupin County:					
Norhtern part of County	$11.40				
Southern part of County	12.085			.65	.01
Macon and DeWitt Counties	8.95	.325			
Christian County	11.40				
Piatt County	10.84	.45	.30		.01
PAINTERS:					
Macoupin County:					
Commercial	10.55	.55	.35		
Industrial & Tapers	10.80	.55	.35		
Christian County					
Brush and Roller	9.80	.45	.15		
Spray	10.30	.45	.15		
DeWitt County:					
Brush	10.35	.45			.06
Spray	10.85	.45			.06
Macon, Shelby, Moultrie and Piatt Counties					
Brush and Roller	10.20	.50	.40		
Spray over Quart Cup	10.95	.50	.40		
PLASTERERS:					
Macoupin County: (Carlinville and Vicinity)	10.10	.50	.52		.02
Macon County, Christian County: (Northern part - south to a line running east and west established north of Humphrey and including Stonington); Shelby County: (Northern part including Moweaqua) Moultrie County: (Northeastern part including Lovington); Piatt County; (Southern portion); DeWitt County: (Southern half including Clinton)	11.47	.60	.475		.01
Remainder of Moultrie and Shelby Counties	11.10				.01
Southern half of Christian County	10.55		.65		
Northern half of Piatt County	11.165	.45			.025
Remainder of DeWitt County	12.15				

DECISION NO. IL78-2028

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS and STEAMFITTERS:					
Macoupin County:					
North of Route #108	$11.53	.35	.88		.05
South of Route #108	12.80	.48	.96		.05
Macon; DeWitt; Moultrie Counties; Townships of Pana, Assumption and Radford in Christian County; West of Route #105 in Piatt County	12.26	.35	.75		.11
Shelby County; (East of Route #105) in Piatt County	11.40	.35	1.15		.12
Remainder of Christian County	11.53	.35	.88		.05
ROOFERS:					
Macoupin County:					
Northern half of County:					
Composition	11.78				
Slate, Tile and Precast Slab	12.03				
Southern half of County	10.45	.47	.45	1.00	.03
Macon; Shelby; Moultrie; DeWitt County: (Sorthern half of County, including Clinton); Christian County: (Townships of Assumption; Pinkle, Dollville, Mt. Auburn, Millville, Oshbernville, Owaneea, Pana, Radford, Rosamond, Stonington, Velma, Vanderville, Willeys	11.23	.30	.20		
Piatt County	10.90	.55	.30		.03
SHEET METAL WORKERS:					
Macoupin County	10.68	.25	.25	6%	.02
Macon, Christian, DeWitt Counties	10.91	3%+.50	.78		.05
Moultrie; Piatt and Shelby Counties	10.60	.45	.35		.12
SPRINKLER FITTERS	11.65	.65	.95		.08
TILE-TERRAZZO-MARBLE WORKERS:					
Macoupin County:					
Marble Setters	9.85				
Tile and Terrazzo Workers	9.95	.50	.75	1.00	
Macon and Shelby Counties	10.60	.60	.50		
Christian County	10.25		.25		
DeWitt County	11.00	.60	.50		
Piatt County	10.60	.60	.50		
WELDER - Receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. IL78-2028 ILL-1-PEO-1-2-3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: MOULTRIE COUNTY					
CLASS I	$11.75	.40	.75		.13
CLASS II	11.70	.40	.75		.13
CLASS III	11.50	.40	.75		.13
CLASS IV	7.50	.40	.75		.13

POWER EQUIPMENT OPERATORS:

CLASS I: Master Mechanic

CLASS II: Utility Operator

CLASS III: Power cranes, Draglines, Electric overhead cranes, Shovels, Gradall, Mechanics, Repair and Maintenance of all equipment, Tractor highlift shovel, Forklifts, Tournamixer, 2 drums machine or 2 cage hoist, Cableways, Tower machines, Motor Patrol, Boom tractor, Boom or winch truck, Truck Crane, Tournapull, Tractor operating scoops, Bulldozer, Push Tractor, Finishing machine on Asphalt, Large rollers & rollers on asphalt, Gravel Macadam & Brick surface, Ross carrier or similar machine, Asphalt Plant Engineer or Pug Mill, Two (2) air compressors; Hetherington paver operator, Farm tractor with ½ yard bucket and/or backhoe attachment, Trench machines cutting over 24," Dredging equipment, Central mix plant engineer, concrete spreader, Air compressors 200 cu. ft. or over, Standard or Dinkey locomotives, Scoopmoblies, Euclid loader, Soil cement machine, Mixers 14S capcaity or less, Trench Machine cutting 24" & under, Backfiller, Elevating machine, Power Blade, Asphalt Plant Engineer, Well drilling Machines, Paint Machine, Pipe Cleaning Machine, Pipe wrapping machine, Pipe Bending Machine, Apsco paver, Boring Machine, w/o winch, Head equipment, Greasers, Barber Green Loaders, Formless paver, Farm Tractor with less than half-yard bucket and other attachments except backhoe, Well Point System

CLASS IV: Power Sub-Grader, Bull Float, Form Grader, Finishing machine, Pavement breaker, Rock Crushers,One drum machine, air compressor less than 20 cu.ft. capacity, Concrete pump, Gunnite machine, Air Tuggers, Truck crane drivers, House Elevators when used for temporary heat, Small rollers on earth, Engine tenders, Fireman on pain pots, Fireman, Wagon Drill, Fexaplane, Conveyor, 2 to 4 Water Pumps, Siphon & Pulsometer, Switchman, Fireman on Asphalt plants, Distrbutor operator on trucks, Tampers, Power Broom, Post Hole Digger, Self Propelled Concrete Saw, Striping Machine (Motor Driven), Form Tamper, Seaman Tiller, Bulk Cement Plant Equipment Greaser

DECISION NO. IL78-2028

ILL-2-PEO-1-2-3

POWER EQUIPMENT OPERATORS: MACOUPIN COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$10.52	.87	1.51		.05
GROUP II	9.69	.87	1.51		.05
GROUP III	9.04	.87	1.51		.05
GROUP IV	8.94	.87	1.51		.05
GROUP V	8.69	.87	1.51		.05
GROUP VI					
a.	12.67	.87	1.51		.05
b.	12.97	.87	1.51		.05
c.	10.79	.87	1.51		.05
d.	11.29	.87	1.51		.05

POWER EQUIPMENT OPERATORS:

GROUP I Cranes, draglines, shovels, skimmer scoops, clamshells or derrick boats, pile drivers, crane-type backhoes, asphalt plant opers. plant opers., ditching machines or backfillers (requiring oilers), dredges, asphalt spreading machines, heavy duty mechanic, ass't. master mechanic, all locomotives, cableways or tower machines, hoists 2 drum or more (where oiler or fireman is required), hoists-2drum or more (where oiler or firemen is not required) Hydrualic backhoes, ditching machines or backfiller (not requiring oilers) Cherry pickers, overhead cranes, roller (Steam or gas) concrete pavers, excavators, concrete breakers, concrete pumps, bulk cement plants, cement pumps, derrick-type drills, mixers (over 3 bags) and boad oprs., (25' & over), Motor graders or pushcats, scoops or tournapulls, Bulldozers, endloaders or fork-lifts, power blade or elevating graders, winch cats, boom tractors, and pipe wrapping or painting mcahines, Drills (other than derrick type) 1-dum-hoists, mud jacks, mixers (2 or 3 bags), conveyors (2), air compressors (2), water pumps regardless of size (2), welding machines (2) siphons or jets (2), winch heads or apparatuses (2) and light plants (2), Mixers (under 2 bags), all tractors regardless of size (Straight tractor only), firemen on stationary boilers, automatic elevators, form grading machines, finishing machines, power-sub-grader or ribbon machine, longitudinal floats, boats oprs., (under 25', conveyors (1), distribution pors., on trucks, siphones or jets (1) winch heads or apparatuses (1), light plant (1) mixers (under 2 bags)

GROUP II Air Compressor (1), water pumps regardless of size (1) welding machines (1)

GROUP III Firemen and asphalt spreader oilers

GROUP IV Heavy equipment oilers (truck cranes, dredges, monigans, large cranes, etc.

GROUP V Oilers

GROUP VI

a. Engineers operating under air pressure
b. Engineers operating in air over 10 lbs pressure
c. Oilers operating under air pressure
d. Oilers operating in air over 10 lbs pressure

DECISION NO IL78-2028

ILL-5-PEO-1-2-3

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
CLASS I	$ 9.75	.30	.40		.05
CLASS II	8.775	.30	.40		.05
CLASS III	8.15	.30	.40		.05

POWER EQUIPMENT OPERATORS:

CLASS I - Asphalt screed man, Aspco concrete spreaders, Asphalt pavers, Asphalt rollers on bituminous concrete, athey loaders, backfillers, crane type, backhoes, cableways, cherry pickers, claim shell, C.N.E. & similar type autograde formless paver, autograde placer & finisher, concrete breakers, concrete plant operators, concrete pumps, cranes, derrick, derrick boats, draglines, earth augeror boring machines, levating graders eingeers on dredge, gravel processing machines, high list or fork lists, hoist w/two drums or two or more loadlines locomotives (all) mechanics, motar graders or auto patrols, operators or levelman on dredges, operators power boat, operators pug mill (asphalt plants), orange peels, overhead cranes, paving mixers, piledrivers, pipe wrapping & painting machines, push dozers, or push cats, rock crvshers, ross carriers or similar machines, scoops, skimmer, 2 cu. yd. capacity & under, sheep foot foller (self propelled) shovels, skimmer scoops, test holedrilling machines, tower cranes, tower machines, tower mixers, track type and loaders, track type fork lists or high lifts, track jacks & tamper, tractor, sideboom, trenching machine, ditching machine, tunnelluggers, wheel type end loaders, winch cat, scoops, all or tournapull.

CLASS II - Asphalt boosters & heaters, asphalt distributors, asphalt plant fireman, oiler on 2 paving mixers when used in tandem boom or winch truck, building elevator, bull floats or flexplanes, concrete finishing machines, concrete saws, self propeller, concrete saws, self propeller, concrete spreader machines, gravel or stone spreader, power operated, head equipment greaser, hoist automatic, hoist w/1 drum & 1 load line, mud jacks, post holediggers, mechanical, road or street sweeper-self propelled, seaman tiller, straw machine, vibratory compactor, well drill machines scissors hoist.

CLASS III - Air compressor*, air compressors, track or self-propelled, asphalt plant engineers, bulk cement batching plants, conveyors,* concrete mixers (except plant, paver, tower) firemen, generators*, greasers, helper on single paving mixer, light plants*, mechanic helpers, mechanical heaters*, oilers, power from graders, power sub-graders, pug mills, when used for other than asphalt operation, rollers (except bituminous concrete) tractors w/o power attachments regardless of size of type) truck crane oiler & driver 1 (man), water pumps*, welding machines (one 300 amp. or over*)* welding machines*

*COMBINATIONS OF ONE TO FIVE OF ANY AIR COMPRESSORS, CONVEYORS, WELDING MACHINES, WATER PUMPS, LIGHT PLANTS OR GENERATORS SHALL BE IN BATTERIES OR WITHIN 300 FT.

DECISION NO IL78-2028 ILL-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.85	.60	a28.00		
GROUP II	10.25	.60	a28.00		
GROUP III	10.45	.60	a28.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II: - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportaion purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III: - 2,3 or 4 axle trucks hauling 16 ton or more, drivers on oil distributores, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

STATE: Illinois COUNTIES: Madison & St. Clair
DECISION NUMBER: IL78-2031 DATE: Date of Publication
Supersedes Decision No. IL76-2078, dated August 13, 1976 in 41 FR 34493
DESCRIPTION OF WORK: Building (Including Residential), Construction.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.18	.45	.62		
BOILERMAKERS	11.45	.95	1.20		.03
BRICKLAYERS:					
Madison County:					
Alton, Granite City & Vicinities					
Bricklayers; Stonemasons; Painters-Caulkers & Cleaners	9.85	.70	.75	1.00	.05
Residential	8.80		.75	1.00	.05
Edwardsville, Marine, Highland & Troy					
Bricklayers; Stonemasons, Marble-Tile-Terrazzo Workers, Pointers, Cleaners & Caulkers	9.95	.50	.75	1.00	
St. Clair County:					
E. ST. Louis & Vicinity					
Bricklayers; Stonemasons; Marble-Tile-Terrazzo Workers Caulkers-Cleaners-Pointers	9.95	.50	.75	1.00	
Belleville & Vicinity					
Bricklayers & Stonemasons	11.00		.30	1.00	
CARPENTERS:					
Madison County					
Carpenters; Millwrights; Soft Floor Layers & Piledrivermen:					
Building	11.335	.60	.50		
Residential-Up to 4 Family Apartments	10.935	.60	.50		
St. Clair County					
Carpenters; Millwrights; Soft Floor Layers & Piledrivermen	10.935	.60	1.00		
CEMENT MASONS	10.975	.78	.62		
ELECTRICIANS:					
Alton & Vicinity in Madison Co.	11.60	.40	1%+.30	6%	.3 of 1%
St. Clair Co. & the Remainder of Madison Co.	11.23	4%	1%+.65	6%	.25%

DECISION NO. IL78-2031

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS:					
Constructors	$10.96	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR				
GLAZIERS	9.26	.45	.93		.01
IRONWORKERS	11.35	.55	.90		
LABORERS:					
Madison County					
Alton					
Common	9.65	.80	.60		.035
Laying sewer & all sewer work	9.75	.80	.60		.035
Well digging; gunnite machine; gunnite nozzle opr.; rip-rapping	9.90	.80	.60		.035
Wood River					
Common	10.45		.60		.035
Laying sewer & all sewer work	10.55		.60		.035
Well digging; gunnite machine & nozzle operator	10.70		.60		.035
Granite City, Madison, Venice, Nameoki & Mitchell					
Common	9.70	.55	.80		.035
Open Well	10.20	.55	.80		.035
Cutting, Burning & Welding	9.975	.55	.80		.035
Plasterers' & Brickmason Tenders	10.20	.55	.80		.035
Dynamite & Powdermen	11.225	.55	.80		.035
Collinsville					
Common	10.55		.50		.035
Mason & Plasterer Tenders	11.05		.50		.035
Dynamite Men	11.85		.50		.035
Edwardsville					
Common	10.80		.25		.035
Men working in main sewer ditch	11.05		.25		.035
Plaster & Mason Tenders	11.30		.25		.035
Dynamite & Powder Men	12.325		.25		.035

DECISION NO IL78-2031

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D)					
Glen Carbon					
Common	$9.95		.60		.035
Mason & Plasterer Tenders	10.45		.60		.035
Dynamite Men	11.55		.60		.035
Highland					
Common	9.85		.60		.035
Mason & Plasterers Tenders	10.35		.60		.035
Workmen cutting & burning w/a torch	10.10		.60		.035
Livingston					
Common	10.25		.20		.035
Working on the Bottom of Sewer	10.50		.20		.035
Mason and Plasterer Tenders	10.75		.20		.035
Marine					
Common	10.25		.20		.035
Mason & Plasterer	10.75		.20		.035
Working on the Bottom of Sewer	10.50		.20		.035
Troy					
Common	9.85		.60		.035
Mason & Plasterer Tenders	10.35		.60		.035
Working on the bottom of sewer	10.10		.60		.035
St. Jacob					
Common	9.85		.60		.035
Mason & Plasterer Tenders	10.35		.60		.035
Working in Sewer Trenches	10.10		.60		.035
LABORERS:					
St. Clair County					
E. St. Louis & Vicinity					
Laborers	9.70	.55	.80		.035
Plasterer Tender	10.20	.55	.80		.035
Dynamite Men	11.225	.55	.80		.035
Belleville & Vicinity					
Laborers	10.00	.45	.60		.035
Dynamite Men & Powder Men	11.50	.45	.60		.035
Hod Carriers & Plast. Tenders	10.80		.25	1.20	
O'Fallon, Mascoutah, Scott AFB, Shilo & Lebannon & Vicinity					
Laborers	10.45		.60		.035
Bottom Men on Sewer Work	10.70		.60		.035
Dynamite Men	11.30		.60		.035

DECISION NO 11.78-2031

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D)					
Freeburg & Vicinity					
Laborers	$9.50	.35	.60		.035
All Sewer Work	9.75	.35	.60		.035
Mason & Plaster Tenders	10.00	.35	.60		.035
Dynamite Men	11.10	.35	.60		.035
New Athens & Vicinity					
Laborers	9.50	.35	.60		.035
Bottom Men on Sewer Work	9.75	.35	.60		.035
Mason & Plaster Tenders	10.00	.35	.60		.035
LATHERS	12.085			.65	.01
PAINTERS:					
Residential - Commercial	10.55	.55	.35		
Industrial	10.80	.55	.35		
Bridges; Grain Elevators, Water Radio & TV Towers; Stacks Spray; Sand & Water Blasting; Steam Cleaning - additional 1.00 per hour	11.05	.55	.35		
PLASTERERS	12.075				.01
PLUMBERS & STEAMFITTERS:					
Alton & Northern part of Madison Co., North of Mitchell	12.80	.48	.96		.05
Granite City; Southern ½ of Madison Co., & E. St. Louis & Vic. in St. Clair Co.	10.75	.65	.76	.52	
Belleville & Vicinity	11.45	.40	1.00		
ROOFERS:					
Composition-Slate-Tile	10.45	.47	.45	1.00	.03
SHEET METAL WORKERS	10.78	.45	.20	6%	.02
SPRINKLER FITTERS	11.65	.65	.95		.08
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO 11.78-2031

PAID HOLIDAYS (WHERE APPLICABLE)

A-New Year's Day; B-Memorial Day; C-Independence Day; F-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day

FOOTNOTE:

a. Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee who has worked in bsuiness more than 5 years and 6% of regular hourly rate for employee who has worked in business more than 5 years.

b. 7 paid Holidays: A through G

c. Nine paid holidays, A through F plus Washington's Birthday, Good Friday and Christmas Eve, providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work day immediately preceding anf following the holiday

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$10.52	.87	1.51		.05
GROUP II	9.69	.87	1.51		.05
GROUP III	9.04	.87	1.51		.05
GROUP IV	8.94	.87	1.51		.05
GROUP V	8.69	.87	1.51		.05
GROUP VI					
a.	12.67	.87	1.51		.05
b.	12.97	.87	1.51		.05
c.	10.79	.87	1.51		.05
d.	11.29	.87	1.51		.05

POWER EQUIPMENT OPERATORS:

GROUP I Cranes, draglines, shovels, skimmer scoops, clamshells or derrick boats, pile drivers, crane-type backhoes, asphalt plant opers. plant opers., ditching machines or backfillers (requiring oilers), dredges, asphalt spreading machines, heavy duty mechanic, ass't. master mechanic, all locomotives, cableways or tower machines, hoists 2 drum or more (where oiler or fireman is required), hoists-2 drum or more (where oiler or firemen is not required) Hydrualic backhoes, ditching machines or backfiller (not requiring oilers) Cherry pickers, overhead cranes, roller (Steam or gas) concrete pavers, excavators, concrete breakers, concrete pumps, bulk cement plants, cement pumps, derrick-type drills, mixers (over 3 bags) and boad oprs., (25' & over), Motor graders or pushcats, scoops or tournapulls, Bulldozers, ednloaders or fork-lifts, power blade or elevating graders, winch cats, boom tractors, and pipe wrapping or painting machines, Drills (other than derrick type) 1-drum-hoists, mud jacks, mixers (2 or 3 bags), conveyors (2), air compressors (2), water pumps regardless of size (2), welding machines (2) siphons or jets (2), winch heads or apparatuses (2) and light plants (2), Mixers (under 2 bags), all tractors regardless of size (Straight tractor only), firemen on stationary boilers, automatic elevators, form grading machines, finishing machines, power-sub-grader or ribbon machine, longitudinal floata, boats oprs., (under 25', conveyors (1), distribution pors., on trucks, siphones or jets (1) winch heads or apparatuses (1), light plant (1) mixers (under 2 bags)

GROUP II Air Compressor (1), water pumps regardless of size (1) welding machines (1)

GROUP III Firemen and asphalt spreader oilers

GROUP IV Heavy equipment oilers (truck cranes, dredges, monigans, large cranes, etc.

GROUP V Oilers

GROUP VI
a. Engineers operating under air pressure
b. Engineers operating in air over 10 lbs pressure
c. Oilers opreating under air pressure
d. Oilers operating in air over 10 lbs pressure

DECISION NO IL78-2031 ILL-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.85	.60	a28.00		
GROUP II	10.25	.60	a28.00		
GROUP III	10.45	.60	a28.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechainc helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II: - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle cobination units; ticket writers

GROUP III: - 2,3 or 4 axle trucks hauling 16 ton or more, drivers on oil distributores, water pulls, mechanics & working foreman; 5-axle or more comination units; dispatcher

FOOTNOTES

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: Illinois COUNTIES: Cass, Morgan and Scott

DECISION NUMBER: IL78-2034 DATE: Date ofPublication

Supersedes Decision No. IL76-2129, dated October 8, 1976, in 41 FR 44625

DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.18	.45	.62		
BOILERMAKERS	11.45	.95	1.20		.03
BRICKLAYERS:					
Morgan and Scott Counties:					
Bricklayers, Stonemasons, Plasterers, Marble-Tile and Terrazzo Workers, Cement Block Layers-Pointers-Caulkers and Cleaners	10.10	.50	.52		.02
Cass County:					
Bricklayers	10.10	.50	.52		.02
CARPENTERS:					
Carpenters and Soft Floor Layers	9.75	.55	.25		.02
Millwrights	10.00	.55	.25		.02
Piledrivermen	10.25	.55	.25		.02
CEMENT MASONS AND PLASTERERS:					
Morgan and Scott Counties:					
Cement Masons	9.855	.50	.52		.02
Cass County:					
Cement Masons	9.98	.35	.35		.02
Plasterers	11.46	.65	1.00		.01
ELECTRICIANS	11.67	.50	3%+.40		.1 of 1%
ELEVATOR CONSTRUCTORS:					
Morgan and Scott Counties:					
Contructors	11.34	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.02
Helpers (Prob.)	50%JR				
GLAZIERS:					
Morgan and Scott Counties	9.94	.45	.15		
IRONWORKERS	11.10	.55	.90		.08
LABORERS:					
Unskilled	8.89	.30	.45		.035
Semi-Skilled	9.09	.30	.45		.035
Skilled	9.24	.30	.45		.035
LATHERS	11.40				
PAINTERS:					
Brush and Roller	9.70	.55	.15		
Spray	10.20	.55	.15		
PLUMBERS AND STEAMFITTERS	11.53	.35	.88		.02

DECISION NO. IL78-2034

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Composition	11.78				
Slate-Tile-Precast Slab	12.03				
SHEET METAL WORKERS	10.91	3%+.50	.78		.05
SPRINKLER FITTERS	11.65	.65	.95		.08
WELDER: Receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS: (WHERE APPLICABLE)

A-New Year's Day; B-Memorial Dau; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day After Thanksgiving; G-Christmas Day

FOOTNOTES:

a. Seven Paid Holidays

b. Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee who has worked in the business more than 5 years. Employer contributes 6% of regular hourly rate to Vacation Pay Credit for employees who has worked in the business less than 5 years.

DECISION NO. IL78-2034

ILL-5-PEO-1-2-3

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
CLASS I	$ 9.75	.30	.40		.05
CLASS II	8.775	.30	.40		.05
CLASS III	8.15	.30	.40		.05

POWER EQUIPMENT OPERATORS:

CLASS I - Asphalt screed man, Aspco concrete spreaders, Asphalt pavers, Asphalt rollers on bituminous concrete, athey loaders, backfillers, crane type, backhoes, cableways, cherry pickers, claim shell, C.N.E. & similar type autograde formless paver, autograde placer & finisher, concrete breakers, concrete plant operators, concrete pumps, cranes, derrick, derrick boats, draglines, earth augeror boring machines, levating graders eingeers on dredge, gravel processing machines, high list or fork lists, hoist w/two drums or two or more loadlines locomotives (all) mechanics, motar graders or auto patrols, operators or levelman on dredges, operators power boat, operators pug mill (asphalt plants), orange peels, overhead cranes, paving mixers, piledrivers, pipe wrapping & painting machines, push dozers, or push cats, rock crushers, ross carriers or similar machines, scoops, skimmer, 2 cu. yd. capacity & under, sheep foot foller (self propelled) shovels, skimmer scoops, test holedrilling machines, tower cranes, tower machines, tower mixers, track type and loaders, track type fork lists or high lifts, track jacks & tamper, tractor, sideboom, trenching machine, ditching machine, tunnelluggers, wheel type end loaders, winch cat, scoops, all or tournapull.

CLASS II - Asphalt boosters & heaters, asphalt distributors, asphalt plant fireman, oiler on 2 paving mixers when used in tandem boom or winch truck, building elevator, bull floats or flexplanes, concrete finishing machines, concrete saws, self propeller, concrete saws, self propeller, concrete spreader machines, gravel or stone spreader, power operated, head equipment greaser, hoist automatic, hoist w/1 drum & 1 load line, mud jacks, post holediggers, mechanical, road or street sweeper-self propelled, seaman tiller, straw machine, vibratory compactor, well drill machines scissors hoist.

CLASS III - Air compressor*, air compressors, track or self-propelled, asphalt plant engineers, bulk cement batching plants, conveyors,* concrete mixers (except plant, paver, tower) firemen, generators*, greasers, helper on single paving mixer, light plants*, mechanic helpers, mechanical heaters*, oilers, power from graders, power sub-graders, pug mills, when used for other than asphalt operation, rollers (except bituminous concrete) tractors w/o power attachments regardless of size of type) truck crane oiler & driver 1 (man), water pumps*, welding machines (one 300 amp. or over*)* welding machines*

*COMBINATIONS OF ONE TO FIVE OF ANY AIR COMPRESSORS, CONVEYORS. WELDING MACHINES, WATER PUMPS, LIGHT PLANTS OR GENERATORS SHALL BE IN BATTERIES OR WITHIN 300 FT.

DECISION NO. IL78-2034

ILL-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	9.85	.60	a28.00		
GROUP II	10.25	.60	a28.00		
GROUP III	10.45	.60	a28.00		

TRUCK DRIVERS

GROUP I - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II - 2 or 3 axle truck hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III - 2,3 or 4 axle truck hauling 16 ton or more, drivers on oil distributors, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES:

a. Per week Per employee

STATE: Illinois COUNTIES: Peoria and Tazewell
DECISION NUMBER: IL78-2035 DATE: Date of Publication
Supersedes Decision No. IL77-2112, dated August 5, 1977 in 42 FR 39873
DESCRIPTION OF WORK: Building (including Residential) and Dredging Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.11	.81	.72		.12
BOILERMAKERS	11.45	.95	1.00		.03
BRICKLAYERS AND STONEMASONS	11.06	.60	.85		.01
CARPENTERS:					
Residential					
Peoria County:					
Chillicothe & Vicinity	9.78	.55	.50		.03
Tazewell County & Remainder of Peoria County	11.11	.40	.50		.05
Commerical					
Peoria County:					
Chillicothe & Vicinity:					
Carpenters, Piledrivermen & Soft Floor Layers	10.98	.65	.60		.03
Millwrights	11.23	.65	.60		.03
Tazewell County & Remainder of Peoria County:					
Carpenters & Soft Floor Layers	11.11	.40	.50		.05
Millwrights & Piledrivermen	11.61	.40	.50		.05
CEMENT MASONS	10.60	.70	.80		.05
ELECTRICIANS	11.67	.50	3%+.50		1%
ELEVATOR CONSTRUCTORS:					
Constructors	11.195	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR				
GLAZIERS	10.73	.55	.45		
IRONWORKERS	11.075	.65	.925		.025
LATHERS	11.12	.40	.40		.01
MARBLE-TILE & TERRAZZO WORKERS	10.81	.60	.85		.01
MARBLE & TILE FINISHERS	10.10	.60	.25		
TERRAZZO FINISHERS:					
Terrazzo Finishers & Floor Machine Operator	10.23	.60	.25		
Base Machine Operator	10.48	.60	.25		

DECISION NO. IL78-2035

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Brush	$10.30	.55	.30		.03
Structural Steel & Spray	10.80	.55	.30		.03
PLASTERERS	10.60	.70	.80		.01
PLUMBERS & STEAMFITTERS:					
Peoria County & North of Highway #98 in Tazewell Co.	11.80	.51	1.05		.15
Remainder of Tazewell County	11.80	.51	1.02		.11
ROOFERS	11.10	.70	.40		.025
SHEET METAL WORKERS	11.22	.50	.75		.08
SPRINKLER FITTERS	11.65	.65	.95		.08
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS: (WHERE APPLICABLE)

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day

FOOTNOTES:

A. Six Paid Holidays; A through G

b. Employer contributes 8% of regular hourly rate to vacation pay credit for employer who has worked in business less than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.

c. Nine paid holidays, A through F plus Washington's Birthday and Good Friday and Christmas Eve providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regular schedule work days immediately preceding and following the holiday.

DECISION NO. IL78-2035

ILL-28-LAB-1

LABORERS: PEORIA COUNTY & THE CITY OF EAST PEORIA (TAZEWELL COUNTY)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	9.85	.40	.60		.035
CLASS 2	9.975	.40	.60		.035
CLASS 3	10.10	.40	.60		.035
CLASS 4	10.025	.40	.60		.035
CLASS 5	10.225	.40	.60		.035
CLASS 6	9.975	.40	.60		.035
CLASS 7	10.10	.40	.60		.035

CLASS 1 - Bricklayers tenders, Common Laborers, carpenter tenders, cement mason tenders, concrete form dismantler, Stone & tile derrickmen, Tool Crib men, Window washers, Wrecking & dismantling Old Buildings, wall men & house movers, Curing concrete

CLASS 2 - Cement men & sack shakers, concrete saw, drill operator, jackhammer, Kettlemen & carriers, men handling hot stuff, singalling & spotting of buckets on rig or rig men paving breaker, plasterers tenders, air tamper chain saw,

CLASS 3 - Gunnite pumpmen, sandblasting pump men, tile layers or laterial sewer, Unloading & handling of creosote materials.

CLASS 4 - Power wheel barrow or buggies

CLASS 5 - Cutting & Acetylene torch, gunnite nozzle men, sandblasting nozzle men, woodblock setters

CLASS 6 - Concrete form disnatler in composite crew with carpenters, compactor rammer type, setting up and using laser beam equipment

CLASS 7 - Setting up and using concrete burning bars, underpinning & shoring of existing buildings.

DECISION NO. IL78-2035

ILL-34-LAB-1

LABORERS: REMAINDER OF TAZEWELL COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
UNSKILLED	$9.65	.60	.60		.035
SEMI-SKILLED	9.85	.60	.60		.035
SKILLED	10.05	.60	.60		.035

UNSKILLED:
Carpenter Tender, Tool Cribmen, Cleaning & Oiling of Machinery, Firemen or Salamander Tenders, Flagmen, Gravel Box Men, Form Handlers, Material Handlers, Fencing Laborers, Cleaning Lumber, Pit Men, Material Checkers, Dispatchers, Landscapers, Unloading Explosives, Laying of Sod, Planting of Trees, Removal of Trees, Pile Driver Helpers, Asphalt Plant Helpers, Wrecking Laborers, Fireproofing Laborers, Surveyors & Instrument Men Helpers, Janitors, Driving of Stakes, String Lines for all Machinery, Unloading & Laborers w/Steel Workers & Re-Bars, Mason Tenders, Scaffold Workers, Laborers with De-Watering Systems, Plaster Tenders

SEMI-SKILLED:
Handling of materials treated w/oil, crosote & asphalt, Track Laborers, Cement Handlers, Concrete Workers (Wet), Cloride Handlers, Tunnel Helpers in Free Air, Batch Dumpers, Kettle & Tar Men, Tank Cleaners, Plastic Installers, Motorized Buggies, Sewer Workers, Vibrator Operators, Mortar Mixer Operators, Cement Silica, Clay, Fly Ash, Lime & Plaster Handlers (Bulk or Bag), Cofferdam Workers, Concrete Paving, Placing, Cutting & Tying of R inforcing, Deck Hand, Dredge Hand & Shore Laborers, Bank Men on Floating Plant, Asphalt Workers & Layers w/ Machine, Grade Checker, Dumpmen, Spotter where grade is to be established, Power Tools, Chain Saw Operators, Jackhammer & Drill Operators, Air Tamping Hammermen, Tree Topping, Signalling & Spotting of Rigs & Equipment.

SKILLED:
Caisson Workers plus depth, Gunnite Nozzle Men, Leadman on Sewer Work, Welders, Cutters, Burners & Torchmen, Layout Man and/or Tile Layer, Steel Form Setters-Street & Highway, Concrete Saw Operator, Screenman on Asphalt Pavers, Front end man on Chip Spreader, Laborers tending Masons w/hot materials or foreign materials are used, Multiple Concrete Duct-Leadman, Luteman, Curb Asphalt Machine Operator, Ready-Mix Scalemen, Permanent, Portable or Temporary Plant, Laser Beam Operator, Concrete Burning Machine & Coring Machine Operators, Underpinning and Shoring or Buildings, Dynamite Shooter.

DECISION NO. IL78-2035

POWER EQUIPMENT OPERATORS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$11.32	.45	.80		.05
GROUP 2	11.12	.45	.80		.05
GROUP 3	10.745	.45	.80		.05
GROUP 4	10.47	.45	.80		.05
GROUP 5	9.86	.45	.80		.05

GROUP 1 - Cranes, escalated rate on crane, derricks, booms, $.01 per hour, per foot, after 80 feet or boom including jib overhead cranes, gradall, cherry pickers (and similar types, over 15 ton lifting capacity (require oiler), mechanic, central concrete mixing plant operator, road pavers (27E-dual drum-tri batchers), blacktop plant opeators and plant engineers, 3 drum joist, derricks, hydro cranes, shovels skimmer scoops, koehring scoopers, draglines, backhoe, hoptoes-crane-type that require oiler, derrick boats, pile drivers and skid rigs, clamshells, locomotive cranes, dredge (all types). motor patrol, power blades dumore-elevating and similar types tower cranes (crawler mobile) and stationary, crane-type backfiller, drott yumbo and similar types considered as cranes, caisson rigs (require oilers) dozer, tourna-dozer, work boats, ross carrier and helicopter

GROUP 2 - Trench machine pumpcrete-belt crete-squeeze cretes-screw-type pumps and gypsum bulker and pump, dinkeys, power launches, tournapulls (all), multiple unit, earth movers, $.25 per hour for each scoop over one, scoops (all sizes), push cats, endloaders (all types), side boom, P-H one pass soil-cement machine (all similar types), wheel tractors (industrial or farm type w/dozer-hoe-end-loader or other attachments), pugmill with pump backfillers, asphalt surfacing machine, euclid loader, forklifts, form-less finishing machine, jeeps w/ditching machine, or other attachments, tune-luger, rock crushers, automatic cement and gravel batching plants, mobile drills (soil and similar types), require oiler), flaherty spreader or similar types (require oiler), heavy equipment greaser (top greaser on spread), gurries and similar type), 1 and 2 drum hoists (buck hoists and similar types freight and passenger elevators chicago boom, boring machine and pipe jacking, machine, hydro boom, starting engineer on pipeline, C.M.I. and similar types (require oiler) straw blower, hydro seeder and F.W.D and similar types

DECISION NO. IL78-2035

POWER EQUIPMENT OPERATOR (CONT'D)

GROUP 3 - Tractor (track type) without power unit pulling rollers, rollers on asphalt, brick or macadam, concrete breakers, concrete spreaders, mule pulling rollers, center stripper, cement finishing machines, barger greene or similar laoders, vibro tamper (all similar types), self-propelled, winch or boom truck, mechanical bull floats, mixer over 3 bags to 27E, tractor pullign power blade or elevating grader, porter rex rail, clary screed, pugmill (without pump) screed man on laydown machine, firemen and spray machine on paving

GROUP 4 - air compressor, all air and steam valves, power subgrader, oil distributor, straight tractor, trac-are without attachments, curb machine, truck cranes oiler, and truck type hoptoe oilers

GROUP 5 - Herman Nelson heater, Dravo, Warner, Silent glo, & similar types, one engineer will operate 1-5 and after 5, two operators will be required, self-propelled concrete saws, assistant heavy equipment greaser on spreed, roller, 5 tons and under on earth or gravel, form grader, pump 1 or 2, generator (1) or (2), welding machine (1) or (2) - 300 amp. or over, mixer (3) bag and under (standard capacity) bulk cement plant, crawler crane and skid rig oilers

DECISION NO. IL78-2035 ILL-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.85	.60	a28.00		
GROUP II	10.25	.60	a28.00		
GROUP III	10.45	.60	a28.00		

GROUP I - Drivers on axle trucks hauling less than 9 tons, air compressors and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & firemen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; fork lifts up to 6,000 lbs. capacity

GROUP II - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch truck, hydrolifts trucks, or similar equipment when used for transportation purposes; fork lifts over 6,000 lb. capacity; winch truck; 4-axle combination units; ticket writers

GROUP III - 2,3 or 4 axle truck hauling 16 ton or more, drivers on oil distributors, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES:
a. Per Week Per Employee

DREDGING CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$11.32	.45	.80		.05
GROUP 2	11.12	.45	.80		.05
GROUP 3	10.745	.45	.80		.05
GROUP 4	10.47	.45	.80		.05
GROUP 5	9.86	.45	.80		.05

GROUP 1 - Operators on hydraulic dipper or clamshell dredges, Engineers and Repairmen, Operators on work boats
GROUP 2 - Power Winches 1-2-3 Drums
GROUP 3 - Security Engineer
GROUP 4 - Cranemen on dipper dredges, operators on launches or power boats
GROUP 5 - Firemen & Oilers

SUPERSEDEAS DECISION

STATE: Illinois COUNTIES: Henderson, Henry, Knox Mercer, Rock Island, Stark & Warrer

DECISION NO. IL78-2036 DATE: Date of Publication

Supersedes Decision No. IL77-2114, dated August 12, 1977, in 42 FR 41062

DESCRIPTION PO WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Stark County	$ 12.11	.81	.72		.12
Remainder of Counties	11.55	.40	.60		.10
BOILERMAKERS	11.45	.95	1.00		.03
BRICKLAYERS:					
Rock Island and Mercer Counties					
Bricklayers and Stonemasons	10.70	.55	.70		.03
Marble, Tile, Terrazzo Workers	10.30	.40	.70		
Plasterers	12.00				
Henry County					
Bricklayers, Stonemasons and Plasterers	11.35		.60		
Stark County					
Bricklayers and Stonemasons	11.35		.60		
Plasterers	10.60	.70	.80		.01
Marble, Tile, terrazzo Workers	10.81	.60	.85		.01
Marble and Tile Finishers	10.10	.60	.25		
Terrazzo Finishers and Floor Machine Operator	10.23	.60	.25		
Knox and Warren Counties					
Bricklayers, Stonemasons, Cement Blocklayers, Pointers, Cleaners, Caulkers	11.06	.60	.85		.01
Henderson County					
Bricklayers, Stonemasons, Cement Blocklayers, Pointers, Cleaners, Caulkers	11.06	.60	.85		.01
Marble, Tile, Terrazzo Workers	10.16	.50	.60		.01
Marble and tile Finishers	10.10	.60	.85		.01
Terrazzo Helpers and Floor Machine Operator	10.23	.60	.25		
CARPENTERS:					
Stark County					
Carpenters and Soft Floor Layers	11.11	.40	.50		.05
Millwrights and Piledrivermen	11.61	.40	.50		.05
Knox, Henderson and Warren cos.					
Carpenters and Soft Floor Layers	11.11	.40	.50		.05
Millwrights and Piledrivermen	11.61	.40	.50		.05

DECISION NO. 11.78-2036

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS: (Cont'd)					
Rock Island, Henry & Mercer Cos.					
Carpenters & Soft Floor Layers	10.46	.45	.70		.04
Piledrivermen	10.71	.45	.70		.04
Millwrights	12.00	6%	7%		.20
CEMENT MASONS:					
Rock Island, Mercer, & Eastern Half of Henry Co.	10.37	.50	.60		
Stark Co. and Remainder of Henry County	10.90		.60		
Knox and Warren Counties					
Cement Masons & Plasterers	11.00	.50	.25		
Henderson County					
Cement Masons:					
Northern half of Co.	10.37	.50	.60		
Central & Southern helf of County	11.15				
Plasterers:					
Northern half of County	12.00				
Central & Southern half of County	10.78				
ELECTRICIANS:					
Knox, Henderson, Warren Cos. Townships of Ohio Grove, North Henderson & Suez in Mercer County	11.25	.40	3%+.50		.25%
Stark Co.; Townships of Essex, Valley & West Jersey	11.67	.50	3%+.50		1%
Henry Co: (Townships of Annawan, Burns, Cambridge, Galva, Kewanee, Weller & Westerfield & the remainder of Stark Co.	11.55	.50	3%+.30		.25%
Rock Island and Remainder of Henry County & Mercer cos.	11.69	.55	7.5%		.03
ELEVATOR CONSTRUCTORS:					
Rock Island, Mercer, Henry and Knox Counties					
Constuctors	10.41	.495	.32	4%+a+b	.02
Helpers	-70%JR	.495	.32	4%+a+b	.02
Helpers (Prob.)	50%JR				
GLAZIERS:					
Stark County	10.73	.55	.45		
Remainder of counties	9.80	.60	1.00		

DECISION NO. 11.78-2036

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS:					
Mercer, Henderson, Warren & all areas west & southwest of Galesburg	10.35	.55	.65		
Stark Co. and all area south and east of Galesburg in Knox County	11.075	.65	.925		.025
Rock Island and Henry Counties; & within Galesburg & all area north of City in Knox County	12.07	.65	.375		.11
LABORERS:					
Stark County - Western ½					
Unskilled	8.37	.40	.42		.035
Semi-Skilled	8.57	.40	.42		.035
Skilled	8.77	.40	.42		.035
Eastern half of Stark County					
Unskilled	8.60	.40	.42		.035
Semi-Skilled	8.80	.40	.42		.035
Skilled	9.00	.40	.42		.035
LATHERS:					
Knox County	11.25				.01
Stark County	11.12	.40	.40		.01
Rock Island, Mercer & Henry Counties	10.70		.20		
PAINTERS:					
Rock Island, Henry, Mercer, Henderson, Stark and Warren Counties; West of Line extending from N. E. corner to S.W. corner of Knox County					
Brush and Roller	9.82	.45	.65		.12
Spray and Structural Steel	10.07	.45	.65		.12
Remainder of Knox County					
Brush and Paperhangers	8.90	.55	.15		
Structural steel	9.15	.55	.15		
PLASTERERS:					
Stark County	10.60	.70	.80		.01
Rock Island and Mercer counties	12.00				
PLUMBERS & STEAMFITTERS:					
Stark County	11.80	.51	1.05		.15
Remainder of Counties	11.00	.54	1.25		.17

DECISION NO. IL78-2036

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
STARK County	11.10	.70	.40		.025
Rock Island, Henry & Mercer Counties	11.85		.60		
Remainder of Counties	9.30				
SHEET METAL WORKERS:					
Stark County	7.95	.38	.35		
Henderson County	10.41	.45	.44		.10
Remainder of Counties	10.66	.45	.44		.10
SPRINKLER FITTERS	11.65	.65	.95		.08

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; D-Independence Day; D-Labor; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Six Paid Holidays: A through F.

b. Employer contributes 4% of regular hourly rate to Vacation Pay credit for employee who has worked in business more than 5 years. Employer conbtributes 2% of regular hourly rate to Vacation Pay credit for employee who has worked in business less than 5 years.

DECISION NO. IL78-2036

ILL-81-LAB-1-2-3

LABORERS:
ROCK ISLAND &MERCER COUNTIES

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
UNSKILELED	9.17	.40	.60		.035
SEMI-SKILLED	9.42	.40	.60		.035
SKILLED	9.67	.40	.60		.035

UNSKILLED - Common Laborer, Carpenter tender, Rod & chain Man, Flagman, GRavel Boxmen, Dumpmen & spotters, Form handlers, Material handlers, Fencing laborers Cleaning lumber, Material checkers, Dispatchers, Lanscapers, Unlaoding Explosives, Laying of sod, Planting of Trees, Removal of trees, Asphalt Plant Laborers, Wrecking laborers, Writers of scale tickets, Scaleman (Permanent-Potable or Temporary Plant), deck hand.

SEMI-SKILLED - Laying & Jointing of telephone conduit, darco & jackahmmer operator, Mechanical tamper and air space, wagon & hand drill, Vibrator operator, Operator on Power tools used under the jurisdiction of laborers, Cement Jumper; Puddler, form Setter Helpers, Power & Hand saw (when clearing timber), center strip, Reinforcing in Concrete, Wire mesh, Concrete sAw, Mortar mixer, Prime mover or any mechanical devise taking the place of concrete buggy or wheelbarrow, Sand point setter, asphalt kettelman, Mastic asphalt mixerman or other preparations used on joints, sheeting hammer divers (2-Men) Back up man or joint man with pipelayers, laborer in ditch or tunnel on sewer and water main & telephone conduit Gas Distribution Men, Pipe Setters on Laterals, drain Tiles, Culvert Pipe, & storm Sewer connections to Catch basins, Manholes or Maine line, Handling of Materials treated with oil, coreosote, asphalt and/or any foreign material harmful to skin or clothing, Chloride handlers, the unlaoding & laborers w/steel workers and Re-bard, Tunnel helpers in free air, Batch Dumpers, Tank cleaners, cofferdam workers, bankmen on floating plant

SKILLED - String (1-man), Head form setter, Dynamite man, Asphalt raker, Tunnel Miner, Pipelayer on sewer & water, Gunnite Nozzle man, Welders, Cutters, Burners & torchman, Screedman on Asphalt Pavers, Lutemen, Curb Asphalt machine operator, Laser beam operator, concrete burning machine operator, coring machine operators, Head Brade man

DECISION NO. IL78-2036

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HENRY COUNTY					
UNSKILLED	8.37	.40	.42		.035
SEMI-SKILLED	8.57	.40	.42		.035
SKILLED	8.77	.40	.42		.035
KNOX, HENDERSON & WARREN COS.					
UNSKILLED	8.60	.40	.42		.035
SEMI-SKILLED	8.80	.40	.42		.035
SKILLED	9.00	.40	.42		.035

UNSKILLED - Common laborer, carpenter tenders, tool cribmen, firemen or salamander tenders, flagmen, gravel box men, dumpmen & spotters, form handlers, fencing laborers, cleaning lumber, pitmen, material checkers, dispatchers, landscapers, unloading explosives, laying of sod, planting of trees, asphalt plant laborers, wrecking laborers, writer of scale tickets, fire shop laborers, fireproofing laborers, janitors, wrecking-dismantling building, wallmen & housemovers, driving of stakes, stringlines for all machinery

SEMI-SKILLED - Handling of materialst reated withoil, creosote, asphalt or any foreign material, track laborers, cement handlers, chloride handlers, the unloading and laborers w/steel workers & rebars, concrete workers (wet), tunnel helpers in free air, batch dumpers, mason & plasterer tenders & material wheelers, kettlemen & tarmen; tank cleaners, plastic installer, scaffold workers, material, buggies or motorized unit used for wet concrete or handling of building materials, laborers w/dewatering systems, all sewer workers plus depth, rod of chainmen with land surveyors, vibrator operators, mortar mixer operator, cement silica, clay, fly ash, lime & plasters, handlers (bulk or bag), cofferdam workers plus depth, (on concrete paving) placing cutting & trying or reinforcing, deck hand & shore laborers, bankmen on floating plant, asphalt workers w/machine, asphalt raker, grader checker

SKILLED - Dynamite men or blasters, caisson workers plus depth, gunnite nozzle men, leadmen on sewer work, welders, cutters, burners, trochmen, chain saw operator, aackhammer & drill operators, layout man, steel form setters (Street & hgihway); air tamping hammerman, signal man on crane, concrete saw operator, screenman on asphalt paver, laborers tendingm achins w/hot materials are used, multiple concrete duct-leadmen, lutemen, crib asphalt machine operator, ready-mix scalemen, portable or temporary plant, laborers handling materplate or similar materials, laser veam operaTOR, coring machine operator

DECISION NO. IL78-2036

ILL-6-PFO-1

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
KNOX, HENDERSON, WARREN, STARK COUNTIES; & EASTERN ½ of HENRY CO.					
GROUP 1	$11.32	.45	.55		.05
GROUP 2	11.12	.45	.55		.05
GROUP 3	10.745	.45	.55		.05
GROUP 4	10.47	.45	.55		.05
GROUP 5	9.86	.45	.55		.05

GROUP 1 - Cranes, escalated rate on crane, derricks, booms, $.01 per hour, per foot after 80 feet or boom including jib, overhead cranes, gradall, cherry pickers (and similar types over 15 ton lifting capacity (require oiler), mechanics, central concrete mixing plant operator, road pavers (27E-dual drum-tri batchers), blacktop plant operators and plant engineers, 3 drum hoist, derricks, hydro cranes, shovels skimmer scoops, koehring scoopers, draglines, backhoe, hoptoes-crane-type that require oilers, derrick boats, pile drivers and skid rigs, clamshells, locomotive cranes, dredge (all types), motor patrol, power blades dumore-elevating and similar types tower cranes (crawler mobile) and stationary, crane-type backfiller, drott yumbo and similar types considered as cranes, casisson rigs (require oilers) dozer, tourna-dozer, work boats, ross carrier and helicopter

GROUP 2 - Trench machine, pumpcrete-belt crete-squeeze-screw-type pumps and gypsum bulker and pump, dinkeys, power launches, tournapulls (all), multiple unit, earth movers, $.25 per hour for eachs coop over one scoops (all sizes), push cats, endloaders (all types), side boom, P-H one pass soil-cement machine (all similar types), wheel tractors (industrial or farm types w/dozer-hoe-end-loader or other attachments), pugmill with pump backfillers, asphalt surfacing machine, euclid loader, forklifts, form-less finishing machine, jeeps w.ditching machine or other attachments, tune-luger, rock crushers, automatic cement and gravel batching plants, mobile drills (soil testing and similar types), requiring oiler), flaherty spreader or similar types (require oiler), heavy equipment greaser (top greaser on spread), gurries and similar type, 1 and 2 drum hoists (buck hoists and similar types freight and passenger elevators Chicago boom, boring machine and pipe jacking, machine hydro boom, starting engineer on pipeline, C.M.I. and similar types (require oiler) straw blower, hydro seeder and P.W.D and similar types

DECISION NO. IL78-2036

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 3 - Tractor (track type) without power unit pulling rollers, rollers on asphalt, brick or macadam, concrete breakers, concrete spreaders, mule pulling roller, center stripper, cement finishing machines, barber greene or similar loaders, vibro tamper (all similar types), self-propelled, winch or boom truck, mechanical bull floats, mixer over 3 bags to 27E, tractor pulling power blade or elevating grader, porter rex rail, clary screed, pugmill (without pump) screed man on laydown machine, firemen and spray machine on paving

GROUP 4 - Air compressor, all air and steam valves, power subgrader, oil distributor, straight tractor, trac-air without attachments, curb machines, truck crane oilers, and truck type hoptoe oilers

GROUP 5 - Herman Nelson heater, Dravo, Warner, Silent glo and similar types, one engineer will operate 1-5 and after 5, two operators will be required, self-propelled concrete saws, assistant heavy equipment greaser on spreed, roller, 5 tons and under on earth or gravel, form grader, pump 1 or 2, generator (1) or (2), weldingmachine (1) or (2) - 300 amp. or over, mixer (3) bag and under (standard capacity), bulk cement plant, crawler crane and skid rig oilers

DECISION NO. IL78-2036

ILL-15-PEO-1-2-3

POWER EQUIPMENT OPERATORS: ROCK ISLAND, MERCER & WESTER ½ OF HENRY COUNTY

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	11.15	.65	.60		.08
CLASS 2	11.15	.65	.60		.08
CLASS 3	9.75	.65	.60		.08
CLASS 4	9.75	.65	.60		.08
CLASS 5	11.85	.65	.60		.08

CLASS 1 - Crane, shovel, clamshell, dragline, backhoe, derrick, towe crane, cableway, concrete spreader (servicing two pavers), asphalt spreader, asphalt mixer plant engineer, dipper operator, dipper dredge craneman, dual purpose truck (boom o winch), leverman or engineman (Hydraulic dredge), mechanic, paving mixer with tower attached (two operators required), pile driver, boom tractor, stationary, portable or floating mixing plant, trenching machine, cleaning and priming machine, endloader (one half cubic yard or over, on basement excavation work), backfiller, (throw bucket), locomotive engineer, Qualified welder, tow or push boat concrete paver, seaman Trav-L-Plant or similar machine, CMI autograder or similar machine, slip form paver, caisson augering machine, mucking, asphalt heater-planer unit hydraulic cranes, mine hoists

CLASS 2 - Athey, Barber-Green, euclid or hasis loader, asphalt pus mill, fireman and driver, concrete pump, concrete spreader (servicing one paver), bulldozer, endloader (other than mentioned above), forklift, elevating grader, group equipment greaser, letournapull and similar machine, DW-10, straddle carrier, hyster winch and similar machines, motor patrol, power blade push cat, tractor pulling elevating grader or power blade, tractor operating scoop or scraper, tractor with power attachment, roller on asphalt or blacktop, single drum hoists, Jaeger mix and place machine, pipe bending machine, welding machines (3 or 4), fuller kenyon cement pump or similar machines, automatic cement and gravel batch plants (one stop set-up), Seaman pulvi-mixer or similar machines, propelled sheep foot roller or compactor (used in conjunction with a grading spread), asphalt spreader screed operator apsco spreader or similar machine, slusher, forklift (over 6,000 lb. cap. or working at heights above 28 ft.) conveyors

DECISION NO. IL78-2036

POWER EQUIPMENT OPERATORS: (CONT'D)

CLASS 3 - Asphalt booster, fireman and pump operator at asphalt plant, compressor (500 cu. ft. and over), concrete finishing machine, form grader with roller on earth, mixers (3 bag to 16E), power operated bull float, tractor without power attachment, Dope not (agitating motor), dope chop machine, distributor (back end), flexplane or similar machines, portable machine fireman, Hydrohammer, power winch on paving work, self-propelled roller or compactor (other than provided for above), pump operator crusher operator, trench machine (40 H.P. and under), power sub grader (on forms), or similar machines, Forklift (6000 or less cap.) Gypsum pump, conveyor over 20 H.P.

CLASS 4 - Air compressor (275 c.f.m. or over) driver on truck crane or similar machines, light plant, mixers (1 or 2 bags), power batching machine (cement auger or conveyor), boiler (engineer or fireman, water pumps, welding machine, mechanical broom, automatic cement and gravel batch plants (two or three stop set-up), small backhoes or endloaders-self-propelled curing machine

DECISION NO. IL78-2036

ILL-82-TD-1-2-2

TRUCK DRIVERS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	9.85	.60	a28.00		
GROUP II	10.85	.60	a28.00		
GROUP III	10.45	.60	a28.00		

GROUP I - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site, Fork lifts up to 6,000 lbs., capacity.

GROUP II - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons, A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transpotation purposes, fork lifts over 6,000 lb. capacity, winch trucks, 4-axle combination units, ticket writers

GROUP III - 2,3 or 4 axle trucks hauling 16 tons or more, driers on oil distributores, water pulls, mehcanics & working foreman, 5-axle or more combination units, dispatchers

FOOTNOTES

a. Per week per employee

STATE: Illinois COUNTY: Sangamon
DECISION NUMBER: IL78-2037 DATE: Date of Publication
Supersedes Decision No. IL76-2131, dated October 22, 1976 in 41 FR 46828
DESCRIPTION OF WORK: Building (Including Residential), Construction.

DECISION NO IL78-2037

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.18	.45	.62		
BOILERMAKERS	11.45	.95	1.20		.03
BRICKLAYERS:					
Bricklayers, Stonemasons, Marble-Tile-Terrazzo Workers, Pointers, Caulkers & Cleaners	10.10	.50	1.00		.02
CARPENTERS:					
Residential					
Housing - 1 & 2 Family Dwellings	8.15	.55	.45		.06
Building					
Carpenters & Soft Floor Layers	10.90	.55	.45		.06
Millwrights & Piledrivermen	11.40	.55	.45		.06
CEMENT MASONS	9.98	.35	.35		.02
ELECTRICIANS:					
Building	11.67	.50	3%+.40		.1 of 1%
Residential	8.10	.50	3%+.40		.5 of 1%
ELEVATOR CONSTRUCTORS:					
Constructors	11.34	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR				
GLAZIERS	9.94	.45	.15		
IRONWORKERS	11.10	.55	.90		.08
LATHERS	11.40				
PAINTERS:					
Brush & Roller	9.80	.45	.15		
Spray	10.30	.45	.15		
PLASTERERS	11.46	.65	1.00		.01
PLUMBERS & STEAMFITTERS	11.53	.35	.88		.05
ROOFERS:					
Composition	11.78				
Slate-Tile & Precast Slab	12.03				
SHEET METAL WORKERS	10.91	3%+.50	.78		.05
SPRINKLER FITTERS	11.65	.65	.95		.08
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; F-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day

FOOTNOTE:

a. Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee who has worked in bsuiness more than 5 years and 6% of regular hourly rate for employee who has worked in business more than 5 years.

b. 7 paid Holidays: A through G

c. Nine paid holidays, A through F plus Washington's Birthday, Good Friday and Christmas Eve, providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work day immediately preceding anf following the holiday

DECISION NO. IL78-2037

ILL-27-LAB-1

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
UNSKILLED	$ 9.85	.40	.40		.035
SEMI-SKILLED	10.05	.40	.40		.035
SKILLED	10.40	.40	.40		.035

LABORERS:

UNSKILLED All Sewer Workers plus Depth Pay, Asphalt Plant Laborers, Bankmen on Floating Plant, Batch Dumpers, Carpenter Tenders, Cleaning Lumber, Cofferdam Workers plus depth pay, Deck Hand, Dredge Hand & Shore Laborer, Dispatchers, Driving of Stakes, Stringlines for all machinery, Fencing Laborers, Firemen or Salamander Tenders, Fireproofing Fire Shop Laborers, Flagmen, Form Handlers, Gravel Box Men, Dumpmen & Spotters, Janitors, Laborers w/de-watering systems, Landscapers, Laying of Sod, Material Checkers, Material Handlers, Pit Men, Plastic Installers, Planting of Trees, Removal of Trees, Rip-Rap Men, Rod & Chairmen, Scaffold Workers, Tool Cribmen, Track Laborers, Unloading Explosives, Unloading & Carrying Lath; Unloading & Carrying of Re-Bars, Wrecking, Dismantling Buildings, Wallmen & Housemovers, Wrecking Laborers, Writer of Scale Tickets

SEMI-SKILLED Asphalt Workers with Machine, Asphalt Raker & Layers, Cement Handlers, Cement Silica, Fly Ash, Lime & Plasters, Handlers (Bulk or Bag); Chain Saw, Chloride Handlers, Concrete Workers (wet), Grade Checker; Handling of materials treated with oil, creosote, asphalt and/or any foreign material harmful to skin or clothing, Kettle Tar Men, on Concrete Paving, Placing, Cutting & Typing of Reinforcing, Signal Man on Crane, Tank Cleaners, Tunnel Helpers in Free Air.

SKILLED Air Tamping Hammerman, Caisson Workers plus depth pay, Concrete Burning Machine Operator Concrete Saw Operator, Coring Machine Operator, Curb Asphalt Machine Operator, Gunnite Nozzle Men, Jackhammer & Drill Operators, Laborers handling Masterplate or similar materials, Laborers tenders Masons with hot material or where foreign materials are used for wet concrete or handling of Building Materials, Multiple Concrete Duct - Leadman; Plasterer Tenders, Ready Mix Scaleman, Portable or Temporary Plant, Screenman on Asphalt Pavers, Steel Form Setters (Street & Highway), Vibrator Operators, Cutters, Burners & Torchmen.

DECISION NO. IL78-2037

ILL-5-PEO-1-2-3

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
CLASS I	$ 9.75	.30	.40		.05
CLASS II	8.775	.30	.40		.05
CLASS III	8.15	.30	.40		.05

POWER EQUIPMENT OPERATORS:

CLASS I - Asphalt screed man, Aspco concrete spreaders, Asphalt pavers, Asphalt rollers on bituminous concrete, athey loaders, backfillers, crane type, backhoes, cableways, cherry pickers, claim shell, C.N.E. & similar type autograde formless paver, autograde placer & finisher, concrete breakers, concrete plant operators, concrete pumps, cranes, derrick, derrick boats, draglines, earth augeror boring machines, levating graders eingeers on dredge, gravel processing machines, high list or fork lists, hoist w/two drums or two or more loadlines locomotives (all) mechanics, motar graders or auto patrols, operators or levelman on dredges, operators power boat, operators pug mill (asphalt plants), orange peels, overhead cranes, paving mixers, piledrivers, pipe wrapping & painting machines, push dozers, or push cats, rock crushers, ross carriers or similar machines, scoops, skimmer, 2 cu. yd. capacity & under, sheep foot foller (self propelled) shovels, skimmer scoops, test holedrilling machines, tower cranes, tower machines, tower mixers, track type and loaders, track type fork lists or high lifts, track jacks & tamper, tractor, sideboom, trenching machine, ditching machine, tunnelluggers, wheel type end loaders, winch cat, scoops, all or tournapull.

CLASS II - Asphalt boosters & heaters, asphalt distributors, asphalt plant fireman, oiler on 2 paving mixers when used in tandem boom or winch truck, building elevator, bull floats or flexplanes, concrete finishing machines, concrete saws, self propeller, concrete saws, self propeller, concrete spreader machines, gravel or stone spreader, power operated, head equipment greaser, hoist automatic, hoist w/1 drum & 1 load line, mud jacks, post holediggers, mechanical, road or street sweeper-self propelled, seaman tiller, straw machine, vibratory compactor, well drill machines scissors hoist.

CLASS III - Air compressor*, air compressors, track or self-propelled, asphalt plant engineers, bulk cement batching plants, conveyors,* concrete mixers (except plant, paver, tower) firemen, generators*, greasers, helper on single paving mixer, light plants*, mechanic helpers, mechanical heaters*, oilers, power from graders, power sub-graders, pug mills, when used for other than asphalt operation, rollers (except bituminous concrete) tractors w/o power attachments regardless of size of type) truck crane oiler & driver 1 (man), water pumps*, welding machines (one 300 amp. or over*)* welding machines*

*COMBINATIONS OF ONE TO FIVE OF ANY AIR COMPRESSORS, CONVEYORS. WELDING MACHINES, WATER PUMPS, LIGHT PLANTS OR GENERATORS SHALL BE IN BATTERIES OR WITHIN 300 FT.

DECISION NO IL78-2037 ILL-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.85	.60	a28.00		
GROUP II	10.25	.60	a28.00		
GROUP III	10.45	.60	a28.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II: - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportaion purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III: - 2,3 or 4 axle trucks hauling 16 ton or more, drivers on oil distributores, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: Illinois COUNTIES: *See Below
DECISION NUMBER: IL78-2038 DATE: Date of Publication
Supersedes Decision No.: IL77-2115, dated August 12, 1977 in 42 FR 41068
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories).

*COUNTIES: Alexander, Franklin, Gallitin, Hamilton, Hardin, Jackson, Jefferson, Johnson, Marion, Massac, Perry, Pope, Pulaski, Saline, Union, White & Williamson

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Alexander, Jackson, Jefferson, Marion, Perry & Unions Cos.,	12.18	.45	.62		
REMAINDER OF COUNTIES	11.30	.45	.60		.03
BOIELRMAKERS	11.45	.95	1.20		.03
BRICKLAYERS & STONEMASONS:					
Marion County:					
Bricklayers, Stonemasons, Marble-Tile-Terrazzo Workers, Cement Block Layers, Pointers, Cleaners & Caulkers	10.70	.35	.50		
Remainder of Counties:					
Bricklayers, Stonemasons, Marble-Tile-Terrazzo Workers, Cement Blocklayers, Pointers, Caulkers & Cleaners	9.95	.55	.40		
CARPENTERS:					
Marion County:					
Carpenters, PIledrivermen & Soft Floor Layers	9.36	.50	.50		.03
Millwrights	9.71	.50	.50		.03
Hamilton, Jefferson & White Counties:					
Carpenters, Piledrivermen & Soft Floor Layers	9.41	.45	.50		.02
Millwrights	9.76	.45	.50		.02
Remainder of Counties:					
Carpenters, Piledrivermen, Millwrights & Soft Floor Layers	9.50	.45	.45		.02
CEMENT MASONS & PLASTERERS:					
Marion County:					
Centrailia & Vicinity					
Cement Masons	10.25				.01
Plasterers	10.35				.01
Salem & Vicinity					
Cement Masons	8.40				
Northern 2/3 of Marion Co., Incl. Salem & Vicinity					
Plasterers	6.75				.01
Franklin, Hamilton, Jefferson & Williamson Counties	9.95				
Saline, Gallatin, Hardin, Pope, Johnson, Massac & White Cos.	9.95				

DECISION NO. IL78-2038

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS & PLASTERERS (CONT'D):					
Alexander, Jackson, Perry, Pulaski & Union Counties	$ 9.65	.30			
ELECTRICIANS	11.80	.40	13%		1%
IRONWORKERS:					
Marion & Perry Cos: Jefferson (Mt. Vernon & All Area West thereof) County	11.35	.55	.90		
Alexander, Franklin, Gallatin, Hardin, Jackson, Johnson, Massac, Pope, Pulaski, Union & Williamson Counties	9.90	.45	.65		.02
LABORERS:					
Marion County:					
Central & Vicinity Laborers	7.75		.30		.035
Salem & Vicinity					
Unskilled	6.80		.30		.035
Skilled	7.05		.30		.035
Pataka & Sandoual & Vicinity Laborers	8.20	.30	.30		.035
Hamilton, Jefferson & White Counties	8.20	.30	.30		.035
Remainder of Counties	8.30	.30	.30		.035
PAINTERS:					
Marion County:					
Centrailia & Vicinity					
Brush & Structural Steel	8.10				
Roller	8.35				
Spray	9.10				
Salem, Flora, Clay & Vicinity					
Brush	8.00				
Roller, Spray	9.25				
Structural Steel	10.00				
Union County:					
Commercial	7.25				
Industrial	7.75				
White County:					
Brush & roller	8.95	.65	.30		
Spray	9.95	.65	.30		
Jefferson & Hamilton Counties:					
Brush and Roller	6.65				
Structural Steel & Spray	8.00				
Massac County					
Brush and Roller	7.10	.25			
Spray					

DECISION NO. IL78-2038

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (CONT'D)					
Jackson & Perry Counties:					
Commercial	9.00				
Industrial	9.90				
Franklin & Williamson Counties:					
Commercial	8.70				
Industiral	8.95				
Gallatin, Hardin, Pope, Saline counties:					
Brush	6.90				
Struc. steel & Drywall	7.15				
Spray	7.25				
Alexander, Johnson, Pulaski Counties:					
Commercial	7.00				
Industrial	8.70				
PLUMBERS & STEAMFITTERS:					
Marion county	13.00	1.20	1.40		.15
White county:					
Crossville, Phillipstown, Emma & Mauine	12.555	.50	.90		.06
Remainder of County	12.43	.50	.90		.06
Alexander, Hardin, Massac, Jackson, Johnson, Perry, Pope, Pulaski & Union Counties	12.20	.30	.90		.08
Franklin, Hamilton, Jefferson, Saline, williamson, & Gallatin counties	11.80	.50	.55		.08
ROOFERS:					
Gallatin, Hardin & White Cos.					
Composition	9.83	.60	.50		
Slate & Tile	10.08	.60	.50		
Remainder of Counties	8.50				
SHEET METAL WORKERS	10.78	.45	.20	6%	.02
SPRINKLER FITTERS	11.65	.65	.95		.08
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. IL78-2038

REMAINDER OF COUNTIES

ILL-17-PEO-1-2-3

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Class 1	$9.00	.40	.60		.035
Class 2	8.25	.40	.60		.035
Class 3	8.00	.40	.60		.035
Class 4	7.70	.40	.60		.035
Class 5	7.30	.40	.60		.035
Class 6	8.25	.40	.60		.035
Class 7	8.00	.40	.60		.035
Class 8	7.50	.40	.60		.035
Class 9	7.45	.40	.60		.035
Class 10	7.20	.40	.60		.035
RIVER WORK and LEVEE WORK ON MISSISSIPPI and OHIO RIVERS					
Class 11	8.90	.40	.60		.035
Class 12	7.70	.40	.60		.035

POWER EQUIPMENT OPERATORS:

Class 1: Apsco or equal spreading machine; Backhoe; Backfiller; Boom or which cat; Bituminous mixplace machine; Backsmith; Bituminous surfacing machine; Bulldozer; Crane; Shovel; Dragline; Truck crane; Piledriver; Concrete finishing machine or spreader machine; Concrete breaker; Concrete or pumperete pumps; Dinky or standard locomotive; Drill well; Elevating grader; Forklifts; Rubber-tired; Flex-plane; Gradall; Hi-lift, handblade, power; Hoists, tugger type; Hoist, (2 drums) or over one; Guy-derrick; Hyster mechanic; Motor patrol; Mixer 21 cu. ft. or over; Push cat; Pulls and scrapers; Pumps; 2 well points; P&H pulverizer or pulverizer equal to pugmill; Rubber-tired farm type tractor with bull-dozer or hi-lift (over 1/2 yd.), Rubber-tired tractor w/auger; Skimmer scoops; Seaman tiller; Spreader, Jersey; Tract-air used w/drill or Hi-lift; Trenching machine, or ditching machine; Wood chipper with tractor; Self-propelled roller w/10 ft. blade; Concrete pumps; Equipment greader

Class 2: Roller, self-propelled, Power subgrader; Elevator operator

Class 3: Rubber-tired farm type tractor w/bull dozer or hi-lift (1/2 yd. or less)

DECISION NO. IL78-2038

POWER EQUIPMENT OPERATORS (Cont'd)

Class 4: Pump, one well point; All tract type tractors, pulling any type roller or disc.

Class 5: Oiler; All wheel type tractors, Oiler on 30 Hp ditches and over; Oiler, Hydra-crane with 15 ton lifting capacity or more and cranes similar to Hydra-crane w/15 ton capacity and more

Class 6: Air compressor w/valve driving piling air compressors, two (220 cu. ft. capacity or over); Air track drills, air track drill w/compressor; Automatic bins scales w/compressor or generator; Pipeline boring machine; Bulk cement plant w/separate compressor bulk float power operator; Concrete saws, (two); Hydra-lift (single motor); Straw mulcher blower w/spout

Class 7: Backend man on bituminous surfacing machine; Boom or winch truck; Cat wagon w/or without dump; Conveyors, two; Chip spreader, self-propelled concrete saw, on self-propelled; Form grader; Heaters, (motor driven); Hoist, 1 drum; Truck crane oiler; Vibrator, self-propelled.

Class 8: Air track drill (one); Belt drag machine, Power boom, Mechanical; Plasterer applicator; Tract-air

Class 9: Air compressor (220 cu. ft. capacity or over), one; Air compressor under (220 cu. ft.) two; Automatic bins, bulk cement plant w/built in compressor, running of same motor or electric motor; Firemen or switchmen; Form tamper, self-propelled; Light plants (two); Welding machine (two); Pumps (two); or combination or 2 pumps, Light plants, welding machines, air compressor (under 200 cu. ft.); Mud jacks or wood chipper; Mixers, less than 21 cu. ft., Motor mixer w/skip or pump; Pipeline track jack

Class 10: Air compressor, under 220 cu. ft. capacity (one); Conveyor (one); Conveyor operator on self-propelled chip spreader; Heater (one); Motor driven; Light plant (one) pump (one); Welding machine (one) Ulmac or equal spreader

RIVER WORK and LEVEE WORK on MISSISSIPPI and OHIO RIVERS

Class 11: Crane, shovel, dragline 4 yards or more, scraper, 18 yards, struck or over, dredge, derrick and piledriver, push boat operator, mechanic or 4 yards machine or over, Engine man on dredge, Levee man on dredge

Class 12: Oiler on crane, dragline, shovel, 4 yard machine or over; Oiler on dredge

DECISION NO. IL78-2038

ILL-2-PEO-1-2-3

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$10.52	.87	1.51		.05
GROUP II	9.69	.87	1.51		.05
GROUP III	9.04	.87	1.51		.05
GROUP IV	8.94	.87	1.51		.05
GROUP V	8.69	.87	1.51		.05
GROUP VI					
a.	12.67	.87	1.51		.05
b.	12.97	.87	1.51		.05
c.	10.79	.87	1.51		.05
d.	11.29	.87	1.51		.05

POWER EQUIPMENT OPERATORS:

GROUP I Cranes, draglines, shovels, skimmer scoops, clamshells or derrick boats, pile drivers, crane-type backhoes, asphalt plant opers. plant opers., ditching machines or backfillers (requiring oilers), dredges, asphalt spreading machines, heavy duty mechanic, ass't. master mechanic, all locomotives, cableways or tower machines, hoists 2 drum or more (where oiler or fireman is required), hoists-2drum or more (where oiler or firemen is not required) Hydrualic backhoes, ditching machines or backfiller (not requiring oilers) Cherry pickers, overhead cranes, roller (Steam or gas) concrete pavers, excavators, concrete breakers, concrete pumps, bulk cement plants, cement pumps, derrick-type drills, mixers (over 3 bags) and boad oprs., (25' & over), Motor graders or pushcats, scoops or tournapulls, Bulldozers, endloaders or fork-lifts, power blade or elevating graders, winch cats, boom tractors, and pipe wrapping or painting mcahines, Drills (other than derrick type) 1-dum-hoists, mud jacks, mixers (2 or 3 bags), conveyors (2), air compressors (2), water pumps regardless of size (2), welding machines (2) siphons or jets (2), winch heads or apparatuses (2) and light plants (2), Mixers (under 2 bags), all tractors regardless of size (Straight tractor only), firemen on stationary boilers, automatic elevators, form grading machines, finishing machines, power-sub-grader or ribbon machine, longitudinal floats, boats oprs., (under 25', conveyors (1), distribution pors., on trucks, siphones or jets (1) winch heads or apparatuses (1), light plant (1) mixers (under 2 bags)

GROUP II Air Compressor (1), water pumps regardless of size (1) welding machines (1)

GROUP III Firemen and asphalt spreader oilers

GROUP IV Heavy equipment oilers (truck cranes, dredges, monigans, large cranes, etc.

GROUP V Oilers

GROUP VI

a. Engineers operating under air pressure
b. Engineers operating in air over 10 lbs pressure
c. Oilers operating under air pressure
d. Oilers operating in air over 10 lbs pressure

DECISION NO IL78-2038

ILL-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.85	.60	a28.00		
GROUP II	10.25	.60	a28.00		
GROUP III	10.45	.60	a28.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II: - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportaion purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III: - 2,3 or 4 axle trucks hauling 16 ton or more, drivers on oil distributorcs, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: Illinois
COUNTIES: See Below
DECISION NUMBER: IL78-2039
DATE: Date of Publication
Supersedes Decision No. IL76-2133, dated October 22, 1976, in 41 FR 46831
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories).

COUNTIES: Boone, Carroll, DeKalb JoDaviess, Lee, Ogle, Stephenson, Whitside & Winnebago

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Boone, Ogle, Stephenson & Winnebago Counties	$11.15	.70	.80	1.00	.04
Carroll, JoDaviess & Whiteside Counties	11.55	.40	.60		.10
BOILERMAKERS:					
Boone, Ogle & Winnebago Cos.	12.30	.95+.40	1.00	5%	.03
Remainder of Counties	11.45	.95	1.00		.03
BRICKLAYERS & STONEMASONS:					
Boone, Ogle, Winnebago, Carroll, JoDaviess, Stephenson, Lee & Whiteside Counties	11.90	.40	.40		
DeKalb County	10.85	.30			
CARPENTERS:					
Stephenson County:					
Carpenters & Soft Floor Layers	10.23	.40	.60		
Millwrights	11.20	.40	.60		
Piledrivermen	8.53	.30	.35		
Winnebago & Boone counties:					
Carpenters & Piledrivermen & Soft Floor Layers	10.50	.40	.70		
Millwrights	11.60	.40	.80		
Carroll & JoDaviess Counties:					
Carpenters & Soft Floor Layers	10.23	.40	.60		
Millwrights	11.20	.40	.60		
Piledrivermen	8.53	.30	.35		
Whitcside (all areas east of Hwy. #78) co., & Ogle (Twps. of Mount Maryland, Forreston, Harper, Haldane, Buffalo, Brookville, Adeline, Lightsville & Bailey-ville) Co:					
Carpenters & Soft Floor Layers	10.23	.40	.60		
Millwrights	11.20	.40	.60		
Piledrivermen	8.48	.35	.35		
Whiteside co. (all areas west of Hwy. #78)					
Carpentes & Soft Floor Layers	10.46	.45	.70		.04
Millwrights	12.00	6%	7%		.20
Piledrivermen	10.71	.45	.70		.04

DECISION NO. IL78-2039

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS (CONT'D)					
DeKalb Co., Ogle (East of Hwy. #15 incl. Rochelle City) Co., Lee (Eastern ⅓ of Co., incl. Roxbury & Compton) Co:					
Carpenters & Soft Floor Layers	11.13	.65	.62		
Millwrights & Piledrivermen	11.38	.65	.62		
Remainder of Lee & Ogle Cos:					
Carpenters & Soft Floor Layers	10.65	.45			
Millwrights & Piledrivermen	11.15	.45			
CEMENT MASONS:					
Boone & Winnebago Counties	10.48	.40	.45		
DeKalb county	10.85	.30			
Whiteside (Erie & Area S.W. thereof) County	10.37	.50	.60		
Carroll, JoDaviess, Lee, Ogle Stephenson & Remainder of Whiteside County	10.15	.40	.70		
ELECTRICIANS:					
Boone, Dekalb, Winnebago, Stephenson, Ogle, Lee, JoDaviess (Warren, Rush, Nora, Stockton, Wards, Grove, Pleasant Valley, Berrenman Twps.) Co; Carroll (Cherry Grove, Shamnon, Rock Creek, Lima, Wysox, Elkhorn, Grove Twps.) Co: Whiteside (Genesee, Jordan, Hopkins, Sterling, Hume, Montgomery, Tampico, Hahnaman Twps.) Co.	11.65	.50	3%+.40		½%
JoDaviess (Savanna Ordinance Depot) Co., Carroll (Cities of Chadwick), Mt. Carroll, Savanna & Tompson) Co; & Remainder of Whiteside Co.	11.69	.55	7.5%		.03
Remainder of JoDaviess County	10.90	.35	3%+.50		3/4%
ELEVATOR CONSTRUCTORS:					
DeKlab County:					
Constructors	12.455	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR				

DECISION NO. IL78-2039

ELEVATOR CONSTRUCTORS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carroll & Whiteside Counties:					
Constructors	10.41	.495	.32		.02
Helpers	70%JR	.495	.32		.02
Helpers (Prob.)	50%JR				
Remainder of Counties:					
Constructors	11.42	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR				
GLAZIERS:					
DeKalb (Lee, Watermon, Hinckley & South Thereof) Co.	9.65			.65	
Winnebago, Boone, Lee (Eastern ½ of Co.) Co., Remainder of DeKalb County	8.90	.37	.20	.74	.02
Carroll, JoDaviess, Stephenson, Whiteside Co., Lee (Western ½ of County incl. Dixon) County	9.74	.65	1.00		.02
IRONWORKERS:					
DeKalb (S.E. 2/3 of Co., incl. Sycamore of DeKalb)	12.95	.65	.525		.08
Carroll (Vicinity of Savanna & Thompson) Co; JoDaviess (E. Dubuque, Galena, Hanover & Vic) Co; & Remainder of Whiteside County	12.07	.65	.375		.11
Boone, Winnebago, Stephenson, Lee, Sterling & West Sterling Co.; Remainder of Carroll, JoDaviess & Dekalb Counties	12.60	.65	.375		.10
LABORERS:					
Boone County:					
Laborers	7.95	.57	1.10		
Power Vibrator	8.05	.57	1.10		
Mortar Men	8.10	.57	1.10		
Plasterer Tenders and Hod Carriers	8.20	.57	1.10		

DECISION NO. IL78-2039

MARBLE-TILE-TERRAZZO WORKERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carroll, Boone, DeKalb, Stephenson, Ogle & Winnebago Counties	10.15	.40	.30		
PAINTERS:					
DeKalb County:					
Brush, Spray, & Drywall Taper	9.34	.60	.70		.06
Carroll, Lee, Ogle, Whiteside Counties:					
Brush	9.00				
Spray, Structural Steel, Sand-Blast	9.35				
JoDaviess County:					
Brush & Roller	9.82	.45	.65		.12
Spray, Structural Steel, Sand-Blast	10.07	.45	.65		.12
Winnebago, Boone & Stephenson Counties:					
Brush & Roller	10.35	.40			
Structural Steel & Sandblast	10.10	.40			
Spray	10.40	.40			
PLASTERERS:					
DeKalb County	10.85	.30			
Boone & Winnebago Counties	10.03	.40		.50	.01
Whiteside (Erie & Area S. W. thereof) co.	12.00				
Carroll, JoDaviess, Lee, Stephenson Cos; & Remainder of Whiteside County	9.75	.40	.50		.01
PLUMBERS & STEAMFITTERS:					
DeKalb County	11.95	.57	.95		.10
Whiteside, Lee, Carroll (West of Rt. #78 excluding Mt. Carroll by 1 mile outside the city limits continuing North of Rt. #78) Co; JoDaviess (South line of Co., then west to the River 1 mile north of Blanding) Co; Savanna Ordnance Depot	11.00	.54	1.24		.17
Boon, Ogle, Stephenson, Winnebago, Carroll (to Rt. #78 incl. Mt. Carroll) Co; Remainder of JoDaviess County	11.55	.45	.60		.07

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
DeKalb (Eastern ½ of Co., Incl. Sycamore, DeKalb & Waterman) County	12.08	.65	.45		.02
Boone, Carroll, JoDaviess, Lee, Ogle Stephenson, Winnebago, Whiteside (Cities or Rock Falls, Sterling & W. Sterling County, DeKalb (Western ½ of county);					
Composition-Slate & Tile	10.55	.40			
Remainder of Whiteside County:					
Flast Slate-Tile-Damp-Waterproof	11.85		.60		
SHEET METAL WORKERS:					
Boone, DeKalb, Lee, Ogle, Whiteside, Winnebago, Carroll (Eastern ½ of County)	10.55	.40	.88	.50	.06
Carroll County (Western ½ of Co.)	10.66	.45	.44		.10
JoDaviess & Stephenson Counties	7.30	.30	.25	.25	.02
SPRINKLER FITTERS	11.65	.65	.95		.08
TRUCK DRIVERS:					
Boone,Stephenson, Winnebago Cos., Carroll (North of Rt. #72 & East of Rt. #78) Co; JoDaviess (East of Rt. #78 except City of Stockton) County:					
2-3 Axles Trucks	9.75	.40	.90		
4 Axle Trucks	9.90	.40	.90		
5 Axle Trucks	10.10	.40	.90		
6 Axle Trucks	10.30	.40	.90		
DeKalb County; East of Rt. #51 in Lee & Ogle counties:					
2-3 Axles Trucks	9.80	d26.00	d30.00		
4 Axle Trucks	9.95	d26.00	d30.00		
5 Axle Trucks	10.15	d26.00	d30.00		
6 Axle Trucks	10.35	d26.00	d30.00		
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

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PAID HOLIDAYS (WHERE APPLICABLE)

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day After Thanksgiving; G- Christmas Day

FOOTNOTES:

a. 7 paid holidays; A through G

b. Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years.

c. Nine paid holidays; A through F plus Washington's Birthday & Good Friday & Christmas Eve, providing employee has worked 45 full days during the 120 calendar days prior to the Holiday, and the regular scheduled work days immediately preceding and following the holiday.

d. Per week, Per Employee

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ILL-101-LAB-1-2-3

LABORERS: REMAINDER OF COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	9.11	.40	.54		.035
CLASS II	9.31	.40	.54		.035
CLASS III	9.41	.40	.54		.035

CLASS I - Common Laborers, Carpenter Tenders, Tool Cribmen, Fireman or Salamander Tenders, Flagmen, Gravel Box Men, Dumpmen & Spotters, Form Handlers, Material Handlers, Fencing Laborers, Cleaning Lumber, Pit men, Material Checkers, Dispatchers, Lanscapers, Unloading explosives, Laying of sod, Planting of trees, Removal, of Trees, Asphalt Plant Laborers, Wrecking Laborers, Writer of Scale Tickets, Fire Shop Laborers, Fireproofing Laborers, Janitors, Driving of Stakes, Stringlines for all machienry, Rod & Chainmen with Technical Engineers, with Land Surveyors, Asphalt Workers with Machine & Layers, Grade Checker, Signal Man on Crane, Coring Machine Operator, concrete Workers (wet), On Concrete Paving, Placing, cutting and Tying or Reinforcing Steel Form Setters-Street and Highway.

CLASS II - Scaffold Workers, Handling of materials treated with any foreign matter harmful to skin or clothing, Bulk Cement Handlers, Unloading of Re-bars, Tunnel Helpers in Free Air, Batch Dumpers, Mason Tenders, Kettle and Tar Men, Tank Cleaners, Plastic Installers, Motorized Buggies of Motorized Unit used for wet concrete or handling of Building Materials, Vibrator Opeators, Mortar Mixer Operators, Cement Silica, Clay Fly Ash, Line & Plasters, Handlers (Bulk or Bag) Deck Hand, Dredge Hand & Shore Laborers, Bankmen on Floating Plant, Power Tools, Material Selector (Firebrick or Castable Material) Chain saw Operators, Air Tamping Hammerman, concrete Saw Operator, Front End Man on Chip Spreader, Luteman, Asphalt Raker

CLASS III - J ckhammer and Drill Operators, Laborers with De-Watering Systems, Bottom Sewer Workers Plus depth, cofferdam workers plus depth, Caisson workers plus depth, Gunntie Nozzle Men, Leadman on Sewer Work, Welders, Cutters, Burners and Trochmen, Layout Man and/or Tile Layer, Screenman on Asphalt Pavers, Laborers Tending Masons with Hot Material, Multiple concrete Duct-Leadman, Curb Asphalt Machine Operator, Ready-Mix Scalemen, Permanant, Portable or Temporary Plant, Laser Beam Operator, Cocnrete Burning Machine Operator, Underpinning and Shoring of Building, Pump Men

DECISION NO. IL78-2039

ILL-12-PEO-1

POWER EQUIPMENT OPERATORS: BOONE, CARROLL, DEKLAB, JODAVIESS LEE, OGLE, STEPHENSON, WINNEBAGO & EASTERN ½ OF WHITESIDE COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	11.85	.75	.85	.40	.05
CLASS II	10.55	.75	.85	.40	.05
CLASS III	9.40	.75	.85	.40	.05
CLASS IV	8.15	.75	.85	.40	.05

CLASS I - Asphalt plant, asphalt spreader, auto-grad, batch plant, Benoto (requires two engineers), boiler & throttle valve, caisson rigs, central redi-mix plant, combination backhoe front end-loader machine, compressor & throttle valve, concrete breaker (truck mounted), conveyor, concrete paver, concrete placer, concrete tower, cranes (all), derricks (all), grader, elevating, grouting machines, highlift shovels or front endlaoder 2¼ yd. & over, hoists, one, two & three drum, hoists, two & three, drum, hoists, two tugger one floor, hydraulic boom trucks, locomotives (all), mechanic, motor patrol, pile drivers & skid rig, post-hole digger, pre-stress machine, pump cretes dual ram (requiring frequent lubrication & water), pumpcretes, squeeze cretes - screw types pumps, Gysum bulker & pump, rock drill (self-propelled), rock drill (truck mounted), scoops - tractor drawn, slip form paver, straddle buggies, tournapull, tractor with boom & side boom, trenching machines

CLASS II - Boilers, bulldzoers, brrom all power propelled, concrete mixer (2 bag & over), conveyor portable, fork lift truck greaser engineer, highlift shovels or front endloaders under 2¼ yd., hoists, automatic hoists, all elevators, hoists, tuggers single drum, rillers, all steam generators, stone crushers, tractors all winch trucks with "A" frame

CLASS III - Air compressor - small 150 & under (1) to 5 not to exceed a total of 300 ft.), Air compressor - large over 150, combination - small equipment opr., generators under & over 50 KW heaters, mechanical pumps over 3" (1 to 3 not to exceed a total of 300 ft.) pumps, well points, welding machines (2 through 5), winches 4 small electric drill winches

DECISION NO. IL78-2039

POWER EQUIPMENT OPERATORS:

WESTERN ½ OF WHITESIDE COUNTY

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	11.15	.65	.60		.08
CLASS 2	11.15	.65	.60		.08
CLASS 3	9.75	.65	.60		.08
CLASS 4	9.75	.65	.60		.08
CLASS 5	11.85	.65	.60		.08

CLASS 1 - Crnae, shovel clamshell, dragline, backhoe, derrick, tower crane, cableway, concrete spreader (servicing two pavers), asphalt spreader, asphalt mixer plant engineer, dipper operator, dipper dredge craneman, dual purposetruck (boom or winch), leverman or engineman (Hydrualic dredge), mechanic, paving mixer with tower attached (two operators required), pile driver, boom tractor, stationary, portable or floating mixing plant, trenching machine cleaning and proming machine, endloader (one half cubic yard or over, on basement excavation work), backfiller (throw bucket), locomotive engineer, qualified welder, tow or push boat concrete paver, seaman Trav-L- Plant or similar machines, CMI autograder or similar machine, slip form pver, caisson augering machine, mucking, asphalt heater-palner unit hydraulic cranes, Mine hoists

CLASS 2 - Athey, Barber-Green, euclid or hasis loader, asphalt pug mill fireman and drier, concrete pump, concrete spreader (servicing one paver), bulldozer, endloader (other than mentiond above), forklift, elevating grader, group equipment greaser, letourneapull and similar machine, DW-10, straddle carrier, hyster winch and similar machines, motor patrol, power blade push cat, tractor pulling elevating grader or power blade, tractor operating scoop or scraper, tractor with power attachment, roller on asphalt or blacktop, single drum hoist, Jaeger mix and place machine, pipe bending machine, welding machines (3 or 4), fuller kenyon cement pump or similar machines, automatic cement and gravel batch plants (one stop set-up), Seaman pulvi-mixer or similar machines, propelled sheep foot roller or compactor (used in conjunction with a grading spread), asphalt spreader screed operator apsco spreader or similar machine, slusher, forklift (over 6,000 lb. cap. or working at heights above 28 ft.) conveyors

DECISION NO. IL78-2039

POWER EQUIPMENT OPERATORS (CONT'D)

CLASS 3 - Asphalt booster, fireman and pump operator at asphalt plant, compressor (500 cu. ft. and over) concrete finishing machine, form grader with roller on earth, mixers (3 bag to 16E), power operated bull float, tractor without power attachment, Dope pot (agitating motor), Dope chop machine, distributor (back end), Fleeplane or similar machines, portable machine fireman, Hydrohammer, power winch on paving work, self-propelled roller or compactor (other than provided for above), pump operator crusher operator, trench machine (40 H.P. and under), power sub grader (on forms), or similar machines, Forklift (6000 or less cap.) Gysum pump, conveyor over 20 H.P.

CLASS 4 - Air compressor (275 c.f.m. or over) driver on truck crane or similar machines, light plant, mixers (1 or 2 bags), power batching machine (cement auger or conveyor), boiler (engineer or fireman, water pumps, welding machine, mechanical broom, automatic cement and gravel batch plants (two or three stop set-up), small backhoes or endloaders) self-propelled curing machine

CLASS 5 - Oiler, mechani's helper, water pump (pumping water to paver), mechanical heater (other than steam boiler) belt machine, small putboard motor boat

DECISION NO IL78-2039

ILL-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.85	.60	a28.00		
GROUP II	10.25	.60	a28.00		
GROUP III	10.45	.60	a28.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II: - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportaion purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III: - 2,3 or 4 axle trucks hauling 16 ton or more, drivers on oil distributores, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: Illinois

COUNTIES: Bond, Calhoun, Clinton, Greene, Jersey, Monroe, Montgomery, Randolph & Washington

DECISION NUMBER: IL78-2040

DATE: Date of Publication

Supersedes Decision No. IL76-2080, Dated August 13, 1976 in 41 FR 34475

DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.18	.45	.62		
BOILERMAKERS	11.45	.95	1.20		.03
BRICKLAYERS:					
Montgomery County					
Bricklayers, Stonemasons, Cement Masons, Plasterers, Marble-Tile-Terrazzo Workers, Pointers-Caulkers-Cleaners					
Hillsboro & East Thereof	10.25		.25		
Remainder of County	9.85	.70	.75	1.00	.05
Washington County					
South of Hoyleton Road					
Bricklayers, Stonemasons, Cement Blocklayers, Marble-Tile-Terrazzo Workers, Pointers-Cleaners-Caulkers	9.95	.55	.40		
Bond & Clinton Cos., & Remainder of Washington County					
Bricklayers, Stonemasons, Marble-Tile-Terrazzo Workers, Cement Blocklayers, Pointers, Cleaners-Caulkers	10.70	.35	.50		
Calhoun & Jersey Counties					
Bricklayers, Stonemasons, Marble-Tile-Terrazzo Workers	9.85	.70	.75	1.00	.05
Greene County					
Bricklayers, Stonemasons, Plasterers, Blocklayers, Marble-Tile-Terrazzo Workers, Pointers-Caulkers-Cleaners	10.10	.50	.52		.02
Randolph County					
Bricklayers, Stonemasons, Terrazzo Workers, Tile Setters	9.95	.55	.40		
Monroe County					
Bricklayers, Stonemasons, Marble-Tile-Terrazzo Workers, Pointers-Cleaners-Caulkers	11.00		.30	1.00	

DECISION NO. II.78-2040

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS:					
Monroe, Randolph, Clinton & Washington Counties					
Carpenters, Soft Floor Layers, Millwrights & Piledrivermen	$10.935	.60	1.00		
Montgomery County					
Waggoner, Standard City & North thereof					
Carpenters & Soft Floor Layers	10.90	.55	.45		.06
Millwrights & Piledrivermen	11.40	.55	.45		.06
Remainder of County					
Carpenters, Soft Floor Layers, Millwrights & Piledrivermen	10.935	.50	.50		
Greene County					
Whitehall & North Thereof					
Carpenters & Soft Floor Layers	9.75	.55	.25		.02
Millwrights	10.00	.55	.25		.02
Piledrivermen	10.25	.55	.25		.02
Bond, Calhoun & Jersey Cos., South of Apple Creek in Greene County					
Carpenters, Soft Floor Layers, Millwrights & Piledrivermen	11.335	.60	.50		
CEMENT MASONS:					
Randolph County					
Cement Masons & Plasterers	9.65	.30			
Greene County					
Cement Masons	9.855	.50	.52		.02
Clinton County					
Carlyle & East Thereof					
Cement Masons	10.25				.01
Calhoun, Jersey, Monroe, Bond & Washington Cos., & Remainder of Clinton County					
Cement Masons	10.975	.78	.62		
ELECTRICIANS:					
Portion East of Butler Grove, Grisham, Hillsboro & Raymond Twps. in Montgomery County	11.70	.50	3%+.40		.35%

DECISION NO. II.78-2040

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS (CONT'D)					
N. W. Part of Montgomery County Monroe County, Red Bud Twp. in Randolph Co., Western ½ of Bond County, Venedy Twp. in Washington County, Remainder of Clinton & Montgomery Counties	$11.67	.50	3%+.40		.1 of 1%
Huey, Hoffman & Vicinity in Clinton County., Eastern ½ of Bond County & Remainder of Randolph & Washington Counties	11.23	4%	1%+.65	6%	.25%
Calhoun, Jersey & Greene Cos.	12.15	.40	13%		1%
IRONWORKERS:	11.60	.40	1%+.30	6%	.3 of 1%
Bond, Clinton, Calhoun, Jersey, Monroe, Washington & Randolph Cos., Litchfield, Hillsboro & South Thereof in Montgomery Co.	11.35	.55	.90		
Greene Co; & Remainder of Montgomery County	11.10	.55	.90		.08
LABORERS:					
Clinton County					
Trenton & Vicinity					
Common	10.15		.30		.035
Brick & Plaster Mason Tenders	10.65		.30		.035
Cutting & Burning w/a Torch & Working on the Bottom of Sewer Trenches, etc.	10.40		.30		.035
Dynamite Men	11.75		.30		.035
Carlyle & Vicinity					
Common	10.25		.20		.035
Brick & Plaster Mason Tenders	10.75		.20		.035
Cutting & Burning w/a Torch & Working on the Bottom of Sewer Trenches, etc.	10.50		.20		.035
Dynamite Men	11.85		.20		.035
New Baden & Vicinity					
Laborers	10.45		.60		.035
Brick Mason Tenders & Mortar Mixers	10.95		.60		.035
Cutting & Burning w/a Torch; Chain Saws	10.70		.60		.035
Plaster Tenders	10.95		.60		.035

DECISION NO 11.78-2040

LABORERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Montgomery County					
Hillsboro & Vicinity					
Common	$9.95		.50		.035
Brick & Plaster Mason Tenders	10.45		.50		.035
Cutting & Burning w/a Torch & Working on the Bottom of Sewer Trenches, etc.	10.20		.50		.035
Dynamite Men	11.55		.50		.035
Litchfield & Vicinity					
Common	10.25		.20		.035
Brick & Plaster Mason Tenders	10.75		.20		.035
Cutting & Burning w/a Torch & Working on the Bottom of Sewer Trenches, etc.	10.50		.20		.035
Dynamite Men	11.85		.20		.035
Monroe County					
Common	10.00	.30	.25		
Air Tool Opr., & Bottom Men on Sewer Trenches	10.25	.30	.25		
Mason & Plasterer Tenders; Dynamite Men	10.50	.30	.25		
Greene County					
Common	9.95		.50		.035
Brick & Plaster Mason Tenders	10.45		.50		.035
Cutting & Burning w/a Torch & Working on the Bottom of Sewer Trenches, etc.	10.20		.50		.035
Dynamite Men	11.55		.50		.035
Calhoun County					
Common	10.25		.20		.035
Brick & Plaster Mason Tenders	10.75		.20		.035
Cutting & Burning w/a Torch & Working on the Bottom of Sewer Trenches, etc.	10.50		.20		.035
Dynamite Men	11.85		.20		.035
Washington County					
Ashley & Vicinity					
Common	10.25		.20		.035
Brick & Plaster Mason Tenders	10.75		.20		.035
Cutting & Burning w/a Torch & Working on the Bottom of Sewer Trenches, etc.	10.50		.20		.035
Dynamite Men	11.85		.20		.035

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LABORERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Washington County (Cont'd)					
Vicinity of Nashville & Okawville					
Common	$10.15		.30		.035
Brick & Plaster Mason Tenders	10.65		.30		.035
Cutting & Burning w/a Torch & Working on the Bottom of Sewer Trenches, etc.	10.40		.30		.035
Dynamite Men	11.75		.30		.035
Bond County					
Vicinity of Greenville & Sorento					
Common	10.25		.20		.035
Brick & Plaster Mason Tenders	10.75		.20		.035
Cutting & Burning w/a Torch & Working on the Bottom of Sewer Trenches, etc.	10.50		.20		.035
Dynamite Men	11.85		.20		.035
Pochontas & Vicinity					
Common	10.05		.40		.035
Brick & Plaster Mason Tenders	10.55		.40		.035
Cutting & Burning w/a Torch & Working on the Bottom of Sewer Trenches, etc.	10.30		.40		.035
Dynamite Men	11.65		.40		.035
Jersey County					
Common	10.25		.20		.035
Brick & Plaster Mason Tenders	10.75		.20		.035
Cutting & Burning w/a Torch & Working on the Bottom of Sewer Trenches, etc.	10.50		.20		.035
Dynamite Men	11.85		.20		.035
Randolph County					
Chester & Vicinity					
Common	9.95		.50		.035
Brick & Plaster Mason Tenders	10.45		.50		.035
Cutting & Burning w/a Torch & Working on the Bottom of Sewer Trenches, etc.	10.20		.50		.035
Dynamite Men	11.55		.50		.035

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D)					
Randolph County (Cont'd)					
Sparta & Vicinity					
Common	$10.25		.20		.035
Brick & Plaster Mason Tenders	10.75		.20		.035
Cutting & Burning w/a Torch & Working on the Bottom of Sewer Trenches, etc.	10.50		.20		.035
Dynamite Men	11.85		.20		.035
LATHERS:					
Montgomery Co., & the Northern ½ of Greene County	11.40				
Bond & Washington Counties	10.25				
Southern ½ of Greene County & Remainder of Counties	12.085			.65	.01
PAINTERS:					
Randolph County					
Commercial	9.00				
Industrial	9.90				
Remainder of Counties					
Commercial	10.55	.55	.35		
Industrial	10.80	.55	.35		
PLASTERERS:					
Bond, Washington, Calhoun, Clinton, Monroe & Jersey Cos.	12.075				.01
PLUMBERS & STEAMFITTERS:					
Randolph County	12.20	.30	.90		.08
Hillsboro & North Thereof in Montgomery County	11.53	.35	.88		.05
Valmeyer & Vicinity in Monroe County; Bond, Greene, Jersey, Calhoun Counties; South & West of Route #127 in Montgomery Co.	12.80	.48	.96	.38	.05
ROOFERS:					
Washington County	7.20				
Montgomery County:					
Composition	11.78				
Slate-Tile-Precast	12.03				
Remainder of Counties:					
Roofers	10.45	.47	.45	1.00	.03
Kettlemen	8.25	.47	.45	1.00	.03
SHEET METAL WORKERS:					
Calhoun County	10.11	.45	.44		.10
Remainder of Counties	10.78	.45	.20	6%	.02
SPRINKLER FITTERS	11.65	.65	.95		.08

DECISION NO. 11.78-2040

ILL-2-PEO-1-2-3

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$10.52	.87	1.51		.05
GROUP II	9.69	.87	1.51		.05
GROUP III	9.04	.87	1.51		.05
GROUP IV	8.94	.87	1.51		.05
GROUP V	8.69	.87	1.51		.05
GROUP VI					
a.	12.67	.87	1.51		.05
b.	12.97	.87	1.51		.05
c.	10.79	.87	1.51		.05
d.	11.29	.87	1.51		.05

POWER EQUIPMENT OPERATORS:

GROUP I Cranes, draglines, shovels, skimmer scoops, clamshells or derrick boats, pile drivers, crane-type backhoes, asphalt plant opers. plant opers., ditching machines or backfillers (requiring oilers), dredges, asphalt spreading machines, heavy duty mechanic, ass't. master mechanic, all locomotives, cableways or tower machines, hoists 2 drum or more (where oiler or fireman is required), hoists-2drum or more (where oiler or firemen is not required) Hydrualic backhoes, ditching machines or backfiller (not requiring oilers) Cherry pickers, overhead cranes, roller (Steam or gas) concrete pavers, excavators, concrete breakers, concrete pumps, bulk cement plants, cement pumps, derrick-type drills, mixers (over 3 bags) and boad oprs., (25' & over), Motor graders or pushcats, scoops or tournapulls, Bulldozers, endloaders or fork-lifts, power blade or elevating graders, winch cats, boom tractors, and pipe wrapping or painting mcahines, Drills (other than derrick type) 1-dum-hoists, mud jacks, mixers (2 or 3 bags), conveyors (2), air compressors (2), water pumps regardless of size (2), welding machines (2) siphons or jets (2), winch heads or apparatuses (2) and light plants (2), Mixers (under 2 bags), all tractors regardless of size (Straight tractor only), firemen on stationary boilers, automatic elevators, form grading machines, finishing machines, power-sub-grader or ribbon machine, longitudinal floats, boats oprs., (under 25', conveyors (1), distribution pors., on trucks, siphones or jets (1) winch heads or apparatuses (1), light plant (1) mixers (under 2 bags)

GROUP II Air Compressor (1), water pumps regardless of size (1) welding machines (1)

GROUP III Firemen and asphalt spreader oilers

GROUP IV Heavy equipment oilers (truck cranes, dredges, monigans, large cranes, etc.

GROUP V Oilers

GROUP VI

a. Engineers operating under air pressure
b. Engineers operating in air over 10 lbs pressure
c. Oilers operating under air pressure
d. Oilers operating in air over 10 lbs pressure

DECISION NO IL78-2040

IL1-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.85	.60	a28.00		
GROUP II	10.25	.60	a28.00		
GROUP III	10.45	.60	a28.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & firemen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II: - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportaion purposes; Fork lifts over 6,000 lb. capacity, winch trucks; 4-axle combination units; ticket writers

GROUP III: - 2,3 or 4 axle trucks hauling 16 ton or more, drivers on oil distributores, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: ILLINOIS COUNTIES: See Below
DECISION NUMBER: IL78-2041 DATE: Date of Publication
Supersedes Decision No. IL77-2030, dated March 4, 1977 in 42 FR 12584
DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories).

COUNTIES: Clark, Clay, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Jasper, Lawrence, Richland, Wabash & Wayne

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Fayette County	$12.18	.45	.62		
Clark, Douglas & Edgar Counties	12.00	.50	.55		.01
Remainder of Counties	11.30	.45	.60		.03
BOILERMAKERS	11.45	.95	1.20		.03
BRICKLAYERS					
Fayette County:					
Bricklayers, Stonemasons, Cement Blocklayers, Pointers-Caulkers-Cleaners-Marble-Tile-Terrazzo Workers	10.70	.35	.50		
Coles & Cumberland Cos; Arcola & South Thereof in Douglas County:					
Bricklayers & Stonemasons	10.90	.45	.50		.05
Edgar Co; & North of Arcola in Douglas County:					
Bricklayers & Stonemasons	10.90	.45	.50		.05
Remainder of Counties:					
Bricklayers, Stonemasons, Blocklayers, Pointer-Caulker, Cleaners-Marble-Tile-Terrazzo Workers	10.60				
CARPENTERS:					
Fayette, Clay, Richland & Wabash Cos; Southeastern Part of Edwards County					
Carpenters, Piledrivermen & Soft Floor Layers	9.36	.50	.50		.03
Millwrights	9.71	.50	.50		.03
Crawford & Lawrence Cos; Eastern ½ of Jasper County:					
Carpenters & Soft Floor Layers	9.87	.57	.50		
Millwrights & Piledrivermen	10.27	.57	.50		
Wayne Co.; Northeastern & Western ½ of Edwards County:					
Carpenters, Piledrivermen & Soft Floor Layers	9.41	.45	.50		.02
Millwrights	9.76	.45	.50		.02

DECISION NO. IL78-2041

CARPENTERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Coles, Clark, Cumberland, Edgar, Effingham Cos; Western ½ of Jasper Co., & Southern part of Douglas County:					
Carpenters & Soft Floor Layers	$10.725	.45	.30		.07
Millwrights & Piledrivermen	11.225	.45	.30		.07
Northern part of Douglas Co., including Tuscola & Newman:					
Carpenters & Soft Floor Layers	11.015	.45	.90		.08
Millwrights & Piledrivermen	11.515	.45	.90		.08
CEMENT MASONS & PLASTERERS					
Northern Part of Fayette Co.					
Cement Masons & Plasterers	10.55		.65		
Eastern Part of Fayette Co.					
Cement Masons	8.40				
Remainder of Fayette Co.					
Cement Masons	10.25				.01
Clark, Edgar & Richland Cos:					
Cement Masons & Plasterers	9.50			.50	.01
Crawford, Lawrence & Wabash Cos:					
Cement Masons & Plasterers	9.35		.70	.80	
Clay, Edwards & Jasper Cos; & Remainder of Wayne County:					
Cement Masons & Plasterers	10.85				
Coles, Cumberland & Effingham Cos; & Southern part of Douglas County:					
Cement Masons	11.18				
Plasterers	11.10				.01
Northern part of Douglas County including Tuscola & Newman:					
Cement Masons	11.775	.45	.25		.025
Plasterers	11.165	.45			.025
S.W. Corner of Wayne County:					
Cement Mason & Plasterers	9.95				
ELECTRICIANS:					
Wabash County	12.35	.50	3%		½%
Coles & Cumberland Cos; Southern ½ of Douglas Co; Twps. of Bishop, Douglas, Lucas, Moccasin, St. Francis, Summit and Teutopols in Effingham County	9.90	.40	1%+.20		.2%
Edwards, Wayne & Clay Cos; & Remainder of Effingham & Fayette Counties	12.15	.40	13%		1%

DECISION NO. IL78-2041

ELECTRICIANS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Northern ½ of Douglas County	$11.70	.50	3%+.30		.3%
Twps. of Banner & Liberty in Effingham Co; Twps. of Hurrican, S. Hurricane, Ramsey, Bowling Green, Carson & Loudon in Fayette County	11.70	.50	3%+.40		.35%
Remainder of Counties	12.15	.40	13%		1%
GLAZIERS:					
Fayette County	10.73	.55	.45		
Coles & Douglas	9.94	.45	.15		
Clark & Edgar Counties	12.39				
Edwards, Lawrence, Wabash & Wayne Counties	10.105	.48	.50		.25
IRONWORKERS:					
Coles, Cumberland, Douglas & Edgar Counties	10.80	.65	1.00		.08
Avena & North thereof in Fayette County & Remainder of Effingham County	11.10	.55	.90		.08
Fayette Co., (Southern ½ below Brownstown)	11.35	.55	.90		
Clark, Jasper, Crawford Cos; Northern ½ of Lawrence Co., North of Olney in Richland Co. Dexter & East thereof in Effingham Co; Remainder of Clay County	10.60	.90	1.90		.10
LABORERS:					
Fayette County	7.75	.30	.30		.035
Coles & Cumberland Counties:					
Unskilled	9.60	.55	.40		.035
Semi-Skilled	9.80	.55	.40		.035
Skilled	9.95	.55	.40		.035

DECISION NO. IL78-2041

LABORERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Clark, Douglas & Edgar Counties:					
Unskilled	$ 9.50	.45	.60		.035
Semi-Skilled	9.70	.45	.60		.035
Skilled	9.85	.45	.60		.035
Remainder of Counties	8.20	.30	.30		.035
LATHERS:					
Richland County	12.085			.65	.01
Fayette County	11.40				
Effingham County	10.25				
Coles, Crawford, Douglas & Edgar	10.84	.45	.30		.01
PAINTERS:					
Fayette County:					
Commercial	10.55	.55	.35		
Industrial	10.80	.55	.35		
Edgar & Clark Counties:					
Commercial & Industrial	6.15				
Edwards & Wayne Counties:					
Brush & Roller	6.65				
Clay County:					
Brush	8.00				
Roller	9.25				
Wabash County:					
Brush	8.10				
Roller	8.35				
Crawford, Jasper, Effingham, Lawrence & Richland Cos:					
Commercial & Industrial	9.05	.45			
Remainder of Counties	10.77	.55	.40		.04
PLUMBERS & STEAMFITTERS:					
Clay & Fayette Counties	13.00	1.20	1.40		.15
Edwards & Wabash Counties	12.555	.50	.90		.06
Lawrence & Wayne Counties	12.55	.50	.55		.08
Clark, Crawford, Edgar & Richland Counties	12.05	.50	.90		
Remainder of Counties	11.65		1.15		.12

DECISION NO. IL78-2041

ROOFERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Fayette County:					
Roofers	$10.45	.47	.45	1.00	.03
Kettlemen	8.25	.47	.45	1.00	.03
Edwards & Wabash Counties:					
Composition	9.83	.60	.50		
Slate & Tile	10.08	.60	.50		
Richland & Wayne Counties	8.50				
Clay, Effingham & Jasper Cos:					
Roofers	11.23	.30	.20		
Coles, Cumberland & Douglas Cos:					
Roofers	10.90	.55	.30		.03
Remainder of Counties	9.70	.40	.20		
SHEET METAL WORKERS:					
Crawford County	11.78	.79	.83		.07
Clark, Coles, Cumberland, Edgar & Douglas Counties	11.39	3%+.60	.67		.12
Remainder of Counties	10.68	.25	.25	6%	.02
SPRINKLER FITTERS	11.65	.65	.95		.08

Welders - receive rate prescribed for craft performing operation to which welding is incidental.

DECISION NO. IL78-2041

POWER EQUIPMENT OPERATORS:
FAYETTE COUNTY

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	10.52	.87	1.51		.05
GROUP II	9.69	.87	1.51		.05
GROUP III	9.04	.87	1.51		.05
GROUP IV	8.94	.87	1.51		.05
GROUP V	8.69	.87	1.51		.05
GROUP VI					
a.	12.67	.87	1.51		.05
b.	12.97	.87	1.51		.05
c.	10.79	.87	1.51		.05
d.	11.29	.87	1.51		.05

GROUP I - Cranes, draglines, shovels, skimmer scoops, clamshells or derrick boats, pile drivers, crane-type backhoes, asphalt plant opers. plant opers., dtiching machines or backfiller (requiring oilers), dredge, asphalt spreading machines, heavy duty mechanic, ass't. master mechanic, all locomotives, cableways or tower machines, hoists 2 drum or more (where oiler or firemen is required), hoists-2 drum or more *where oiler or firemen is not required) Hydraulic backhoes, ditching machines or backfiller (not concrete pavers, excavators, concrete breakers, concrete pumps, bulk cement plants, cement pumps, derrick-type drills, mixers (over 3 bags) and broad oprs., (25' & over), Motor graders or pushcats, scoops or tournapulls, Bulldozers, endloaders or fork-lifts, power blade or elevating graders, winch cats, boom tractors, and pipe wrapping or painting machiens, Drills (other than derrick type) 1-drum-hoists, mud jacks, mixers (2 or 3 bags), conveyors (2), air compressors (2), water pumps regardless of size (2), welding machines (2) siphons or jet (2), winch heads or apparatuses (2) and light plants (2), Mixers (under 2 bags), all tractors regardless of size (Straight tractor only), firemen on stationary boilers, automatic elevators, form grading machines, finishing machines, power-sub-grader or ribbon machine, longitudinal, flats, boats oprs., (under 25', conveyors (1), distribution oprs., on trucks, siphons or jets (1) winch heads or apparatuses (1), light plant (1) mixers (under 2 bags)

GROUP II - Air Compressor (1), water pumps regardless of size (1) welding machines (1)

GROUP III - Firemen and asphalt spreader oiler

GROUP IV - Heavy equipment oilers (trucks, cranes, dredges, monigans, large cranes, etc.

GROUP V - Oilers

GROUP VI - a. Engineers operating under air pressure
b. Engineers operating in air over 10 lbs. pressure
c. Oilers operating under air pressure
d. Oilers operating in air over 10 lbs. pressure

DECISION NO. IL78-2041

ILL-1-PEO-1-2-3

POWER EQUIPMENT OPERATORS:
Remainder of Counties

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	11.00	.40	.75		.13
CLASS II	10.95	.40	.75		.13
CLASS III	10.75	.40	.75		.13
CLASS IV	7.25	.40	.75		.13

CLASS I - Master Mechanic

CLASS II - Utility Operator

CLASS III - Power Cranes, Draglines, Derricks, Shovels, Gradalls, Mechanics, Concrete Mixers with skip, tournamixer, Two Drum Machine, One Drum Hoists with tower or boom, cableways, Tower Machines, Motor Patrol, Boom Tractor, Boom or Winch Truck, winch or Hydraulic Boom Truck, Truck Crane, Tournapull, Tractor Operating Scoops, Bulldozer, Push Tractor, Asphalt Planer, Finishing Machine on Asphalt, Large rollers on Earth, rollers on Asphalt Mix, Ross Carriers or similar Machine Gravel, Processing Machine, Asphalt Plant Engineer, Paver Operator, Farm Tractor w/half yard Bucket and/or Backhoe Attachment, Dredging Equipment or Dredge engineer or Dredge Operator, Central Mix Plant Engineer. CMI or similar type machine, Concrete Pump, Truck or Skid Mounted, Tower Crane, Enginer or Rock Crusher Plant, Concrete Plant Engineer, Ditching Machine with dual attachment, Tractor Mounted Loaders, Cherry Pickers, Hydro Crane, Standard or Dinkey Locomotives, Scoopmobiles, Euclid Loader, Soil Cement Machine, Backfiller, Elevating Machine, Power Balde, Drilling Machines, incl. Well Testing, Caissons, Shaft or any similar type drilling machines, Motor Driven Paint Machine, Pipe Cleaning Machine, Pipe Wrapping Mahcine, Pipe Bending Machine, Apsco Paver, Boring Machine, (Head Equipment Greaser), Barber-Greene Loaders, Formless Paver, (Well Point System). Concrete Spreader, Hydra Ax, Resco Concrete Saw, Marine Scoops, Brush Mulcher, Brush Burner, Mesh Placer, Tree Mover, Helicopter Crew (3), Piledriver - Skid or Crawler, Stump Remover, Root Rake, Tug Boat Operator, Refrigerating Machine, Freezing Operator, Chair Cart - Self-Propelled, Hydra Seeder, Straw Blower, Power Sub Grader, Bull Float finishing Machine, Self-Propelled Pavment Breaker (Backhoe attahced), Lull (or similar type machine), Two Air Compressors, Compressors hooked in Manifold, Overhead crane chip Spreader, Mud Cat, Sull-Air

DECISION NO. IL78-2041

POWER EQUIPMENT OPERATORS (CONT'D)

CLASS IV - Concrete Mixers without Skips, Rock Crusher, Ditching Machine under 6', curbing Machine, One Drum Machines without mower or Boom, Air Tugger, Self Propelled concrete Saw, Machine Mounted Post Hole Digger, two to four Generators, Water Pumps, or Welding Machines, within 400 feet, Air Compressor 600 cu. ft. and under, Rollers on aggregate and Seal Coat Surfaces, Fork Lift, Concrete and Blacktop curb Machine, Farm Tractor with less than half yard Bucket, One Water Pump, Oilers, Air Valves or Steam Valves, One Welding Machine, Truck Jack, Mud Jack, Gunite Machine, House Elevators when used for hoisting Material, engine Tenders, Fireman, Wagon Drill, Flex Plane, conveyor, Siphons and Pulsometer, Switchman, Fireman on Pain Pots, Fireman on asphalt Plants, Distributor Operator on Trucks, Tampers, Self-Propelled Power Broom, Striping Machine (motor driven), Form Tamper, Seaman Tiller, Bulk Cement Plant Equipment Greaser, Deck hands, Truck Crane, Oiler Driver, Cement Blimps, Form Grader, Temporary Heat, Throttle Valve, Farm Tractor

DECISION NO IL78-2041

ILL-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.85	.60	a28.00		
GROUP II	10.25	.60	a28.00		
GROUP III	10.45	.60	a28.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity

GROUP II: - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units;

GROUP III: - 2,3 or 4 axle trucks hauling 16 ton or more, drivers on oil distributores, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: Nevada
COUNTY: Washoe
DECISION NUMBER: NV78-5011
DATE: Date of Publication
Supersedes Decision No. NV77-5089 dated September 23, 1977, in 42 FR 48665.
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 13.00	$1.02	$ 1.20		.07
BOILERMAKERS	13.625	1.075	1.00	.75	.02
BRICKLAYERS; Stonemasons	11.45	.50	.60		.01
BRICK HOD CARRIERS:					
Zone 1: 0-35 miles from Courthouse in Reno, Nevada	9.60	.50	.90		.05
Zone 2: 35-75 miles from Courthouse in Reno, Nevada	10.50	.50	.90		.05
CARPENTERS	9.24	.70	1.16		.05
CEMENT MASONS:					
Lake Tahoe Area:					
Cement Masons	10.80	.70	.90	1.25	.05
Mastic, Magnesite and all Composition Masons	11.05	.70	.90	1.25	.05
Troweling Machine; Grinder Operator and Kelly Float	11.30	.70	.90	1.25	.05
Remainder of Washoe County:					
Cement Masons	9.35	.70	.90	1.25	.05
Mastic, Magnesite and all Composition Masons	9.60	.70	.90	1.25	.05
Troweling Machine; Grinder Operator and Kelly Float	9.85	.70	.90	1.25	.05
DRYWALL INSTALLERS	11.40	.70	1.16		.05
ELECTRICIANS:					
Washoe County, does not include Lake Tahoe Area:					
Electricians; Technicians	13.33	.84	3%+1.07		.08
Cable Splicers	14.66	.84	3%+1.07		.08
Lake Tahoe Area:					
Electricians; Technicians	14.33	.84	3%+1.07		.08
Cable Splicers	15.66	.84	3%+1.07		.08
ELEVATOR CONSTRUCTORS	14.82	.745	.56	3%+a	.025
ELEVATOR CONSTRUCTORS' HELPERS	10.37	.745	.56	3%+a	.025
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	7.41				
GLAZIERS	11.22	.58	1.50	1.25	
IRONWORKERS:					
Fence Erectors	10.66	1.24	2.22	1.46	.06
Ornamental; Reinforcing; Structural	11.55	1.24	2.22	1.46	.06
MARBLE MASONS	11.45	.50	.60		.01
MARBLE, TERRAZZO, TILE SETTERS	6.87	.50	.60		.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Brush and Roller	$ 11.95	.70	.75		.005
Spray; Brush - swing stage up to 40 ft.; Brush - steel; Sandblasters; Taper; Paperhangers	12.20	.70	.75		.005
Spray - swing stage, up to 40 ft	12.20	.70	.75		.005
PLASTER HOD CARRIERS:					
Plaster Hod Carriers serving Plasterers	10.75	.50	.90		
Plaster Hod Carriers working on any type of gun	11.35	.50	.90		
PLASTERERS	11.22	.70	1.00		.03
PLUMBERS; Steamfitters	11.74	.73	.90	1.95	.10
ROOFERS	11.60	.70	.50		.02
SHEET METAL WORKERS:					
Residential construction not over 3 stories in height, where each individual family apartment is individually conditioned by a separate and independent unit or system	8.98	1.04	2.13		.05
All other residential construction	11.22	1.04	2.13		.05
SOFT FLOOR LAYERS	11.48	.70	.20	.28	
SPRINKLER FITTERS	15.05	.65	.95		.08
TERRAZZO WORKERS; TILE SETTERS	11.45	.50	.60		.01

FOOTNOTE:
a. Employer contributes 4% basic hourly rate for over 5 years' service and 2% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

LABORERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 1: In Washoe County, the area within 5 road miles of the following communities - Carson City, Lovelock; also area within 10 road miles of Reno, Nevada; also Washoe Valley between Reno, Nevada, and Carson City, Nevada, but not including any area further tha the foot of the mountains to the east or west side of Washoe Valley; Also the area of Stead Air Force Base:					
Group 1	$ 8.20	.80	.90		.10
Group 2	8.30	.80	.90		.10
Group 3	8.45	.80	.90		.10
Group 4	8.70	.80	.90		.10
Group 5	9.00	.80	.90		.10
Group 6-A	9.00	.80	.90		.10
Group 6-B	8.70	.80	.90		.10
Group 6-C	8.35	.80	.90		.10
Zone 2: Area outside of Zone 1 and not more than 20 road miles from the communities named in Zone 1:					
Group 1	8.80	.80	.90		.10
Group 2	8.90	.80	.90		.10
Group 3	9.05	.80	.90		.10
Group 4	9.30	.80	.90		.10
Group 5	9.60	.80	.90		.10
Group 6-A	9.60	.80	.90		.10
Group 6-B	9.30	.80	.90		.10
Group 6-C	8.95	.80	.90		.10

LABORERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 3: Area over 20 and not more than 40 road miles from the communities named in Zone 1:					
Group 1	$ 9.00	.80	.90		.10
Group 2	9.10	.80	.90		.10
Group 3	9.25	.80	.90		.10
Group 4	9.50	.80	.90		.10
Group 5	9.80	.80	.90		.10
Group 6-A	9.80	.80	.90		.10
Group 6-B	9.50	.80	.90		.10
Group 6-C	9.15	.80	.90		.10
Zone 4: Area over 40 road miles from the communities named in Zone 1:					
Group 1	9.70	.80	.90		.10
Group 2	9.80	.80	.90		.10
Group 3	9.95	.80	.90		.10
Group 4	10.20	.80	.90		.10
Group 5	10.50	.80	.90		.10
Group 6-A	10.50	.80	.90		.10
Group 6-B	10.20	.80	.90		.10
Group 6-C	9.85	.80	.90		.10

LABORERS

Group 1: All cleanup work of debris, grounds, and buildings including Brushloader and windows and tile; Dumpman or Spotter (other than asphalt); General Laborer; Gardeners and Landscape Laborers; Limber, Brushloader and Piler; Flagman

Group 2: Choker Setter or Rigger (clearing work only); Pittsburgh Chipper and similar type Brush Shredders; Concrete Worker (wet or dry) - all concrete work not listed in Group 3; Crusher or Grizzly Tender; Guinea Chaser (Stakeman); Panel Forms (wood or metal) - handling, cleaning and stripping of; Loading and unloading, carrying and handling of all rods and materials for use in reinforcing concrete; Railroad Trackmen (maintenance, repair or builders); Sloper; Semi-skilled Wreckers (salvaging of building materials other than those listed in Group 3); Greasing Dowels

Group 3: Asphalt Workers (Ironers, Shoveler, Cutting Machine); Buggymobile; Chainsaw, faller, logloader and bucker; Compactor (all types); Concrete Mixer under 1/2 yards; Concrete Pan Work (breadpan type), (handling, cleaning, stripping); Concrete Saw, Shipping, Grinding, Sanding, Vibrator; Cribbing, Shoring, Lagging, Trench Jacking, hand-guided Lagging Hammer; Curbing or Divider Machine; Curb Setter (precast or cut); Ditching Machine (hand-guided); Drillers' Helper, Chuck Tender; Form Raiser, Slip Forms; Grouting of concrete walls, windows and door jams; Headerboardman; Jackhammer, Pavement Breaker, Air Spade; Mastic Workers (wet or dry); Pipe Wrapper, Kettleman, Potman, and Men applying asphalt, creosote and similar type materials; All power tools (air, gas or electric) not listed in Group 5); Pipejacking; Posthole Digger (air, gas or electric); Post Driver; Riprap-stonepaver and Rock Slinger, including placing of sack concrete wet or dry; Rototiller; Rigging and Signaling in connection with Laborers' work; Sandblaster, Potman, Gunman or Nozzleman; Vibra-screed; Skilled Wrecker (removing and salvaging of sash, windows, doors, plumbing and electrical fixtures

Group 4: Burning and Welding in connection with Laborers' work; Joy Drill Model TWM-2A, Gardner Denver Model DN 143 and similar type drills; Track Drillers, Diamond Core Drillers, Wagon Drillers, Mechanical Drillers on multiple units; High Scalers; Concrete Pump; Heavy Duty Vibrator with stinger 5" diameter or over; Pipelayer, Caulker and Bander; Pipelayer - waterline, sewerline, gasline or conduit; Asphalt Rakers

Group 5: Blasters and Powdermen, all work of loading, placing and blasting of all powder and explosives of any type, regardless of method used for such loading and placing

Group 6-A: Nozzleman

Group 6-B: Gunman, Materialman

Group 6-C: Reboundman

POWER EQUIPMENT OPERATORS: (Except Piledriving and Steel Erection)	Basic Hourly Rates Area 1	Basic Hourly Rates Area 2	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1-A	$ 9.18	$10.33	$ 1.73	$ 2.25	$ 1.02	.10
Group 2	9.58	10.73	1.73	2.25	1.02	.10
Group 3	9.79	10.94	1.73	2.25	1.02	.10
Group 4	10.35	11.50	1.73	2.25	1.02	.10
Group 5	10.58	11.73	1.73	2.25	1.02	.10
Group 6	10.71	11.86	1.73	2.25	1.02	.10
Group 7	10.89	12.04	1.73	2.25	1.02	.10
Group 8	11.31	12.46	1.73	2.25	1.02	.10
Group 9	11.54	12.69	1.73	2.25	1.02	.10
Group 10	11.79	12.94	1.73	2.25	1.02	.10
Group 10-A	11.92	13.07	1.73	2.25	1.02	.10
Group 11	12.10	13.25	1.73	2.25	1.02	.10
Group 11-A	13.27	14.42	1.73	2.25	1.02	.10

SEE "AREA DEFINITIONS" following Truck Drivers

POWER EQUIPMENT OPERATORS
(Except Piledriving and Steel Erection)

Group 1-A: Assistant to Engineer, including Brakeman, Deckhand, Fireman, Oiler, Partsman (heavy duty repair shops parts room when needed), Switchman, Tar pot Fireman; Boiler Tender

Group 2: Compressor; Material Loader and/or Conveyor (handling building materials); Pump; Tar Pot Fireman (power agitated)

Group 3: Box Operator (Bunker); Concrete Curing Machines (streets, highways, airports, canals); Conveyor Belt (tunnel); Engineer Generating Plant (500 H.W.); Fireman, Hot Plant, Hydraulic Monitor; Lubrication and Service Engineer (mobile and grease rack); Mixer Box Operator (concrete plant); Motorman; Rotomist; Screedman (except Asphaltic or concrete paving); Oiler (truck crane); Rodman or Chainman; Bobcat or similar loader, 1/4 cu. yd. or less

Group 4: Ballast Jack Tamper; Ballast Regulator; Ballast Tamper Multi-purpose; Boxman (asphalt plant); Concrete Mixer, Skip type; Dinky; Fork Lift (construction job site); Ross Carrier; Skip Loader (under 1 cu. yd.); Tie Spacer; Line Master

Group 5: Concrete Mixer (over 1 cu. yd.); Concrete Pumps or Pumpcrete Guns; Elevator and Material Hoist (1 drum); Screedman (Barber-Greene and similar) (asphaltic or concrete paving); Shuttle Car; Signalman

POWER EQUIPMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection)

Group 6: Boom Truck or Dual Purpose "A" Frame Truck; B.L.H. Lima Road Pactor or similar; Chip Box Spreader (Flaherty type or similar); Concrete Batch Plant (wet or dry); Concrete Saws (highways, streets, airports, canals); Highline Cableway Signalman; Locomotive (over 30 tons); Maginnis International Full Slab Vibrator (airports, highways, canals, warehouses); Mechanical Burn, Curb and/or Curb Gutter Machine (concrete or asphalt); Power Jumbo (setting slip forms, etc., in tunnels); Roller (except asphalt); Self-propelled Compactor (single engine); Slip Form Pump (power driven by hydraulic, electric, air, gas, etc., lifting device for concrete forms); Stationary Pipe Wrapping, Cleaning and Bending Machine; Pavement Breaker or Tamper (with or without compressor combination); Pavement Breaker, truck mounted, with compressor combination; Small Rubber-tired Tractors; Self-propelled Tape Machine; Auger type drilling equipment up to and including 30 ft. depth digging capacity m.r.c.

Group 7: Compressor (over 2); Concrete Conveyor; Concrete Conveyor or Concrete Pump, truck or equipment mounted (boom length to apply); Crusher Plant Engineer; Deck Engineer; Drilling and Boring Machinery, vertical and horizontal (not to apply to waterliners, wagon drills or jackhammers); Generators; Grade Setters; Grade Checker; Kolman Loader; Material Hoist (2 or more drums); Mechanical Finishers or Spreader Machine (asphalt, Barber-Greene and similar); Mine or Shaft Hoist; Pipe Bending Machines (Pipelines only); Pipe Cleaning Machines (tractor propelled and supported); Pipe wrapping Machines (tractor propelled and supported); Portable Crushing and Screening Plants; Pumps (over 2); Refrigeration Plant; Self-propelled Boom type lifting device (center mount)(10 ton capacity or less); Slusher; Soil Tester (certified); Surface Heater and Planer; Trenching Machine (maximum digging capacity 3 ft. depth); Truck type loader; Welding Machines (gasoline or diesel); Roller (asphalt); Instrument Man; Auger type drilling equipment over 30 ft. depth capacity m.r.c.

Group 8: Asphalt Plant Engineer; Car Passer; Cast-in-place Pipe Laying Machine; Combination Slusher and Motor; Dozer; Concrete Batch Plant (multiple units); Elevating Grader; Grooving and Grinding Machine (highways); Heavy Duty Repairman and/or Welder; Ken-seal; Loader (up to and including 2½ cu. yds.); Mechanical Trench Shield; Mixermobile; Push Cats; Road Oil Mixing Machine; Wood-mixer (and other similar pugmill equipment); Rubber-tired Earthmoving equipment (up to and including 35 cu. yds. "struck" m.r.c)(Euclids, T-Pulls, DW's 10, 20, 21 and similar); Self-propelled Compactor with Dozer; Sheepfoot; Small Tractor (with boom); Soil Stabilizer (P & H or equal); Timber Skidder (rubber tire) or similar equipment; Tractor; Tractor drawn scraper; Tractor mounted Compressor Drill Combination; Trenching Machine (over 3ft. depth); Tri-batch Paver; Tunnel Badger or Tunnel Boring Mahcine; Tunnel Mole Boring Machine; Vermeer T-600 B Rock Cutter

Group 9: Canal Finger Drain Digger; Chicago Boom; Combination Backhoe and Loader (up to and including 3/8 yds.); Combination Mixer and Compressor (gunnite); Lull Hi-lift (20 ft. or over); Mucking Machine; Tractor with boom (D-6 or larger); Track Laying type Earth Moving Machine (single engine with tandem scrapers); Sub-grader (Gurries or other types)

POWER EQUIPMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection)

Group 10: Boom type Backfilling Machine; Bridge Crane; Cary-lift or similar; Chemical Grouting Machine; Derricks; Derrick Barges (except excavation work); Euclid Loader and similar types; Heavy Duty Rotary Drill Rigs; Lift-slab (Vagtborg and similar types); Loader (over 2½ cu. yds. up to and including 4 cu. yds.); Locomotive (over 100 tons) (single or multiple units); Multiple Engine Earth Moving Machines (Euclid, Dozers, etc.); Pre-stress Wire Wrapping Machine; Rubber-tired Scraper, self-loading; Self-propelled Reservoir-debris equipment floating (200 HP and over); Shuttle Car (Re-claim Station); Single Engine Scraper (over 35 cu. yds.); Train Loading Station; Vacuum Cooling Plant; Whirley Crane (up to and including 25 tons); Trenching Machine; Multi-engine with sloping attachments (JEFFCO or similar); Chief of Party

Group 10-A: Backhoe (up to and including 1 cu. yd. hydraulic); Backhoe (up to and including 1 cu. yd. cable); Cranes (not over 25 tons) (hammerhead and Gantry); Grade-alls (up to and including 1 cu. yd.); Motor Patrol; Power Shovels, Clamshells, Draglines, Cranes (up to and including 1 cu. yd.); Rubber-tired Scraper, self-loading (twin engine); Self-propelled Boom-type Lifting Device (center mount) (over 10 tons); CMI dual lane auto-grader SP30 or similar

Group 11: Automatic Asphalt or Concrete Slip Form Paver; Automatic Railroad Car Dumper; Canal Finger Drain Backfiller; Canal Trimmer; Cranes (over 25 tons); Highline Cableway Operator; Loader (over 4 yds. up to and including 12 cu. yds.); Multi-engine Earthmoving Equipment (up to and including 75 cu. yds. "struck" m.r.c.); Power Shovels, Clamshells, Draglines, Backhoes, Gradeall (over 1 yd. and up to and including 7 cu. yds. m.r.c); Self-propelled Compactor (with multiple propulsion power units); Single Engine rubber-tired Earth-moving Machine (with tandem scraper); Slip Form Paver (concrete or asphalt); Tandem Cats and Scrapers; Tower Crane Mobile; Universal Liebher and Tower Cranes (and similar types); Wheel Excavator (up to and including 750 cu. yds. per hour); Whirley Cranes (over 25 tons); Euclid Loader when controlled from the Pullcat

Group 11-A: Band Wagons (in conjunction with wheel excavators); Loaders (over 12 cu. yds.); Multi-engine Earth-moving Equipment (over 75 cu. yds. "struck" m.r.c); Operator of Helicopter (when used in construction work); Power Shovels and Draglines (over 7 cu. yds. m.r.c.); Remote-controlled Earth-moving Equipment; Wheel Excavator (over 750 cu. yds. per hour)

POWER EQUIPMENT OPERATORS (Cont'd) Steel Erection	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 9.69	$ 1.73	$ 2.25	$1.02	.10
Group 2	10.10	1.73	2.25	1.02	.10
Group 3	11.34	1.73	2.25	1.02	.10
Group 4	11.34	1.73	2.25	1.02	.10
Group 4-A	11.65	1.73	2.25	1.02	.10
Group 5	12.17	1.73	2.25	1.02	.10
Group 6	12.61	1.73	2.25	1.02	.10
Group 6-A	13.22	1.73	2.25	1.02	.10
Group 7	14.31	1.73	2.25	1.02	.10

POWER EQUIPMENT OPERATORS (Cont'd)
Steel Erection

Group 1: Oiler

Group 2: Compressor Operator; Generaror, gasoline or diesel-driven (100 K.W. or over); Truck Crane Oiler

Group 3: Compressors, Generators and/or Welding Machines or Combination (2 to 6) (Structural steel or tank erection only)

Group 4: Heavy Duty Repairman; Tractor Operator

Group 4-A: Combination Heavy-duty Repairman-Welder

Group 5: Boom Truck or Dual Purpose A-frame Truck; Boom Cat; Chicago Boom; Crawler Cranes and Truck Cranes (15 ton m.r.c. or less); Self-propelled Boom-type Lifting Device (center mount) (10 ton capacity or less m.r.c.); Single Drum Hoist; Tugger Hoist

Group 6: Crawler Cranes and Truck Cranes (over 15 tons m.r.c.); Derricks; Gantry Rider (or similar equipment); Highline Cableway; Self-propelled boom-type Lifting Device (center mount) (over 10 tons); Tower Cranes Mobile; Universal Liebher and Tower Cranes (and similar types); Two or more drum Hoist

Group 6-A: Cranes (over 125 tons)

Group 7: Operator of Helicopter

POWER EQUIPMENT OPERATORS (Cont'd) Piledriving	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 9.18	$ 1.73	$ 2.25	$1.02	.10
Group 1-A	9.55	1.73	2.25	1.02	.10
Group 1-B	9.78	1.73	2.25	1.02	.10
Group 2-A	9.78	1.73	2.25	1.02	.10
Group 2-B	10.60	1.73	2.25	1.02	.10
Group 3	10.92	1.73	2.25	1.02	.10
Group 3-A	11.36	1.73	2.25	1.02	.10
Group 4	11.93	1.73	2.25	1.02	.10
Group 5	12.11	1.73	2.25	1.02	.10
Group 6	13.27	1.73	2.25	1.02	.10

POWER EQUIPMENT OPERATORS (Cont'd)
Piledriving

Group 1: Fireman; Oilman; Deckhand

Group 1-A: Compressor Operator

Group 1-B: Truck Crane Oiler

Group 2-A: Operator of Tugger Hoist (hoisting material only)

Group 2-B: Compressor Operator (over 2); Generator Operator; Pump Operator (over 2); Welding Machine Operator (powered other than by electricity)

Group 3: Deck Engineer; Fork Lift Operator; A-Frames; Self-propelled boom-type Lifting Device (center mount) (10 ton capacity or less m.r.c.)

Group 3-A: Heavy Duty Repairman and/or Welder

Group 4: Operating Engineer in lieu of Assistant to Engineer tending Boiler or Compressor attached to Crane Piledriver; Operator of Piledriving Rigs, Skid or Floating and Derrick Barges; Operator of diesel or gasoline powered Crane Piledriver (without boiler) (up to and including 1 cu. yd. rating); Self-propelled boom-type Lifting Device (center mount) (Over 10 tons); Truck Crane Operator (up to and including 25 tons)

Group 5: Operator of diesel or gasoline powered Crane Piledriver (without boiler) (over 1 cu. yd. rating); Operator of Crane (with steam, flash boiler, pump or compressor attached); Operator of steam powered crawler, or Universal type driver (Raymond or similar type); Truck Crane Operator (over 25 tons) (hoisting material or performing piledriving work)

Group 6: Cranes (over 12 tons)

TRUCK DRIVERS	Basic Hourly Rates AREA 1	Basic Hourly Rates AREA 2	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
DUMP (single or multiple units including semis, double and transfer units; Dumpcrete and bulk cement Spreaders:						
Under 4 yards	$ 9.20	$10.35	.51	.65		.05
4 yds. and under 8 yds.	9.40	10.55	.51	.65		.05
8 yds. and under 18 yds.	9.60	10.75	.51	.65		.05
18 yds. and under 35 yds.	9.75	10.90	.51	.65		.05
35 yds. and under 60 yds.	10.00	11.15	.51	.65		.05
60 yds. and under 75 yds.	10.15	11.30	.51	.65		.05
75 yds. and under 100 yds.	10.30	11.45	.51	.65		.05
100 yds. and over	10.45	11.60	.51	.65		.05
TRANSIT MIX:						
Under 8 yards	9.60	10.75	.51	.65		.05
8 yds. and including 12 yds	9.70	10.85	.51	.65		.05
Over 12 yards	9.90	11.05	.51	.65		.05
WATER TRUCKS & Jetting Trucks:						
Up to 2,500 gallons	9.40	10.55	.51	.65		.05
2,500 gals. and over	9.60	10.75	.51	.65		.05
DW 20's and 21's and other similar Cat type; Terra Cobra, LeTourneau Pulls, Tournerocker, Euclid and similar type equipment when pulling Aqua/Pak; Water tank trailers, fuel and/or grease tank, or other misc. trailers (except as defined under dump trucks)	9.85	11.00	.51	.65		.05
FLATRACK; Industrial Lift with Mechanical Tailgate:						
Single unit - 2 axle	9.40	10.55	.51	.65		.05
Single unit - 3 axle	9.50	10.65	.51	.65		.05

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates AREA 1	Basic Hourly Rates AREA 2	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
BUS AND MANHAUL DRIVERS, Single unit; Pickup:						
Up to 18,000 pounds	$ 9.25	$10.40	.51	.65		.05
18,000 pounds and over	9.35	10.50	.51	.65		.05
WINCH TRUCKS, A-Frame:						
Under 18,000 pounds	9.35	10.50	.51	.65		.05
18,000 pounds and over	9.45	10.60	.51	.65		.05
HEAVY DUTY TRANSPORT (highbed); Heavy Duty transport (gooseneck lowbed); Tiltbed or flatbed pull trailers	9.75	10.90	.51	.65		.05
BOOTMAN, combination; Bootman and Road Oiler	9.65	10.80	.51	.65		.05
ROAD OIL TRUCKS OR BOOTMEN; Fuel Drivers; Fuel Man and Fuel Island Man	9.35	10.50	.51	.65		.05
HELICOPTER PILOT (when transporting men or materials)	10.15	11.30	.51	.65		.05
LIFT JITNEYS And FORK LIFTS	9.45	10.60	.51	.65		.05
WAREHOUSE CLERK	9.30	10.45	.51	.65		.05
TIRE REPAIRMAN	9.60	10.75	.51	.65		.05
TRUCK REPAIRMAN	9.90	11.05	.51	.65		.05

TRUCK DRIVERS "See AREA DEFINITION" following this page.

AREA DEFINITIONS
Power Equipment Operators and Truck Drivers
WASHOE COUNTY

AREA 1: All of Northern Nevada within the following lines:

Commencing at the N.W. corner of Township 22N, Range 18E, Mount Diablo Baseline and Meridian at the California-Nevada border;
Thence Easterly to the N.E. corner of Township 22N, Range 22E;
Thence Southerly to the N.E. corner of Township 20N, Range 22E;
Thence Easterly to the N.W. corner of Township 20N, Range 26E;
Thence Northerly to the N.W. corner of Township 22N, Range 26E;
Thence Easterly to the N.W. corner of Township 22N, Range 26E;
Thence Northerly to the N.W. corner of Township 30N, Range 29E;
Thence Easterly to the N.E. corner of Township 30N, Range 33E;
Thence Southerly to the S.E. corner of Township 24N, Range 33E;
Thence Westerly to the S.E. corner of Township 24N, Range 31E;
Thence Southerly to the S.E. corner of Township 16N, Range 31E;
Thence Westerly to the S.E. corner of Township 24N, Range 31E;
Thence Southerly to the S.E. corner of Township 16N, Range 31E;
Thence Westerly to the S.E. corner of Township 24N, Range 31E;
Thence Southerly to the S.E. corner of Township 15N, Range 30E;
Thence Westerly to the S.E. corner of Township 15N, Range 27E;
Thence Southerly to the S.E. corner of Township 14N, Range 27E;
Thence Westerly to the S.E. corner of Township 14N, Range 23E;
Thence Southerly to the S.E. corner of Township 13N, Range 23E;
Thence Westerly to the S.E. corner of Township 13N, Range 22E;
Thence Southerly to the N.E. corner of Township 10N, Range 22E;
Thence Easterly to the N.E. corner of Township 10N, Range 23E;
Thence Southerly along the Easterly line of Range 23E to the intersection of the California-Nevada Border;
Thence North-Westerly, then Northerly following the California-Nevada Border to the point of beginning.

AREA 1 also includes that portion of Northern Nevada included within the following line:

Commencing at the S.W. corner of Township 37N, Range 52E;
Thence Easterly to the S.E. corner of Township 37N, Range 52E;
Thence Northerly to the N.E. corner of Township 37N, Range 52E;
Thence Easterly to the N.E. corner of Township 37n, Range 58E;
Thence Southerly to the S.W. corner of Township 37N, Range 58E;
Thence Easterly to the S.E. corner of Township 37N, Range 58E;
Thence Southerly to the N.E. corner of Township 31N, Range 58E;
Thence Westerly to the N.W. corner of Township 31N, Range 58E;
Thence Southerly to the S.W. corner of Township 31N, Range 58E;
Thence Westerly to the S.E. corner of Township 31N, Range 52E;
Thence Northerly to the N.E. corner of Township 31N, Range 52E;
Thence Westerly to the S.E. corner of Township 32N, Range 51E;
Thence Northerly to the point of beginning.

AREA 2: All areas not included within Area 1 as defined above.

SUPERSEDEAS DECISION

STATE: Nevada

COUNTY: Clark County (does not include the Nevada Test Site)

DECISION NUMBER: NV78-5018

DATE : Date of Publication

Supersedes Decision No. NV77-5085 dated September 23, 1977, in 42 FR 48679.

DESCRIPTION OF WORK: Residential Construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 13.66	$ 1.10	$ 1.20		
BOILERMAKERS	13.625	1.075	1.00	.75	.02
BRICKLAYERS; Stonemasons	12.27	.70	.60		.06
CARPENTERS:					
Zone 1: Area within the City limits of Henderson, Nevada, and Boulder City, Nevada; area within a 10 mile radius of Las Vegas, Nevada; In Clark County, the present fenced area of Nellis Air Force Base, as well as that area adjacent to Nellis Air Force Base bounded on the north by the Nellis spur track and on the west by the train line of the Union Pacific Railroad:					
Carpenters	11.36	.65	.90	1.00	.10
Floor Layers; Patent Scaffold Erectors; Power Saw Operators	11.51	.65	.90	1.00	.10
Piledrivermen	11.56	.65	.90	1.00	.10
Millwrights	12.06	.65	.90	1.00	.10
Zone 2: Area outside of Zone 1 and not more than 20 miles from the communities described above:					
Carpenters	11.86	.65	.90	1.00	.10
Floor Layers; Patent Scaffold Erectors; Power Saw Operators	12.01	.65	.90	1.00	.10
Piledrivermen	12.06	.65	.90	1.00	.10
Millwrights	12.56	.65	.90	1.00	.10
Zone 3: Area over 20 miles and not more than 40 miles from the communities described in Zone 1:					
Carpenters	12.11	.65	.90	1.00	.10
Floor Layers; Patent Scaffold Erectors; Power Saw Operators	12.26	.65	.90	1.00	.10
Piledrivermen	12.31	.65	.90	1.00	.10
Millwrights	12.81	.65	.90	1.00	.10

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS: (Cont'd)					
Zone 4: Area over 40 miles from the communities described in Zone 1:					
Carpenters	$ 13.36	.65	.90	$ 1.00	.10
Floor Layers; Patent Scaffold Erectors; Power Saw Operators	13.51	.65	.90	1.00	.10
Piledrivermen	13.56	.65	.90	1.00	.10
Millwrights	14.06	.65	.90	1.00	.10
CEMENT MASONS:					
Cement Masons	11.40	1.00	.70		.08
Cement Floor Finishing Machine; Color Work	11.65	1.00	.70		.08
ELECTRICIANS:					
Electricians; Technicians	14.36	.73	3%+1.30		.08
Cable Splicers	14.69	.73	3%+1.30		.08
ELEVATOR CONSTRUCTORS	13.41	.745	.56	3%+a	.025
ELEVATOR CONSTRUCTORS' HELPERS	9.39	.745	.56	3%+a	.025
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	6.705				
GLAZIERS	13.50	.50	.40		.05
IRONWORKERS:					
Fence Erectors	10.66	1.24	2.22	1.46	.06
Ornamental; Reinforcing; Structural	11.55	1.24	2.22	1.46	.06
LATHERS	10.60	.70	1.00	1.00	.16
MARBLE MASONS	12.27	.70	.60		.06
MARBLE, TERRAZZO, TILE HELPERS	9.65	.70	.60		
MASON TENDERS	10.02	.66	1.35		
PAINTERS:					
Brush; Roller	12.64	.75	.35		.06
Paperhangers; Spray; Steel; Swing Stage; Sandblasters; Tapers	12.99	.75	.35		.06
PLASTER TENDERS	11.12	.66	1.35		
PLASTERERS	11.68	1.00	.70		.08
PLUMBERS; Steamfitters	11.53	1.25	2.32	1.85	.08
ROOFERS	13.75	.65			
SHEET METAL WORKERS	13.67	.93	1.61		.12
SOFT FLOOR LAYERS	13.07	.65			.15
SPRINKLER FITTERS	15.05	.95			.08
TERRAZZO WORKERS, TILE SETTERS	12.27	.70	.60		.06

FOOTNOTE:

a. Employer contributes 4% basic hourly rate for over 5 years' service and 2% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS					
Group 1	$ 8.00	.66	$ 1.53	$1.00	
Group 2	8.05	.66	1.53	1.00	
Group 3	8.08	.66	1.53	1.00	
Group 4	8.10	.66	1.53	1.00	
Group 5	8.12	.66	1.53	1.00	
Group 6	8.13	.66	1.53	1.00	
Group 7	8.15	.66	1.53	1.00	
Group 8	8.18	.66	1.53	1.00	
Group 9	8.19	.66	1.53	1.00	
Group 10	8.21	.66	1.53	1.00	
Group 11	8.26	.66	1.53	1.00	
Group 12	8.29	.66	1.53	1.00	
Group 13	8.31	.66	1.53	1.00	
Group 14	8.34	.66	1.53	1.00	
Group 15	8.36	.66	1.53	1.00	
Group 16	8.425	.66	1.53	1.00	
Group 17	8.45	.66	1.53	1.00	
Group 18	8.52	.66	1.53	1.00	

LABORERS

Group 1: Debris Handler; Dry packing of concrete and filling of form-bolt holes; Dumpman; Gas and oil pipeline laborers; Demolition Laborers; General or construction Laborers; Spotter; Window Cleaner; Flagman

Group 2: Cutting Torch Operator (demolition); Tarman and Mortarman

Group 3: Guinea Chaser

Group 4: Fine Grader, highway and street paving, airport, runways and similar type heavy construction; Landscape gardener and nursery-man

Group 5: Laborers - packing rod steel and pans

Group 6: Underground Laborer including caisson bellowers

Group 7: Chucktender (except tunnels); Scaler; Septic tank digger and installer (lead man); Tank scaler and cleaner

Group 8: Cesspool digger and installer

Group 9: Concrete curer - impervious membrane and oiler of all materials; Making and caulking of all non-metallic pipe joints; Riprap stonepaver; Sandblaster (pot tender)

Group 10: Asphalt Ironer, raker, spreader; Buggymobile; Cement Dumper (on 1 yard or larger mixers and handling bulk concrete); Cement grinding machine operator; Concrete core cutter; Concrete saw man, excluding tractor type; Gas and oil pipeline wrapper, pot tender and form man; Tree climber, faller, chain saw operator; Pittsburgh Chipper and similar type; Vibrators and all pneumatic gas, electric and similar mechanical tools not separately classified herein; Roto Scraper

Group 11: Rock Slinger; Scaler, using bosun chair, safety belt or power tools

Group 12: Driller and/or pavement breaker

Group 13: Laying of all non-metallic pipe (including sewer pipe, drain pipe and underground tile)

Group 14: Gas and oil pipeline wrapper - 6 inch pipe and over

Group 15: Cribber or Shorer; Powderman

Group 16: Steel Headerboard Man

Group 17: Driller (core, diamond or wagon) Joy Driller Model TW-M-2A, Gardner-Denver Model DH-163 and similar drills; Sandblaster - Nozzleman

Group 18: Head Rock Slinger

POWER EQUIPMENT OPERATORS (Except Piledriving and Steel Erection)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 10.70	$ 1.00	$ 2.00	.50	.14
Group 2	10.98	1.00	2.00	.50	.14
Group 3	11.27	1.00	2.00	.50	.14
Group 4	11.41	1.00	2.00	.50	.14
Group 5	11.63	1.00	2.00	.50	.14
Group 6	11.74	1.00	2.00	.50	.14
Group 7	11.86	1.00	2.00	.50	.14
Group 8	12.03	1.00	2.00	.50	.14
Group 9	12.16	1.00	2.00	.50	.14

POWER EQUIPMENT OPERATORS
(Except Piledriving and Steel Erection)

Group 1: Brakeman; Compressor Operator; Engineer Oiler; Generator Operator; Heavy Duty Repairman Helper; Pump; Signalman; Switchman

Group 2: Concrete Mixer Operator, skip type; Conveyor Operator; Fireman; Hydrostatic Pump Operator; Oiler Crusher (asphalt or concrete Plant); Plant Operator, generator, pump or compressor; Rotary Drill Helper (oilfield); Skiploader - wheel type up to 3/4 yd. with attachment; Soils Field Technician; Tar Pot Fireman; Temporary Heating Plant Operator; Trenching Machine Oiler; Truck Crane Oiler

Group 3: A-Frame or Winch Truck; Elevator Operator (inside); Equipment Greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter Radioman (ground); Power Concrete Curing Machine; Power Concrete Saw; Power driven Jumbo Form Setter; Ross Carrier; Stationary Pipe Wrapping and Cleaning Machine

Group 4: Asphalt Plant Fireman; Boring Machine; Boxman or Mixerman (asphalt or concrete); Bridge type Unloader and Turntable Operator; Chip Spreading Machine; Concrete Pump (small portable); Dinky Locomotive or Motorman (up to and including 10 tons); Equipment Greaser (grease truck); Helicopter Hoist; Highline Cableway Signalman; Hydra-hammer-Aero Stomper; Power Sweeper; Roller (compacting); Screed (asphalt or concrete); Trenching Machine (up to 6 ft.)

POWER EQUIPMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection)

Group 5: Asphalt Plant Engineer; Concrete Batch Plant; Backhoe (up to and including 3/4 yds.); Bit Sharpener; Concrete Joint Machine (canal and similar type); Concrete Planer; Deck Engine; Forklift (under 5 ton capacity); Machine Tool; Maginnis Internal Full Slab Vibrator; Mechanical Berm (curb or gutter concrete or asphalt); Mechanical Finisher (concrete-Clary-Johnson-Bidwell or similar); Pavement Breaker; Road Oil Mixing Machine; Roller (asphalt or finish); Rubber-tired Earth Moving Equipment, (single engine, up to and including 25 yds. struck); Self-propelled Tar Pipelining Machine; Slip Form Pump (power-driven hydraulic lifting device for concrete forms); Tugger Hoist (1 drum); Tunnel Locomotive (over 10 and up to and including 30 tons); Stinger Crane (Austin-Western or similar type); Skiploader Crawler and wheel type (over 3/4 yards and up to and including 1½ yards); Tractor-Bulldozer, Tamper, Scraper (single engine, up to 100 HP, Flywheel and similar types, up to and including D-5 and similar types)

Group 6: Asphalt or Concrete Spreading (tamping or finishing); Asphalt Paving Machine (Barber Greene or similar type); BHL Lima Road Pactor or similar; Bridge Crane; Pipe Laying Machine (cast in place); Combination Mixer and Compressor (gunite work); Concrete Pump (truck mounted); Concrete Mixer; Crane (up to and including 25 tons); Crushing Plant; Elevating Grader; Forklift (over 5 tons); Grade Checker; Gradeall; Grouting Machine; Heading Shield; Heavy Duty Repairman; Hoist (Chicago Boom and similar type); Kolman Belt Loader and similar type; LeTourneau Blob Compactor or similar type; Lift Slab Machine (Vagtborg and similar types); Lift Mobile; Loader-Athey, Euclid, Sierra and similar type); Material Hoist; Mucking Machine 1/4 yd. - rubber-tired, rail or track type); Pneumatic Concrete Placing Machine (Hackley-Presswell or similar type); Pneumatic Heading Shield (tunnel); Pumpcrete gun; Rotary Drill (excluding caisson type); Rubber-tired Earth Moving Equipment Operator (single engine - Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yards and up to and including 50 cubic yards struck); Rubber-tired Scraper (self-loading - paddle wheel type - John Deere, 1040 and similar single unit); Skiploader (Crawler and wheel type over 1½ yds., up to and including 6½ yds.); Surface Heaters and Planers; Rubber-tired Earth Moving Equipment, multiple engine (up to and including 25 yds, struck); Trenching Machine (over 6 feet depth capacity, manufacturers rating); Tower Crane; Tractor Compressor Drill Combination; Tractor (any type larger D-5 100 flywheel HP and over or similar)(Bulldozer, Tamper, Scraper and Push Tractor single engine); Tractor (boom attachments); Traveling PIpe Wrapping, Cleaning and Bending; Tunnel Locomotive (over 30 tons); Shovel, Backhoe, Dragline, Clamshell (over 3/4 yd. and up to 5 cu. yds. M.R.C.)

POWER EQUIPMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection)

Group 7: Crane (over 25 tons up to and including 100 tons M.R.C.); Derrick Barge; Dual drum mixer; Hoist, stiff legs, guy derrick, or similar type, up to and including 100 tons; Monorail locomotive (diesel, gas or electric); Motor patrol-blade Operator (single engine); Multiple engine tractor operator (Euclid and similar type except Quad 9 cat); Rubber-tired earth moving equipment (single engine over 50 yds. struck); Rubber-tired earth moving equipment (multiple engine, euclid, Caterpillar and similar) (over 25 yds. and up to 50 cu. yds. struck); Tractor loader operator (crawler and wheel type over 6½ yds.); Tower crane repairman; Shovel, backhoe, dragline, clamshell operator (over 5 cu. yds. MRC); Woods mixer and similar pugmill equipment; Heavy duty repairman - welder combination

Group 8: Auto grader; Automatic slip form; Crane (over 100 tons); Hoist stiff legs, guy derricks or similar types (capable of hoisting 100 tons or more); Mass excavator (less than 750 cu.yds.); Mechanical finishing machine; Mobile form traveler; Motor patrol (multi engine); Pipe mobile machine; Rubber-tired earth moving equipment (multiple engine, Euclid, Caterpillar and similar type over 50 cu. yds. struck); Rubber-tired self loading scraper (paddle wheel-auger type self-loading) (2 or more units); Tandem equipment (2 units only); Tandem tractor (quad 9 or similar type); Tunnel mole boring machine; Rubber-tired Scraper (pushing without push cat, push-pull) (50¢ per hour additional)

Group 9: Canal liner; Canal trimmer; Helicopter pilot; Highline cableway; Wheel excavator (over 750 cu. yds.); Remote controlled earth moving equipment ($1.00 per hour additional to base rate)

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$9.97	.51	.70		
Group 2	10.08	.51	.70		
Group 3	10.13	.51	.70		
Group 4	10.29	.51	.70		
Group 5	10.47	.51	.70		
Group 6	10.97	.51	.70		

TRUCK DRIVERS

Group 1: Dump Trucks (less than 12 yds.); Trucks (legal payload capacity less than 15 tons); Water and fuel trucks (under 2500 gals.); Pickups; Service; Repairman helper; Drivers of busses (on jobsite used for transportation of up to 25 passengers); Teamster equipment (highest rate for dual craft operation)

Group 2: Dump trucks (12 yds. but less than 16 yds.); Trucks (legal payload capacity between 15 and 20 tons); Water and fuel trucks (2500 to 4000 gals.); Truck driver working on gas and oil pipeline (including winch truck and all sizes of trucks); Truck greaser and tireman; Drivers of busses (on jobsite used for transportation of more than 25 passengers); Bootman

Group 3: Dumpcrete (less than 6½ yds.); Transit-mix (less than 3 yds); Warehouse Clerk

Group 4: Dump trucks (16 yds. up to and including 22 yds.); Trucks (legal payload capacity 20 tons but less than 30 tons); Water and fuel trucks (4000 gals. but less than 6000 gals.); Dumpcrete (6½ yds. and over); Transit-mix (3 yds. but less than 6 yds.); Euclid-type spreader trucks; Dumpster; Fork lift; Ross carrier - highway; Road oil spreading truck, time spent spreading oil

Group 5: Dump trucks (over 22 yds.); Trucks (legal payload capacity 20 tons and over); Water and fuel trucks (6000 gals. and over); Transit-mix (6 yds. and over); Truck repairman

Group 6: D.W. and similar-type equipment, D.W. 10 and D.W. 20, Euclid-type equipment, LeTourneau Pulls, Terra Cobras and similar types of equipment; also PB and similar-type trucks when performing work within teamster jurisdiction, regardless of types of attachment including power units pulling off highway belly dumps in tandem

SUPERSEDEAS DECISION

STATE: Oklahoma COUNTIES: Tulsa,Creek, Craig, Ottawa, Delaware, Mayes and Rogers

DECISION NO. OK78-4022 DATE: Date of Publication

Supersedes Decision No. OK77-4278 dated September 30, 1977 in 42 FR 53103

DESCRIPTION OF WORK: Building Construction (but does not include single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 11.50	.35	.75		.015
BOILERMAKERS	10.55	.80	1.00		.02
BRICKLAYERS-STONEMASONS:					
Tulsa, Delaware, Ottawa, Craig, and Rogers Counties	10.09	.45	.40	.33	.06
Mayes County	9.75	.45	.40		.05
CARPENTERS:					
Area I	9.18	.45	.75		.07
Area II	8.12	.33	.30		
MILLWRIGHTS-PILEDRIVERMEN:					
Area I	9.48	.45	.75		.07
Area II	8.37	.33	.30		

CARPENTERS-MILLWRIGHTS-PILEDRIVERMEN AREA DEFINITIONS

AREA I - Tulsa, Creek, Craig, Rogers and Mayes Counties
AREA II - Delaware and Ottawa Counties

CEMENT MASONS:					
Cement masons	9.67		.40		.16
Power Tool operator	9.92		.40		.16
ELECTRICIANS:					
Electricians	10.65	.46	3%+.40	.30	.07
Cable splicers	10.90	.46	3%+.40	.30	.07
ELEVATOR CONSTRUCTORS	10.40	.545	.35	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPER	70%JR	.545	.35	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPER (Probationary 6 months)	50%JR				
GLAZIERS:					
Area I	9.16	.50	.30		.01
Area II	8.05			.25	

GLAZIERS AREA DEFINITIONS

AREA I - Tulsa, Creek, Mayes, and Roger Counties
AREA II - Craig, Delaware and Ottawa Counties

IRONWORKERS	10.10	.45	.65		.12
LABORERS:					
Group I	7.20	.25	.40		
Group II	7.50	.25	.40		
Group III	7.60	.25	.40		
Group IV	8.05	.25	.40		

LABORERS CLASSIFICATION DEFINITIONS

Group I - All digging and dirt work, firing of salamanders and smudge pots; loading and unloading of materials and equipment; loading and unloading of materials to and from hoist or cages for stock piling only; wheeling and placing of concrete; handling of lumber, steel, cement and distribution of materials; all cleaning, including cleaning of windows; wrecking and razing of bnuilding and all structures; cleaning when the man is directly tenders; and common laborers.

Group II - All machines tool operators that come under the jurisdiction of the laborers; all sewer and drain tile layers and handling at the ditch, excluding distribution; operators of water pumps up to 4 inches and slip form jacks; men erecting scaffolds and directly tending lathers, masons, cement masons and plasterers, mortar mixers, hod carriers and dry mixers; high work over 30 feet from the ground or floors; cement finisher helper; work on swinging scaffold; all kettle and pot men, tank cleaning, all pipe doping treating and wrapping, including all men working with dope; mortar and plaster mixing machine, pump-crete machines, and gunite mixing machines, including placing of concrete; handling creosoted or treated materials, liquid acids, or like materials, when injurious to health, eye and skin or clothes; all newly developed mechanical equipment which replaces wheel barrows or buggies previously used by laborers; all scale man on batch plants; all laborers screening sand, running sand drier, and feeding operating sand blaster, except nozzle; signalmen and cutting torch operators in connection with laborers work; concrete grader

Group III - Wagon drill operator
Group IV - Powdermen or blaster

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	8.65		.30		.01
LINE CONSTRUCTION:					
Linemen	9.85		3%		½%
Cable splicers	10.44		3%		½%
Hole digger operator	8.94		3%		½%
Heavy equipment op. (pole or cat equivalent)	8.94		3%		½%
Jack Hammerman	7.37		3%		½%
Line truck driver (winch op.)	8.09		3%		½%
Powderman	8.94		3%		½%
Groundman	6.57		3%		½%
Truck driver (flat bed ton and half and under)	7.02		3%		½%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (Craig, Ottawa and Delaware Counties:					
Brush, roller, tapers, paperhangers	7.92		.30		
Spray, steamclean, sandblast, and pot tenders	8.295		.30		
PAINTERS (Tulsa, Creek, Rogers and Mayes Counties:					
Brush	10.10		.40		.07
Highwork and stage	10.50		.40		.07
Spray and sandblasting	10.75		.40		.07
Hot or bituminous	11.40		.40		.07
Sheetrock handtools	10.10		.40		.07
Sheetrock power tools	10.45		.40		.07
Hazardous work	12.30		.40		.07
PIPEFITTERS	11.02	.50	.65		.08
PLASTERERS	9.15				.01
PLUMBERS	11.27	.35	.55		.08
POWER EQUIPMENT OPERATORS:					
GROUP I	10.75	.45	.50		.12
GROUP II	10.50	.45	.50		.12
GROUP II	10.25	.45	.50		.12
GROUP IV	10.00	.45	.50		.12
GROUP V	9.75	.45	.50		.12
GROUP VI	9.50	.45	.50		.12
GROUP VII	9.25	.45	.50		.12
GROUP VIII	8.85	.45	.50		.12
GROUP IX	8.50	.45	.50		.12
GROUP X	8.50	.45	.50		.12
GROUP XI	8.25	.45	.50		.12

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I - All crane type equipment with 250' of boom or over (including jib)
GROUP II - All crane type equipment with 200' of boom or over (including jib)
GROUP III - All crane type equipment with 150 - 200' of boom (including jib)
GROUP IV - All crane type equipment with 100 - 150' of boom (including jib), all tower cranes and all crane type equipment of 3 cu. yd. or more (as rated by mfg), sideboom (booms (30" & over), guy derrick
GROUP V - Heavy duty mechanic, welder, crane-hood & overhead monorail, whirley, panel board, batch plant operator, piledriver engineer, dragline, shovel, clamshell, backhoe (3/4 yd & over); sideboom (under 30'), gradeall, hydro crane, cherry picker, hoist while operating 2 or more drums, hoists while doing stacks & chimney work (1 or 2 drums), power driven hole digger (with 30' and longer mast)

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (CONT'D)

GROUP VI - Motor patrol (blade), fork lift (35' & over), dozer (engine h.p. 65 or over) fordson tractor or like equipment with hoe or loader equipment of ditcher, scraper type equipment, tournapull, DW 10, 15, 16, 20, 21 and similar rubber tired equipment, euclid, TS-24 and similar, loader operator or Hi-lift (engine h.p. 65 or over), asphalt lay machine, tail boom, conveyor-multiple, panel board control, powder driven hole digger with less than 30' mast, trenching machine, concrete pump-boom type - Engineers for machine not listed under the above classifications shall receive the scale comparable to these classifications

GROUP VII - Locomotive engineer, boring machine, tug boat, mixer, 18 cu. ft. and over, sand barge, dredging machine, tugger, hoist - when operating one drum, welding machine, 3 to 6, air compressor, 3 to 5, 500 cu. ft. & under, air compressor, over 500 cu. ft. (1) pumps, Battery, 3 to 6, fork-lift, bobcat and similar equipment, generator plant engineer, diesel elec., winch truck with A-frame, roller, all types, outside elevator or building type of personnel, hoist, concrete buster or tamper, heaters under jurisdiction of Operating Engineers, fireman, boiler operator, crushing plants, oiler distributor, pulvimixer, farmer tractor with or without attachments, batch plant operator (portable), conveyor-operator duel, continous or belt bulk handling, screed operator, concrete pump, form grader, screening plant, well point pump opreator, signal man on large whirleys when and if required, operator for rotary drilling machines when operated from console or machines -- Engineers for machines not listed under the above classifications shall receive the scale comparable to those classifications

GROUP VIII - Greaser, tilt top trailer operator

GROUP IX - Permanent elevator - building type (automatic), concrete mixer, with hopper less than 18 cu. ft., air compressor, 500 cu. ft., and under (1 or 2), welding machine (1 or 2) pump (1 or 2), fuelman, conveyor operator-single continous belt bulk handling

GROUP X - Asphalt lay machine back end man, mechanic helper and welder helper

GROUP XI - Truck crane oiler driver or track crane oiler

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS	9.15	.60	.25		.04
SHEET METAL WORKERS	9.53	.50	.66		.10
SOFT FLOOR LAYERS	7.71		.35	74+b	.03
SPRINKLER FITTERS	11.15	.65	.95		.08
TERRAZZO WORKERS	9.90		.30		
TERRAZZO WORKERS' & Tile layers finishers	8.19				
TERRAZZO WORKERS' floor machine operator	8.30				
TERRAZZO WORKERS' base machine operator	8.51				
TILE LAYERS	9.90		.30		

TRUCK DRIVERS: (DELAWARE COUNTY)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group I	7.55				
Group II	7.65				
Group III	7.75				
Group IV	7.70				
Group V	7.85				

DELAWARE COUNTY - TRUCK DRIVERS CLASSIFICATION DEFINITIONS

GROUP I - Pick-up 1½ tons, or 2½ yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake bodies and buses.

GROUP II - 3 tons or 4 yards and up to but not including 4 tons or 6 yards

GROUP III - 5 tons or 6 yards and over including heavy equipment such as pole trucks, winch trucks, euclids, Mississippi wagons, semi-dumps, tourner pulls, or other heavy material moving equipment, tractor trailer drivers and similar equipment, such as tractors, ten wheelers

GROUP IV - Ready mix concrete trucks up to but not including 3 yards

GROUP V - Ready mix concrete trucks 3 yards and over

TRUCK DRIVERS (TULSA, CREEK, CRAIG, OTTAWA, MAYES & ROGERS COUNTIES)						
Group I	8.43					
Group II	8.48					
Group III	8.58					
Group IV	8.58					
Group V	8.58					

TULSA, CREEK, CRAIG, OTTAWA, MAYES AND ROGERS COUNTIES - TRUCK DRIVERS CLASSIFICATION DEFINITIONS

Group I - Truck drivers, including pick-up, 1½ tons or 2½ yards up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake body or bus driver

Group II - 3 tons or 4 yards up to but not including 4 tons or 6 yards.

Group III - 5 tons or 6 yards and over including heavy equipment

Group IV - Ready mix concrete truck

Group V - Tractor-trailer and similar equipment

FOOTNOTES:

a - 1 6 mos. none; 6 mos. to 5 yrs. -2%; over 5 years - 4% of basic hourl y rate.

b - Paid Holidays - A through F

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christman Day.

SUPERSEDEAS DECISION

STATE: Utah COUNTIES: Statewide
DECISION NUMBER: UT78-5012 DATE: Date of Publication
Supersedes Decison No. UT77-5075 dated August 5, 1977, in 42 FR 39884.
DESCRIPTION OF WORK: Building Construction (does not include single family homes and garden type apartments up to and including 4 stories), heavy and highway construction.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 11.21	.84	$ 1.20		
BOILERMAKERS	11.825	1.075	1.00	.75	.02
BRICKLAYERS	10.96	.45	.32+.10		.09
CARPENTERS:					
Building Construction:					
Carpenters	9.75	.55	.60		.03
Saw operators; Carpenters handling creosote materials	10.00	.55	.60		.03
Millwrights	10.45	.55	.60		.03
Piledrivermen	12.08	.55	.60		.03
Heavy and Highway Construction:					
Zone 1: Area 0 to 40 miles from the following Cities: Brigham City, Cedar City, Kanab, Logan, Moab, Monticello, Ogden, Price, Provo, Richfield, St. George, Salt Lake City, Vernal:					
Carpenters	9.75	.55	.60		.03
Saw operators; Carpenters handling creosote materials	10.00	.55	.60		.03
Millwrights	10.45	.55	.60		.03
Piledrivermen	12.08	.55	.60		.03
Zone 2: Area 40 to 60 miles from the above-named Cities:					
Carpenters	10.75	.55	.60		.03
Saw operators; Carpenters handling creosote materials	11.00	.55	.60		.03
Millwrights	10.45	.55	.60		.03
Piledrivermen	12.08	.55	.60		.03
Zone 3: Area over 60 miles from the above-named Cities:					
Carpenters	11.75	.55	.60		.03
Saw Operators; Carpenters handling creosote materials	12.00	.55	.60		.03
Millwrights	10.45	.55	.60		.03
Piledrivermen	12.08	.55	.60		.03

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS:					
Building Construction:					
Cement Masons	$ 9.50	.55	.60		.03
Machine Operator; Mastic Floor Materials	9.63	.55	.60		.03
Swing Scaffold; Swing Stage	9.75	.55	.60		.03
Heavy and Highway Construction:					
Zone 1: Area 0 to 40 miles from the following Cities: Brigham City, Cedar City, Kanab, Logan, Moab, Monticello, Ogden, Price, Provo, Richfield, St. George, Salt Lake City, Vernal:					
Cement Masons	9.50	.55	.60		.03
Machine Operator; Mastic Floor Materials	9.63	.55	.60		.03
Swing Scaffold, Swing Stage	9.75	.55	.60		.03
Zone 2: Area 40 to 60 miles from the above-named Cities:					
Cement Masons	10.50	.55	.60		.03
Machine Operator; Mastic Floor Materials	10.63	.55	.60		.03
Swing Scaffold; Swing Stage	10.75	.55	.60		.03
Zone 3: Area over 60 miles from the above-named Cities:					
Cement Masons	11.50	.55	.60		.03
Machine Operator; Mastic Floor Materials	11.63	.55	.60		.03
Swing Scaffold; Swing Stage	11.75	.55	.60		.03
DRYWALL INSTALLERS:					
Taping, finishing and texturing (hand or machine)	10.09	.51	.30		.03

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
North section of Utah - Box Elder, Cache, Davis County (north of 41st Parallel), Morgan, Rich, Weber Counties:					
Zone 1: That area 10 miles on either side of Interstate Hwy. #15, commencing on the south at the 41st Parallel in Davis County, continuing north to Hwy. #91 Interstate 15 junction south of Brigham City; at this point go east and north through Logan and continue north to the 42nd Parallel in Cache County on Hwy #91:					
Electricians; Technicians	$ 11.60	.70	3%+.75		8/10%
Cable Splicers	11.85	.70	3%+.75		8/10%
Zone 2: That area not included in Zone 1 that lies east of 112°20' longitude in Box Elder County and that area lying west of 111°35', north of the 41st Parallel and south of the 40th Parallel in Cache, Morgan, Weber Cos.:					
Electricians; Technicians	12.10	.70	3%+.75		8/10%
Cable Splicers	12.35	.70	3%+.75		8/10%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
North Section of Utah (Cont'd)					
Zone 3: That area lying east of 111°35' longitude and north of the 41st Parallel in Cache, Morgan, Rich, Weber Counties; also the area in Box Elder County lying west of 112°20' longitude and north and east of Utah Hwy. #87:					
Electricians; Technicians	$ 12.60	.70	3%+.75		8/10%
Cable Splicers	12.85	.70	3%+.75		8/10%
Zone 3-A: That area from a point 2 miles north of Center Street in Smithfield to the Utah-Idaho State Line and 10 miles east and west from Highway #91:					
Electricians; Technicians	12.60	.70	3%+.75		8/10%
Cable Splicers	12.85	.70	3%+.75		8/10%
Zone 4: All other area west of Zones 3 and 3-A in Box Elder County:					
Electricians; Technicians	14.35	.70	3%+.75		8/10%
Cable Splicers	14.60	.70	3%+.75		8/10%
In the above areas on any job or project not exceeding $35,000 electrical, labor and material including, Zone 1 rates shall apply.					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: Cont'd)					
South section of Utah (Remaining Counties):					
Zone 1: Davis County (south of 41st Parallel); Salt Lake Co.; Tooele County (northeast corner beginning at a point where the township line between Township 3 south and Township 4 south, Salt Lake Base Meridian, intersects the east boundary line of Tooele County and thence west along said township line to the southwest corner of Section 32, Township 3 south, Range 4 west, Salt Lake Base Meridian, thence north to the northwest corner of Section 17 of Township 3 south, Range 4 west, thence west to longitude 112.5°, thence north along the line of longitude 112.5° to the north line of Tooele County); Utah County (north of 40th Parallel):					
Area A: Ten miles either direction (east or west) from Interstate Hwy. #15, bounded on the north by the 41st Parallel and on the south by the 40th Parallel:					
Electricians; Technicians	$ 11.00	.70	3%+.50		8/10%
Cable Splicers	11.50	.70	3%+.50		8/10%
Area B: The balance of Zone 1 that lies in Davis, Salt Lake, Utah Counties:					
Electricians; Technicians	11.75	.70	3%+.50		8/10%
Cable Splicers	12.25	.70	3%+.50		8/10%
Area C: That portion of the remainder of Zone 1 that lies in Tooele County:					
Electricians; Technicians	12.50	.70	3%+.50		8/10%
Cable Splicers	13.00	.70	3%+.50		8/10%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
Zone 2: Remainder of Counties and all portions of Counties not included in Zones 1 and 2 of south section of Utah:					
Electricians; Technicians	$ 13.75	.70	3%+.50		8/10%
Cable Splicers	14.25	.70	3%+.50		8/10%
ELEVATOR CONSTRUCTORS	10.555	.745	.56	3%+a	025
ELEVATOR CONSTRUCTORS' HELPERS	7.39	.745	.56	3%+a	.025
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	5.28				
GLAZIERS:					
Iron, Washington Counties	13.50	.50	.40		.05
Remaining Counties	8.96	.51	.30	b+1.05	
IRONWORKERS:					
Fence Erectors; Ornamental; Reinforcing; Structural	10.65	.65	1.15		.05
LATHERS	9.92	.50	.50		.01
LINE CONSTRUCTION WORKERS:					
Groundman	7.67	.45	3%		1/2%
Line Equipment Serviceman	9.15	.45	3%		1/2%
Line Equipment Mechanic:					
Base Shop	9.15	.45	3%		1/2%
Right-of-way	9.77	.45	3%		1/2%
Line Equipment Operators	9.30	.45	3%		1/2%
Linemen	10.32	.45	3%		1/2%
Cable Splicers	11.35	.45	3%		1/2%
MARBLE SETTERS	10.35	.20			
MASON TENDERS	8.72	.40	.35		
PAINTERS:					
Area north of the 41st Parallel:					
Brush; Roller	9.69	.51	.50		.03
Spray; Sandblaster; Steeplejack	9.91	.51	.50		.03
Spray (swing stage; Sandblaster (swing stage)	10.11	.51	.50		.03
Remaining part of State:					
Brush; Roller	9.70	.51	.30		.02
Brush (swing stage); Brush (steel and bridge); Spray, Sandblaster Steeplejack	10.00	.51	.30		.02
Spray (swing stage); Spray Steel and bridge); Sandblaster (swing stage)	10.25	.51	.30		.02
Wallcovering Hanger	9.95	.51	.30		.02

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS' TENDERS	$ 8.80	.40	.35		
PLASTERERS	9.90	.55	.60		.01
PLUMBERS; Pipefitters	10.95	.66	1.00		.06
REFRIGERATION and AIR CONDITIONING	10.95	.66	1.00		.06
ROOFERS	9.39	.57	.35		.05
SHEET METAL WORKERS	11.13	.54	.60		.08
SOFT FLOOR LAYERS	8.65	.51	.12		
SPRINKLER FITTERS	10.68	.65	.95		.08

WELDER: Receive rate prescribed for craft performing operation to which Welding is incidential.

FOOTNOTES:

a. Employer contributes 4% of basic hourly rate for 5 years' service and 2% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.

b. Employees who have been employed for a period of 1 year shall have 3 weeks' vacation with pay. Should a holiday listed below occur within a employee's vacation period he shall be allotted an additional day's vacation. 8 Paid Holidays: A thru F and President's Day and Pioneer Day.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS Building Construction					
Group 1	$ 7.45	.40	.35		.04
Group 2	7.58	.40	.35		.04
Group 3	7.70	.40	.35		.04
Group 4	7.95	.40	.35		.04
Group 5	8.45	.40	.35		.04

LABORERS
Building Construction

Group 1: General Laborer

Group 2: Asphalt raker; Sandblast pot tender; Gunite nozzleman; Concrete pump (head hoseman); Signalman and dumpman on concrete construction

Group 3: Work of all types using cutting torch; Operators of gasoline, electric or pneumatic tools (e.g., compressor, compactors, jackhammer, vibrator, concrete saw, chain saw and concrete cutting torch); Pipelayer; Laser instrument operator; Refinery tank and vessel cleaner; Sandblaster

Group 4: Air track and similar drills

Group 5: Powderman

LABORERS* Heavy and Highway Construction	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	AREA 1	AREA 2				
Group 1	$ 7.45	$ 8.95	.40	.35		.04
Group 2	7.58	9.08	.40	.35		.04
Group 3	7.70	9.20	.40	.35		.04
Group 4	7.95	9.45	.40	.35		.04
Group 5	8.45	9.95	.40	.35		.04
Tunnel and Shaft Work						
Group 1	7.60	9.10	.40	.35		.04
Group 2	7.70	9.20	.40	.35		.04
Group 3	7.90	9.40	.40	.35		.04
Group 4	8.35	9.85	.40	.35		.04

*LABORERS - AREA DEFINITION: See "Area Definition" - following Truck Drivers.

LABORERS
Heavy and Highway Construction

Group 1: General Laborers

Group 2: Asphalt raker; Sandblast pot tender; Gunite nozzleman; Concrete pump head hoseman; Signalman and dumpman on concrete construction

Group 3: Work of all types using cutting torch; Operators of gasoline, electric or pneumatic tools (e.g., compressor, compactors, jackhammer, vibrator, concrete saw, chain saw and concrete cutting torch); Pipelayer; Laser instrument operator; Refinery tank and vessel cleaner; Sandblaster

Group 4: Air tank and similar drills

Group 5: Powderman

Tunnel and Shaft Work

Group 1: Underground laborers

Group 2: Brakeman; Chucktender; Dumpman; Powderman helper; Puddler; Nipper; Tapman; Vibrator; Screedmen

Group 3: Cutting machine operator; Drill doctor; Finisher; Gunite gunman; Miner; Powder makeup man; Spader and tugger; Steelman; Gunite groundman; Gunite nozzleman; Gunite rodman; Concrete head hoseman

Group 4: Shifter

POWER EQUIPMENT OPERATORS: Building Construction	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	AREA 1	AREA 2				
Group 1	$ 7.82	$ 8.82	.90	$ 1.565	.75	.05
Group 2	8.19	9.19	.90	1.565	.75	.05
Group 3	8.38	9.38	.90	1.565	.75	.05
Group 4	8.49	9.49	.90	1.565	.75	.05
Group 5	8.49	9.49	.90	1.565	.75	.05
Group 6	8.97	9.97	.90	1.565	.75	.05
Group 7	9.13	10.13	.90	1.565	.75	.05
Group 7-A	9.25	10.25	.90	1.565	.75	.05
Group 8	9.56	10.56	.90	1.565	.75	.05
Group 8-A	9.63	10.63	.90	1.565	.75	.05
Group 9	9.79	10.79	.90	1.565	.75	.05
Group 10	9.96	10.96	.90	1.565	.75	.05
Group 11	10.42	11.42	.90	1.565	.75	.05
Group 11-A	11.33	12.33	.90	1.565	.75	.05
Group 11-B	11.80	12.80	.90	1.565	.75	.05
Group 12	12.07	13.07	.90	1.565	.75	.05

*POWER EQUIPMENT OPERATORS - AREA DEFINITIONS: See "Area Definition" - following Truck Drivers

POWER EQUIPMENT OPERATORS
Building Construction

Group 1: Assistant to engineer; Elevator operator; Hydraulic monitor; Material loader or conveyor operator

Group 2: Air compressor operator; Concrete mixer operator (skip-type); Concrete pump or pumpcrete gun operator; Generator operator (100 KW or over); Mixer box operator or similar (concrete or asphalt plant continuous mix); Pump operator; Truck crane oiler

Group 3: Front end loader (up to and including 1 cu. yds. struck M.R.C.); Hoist operator - 1 drum; Slip form pumps

Group 4: Heavy duty repairman and welder

POWER EQUIPMENT OPERATORS (Cont'd)
Building Construction

Group 5: Air Compressor Operator (2 or more compressors); Signalman; Small Rubber-tired Tractor; Small self-propelled pneumatic rollers; Towermobile Operator; Welding Machine (2 or more); Concrete Conveyor, building site

Group 6: A Frame Truck and Tugger Hoist; Fork Lift (construction jobsite); Kolman Loader and similar; Loader Operator (over 1 cu. yd. up to and including 2 cu. yds. struck M.R.C.); McGinnis Internal Full Slab Vibrator (on airports, highways, canals and warehouses); Mixermobile Operator; Ross Carrier or similar type; Small rubber-tired tractor (with attachments, including backhoe); Small rubber-tired Trenching Machine; Small Tractor with boom; Gradesetter

Group 7: Bridge Crane; Concrete Mixer Operator (paving or batch plant); Drilling Machine Operator (well or diamond); Dual Drum Mixers; Hoist Operator - 2 drums; Lull High-lift (40 ft. or similar); Roller Operator or self-propelled Compactors; Tractor Operator (Sheep's foot and compacting equipment); Trenching Machine; Concrete Conveyor or Concrete Pump, Truck or equipment mounted (boom length to apply); Self-propelled Compactor with or without dozer

Group 7-A: Tractor Operator (bulldozer or tractor-drawn scraper or drag-type Shovel or boom attachment, up to and including D-7 or similar)

Group 8: Chicago Boom (including Stiff Leg and Sheer Pole); Concrete Batch Plant (multiple units); Loader Operator (over 2 cu. yds. up to and including 5 cu. yds. struck M.R.C.); Self-propelled Boom type Lifting Device (center mount) (10 ton capacity or less M.R.C.)

Group 8-A: Heavy Duty Repairman or Welder; Tractor Operator (bulldozer or tractor-drawn scraper or drag-type shovel or boom attachment, larger than D-7 or similar)

Group 9: Motor Patrol

Group 10: Loader Operator (over 5 cu. yds. up to and including 12 cu. yds. struck M.R.C.); Universal Equipment Operator (shovel, backhoe, dragline, derrick, derrick barge, clamshell, crane, grade-all, etc.) (up to and including 5 cu. yds. struck M.R.C.); Self-propelled Boom type Lifting Device (center mount); Tower Crane (Linden type or similar designs and capacity)

Group 11: Remote Controlled Cranes and Derricks; Tower Cranes Mobile

Group 11-A: Loader Operator (over 12 cu. yds. struck M.R.C. up to 18 cu. yds. M.R.C.)

Group 11-B: Operator of Helicopter (when used in erection work)

Group 12: Cranes over 125 tons

POWER EQUIPMENT OPERATORS:* Heavy and Highway Construction	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	AREA 1	AREA 2				
Group 1	$ 8.49	$ 9.49	.90	$ 1.705	.95	.14
Group 2	8.84	9.84	.90	1.705	.95	.14
Group 3	9.02	10.02	.90	1.705	.95	.14
Group 4	9.13	10.13	.90	1.705	.95	.14
Group 5	9.13	10.13	.90	1.705	.95	.14
Group 6	9.59	10.59	.90	1.705	.95	.14
Group 7	9.74	10.74	.90	1.705	.95	.14
Group 7-A	9.85	10.85	.90	1.705	.95	.14
Group 8	10.15	11.15	.90	1.705	.95	.14
Group 8-A	10.21	11.21	.90	1.705	.95	.14
Group 9	10.27	11.27	.90	1.705	.95	.14
Group 10	10.43	11.43	.90	1.705	.95	.14
Group 11	10.87	11.87	.90	1.705	.95	.14
Group 11-A	11.83	12.83	.90	1.705	.95	.14
Group 11-B	12.28	13.28	.90	1.705	.95	.14
Group 12	12.44	13.44	.90	1.705	.95	.14

*SEE AREA DEFINITION following TRUCK DRIVERS

POWER EQUIPMENT OPERATORS (Cont'd)
Heavy and Highway Construction

Group 1: Asphalt plant fireman; Assistant to engineer; Brakeman-locomotive; Elevator operator; Fireman; Hydraulic monitor; Material loader or conveyor operator; Partsman-field; Repairman helper-field; Chainman; Rodman

Group 2: Air compressor operator; Concrete mixer operator (skip-type); Concrete pump or pumpcrete gun operator; Engineer, dinky operator; Generator operator (100 KW or over); Mixer box operator or similar (concrete or asphalt plant continuous mix); Pump operator; Screedman; Self-propelled, automatically applied concrete curing machine (on street, highways, airports and canals); Truck crane oiler; Boxman, asphalt plant

Group 3: Ballast jack tamper; Ballast regulator; Ballast tamper-multiple-purpose; Front end loader (up to and including 1 cu. yd. struck MRC); Hoist

Group 4: Slurry Seal Machine or similar

POWER EQUIPMENT OPERATORS (Cont'd)
Heavy and Highway Construction

Group 5: Air Compressor Operator (2 or more compressors); Batch Operator (asphalt plant); Motorman; Pavement Breaker Operator (Emsco and similar type); Shuttlecar; Signalman; Small rubber-tired tractor; Small self-propelled pneumatic rollers; Towermobile Operator; Welding Machine (2 or more); Lube and Service Engineer (mobile and grease rack); Concrete Conveyor (building site)

Group 6: A-Frame Truck and Tugger Hoist; Concrete Saws (self-propelled units on streets, highways, airports and canals); Engineer-locomotive; Fork Lift (construction jobsite); Kolman Loader (and similar); Loader Operator (over 1 cu. yd. up to and including 2 cu. yds. struck MRC); Maginnis Internal Full Slab Vibrator (on airports, highways, canal and warehouses); Mixermobile Operator; Pipe Bending Machine Operator; Pipe Cleaning Machine; Pipe Wrapping Machine; Power Jumbo Operator (setting slip forms, etc., in tunnels); Road Mixing Machine Operator; Ross Carrier or similar type; Small rubber-tired tractor (with attachments, including backhoe); Small rubber-tired Trenching Machine; Small Tractor with boom; Surface Heater (self-propelled); Gradesetter

Group 7: Bridge Crane; Chip Box Spreader (Flaherty-type and similar); Concrete Mixer Operator (paving or batch plant); Deck Engineer (Marin); Drilling Machine Operator (well or diamond); Dual Drum Mixers; Elevating Grader Operator; Fuller Kenyon Pump and similar types; Heavy Duty Rotary Drill Rigs (such as Quarry Master, Joy Drills or equal); Hoist Operator - 2 drums; Lull High Lift (40 ft. or similar); Mechanical Finisher Operator (asphalt or concrete); Mine or Shaft Hoist; No-Joint Pipe Laying Machine; Pavement Breaker; Pavement Breaker with Compressor Combination; Pavement Breaker, truck mounted, compressor combination; Refrigeration Plant; Roller Operator or self-propelled Compactor; Self-propelled Pipeline, Wrapping Machine (Perault, CRC, or similar types); Slusher Operator; Tractor Compressor Drill combination; Tractor Operator (Sheep's foot and compacting equipment); Trenching Machine; Concrete Conveyor or Concrete Pump, truck or equipment mounted (boom length to apply); Mechanical Burm, Curb and/or Curb and Gutter Machine, Concrete or Asphalt; Self-propelled Compactor with or without dozer; Drilling and Boring Machinery, Horizontal and Vertical (not to apply to waterliners, wagon drills or jackhammers); Self-propelled Compactor (with multiple-propulsion power units)

Group 7-A: Side Boom Operator; Tractor Operator (Bulldozer or tractor-drawn scraper or drag-type shovel or boom attachment, up to and including D-7 or similar); Instrument Man

POWER EQUIPMENT OPERATORS (Cont'd)
Heavy and Highway Construction

Group 8: Chicago Boom (including Stiff Leg and Sheer Pole); Combination Slusher and Motor Operator; Concrete Batch Plant (multiple units); Do-more Loader and Adams Elegrader; Euclid Loader and similar types; Koehring Skooper (or similar)(up to 5 cu. yds. struck MRC); Loader Operator (over 2 cu. yds. up to and including 5 cu. yds. struck MRC); Mechanical Trench Shield; Mucking Machine Operator; Rubber-tired Scrapers (under 35 cu. yds. yds. struck MRC); Saurman-type Dragline (under 5 cu. yds. struck MRC); Self-propelled Boom-type Lifting Device (center mount) (10 ton capacity or less MRC); Self-propelled Elevating Grade Plane; Soil Stabilizer (P&H or equal); Subgrader (automatic subgrader - fine grader); Tri-batch Paver; Tunnel Mole (or similar); Asphalt Plant Engineer; Engineer, crushing plant; Combination Backhoe and Loader (3/4 yds. and over struck MRC)

Group 8-A: Heavy Duty Repairman or Welder; Tractor Operator (bulldozer or tractor-drawn scraper or drag-type shovel or boom attachment, larger than D-7 or similar).

Group 9: Combination Mixer and Compressor (gunite); Highline Cableway Signalman; Motor Patrol; Tower Crane (Linden-type or similar designs and capacity)

Group 10: D.W. 10, 20, etc. (Tandem Scrapers); Highline Cableway Operator; Lift Slab Machine (Vagtborg and similar types); Loader Operator (over 5 cu. yds. up to and including 12 cu. yds. struck MRC); Locomotive (over 100 tons) (single or multiple units); Prestress Wire Wrapping Machine; Saurman-type Dragline (5 cu. yds. and over struck MRC); Tractor (tandem scrapers); Universal Equipment Operator (shovel, backhoe, dragline, derrick, derrick barge, clamshell, crane, gradeall, etc.) (up to and including 5 cu. yds. struck MRC); Self-propelled Boom-type lifting device (center mount (over 10 tons)

Group 11: Automatic Concrete Slip Form Paver; Koehring Skooper (or similar) (5 cu. yds. and over struck MRC); Multiple Propulsion power unit earth movers (up to and including 75 cu. yds. struck MRC); Power Equipment with Shovel-type controls (over 5 cu. yds. up to and including 7 cu. yds. struck MRC); Remote-controlled Cranes and Derricks; Rubber-tired Scrapers (35 cu. yds. and over struck MRC); Slip Form Paver (concrete or asphalt); Tandem Tractors; Tower Cranes Mobile

Group 11-A: Loader Operator (over 12 cu. yds. struck MRC up to 18 cu. yds. MRC); Multi-purpose earth moving machines (2 or more scrapers) (over 75 cu. yds. struck MRC); Power Shovels and Draglines (over 7 cu. yds. struck MRC)

Group 11-B: Operator of Helicopter (when used in erection work); Loader (18 cu. yds. and over)

Group 12: Cranes (over 125 tons)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: Steel Erection					
Group 1	$ 9.69	.90	$ 1.705	.95	.14
Group 2	10.10	.90	1.705	.95	.14
Group 3	11.19	.90	1.705	.95	.14
Group 4	11.34	.90	1.705	.95	.14
Group 4-A	11.65	.90	1.705	.95	.14
Group 5	12.17	.90	1.705	.95	.14
Group 6	12.61	.90	1.705	.95	.14
Group 6-A	13.22	.90	1.705	.95	.14
Group 7	14.31	.90	1.705	.95	.14
Piledriving					
Group 1-A	9.18	.90	1.705	.95	.14
Group 1-B	9.55	.90	1.705	.95	.14
Group 1-C	9.78	.90	1.705	.95	.14
Group 2-A	9.78	.90	1.705	.95	.14
Group 2-B	10.60	.90	1.705	.95	.14
Group 3	10.92	.90	1.705	.95	.14
Group 3-A	11.36	.90	1.705	.95	.14
Group 4	11.73	.90	1.705	.95	.14
Group 5	12.11	.90	1.705	.95	.14
Group 6	13.27	.90	1.705	.95	.14

POWER EQUIPMENT OPERATORS (Cont'd)
Steel Erection

Group 1: Assistant to Engineer (oiler)

Group 2: Compressor Operator; Generator, gasoline or diesel driven (100 KW or over)(structural steel or tank erection only); Assistant to Engineer (truck crane oiler)

Group 3: Compressors, Generators and/or Welding Machines or Combination (2 to 6)(structural steel or tank erection only); Deck Engineer; Signalman (using mechanical equipment); Fork Lift

Group 4: Heavy Duty Repairman; Tractor Operator

Group 4-A: Combination Heavy Duty Repairman - Welder

Group 5: Dual-purpose A-Frame or Boom Truck; Boom Cat; Chicago Boom; Crawler Cranes and Truck Cranes (15 tons MRC or less); Self-propelled Boom-type Lifting Device (center mount)(10 ton capacity or less MRC); Single Drum Hoist; Tugger Hoist

Group 6: Crawler Cranes and Trucks Cranes (over 15 tons MRC); Derricks; Highline Cableway; Gantry Rider (or similar equipment); Self-propelled Boom-type Lifting Device (center mount) (over 10 tons); Tower Cranes Mobile (including rail mounted); Universal Liebher and Tower Cranes (and similar types); 2 or more drum Hoist

Group 6-A: Cranes (over 125 tons)

Group 7: Operator of Helicopter

POWER EQUIPMENT OPERATORS (Cont'd)
Piledriving

Group 1-A: Assistant to Engineer (deckhand, fireman, oiler)

Group 1-B: Compressor Operator

Group 1-C: Assistant to Engineer (truck crane oiler)

Group 2-A: Operator of Tugger Hoist (hoisting materials only)

Group 2-B: Compressor Operator (over 2); Generators; Pumps; Welding Machines (powered other than by electricity)

Group 3: Deck Engineer; Fork Lift Operator; A-Frame; Self-propelled Boom-type Lifting Device (center mount) (10 ton capacity or less MRC)

Group 3-A: Heavy Duty Repairman and/or Welder

Group 4: Operating Engineer in lieu of Assistant to Engineer tending boiler or compressor attached to Crane Piledriver; Operator of Piledriving Rigs, skid or floating and derrick barges; Operator of diesel or gasoline powered Crane Piledriver (without boiler) up to and including 1 cu. yd. rating; Self-propelled Boom-type lifting device (center mount) (over 10 tons); Truck Cranes Operator (up to and including 25 tons) (hoisting material only)

Group 5: Operator of diesel or gasoline powered Crane Piledriver (without boiler) over 2 cu. yd. rating; Operator of Crane (with steam, flash boiler, pump or compressor attached); Operator of steam powered Crawler or Universal-type Driver (Raymond or similar type); Truck Crane Operator (over 25 tons) (hoisting material or performing piledriving work)

Group 6: Cranes (over 125 tons)

TRUCK DRIVERS*	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
DUMP TRUCKS - Water level capacity (bottom, end and side) (including Dumpster Trucks, Euclid type Trucks, Turnawagons, Turnarockers and Dumpcrete)	AREA 1	AREA 2				
Less than 8 yards	$ 8.65	$10.15	.58	.75	$ 1.00	.10
8 yds. and less than 14 yds.	8.80	10.30	.58	.75	1.00	.10
14 yds. and less than 35 yds.	8.95	10.45	.58	.75	1.00	.10
35 yds. and less than 55 yds.	9.15	10.65	.58	.75	1.00	.10
55 yds. and less than 75 yds.	9.35	10.85	.58	.75	1.00	.10
75 yds. and less than 95 yds.	9.55	11.05	.58	.75	1.00	.10
95 yds. and less than 105 yds.	9.75	11.25	.58	.75	1.00	.10
105 yds. & less than 130 yds.	9.87	11.37	.58	.75	1.00	.10
130 cu. yds. and over to be paid one-half cent ($.005) per cu. yds. capacity per hour in addition to rate for 105 yards and less than 130 yards						
FLAT TACK TRUCKS, Bulk Cement Trucks, Transport Trucks, Semi-Trailer (carrying capacity):						
Pickup	8.475	9.975	.58	.75	1.00	.10
Less than 10 tons	8.55	10.05	.58	.75	1.00	.10
10 tons and less than 15 tons	8.70	10.20	.58	.75	1.00	.10
15 tons and less than 20 tons	8.80	10.30	.58	.75	1.00	.10
20 tons and over	8.95	10.45	.58	.75	1.00	.10
TRANSIT MIX TRUCKS:						
4½ yards capacity and less	8.675	10.175	.58	.75	1.00	.10
Over 4½ yards to and including 6½ yards capacity	8.775	10.275	.58	.75	1.00	.10
Over 6½ yards capacity	8.875	10.375	.58	.75	1.00	.10
CONCRETE PUMPING TRUCKS	8.875	10.375	.58	.75	1.00	.10

TRUCK DRIVERS* CONT'D)

	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	AREA 1	AREA 2				
WATER, FUEL & OIL TANK TRUCKS:						
Less than 1200 gallons	$ 8.525	$10.025	.58	.75	$ 1.00	.10
1200 gallons to less than 25,000 gallons	8.65	10.15	.58	.75	1.00	.10
2500 gallons to less than 4000 gallons	8.80	10.30	.58	.75	1.00	.10
4000 gallons to less than 6000 gallons	9.10	10.60	.58	.75	1.00	.10
6000 gallons to less than 10,000 gallons	9.35	10.85	.58	.75	1.00	.10
10,000 gallons to less than 15,000 gallons	9.60	11.10	.58	.75	1.00	.10
15,000 gallons to less than 20,000 gallons	9.85	11.35	.58	.75	1.00	.10
20,000 gallons to less than 25,000 gallons	10.10	11.60	.58	.75	1.00	.10
25,000 gallons and over	10.35	11.85	.58	.75	1.00	.10
OILER SPREADER OPERATOR (on single man operation where Boot Man is not required)	9.35	10.85	.58	.75	1.00	.10
CONSTRUCTION JOB SERVICEMEN:						
Telescopic Manlift Truck	8.85	10.35	.58	.75	1.00	.10
Fork Lift (under 6 tons) and Straddle Truck	8.85	10.35	.58	.75	1.00	.10
Chauffeurs	8.425	9.925	.58	.75	1.00	.10
Warehousemen (counter clerk)	8.60	10.10	.58	.75	1.00	.10
Washers	8.625	10.125	.58	.75	1.00	.10
Tireman and Greaser	9.05	10.55	.58	.75	1.00	.10
Gas Station Attendants	8.475	9.975	.58	.75	1.00	.10
Fork Lift (over 6 tons)	8.95	10.55	.58	.75	1.00	.10
Teamster Mechanic	9.66	11.16	.58	.75	1.00	.10
Teamster Welder	9.66	11.16	.58	.75	1.00	.10
Teamster Driving two Horses	9.425	10.925	.58	.75	1.00	.10
Teamster Driving three or more horses	9.525	11.025	.58	.75	1.00	.10
Sweeper or Vacuum Truck	8.80	10.30	.58	.75	1.00	.10

*SEE AREA DEFINITION following this page.

AREA DEFINITIONS

Laborers
(Heavy and Highway Construction)
Power Equipment Operators
Building Construction)
(Heavy and Highway Construction)
Truck Drivers

Area 1: All areas included in the description defined below which is based upon township and range lines as referenced to the Salt Lake City Base and Meridian:

Commencing at the intersection of the Utah/Nevada border and the Southerly line of township 35 south;
Thence easterly to the S.E. corner of township 35 south, range 17 west;
Thence northerly to the S.E. corner of township 34 south, range 17 west;
Thence easterly to the S.E. corner of township 34 south, range 16 west;
Thence northerly to the S.E. corner of township 30 south, range 16 west;
Thence easterly to the S.E. corner of township 30 south, range 15 west;
Thence northerly to the S.E. corner of township 25 south, range 15 west;
Thence easterly to the S.E. corner of township 25 south, range 14 west;
Thence northerly to the S. E. corner of township 24 south, range 14 west;
Thence easterly to the S.E. corner of township 24 south, range 13 west;
Thence northerly to the S.E. corner of township 23 south, range 13 west;
Thence easterly to the S.E. corner of township 23 south, range 12 west;
Thence northerly to the S.E. corner of township 18 south, range 12 west;
Thence easterly to the S.E. corner of township 18 south, range 11 west;
Thence northerly to the S.E. corner of township 16 south, range 11 west;
Thence easterly to the S.E. corner of township 16 south, range 10 west;
Thence northerly to the S.E. corner of township 15 south, range 10 west;
Thence easterly to the S.E. corner of township 15 south, range 9 west;
Thence northerly to the S.E. corner of township 14 south, range 9 west;
Thence easterly to the S.E. corner of township 14 south, range 8 west;
Thence northerly along the easterly line of range 8 west, crossing the Salt Lake Base Line to the intersection of the easterly line of range 8 west and the northerly border of Utah;
Thence easterly along the northerly border of Utah crossing the Salt Lake Meridian to the Utah/Idaho/Wyoming border;
Thence southerly along the Utah/Wyoming border;
Thence easterly along the Utah/Wyoming border to the intersection of the Utah/Wyoming border and Longitude 111 degrees west;
Thence southerly along Longitude 111 degrees west crossing the Salt Lake Base Line to the intersection of Longitude 111 degrees west and the southerly line of township 4 south;
Thence easterly along the southerly line of township 4 south to the S.E. corner of township 4 south, range 17 east;

AREA DEFINITIONS (Cont'd)

AREA 1: (Cont'd)

Thence northerly to the S. E. corner of township 1 south, range 17 east;
Thence easterly along the southerly line of township 1 south to the intersection of the Utah/Colorado border;
Thence southerly along the Utah/Colorado border to the intersection of the Utah/Colorado border and the southerly line of township 7 south;
Thence westerly along the southerly line of township 7 south to the S.W. corner of township 7 south, range 20 east;
Thence southerly to the S.E. corner of township 8 south, range 19 east;
Thence westerly along the southerly line of township 8 south to the S. E. corner of township 8 south, range 12 east;
Thence southerly along the easterly line of range 12 east to the S. E. corner of township 20 south, range 12 east;
Thence westerly along the southerly line of township 20 south to the S.E. corner of township 20 south, range 3 east;
Thence southerly along the easterly line of range 3 east to the S.E. corner of township 27 south, range 3 east;
Thence westerly to the intersection of the southerly line of township 27 south and the Salt Lake Meridian, thence southerly along the Salt Lake Meridian to the intersection of the Salt Lake Meridian and the southerly line of township 39 south;
Thence westerly crossing the Salt Lake Meridian to the S.E. corner of township 39 south, range 2 west;
Thence southerly to the S.E. corner of township 41 south, range 2 west;
Thence westerly to the S.E. corner of township 41 south, range 3 west;
Thence southerly along the easterly line of range 3 west to the Utah/Arizona border;
Thence westerly along the Utah/Arizona border to the Utah/Arizona/Nevada border;
Thence northerly along the Utah/Nevada border to the point of beginning; commencing at the intersection of the Utah/Colorado border and the southerly line of township 34 south;
Thence westerly to the S.W. corner of township 34 south, range 21 east;
Thence northerly to the S.W. corner of township 29 south, range 21 east;
Thence westerly to the S.W. corner of township 29 south, range 19 east;
Thence northerly to the N.W. corner of township 23 south, range 19 east;
Thence easterly to the N.W. corner of township 23 south, range 22 east;
Thence northerly to the N.W. corner of township 21 south, range 22 east;
Thence easterly to the N.E. corner of township 21 south, range 24 east;
Thence southerly to the N.E. corner of township 31 south, range 24 east;
Thence easterly along the northerly line of township 31 south, to the Utah/Colorado border;
Thence southerly along the Utah/Colorado border to the point of beginning

AREA 2: All areas not included in Area 1 as defined.

SUPERSEDEAS DECISION

STATES: District of Columbia, Maryland and Virginia

COUNTIES: District of Columbia; Maryland-Montgomery and Prince Georges; and D.C. Training School; Virginia-Independent City of Alexandria & Arlington

DECISION No. DC78-3008 DATE: Date of Publication

Supersedes Decision No. DC78-3006, dated March 3, 1978, in 43 FR 9084.

DESCRIPTION OF WORK: Building Construction (Does not include single family homes and garden type apartments up to and including 4 stories). and also excluding the Independent City of Alexandria
Heavy Construction (excluding Water and Sewer Lines)
Highway Construction (District of Columbia Only)
Water and Sewer Lines (District of Columbia Only)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HEAVY CONSTRUCTION EXCLUDING WATER AND SEWER LINES: All Counties BUILDING CONSTRUCTION: Excluding Alexandria, Virginia					
ASBESTOS WORKERS	$11.41	.70	1.29		.03
BOILERMAKERS - BLACKSMITHS	11.15	.70	1.00		.02
BRICKLAYERS	11,65	.80	.70		.10
CARPENTERS	10.45	.80	.60		.05
CARPET LAYERS	7.05	.30			.05
CEMENT MASONS:					
Cement masons	10.50	.805	.60		.11
Grinding machine	10.75	.805	.60		.11
DIVERS	18.125	.50	.49		.07
DIVER TENDER	10.75	.50	.49		.07
ELECTRICIANS	11.70	.65	3%+.80		.13
ELEVATOR CONSTRUCTORS	11.235	.745	.56	a+b	.025
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.56	a+b	.025
ELEVATOR CONSTRUCTORS" HELPERS (PROBATIONARY)	50%JR				
GLAZIERS	11.48	.61	.50		.05
IRONWORKERS:					
Structural, ornamental and chain link fence	10.40	.87	.80		.05
Reinforcing	10.95	.62	1.05		.03
LABORERS (EXCLUDING, HEAVY CONSTRUCTION)					
Common laborers, landscapers	8.46	.60	.45		.05
Acetylene burners used on wrecking	8.96	.60	.45		.05
Air tool op., scaffold builders, paving breakers, towmasters, buggy mobiles, spaders, mortar men and scootcretes	8.61	.60	.45		.05
Pipelayers	8.61	.60	.45		.05
Plasterers' tenders	8.96	.60	.45		.05
Plumbers' laborers	8.50	.60	.45		.05
Powdermen	9.635	.60	.45		.05
Powersaw, well points	8.71	.60	.45		.05
LATHERS	10.66	.65	.50		.025
LEADBURNERS	10.75	.40	.25	c	.01

DECISION NO. DC78-3008

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HEAVY CONSTRUCTION (EXCLUDING WATER AND SEWER LINES): All Counties					
BUILDING CONSTRUCTION: Excluding Alexandria, Virginia					
LINE CONSTRUCTION:					
Linemen, cable splicers, equipment operators	12.71	.45	3%		½ of 1%
Truck with winch, truck pole or steel handling	7.63	.45	3%		½ of 1%
Groundmen (0 to 1 year)	6.21	.45	3%		½ of 1%
Groundmen (1 to 2 years)	7.12	.45	3%		½ of 1%
Groundmen (over 2 years)	7.37	.45	3%		½ of 1%
MARBLE SETTERS	11.60	.80	.65		.06
MARBLE SETTERS' HELPERS	7.35				
MILLWRIGHTS	10.94	.80	.60		.05
PAINTERS:					
Brush, spray, paperhangers, tapers	10.54	.81	1.10		.06
Steel, sandblasting, swing stage, power brushing	11.04	.81	1.10		.06
PILEDRIVERMEN	10.68	.80	.60		.05
PLASTERERS	10.40	.60	.75		.06
PLUMBERS	11.32	1.00	1.00		.27
ROOFERS:					
Composition	9.87	.56	.30		
Slate, tile mopmen, waterproofers, sprayers, sprandrel and ironite	10.43	.56	.30		
SHEET METAL WORKERS	11.14	1.07	1.21		.14
SOFT FLOOR LAYERS	10.45	.80	.60		.05
SPRINKLER FITTERS	11.70	.65	.95		.08
STEAMFITTERS, REFRIGERATION AND AIR CONDITION MECHANIC	11.48	.75	1.00		.16
STONE MASONS	11.60	.80	.65		.07
STONE CUTTERS:					
Fitters and trimmers	11.65	.18	.40		
Ornamental carvers	10.38	.18	.40	d	
Figure carvers	11.00	.18	.40	d	

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HEAVY CONSTRUCTION (EXCLUDING WATER AND SEWER LINES: All Counties					
BUILDING CONSTRUCTION: Excluding Alexandria					
TERRAZZO AND MOSAIC WORKERS	12.03	.60	.40		
TERRAZZO WORKERS' HELPERS	9.95	.70	.70		
TILE SETTERS	11.59	.70	.70		.04
TILE SETTERS' HELPERS	9.30	.50	.40		
TRUCK DRIVERS:					
Boom trucks	8.45	.415	.425	e+f	
Small dump, water sprinkler, grease and oil	8.20	.415	.425	e+f	
Flat, pick-up hauling materials, small Euclids, dump over 8 wheels	8.30	.415	.425	e+f	
Trailers, low boys, tractor pulls	8.50	.415	.425	e+f	
Helpers	8.05	.415	.425	e+f	
Carryalls, large Euclids, Euclid water sprinkler, tunnel work under ground	8.60	.415	.425	e+f	
Mechanics	8.35	.415	.425	e+f	
RIGGERS AND WELDERS - Receive rates prescribed for crafts performing operations to which rigging and welding are incidental.					

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PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Holidays: A through F, plus the Friday after Thanksgiving Day.

b. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

c. Holidays: A through F plus Washington's Birthday, Good Friday and Christmas Eve (provided an employee has worked at least 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holiday).

d. Holidays: A-D-E-F and Veteran's Day.

e. Holidays: A-D-E and F (provided the employee works the regularly scheduled work days immediately preceeding and following the holiday.

f. One weeks paid vacation providing the employee has worked 3 years and a minimum of 1450 hours during any calendar year.

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (HEAVY CONSTRUCTION EXCLUDING WATER AND SEWER LINES):					
GROUP I	8.46	.60	.45		.05
GROUP II	8.61	.60	.45		.05
GROUP III	8.66	.60	.45		.05
GROUP IV	8.71	.60	.45		.05
GROUP V	8.91	.60	.45		.05
GROUP VI	9.11	.60	.45		.05
GROUP VII	9.235	.60	.45		.05
GROUP VIII	9.635	.60	.45		.05

CLASSIFICATIONS

LABORERS:
GROUP I - Carloader, choker setter, concrete crewman, crushed feeder, demolition laborer (including salvaging all material, loading and cleaning up), wrecking, driller helper, dumpman, flagman, fence erector and installer (including installation and erection of fence, guard rails, median rails, reference posts, guide posts and right-of-way markers), form stripper, general laborers, railroad track laborer, riprap man, scale man, stake jumper, structure mover (includes foundation, separation, preparation, cribbing, shoring, jacking and unloading of structures), water nozzleman, timber bucker and faller, truck loader, water boys, tool room men
GROUP II - Combined air and water nozzlemen, cement handler, dope pot fireman (nonmechanical), form cleaning machine, mechanical railroad equipment (includes spiker, puller, tie cleaner, tamper pipe wrapper, power driven wheelbarrow, operators of hand derricks, towmasters, scootcretes, buggymobiles and similar equipment), tamper or rammer operator, trestle scaffold builders over one tier high, power tool operator (gas, electric or pneumatic), sandblast or gunnite tailhose man, scaffold erector (steel or wood), vibrator operator (up to 4'), asphalt cutter, mortar men, shorer and lagger, creosote material handler, corrosice enamel or equal, paving breaker and jackhammer operators
GROUP III - Multi-section pipe layer, non-mentallic clay and concrete pipe layer (including caulker, collarman, jointer, rigger and jacker) thermite welder and corrugated metal culvert pipe layer
GROUP IV - Asphalt block pneumatic cutter, asphalt roller, walking chain-saw with attachment, concrete saw (walking), high scalers, jackhammer (using over 6' of steel), vibrator (4' and over), well point installers, air-trac operator
GROUP V - Asphalt screeder, big drills, cut of the hole drills (1½ piston or larger) down the hole drills (3½" piston or larger), gunnite or sandblaster nozzleman, asphalt raker, asphalt tamper, form setter, demolition torch operator, shotcrete nozzlemen and potman
GROUP VI - Powderman, master for setters
GROUP VII - Brick paver (asphalt block paver, asphalt block saw man, asphalt block grinder; hasting block or similar type)
GROUP VIII - Miners

DECISION NO. DC78-3008	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (HEAVY CONSTRUCTION):					
GROUP I	8.735	.50	.40		.05
GROUP II	9.035	.50	.40		.05
GROUP III	9.685	.50	.40		.05
GROUP IV	9.935	.50	.40		.05

CLASSIFICATIONS

TUNNELS, RAISES AND SHAFTS - FREE AIR

GROUP I
Brakeman, bull gang, dumper, trackman, concrete man

GROUP II
Chuck tender, powdermen in prime house, form setters and movers, nippers, cableman, hosemen, groutman, bell or signalman, top or bottom vibrator operator, caulkers' helpers

GROUP III
Miners, rodmen, re-bar underground, concrete or gunnite nozzlemen, powderman, timberman and re-timberman, wood steel including liner plate or any other support, material, motorman, caulkers, diamond drill operators, riggers, cement finishers - undergroung, welders and burners, shield driver, air trac operator, shotcrete nozzleman and potman

GROUP IV
Mucking machine operator (air)

DECISION NO. DC78-3008		Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS - COMPRESSED AIR RATES (EXCLUDING SEWER AND WATER LINES)						
Gauge Pressure Pounds	Work Period Hours					
1-14	7	91.26	a	b		c
14-18	6	94.60	a	b		c
18-22	5-1/2	97.89	a	b		c
22-26	5	101.28	a	b		c
26-32	4	104.61	a	b		c
32-38	3	107.91	a	b		c
38-44	2-1/2	119.29	a	b		c

FOOTNOTES:

a. The employer pays $4.80 to health and welfare per day.

b. The employer pays $3.60 to Pension per day.

c. The employer pay $.40 to training fund per day.

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HEAVY CONSTRUCTION EXCLUDING WATER AND SEWER LINES: BUILDING CONSTRUCTION:					
POWER EQUIPMENT OPERATORS:					
GROUP I	11.70	.60	.60		.12
GROUP II	11.45	.60	.60		.12
GROUP III	11.30	.60	.60		.12
GROUP IV	11.12	.60	.60		.12
GROUP V	11.07	.60	.60		.12
GROUP VI	11.05	.60	.60		.12
GROUP VII	11.04	.60	.60		.12
GROUP VIII	10.87	.60	.60		.12
GROUP IX	10.85	.60	.60		.12
GROUP X	10.65	.60	.60		.12
GROUP XI	10.17	.60	.60		.12
GROUP XII	9.99	.60	.60		.12
GROUP XIII	8.55	.60	.60		.12

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP I - 35 ton cranes and above, tower and climbing cranes

GROUP II - Back hoes, boom-cat, cableways, cranes or derricks, draglinges, elevating graders, hoists, multiple concrete conveyors, elevators (permanent), paving mixers, pile driving engines, power shovels, tunnel shovels, mucking machines, batch plant, concrete pumps, locomotives (standards, narrow guage), power driven wheel scoops and scrapers (50 cu. yd. struck capacity or above), front end loader above 3½ cu. yd., boom trucks, moles, shields, tunnel mining machines, loaders used as muckers in tunnel mining, gradalls, shotcrete machines and grout pumps with discharge of two inches I.D. or more, drill rigs

GROUP III - Hydraulic back hoes of less than ½ yd. capacity, mounted on tractors, front end loader above 2-3/4 to 3½ cu. yd.

GROUP IV - Air compressor on steel

GROUP V - Mechanic, mechanic-welder, welder

GROUP VI - Front end loader, highlift, fork lift

GROUP VII - Boilers (skeleton), trenching machines, tug boat, well drilling machines

GROUP VIII - Concrete mixer, tunnel motorman

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POWER EQUIPMENT OPERATORS CLASSIFICATIONS (CONT'D)

GROUP IX - Power driven wheel scoops and scrapers (below 50 cu. yd. struck capacity), blade graders, motor graders, bulldozers

GROUP X - Rollers, asphalt spreaders, bullfloat finishing machines, concrete finishing machines, concrete spreaders, fine graders

GROUP XI - Air compressors (except steel), welding machines, pumps, generators, space heaters, wellpoints, deepwells, hydraulic pumps

GROUP XII - Firemen

GROUP XIII - Oilers

(District of Columbia Only)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DEMOLITION (EXCLUDING ALEXANDRIA):					
Laborers	$ 6.40	.35	.40		.05
Burners	6.90	.35	.40		.05
Power tool operator	6.55	.35	.40		.05
Bobcat operator	7.40	.35	.40		.05

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(DISTRICT OF COLUMBIA ONLY)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAVING AND INCIDENTAL GRADING					
ASPHALT SHOVELER	7.05	.27	.35		
ASPHALT RAKER	7.25	.27	.35		
ASPHALT TAMPER	7.15	.27	.35		
BRICKLAYERS	11.65	.80	.70		.10
CARPENTERS	10.45	.80	.60		.05
CEMENT MASONS	7.50	.27	.35		
CONCRETE SAW OPERATOR	7.25	.27	.35		
CONCRETE SHOVELER	7.15	.27	.35		
FORM SETTER	7.50	.27	.35		
LABORERS:					
Laborers	7.00	.27	.35		
Jackhammer	7.20	.27	.35		
Hand Burner Operator	7.15	.27	.35		
POWER EQUIPMENT OPERATORS:					
Concrete Spreader Operator, Finishing Machine, Roller (rough), Compressor, Rubber-tired Loader (1-½ cu. yds., or less), Asphalt Plant Mixer	7.25	.27	.35		
Loader Operator Tracks (2-½ cu. yds. or less), Burner Planer, Bulldozer, Mechanic or Welder, Rubber Tired Loader (over 1-½ cu. yds.)	7.45	.27	.45		
Asphalt Spreader, Hydraulic Backhoe (½ cu. yd., or less), Asphalt Plant Engineer, Asphalt Roller Operator, Concrete Breaker (machine)	7.50	.27	.35		
Crane Operator, Concrete Paving Operator	7.65	.27	.35		
Shovel Operator	7.75	.27	.35		
Gradall Operator (1-½ cu. yds. or less), Motor Grader, Operator Tracks (over 2-½ cu. yds	8.40	.27	.35		
G-1000 Gradall Operator (over 1½ cu. yds.)	8.65	.27	.35		
Power Broom, Oiler	7.15	.27	.35		
Sand Setter	7.45	.27	.35		
TRUCK DRIVERS:					
Truck Drivers (standard)	7.00	.27	.35		
Tandem	7.12	.27	.35		
Tractor trailer (capable of moving heavy equipment)	7.50	.27	.35		

DECISION NO. DC78-3008

(DISTRICT OF COLUMBIA ONLY)

SEWER AND WATER LINES

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	11.65	.80	.70		.10
CARPENTERS	10.45	.80	.60		.05
CEMENT MASONS	10.50	.805	.60		.11
IRONWORKERS; Reinforcing	10.95	.62	1.05		.03
LABORERS:					
Open Cut:					
Laborers, jackhammer, rammers and spaders	5.78	.28	.25		.03
Timbermen, sheeting-men, shoring-men, caulkers, pipelayers helpers	5.93	.28	.25		.03
Bottom man	5.83	.28	.25		.03
Wagon drillers, air track drillers	6.13	.28	.25		.03
Pipelayers	6.13	.28	.25		.03
Rock drillers	5.88	.28	.25		.03
Tunnel:					
Brakeman, bull gang, dumper, trackmen, concrete man	6.415	.28	.25		.03
Chuck tender, powder in prime house, form setters and movers, nippers, cable-men, hosemen, grout men, bell or signal men, top or bottom, vibrator operator, caulkers' helpers	6.715	.28	.25		.03
Miners, rodmen, re-bar underground, concrete or gunite nozzlemen, pwermen, timbermen and retimberman wood or steel including liner plate or any other support material, motorman, caulkers, diamond drill riggers, cement finishers (underground), welders and burners, shield driver	7.365	.28	.25		.03
Mucking machine operator (air)	7.615	.28	.25		.03

DECISION NO. DC78-3008

(DISTRICT OF COLUMBIA)

		Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
SEWER AND WATER LINES CONT'D						
COMPRESSED AIR: (All rates per day)						
Gauge Pressure Pounds	Work Period					
From 1 to 14	7 hours	72.74	a	b		.03
From 14 to 18	6 hours	76.08	a	b		.03
From 18 to 22	5½ hours	79.41	a	b		.03
From 22 to 26	5 hours	82.76	a	b		.03
From 26 to 32	4 hours	86.09	a	b		.03
From 32 to 38	3 hours	89.44	a	b		.03
From 38 to 44	2½ hours	92.77	a	b		.03
PILEDRIVERMEN		10.68	.80	.60		.05
PLUMBERS		11.12	1.00	1.00		.27
POWER EQUIPMENT OPERATORS:						
Backhoes, cable ways, cranes, draglines power shovels, tunnel shovels, tunnel mucking machines, derricks, 1 cu. yd. and over		8.19	.35	.35		.05
Backhoes, cableways, cranes derricks, dragline, tunnel shovels, tunnel mucking machines up to 1 cu. yd., boom cats, elevating graders, hoists, paving mixers, pile-driving engines, batch plants concrete pumps		7.94	.35	.35		.05
Trenching machines (above 8' 3")		7.74	.35	.35		.05
Backhoes (hydraulic, under ½ c.y.)		7.82	.35	.35		.05
Trenching machines (up to 8' 3"), boilers skeleton, well drilling machines		7.64	.35	.35		.05
Air compressors, tunnel		7.61	.35	.35		.05
Front end loaders (high lift), bulldozers		7.59	.35	.35		.05
Concrete mixers, power sheel scoops and scrapers, motor graders, tunnel motor men, blade graders, tunnel mechanics		7.49	.35	.35		.05

DECISION NO. DC78-3008

(DISTRICT OF COLUMBIA ONLY)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SEWER AND WATER LINES CONT'D					
Mechanics	7.47	.35	.35		.05
Bulldozer, hydraulic tampers	7.39	.35	.35		.05
Roller	7.29	.35	.35		.05
Air compressors, pump, welding machine well points	7.215	.35	.35		.05
TRUCK DRIVERS:					
Dump trucks	6.10	.415	c		
Dump trucks over 8 wheels	6.20	.415	c		
Flat trucks	6.20	.415	c		
Trailers	6.45	.415	c		
Fuel and oil trucks	6.10	.415	c		
Euclids	6.60	.415	c		

FOOTNOTES:

a. Employer contributes $2.24 per day to Health and Welfare.

b. Employer contributes $2.00 per day to Pension.

c. $10.00 per week when employee has worked 90 days and work three days in any work week.

[FR Doc. 78-6717 Filed 3-16-78; 8:45 am]

federal register

FRIDAY, MARCH 17, 1978
PART V

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

Health Maintenance Organizations

[4110-85]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 110]

HEALTH MAINTENANCE ORGANIZATIONS

Proposed Rulemaking

AGENCY: Public Health Service, HEW.

ACTION: Notice of propose rulemaking.

SUMMARY: The Public Health Service proposes changes in regulations setting forth general provisions regarding Federal financial assistance for health maintenance organizations. The changes are proposed because, due to an amendment to section 1532(c) of the Public Health Service Act, the Public Health Service seeks to provide health systems agencies (HSAs) and State health planning and development agencies (SHPDAs) with uniform considerations for the evaluation of the special needs and circumstances of health maintenance organizations.

DATE: Comments received on or before May 16, 1978, will be considered in the preparation of the final regulations.

ADDRESS: Interested persons are invited to submit written comments, suggestions, or objections with respect to the proposed regulations to the Director, Division of Health Maintenance Organizations Development, Office of the Assistant Secretary for Health, Parklawn Building, Room 12-05, 5600 Fishers Lane, Rockville, Md. 20857. The comments will be available for public inspection at the above address between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Frank H. Seubold, Ph. D., Director, Division of Health Maintenance organizations Development, 5600 Fishers Lane, Parklawn Building, Room 12-05, Rockville, Md. 20857, 301-443-4106.

SUPPLEMENTARY INFORMATION: It is proposed that amendments be made in the program requirements set forth in subpart B of interim regulations published on June 8, 1977, in the FEDERAL REGISTER (42 FR 29400, 29407-09). Section 117(a) of Pub. L. 94-460, the Health Maintenance Organization Amendments of 1976, approved on October 8, 1976, amended section 1532(c) of the Public Health Service Act to require that certain of the criteria established by any HSA or SHPDA for their health planning activities under title XV of the Public Health Service Act be consistent with the standards and procedures established by the Secretary under section 1306(c) of the Public Health Service Act. Specifically, section 1532(c)(8) of the Public Health Service Act requires HSAs and SHPDAs, in developing their review criteria for their health planning activities under title XV, to consider the special needs and circumstances of health maintenance organizations for which assistance may be provided under title XIII of the Public Health Service Act. The proposed changes to the standards and procedures required by section 1306(c) of the Act are set forth below, and are intended to provide the reviewing agencies with uniform review and comment considerations that will assist in their evaluation of the special needs and circumstances in considering applications for financial assistance to develop or expand qualified health maintenance organizations. In addition, because of the amendment made by section 117(a) of Pub. L. 94-460, these proposed changes to the standards and procedures required by section 1306(c) of the Act will also have implications for HSAs and SHPDAs in developing their review criteria for their health planning activities under title XV. In this regard, attention is called to a Notice of Proposed Rulemaking issued by the Assistant Secretary for Health in this issue of the FEDERAL REGISTER (43 FR —), which proposes to change 42 CFR part 122, subpart D and 42 CFR part 123, subpart E by in part setting forth criteria and procedures for certificate of need review of health maintenance organizations which are consistent with the changes to the standards and procedures proposed herein.

Section 110.204 of this subpart is accordingly proosed to be revised as described below. In commenting on applications for assistance under title XIII, the appropriate reviewing agencies are to judge proposed HMO services on the basis of the needs of enrolled members and reasonably anticipated new members of the HMO and not on the need for the services in general if proposed by non-HMO providers. In addition, the regulations provide that a reviewing agency should not recommend against approval of an application for financial assistance for planning or initial development or initial operating costs, if the application is consistent with the basic objectives, time schedules, and plan of an earlier application which the agency previously approved or recommended for approval. While the considerations on which the planning agencies may base their reviews and comments are set forth in § 110.204(a), § 110.204(c) provides that the agencies may use additional considerations if consistent with the purposes of title XIII of the Act, and approved by the Secretary. Planning agencies which anticipate that they will request approval of the use of additional considerations are requested to so advise the Department during the public comment period on these proposed regulations.

In addition to the amendments proposed for § 110.204, it is also proposed that subpart B be clarified in a number of respects. Attention is called in particular to proposed § 110.203(e), which would make clear that assurances given by the applicant for financial assistance are binding on successors, assignees, and transferees of the applicant, as well as the applicant; to § 110.207(e), which refers to the obligations under section 504 of the rehabilitation Act of 1973, as amended, of a recipient of financial assistance; to § 110.213(c), which would make clear the accountability of a grantee to the Secretary if it fails to become or remain a qualified health maintenance organization; to § 110.203(e)(6) which would require a nonprofit applicant to provide an assurance that it will become a nonprofit health maintenance organization and will maintain its nonprofit status unless for good cause the Secretary releases the applicant from this assurance; and to § 110.215 which would require repayment of all grant funds if an entity elected to become a private for-profit entity after receiving grant assistance under section 1304 of the Act unless for good cause shown the Secretary determines that such repayment would not be in the interests of the United States.

The Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary, hereby proposes to amend subpart B of 42 CFR part 110.

NOTE.—The Department of Health, Education, and Welfare 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: December 1, 1977.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: March 3, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

Subpart B—Federal Financial Assistance: General

Sec.

110.201 Applicability.
110.202 Definitions.
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110.204 Health systems agency or State health planning and development agency review and comments.

110.205 Records, reports, inspection, audit.
110.206 Additional conditions.
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110.209 Publications, copyright, and data.
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110.211 Applicability of 45 CFR Part 74.
110.212 Use of funds.
110.213 Grantee accountability.
110.214 Continued support.
110.215 Effect of change from non-profit status.

AUTHORITY.—Sec. 215, 58 Stat. 690 (42 U.S.C. 216); secs. 1301-1316, as amended, 90 Stat. 1945-1960 (42 U.S.C. 300e-300e-15).

Subpart B—Federal Financial Assistance: General

§ 110.201 Applicability.

The regulations of this subpart apply to the award of grants, loans, and loan guarantees to public or nonprofit private entities or private entities (other than nonprofit private entities) for projects as authorized by sections 1303, 1304, and 1305 of the Act.

§ 110.202 Definitions.

(a) "Nonprofit" as applied to a private entity, agency, institution, or organization means a private entity, agency, institution, or organization, no part of the net earnings of which inures, or may lawfully inure, to the benefits of any private shareholder or individual.

(b) The term "health system agency" means an entity which has been designated in accordance with section 1515 of the Public Health Service Act; and the term "State health planning and development agency" means an agency which has been designated in accordance with section 1521 of the Act.

(c) "Significant expansion" means (1) a planned increase in membership to be effected at a rate which exceeds the average growth rate (see §§ 110.303(g), 110.403(h), and 110.404(f)) of the health maintenance organization and which will require an increase in the number of health professionals serving members of the health maintenance organization or an expansion of the physical capacity of the total health facilities; or (2) a planned expansion of the service area beyond the current service area which would be made possible by the addition of health service delivery facilities and health professionals to serve members at a new site or sites in areas previously without such service sites. Only organizations which have been found by the Secretary to be qualified health maintenance organizations are eligible to apply for assistance for expansion under sections 1303 and 1304 of the Act.

§ 110.203 Application requirements.

(a) An application for a grant, loan, or loan guarantee shall be submitted as prescribed by the Secretary.[1]

(b) The application shall contain a budget and a narrative describing the manner in which the applicant intends to conduct the project and carry out the requirements of these regulations. The application must describe the project in sufficient detail to identify clearly the need for and nature, specific objectives, plan and methods of the project.

(c) The application must be executed by an individual authorized to act for the applicant and to assume in behalf of the applicant the obligations imosed by the statute, the regulations of this subpart, and any additional conditions of the award.

(d) Applicants must submit an audited full financial statement unless exempted by the Secretary. An applicant whose financial statement shows unobligated cash assets which presumably could be used to conduct all or part of the project or undertaking for which application is made must also submit a detailed statement satisfactory to the Secretary stating why the unobligated cash assets of the applicant (other than those to be used to meet the applicant's contribution requirements) are not available or are inadequate for the planned project. An applicant for a loan or loan guarantee shall also submit a written verification from at least two public or two private lending agencies or institutions demonstrating that, after a formal request,

(1) Funds have been denied in the amount requested in the application, or

(2) Funds in the amount requested in the application are available only at an interest rate in excess of those currently in effect for the loan and loan guarantee program on the date of the application. On the basis of the information submitted, the Secretary will determine whether or not the applicant would not be able to complete the project or undertaking for which the application is submitted without the assistance applied for.

(e) Each application must contain the following assurances, as appropriate, which assurances are binding on successors, assignees, and transferees of the applicant, as well as the applicant:

(1) In the case of an application for assistance under section 1303 of the Act, if the survey or other activity supported demonstrates that the development and operation or the expansion of the operation of a health maintenance organization is feasible, the applicant will be, or will form, or expand the operation of, as appropriate, a health maintenance organization;

(2) In the case of an application for assistance under section 1304 of the Act, the applicant will develop and operate or expand the operation of, as the case may be, a health maintenance organization;

(3) When operational as a health maintenance organization, the applicant will (i) provide basic and supplemental health services to its members, (ii) provide such services in the manner prescribed by section 1301(b) of the Act and by the regulations of this part, and (iii) be organized and operated in the manner prescribed by section 1301(c) of the Act and by the regulations of this part;

(4) When operational as a health maintenance organization, the applicant will enroll, and maintain an enrollment of, the maximum number of members that its available and potential resources will enable it to serve effectively. Maximum number of members is defined as the actual or projected enrollment which the health maintenance organization can serve, considering the availability of the required health manpower in the area to be served by the organization and the capacity of the facilities of the organization;

(5) A statement of intent (including a demonstration of the applicant's ability) to meet the requirements of paragraphs (1) and (2) of section 1301(b) of the Act and the applicable regulations of this part respecting the fixing of basic health services payments and such supplemental health services that the member has contracted for on a prepayment basis under a community rating system; and

(6) In the case of an application for assistance under sections 1304 or 1305 of the Act filed by a nonprofit entity, the applicant will become a nonprofit health maintenance organization and will maintain its nonprofit status unless for good cause shown the Secretary releases the applicant from this assurance.

(f) Each application which evidences, or projects an enrollment of at least 66 percent from a nonmetropolitan area shall identify the area in which such population resides and indicate the percent of anticipated enrollment to be drawn from such area.

(g) Each application which evidences, or projects an enrollment of at least 30 percent of its members from a medically underserved population when the health maintenance organization first receives financial assistance or becomes operational shall identify the area in which such population resides, the total population of

[1] Application forms and instructions may be obtained by writing the Regional Health Administrator in the appropriate Regional Office of the Department of Health, Education, and Welfare at the addresses set forth at 45 CFR 5.31(b).

that area, and the percent of anticipated enrollment to be drawn from that area. Medically underserved areas will be designated by the Secretary, taking into consideration the following factors, among others [3]

(1) Available health resources in relation to size of the area and its population, including appropriate ratios of primary care physicians (both doctors of medicine and doctors of osteopathy) in general or family practice, internal medicine, pediatrics, obstetrics and gynecology, or general surgery, to population;

(2) Health indices for the population of the area, such as infant mortality rate;

(3) Economic factors affecting the population's access to health services, such as percentage of the population with incomes below the poverty level; and

(4) Demographic factors affecting the population's need/demand for health services, such as percentage of the population age 65 or over.

The designation of such areas may be made by the Secretary only after consideration of the comments, if any, of the appropriate health systems agency or State health planning and development agency whose plan covers (in whole or in part) the area in which such population group resides.

(h) Each application must show that each health systems agency whose plan covers (in whole or in part) the area to be served by the health maintenance organization for which such application is submitted (or if there is no such agency, the State health planning and development agency whose State health plan covers, in whole or in part, such area) has been sent a copy of the application concurrent with its submission to the appropriate Regional Office of the Department of Health, Education, and Welfare. The agency shall be given an opportunity to review and comment on the application in accordance with § 110.204.

(i) If under applicable State law, the application may not be submitted without the approval of the health systems agency, or State health planning and development agency, the applicant shall obtain such approval which must be included as a part of the application.

(j) The application shall provide written information describing the applicant's development and operation of any prior projects which were supported by funds of by loans or loan guarantees under Title XIII of the Act. Applicants must also describe projects for the planning or operation of health service delivery programs supported under any other titles of the Public Health Service Act, or for which applications under the Act are currently under consideration.

(k) Applicants for more than one grant, loan, or loan guarantee under Title XIII of the Act, simultaneously or over the course of time, shall not be required to duplicate information, but shall update such information with each subsequent application.

§ 110.204 Health Systems Agency or State Health Planning and Development Agency Review and Comments.

(a) *Time, manner, and considerations for review and comment.* The appropriate health systems agency or State health planning and development agency, should, within 60 days after receiving an application for financial assistance under this part, provide to the Secretary, through the appropriate Department of Health, Education, and Welfare Regional Office, comments and recommendations regarding the application. Except as provided in paragraph (c) of this section, the review and comment shall be based solely on the following considerations:

(1) The needs of enrolled members and reasonably anticipated new members of the health maintenance organization or proposed health maintenance organization applying for assistance for the health services proposed to be provided by such organization.

(2) The availability of the proposed health services from non-health maintenance organization providers in a reasonable and cost-effective manner which is consistent with the basic method of operation of the health maintenance organization or proposed health maintenance organization applying for assistance. In assessing the availability of such health services from nonhealth maintenance organization providers the agency shall consider only whether the services from such providers:

(i) Would be available under a contract of at least five years duration with a non-health maintenance organization provider;

(ii) Would be available and conveniently accessible through physicians and other health professionals associated with the health maintenance organization or proposed health maintenance organization (for example: Whether physicians associated with the health maintenance organization have or will have full staff privileges at a non-health maintenance organization hospital);

(iii) Would cost no more than if the services were provided by the health maintenance orgnization or proposed health maintenance organization; and

(iv) Would be available in a manner which is administratively feasible to the health maintenance organization or proposed health maintenance organization.

(b) *Inappropriate considerations for review and comment.* (1) The health systems agency or State health planning and development agency should not recommend against approval of an application solely because there is a health maintenance organization of the same type, as specified in section 1310(b) of the Act, in the same area, or solely becuase the services being reviewed are not discussed in the applicable health systems plan, annual implementation plan, State health plan, or State medical facilities plan.

(2) The health systems agency or State health planning and development agency should not recommend against approval of an application for financial assistance for planning or initial development or initial operating costs under subparts D and E of this part, which is consistent with the basic objectives, time schedules, and plans of an application which it previously approved or recommended for approval.

(c) *Additional considerations for review and comment.* A health systems agency or State health planning and development agency may propose to the Secretary that it be permitted to base its reviews and comments on additional considerations not set forth in paragraph (a) of this section. Any agency making such a request for permission to use additional considerations shall do so in writing and specify the reasons for the proposal. The Secretary will approve the request if he finds the additional considerations to be consistent with the purpose of Title XIII of the Act. Unless the Secretary has approved the use of the additional considerations, the agency shall base its reviews and comments solely on the considerations set forth in paragraph (a) of this section.

§ 110.205 Records, reports, inspection, and audit.

(a) Each grant, loan, or loan guarantee awarded pursuant to this part shall be subject to the condition that the recipient shall maintain records which disclose the amount and disposition of the proceeds of the grant, or loan (directly made or guaranteed), the total cost of the undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit, examination or evaluation to any books, documents, papers, and records of the recipients of a

[3] A list of medically underserved areas already designated may be obtained by writing the Regional Health Administrator in the appropriate Regional Office of the Department of Health, Education, and Welfare at the addresses set forth at 45 CFR 5.31(b).

grant, loan or loan guarantee under Title XIII of the Act which relate to such assistance.

(c) A report shall be submitted to the Secretary by the recipient of a grant loan, or loan guarantee under Title XIII of the Act not later than 60 days after the termination date of each project, describing existing and anticipated plans, developments and operations in accordance with information required under section 1306(b)(3) of the Act.

(d) Such other reports shall be submitted as the Secretary may require to meet the provisions of the Act and these regulations.

§ 110.206 Additional conditions.

The Secretary may, with respect to the approval of any grant, contract, loan, or loan guarantee, impose additional conditions prior to or at the time of any approval when, in his judgment, such conditions are necessary to assure or protect the advancement of the approved project, the interests of public health, or the conservation of project funds.

§ 110.207 Nondiscrimination.

(a) Attention is called to the requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d et seq.) and in particular section 601 of such Act which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such title VI, which applied to all financial assistance under this part, has been issued by the Secretary of Health, Education, and Welfare with the approval of the President (45 CFR Part 80). In addition no person shall, on the grounds of sex, or creed (unless otherwise medically indicated) be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Nor shall any person be denied employment in or by such program or activity so receiving Federal financial assistance on the grounds of age, sex, creed, or marital status.

(b) Attention is called to the requirements of the Rehabilitation Act of 1973, Pub. L. 93-112, as amended, (29 U.S.C. 794), with particular regard to section 504 and the regulations issued by the Secretary at 45 CFR Part 84.

§ 110.208 Inventions or discoveries.

An award under this part is subject to the regulations of the Department of Health, Education, and Welfare as set forth in 45 CFR Parts 6, "Inventions and Patents (General)" and 8, "Inventions Resulting from Research Grants, Fellowship Awards, and Contracts for Research." Such regulations shall apply to any activity for which funds are in fact used whether within the scope of the project as approved or otherwise. Appropriate measures shall be taken by the award recipient and by the Secretary to assure that no contracts, assignments or other arrangements inconsistent with the award obligations are continued or entered into and that all personnel involved in the supported activity are aware of and comply with such obligations. Laboratory notes, related technical data, and information pertaining to inventions and discoveries shall be maintained for such periods, and filed with or otherwise made available to the Secretary or those he may designate at such times and in such manner as he may determine necessary to carry out such Department regulations.

§ 110.209 Publications, copyright, and data.

(a)(1) Except as may otherwise be provided under the terms and conditions of the award, the applicant may copyright without prior approval any data developed or resulting from a project supported under this part, subject, however, to a royalty-free, nonexclusive, and irrevocable license or right in the Government to reproduce, translate, publish, use, disseminate, and dispose of such materials and to authorize others to do so.

(2) The government may use, duplicate, or disclose in any manner and for any purpose whatsoever, and have or permit others to do so, all data developed during the term of Federal financial assistance.

(3) Whenever any data is to be obtained from a contractor or subcontractor under the assisted projects, the applicant shall include this section (§ 110.209) in the contract or subcontract without alteration, making it applicable to the subject matter of the contract or subcontract, and no other clause shall be used to diminish the government's right in that contractor's or subcontractor's data.

(b) As used in this section, the term "data" means writings, films, sound recordings, pictorial reproductions, drawings, designs or other graphic representations, procedural manuals, forms, diagrams, work-flow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are developed during the term of Federal financial assistance.

§ 110.210 Confidentiality.

Each award is subject to the condition that all information obtained by the personnel of the project from participants in the project related to their examination, care, and treatment shall be held confidential, and shall not be divulged without the individual's informed consent except as may be required by law or as may be necessary to provide service to the individual or to the Secretary as part of his duties under the Act. Information may be disclosed in summary, statistical, or other form which does not identify particular individuals.

§ 110.211 Applicability of 45 CFR Part 74.

The provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles, shall apply to all grants under this part to State and local governments as those terms are defined in Subpart A of that Part 74. The relevant provisions of the following subparts of Part 74 shall also apply to all other grantee organizations under this part:

Subpart:
- A—General.
- B—Cash Depositories.
- C—Bonding and Insurance.
- D—Retention and Custodial Requirements for Records.
- F—Grant-related Income.
- G—Matching and Cost Sharing.
- K—Grant Payment Requirements.
- L—Budget Revision Procedures.
- M—Grant Closeout, Suspension, and Termination.
- O—Property.
- Q—Cost Principles.

§ 110.212 Use of funds.

Any grants, loans, and loan guarantees awarded pursuant to this Part as well as other Federal funds to be used in the performance of the approved project shall be expended solely for carrying out the approved project in accordance with the statute, the regulations of this part, and the terms and conditions of the award or assistance.

§ 110.213 Grantee accountability.

(a) All payments made by the Secretary under grants awarded pursuant to sections 1303 and 1304 of the Act shall be recorded by the grantee in accounting records separate from the records of all other grant funds, including funds derived from other grant awards. With respect to each approved project the grantee shall account for the sum total of all amounts paid by presenting or otherwise making available evidence satisfactory to the Secretary of expenditures for direct and indirect costs meeting the requirements of this part: *Provided, however,* That when the amount awarded for indirect cost was based on a predetermined, fixed-percentage of estimated direct costs, the amount allowed for indirect costs shall be computed on the basis of such predetermined fixed-percentage rates applied to the total, or a selected element thereof, of the reimbursable direct costs incurred.

(b)(1) A grantee shall render, with respect to each approved project, a full account, as provided herein, as of date of the termination of grant support. The Secretary may require other special and periodic accounting.

(2) There shall be payable to the Federal Government as final settlement with respect to each approved project the total sum of:

(i) Any amount not accounted for pursuant to paragraph (a) of this section;

(ii) Any other amounts due pursuant to Subparts F, M, and O of 45 CFR Part 74.

Such total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assignees by setoff or other action as provided by law.

(c) If the grantee fails to become a qualified health maintenance organization in accordance with Subpart F of this Part, or fails to remain a qualified health maintenance organization, the grantee shall be accountable to the Secretary for all unexpended grant funds and for the then value of all items of real or nonexpendable personal property purchased with grant funds, in addition to all amounts not accounted for pursuant to paragraphs (a) and (b) of this section. Such total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assignees by setoff or other action as provided by law.

§ 110.214 Continued support.

Neither the approval of any project nor any award of financial assistance shall commit or obligate the United States to make any additional, supplemental, continuation, or other award with respect to any approved project or portion thereof. For continuation support, applicants must make separate applications at such times and in such manner as the Secretary may direct.

§ 110.215 Effect of change from non-profit status.

(a) Any non-profit private entity which received a grant under section 1304 of the Act and which thereafter becomes a for-profit private entity, shall notify the Secretary of such change of status within 30 days of the change.

(B) Unless the Secretary determines, for good cause shown, that repayment would not be in the interests of the United States, any grantee which becomes a for-profit private entity after having received as a non-profit private entity a grant under section 1304 of the Act, shall repay to the Secretary the total amount of grant funds received under section 1304. This sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assignees by setoff or other action as provided by law.

[FR Doc. 78-6757 Filed 3-16-78; 8:45 am]

federal register

FRIDAY, MARCH 17, 1978
PART VI

DEPARTMENT OF STATE

■

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Applications for Permits To Fish Off Coasts of U.S.

[4710-01]

DEPARTMENT OF STATE

[Public Notice 597]

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Applications for Permits To Fish Off the Coasts of the United States

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to Section 204 of the Act.

The Act also requires that all applications for such permits be published in the FEDERAL REGISTER.

Applications for fishing during 1978 have been received from the Governments of the Republic of Cuba and Japan, and are published herewith.

Dated: March 2, 1978.

LARRY L. SNEAD,
Acting Director,
Office of Fisheries Affairs.

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. JA-78-0330

1. Name of Vessel KYUYO MARU NO.2
2. Visual Identifier (Call Sign) JGYV
3. Type of Vessel STERN TRAWLER
4. Length 99 M
5. Gross Tonnage 2961 M.T.
6. Net Tonnage 1501 M.T.
7. Maximum Speed (knots) 16
8. Owner's Name and Address HOKKAIDO FISHERIES CO., LTD.
4-6-1, ODORI NISHI, CHUO-KU, SAPPORO, JAPAN. (chartered by JAMARC *) from 5 Oct. '77 to 10 Jun 1978)
9. Types of Processing Equipment FLASH FREEZER, HEADER, FILLETER,
FISH MEAL PLANT, FISH OIL PLANT, SURIMI PLANT
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
BSA	POLLOCK	BOTTOM TRAWL	X	X	
	YELLOWFIN SOLE	BOTTOM TRAWL	X	X	
	OTHER FLOUNDERS	BOTTOM TRAWL	X	X	
	PACIFIC OCEAN-PERCH	BOTTOM TRAWL	X	X	
	SABLEFISH	BOTTOM TRAWL	X	X	
	PACIFIC COD	BOTTOM TRAWL	X	X	
	HERRING	BOTTOM TRAWL	X	X	
	SQUID	BOTTOM TRAWL	X	X	
	OTHER GROUNDFISH	BOTTOM TRAWL	X	X	
GOA	POLLOCK	BOTTOM TRAWL	X	X	
	PACIFIC OCEAN-PERCH	BOTTOM TRAWL	X	X	
	OTHER ROCKFISH	BOTTOM TRAWL	X	X	
	FLOUNDERS	BOTTOM TRAWL	X	X	
	ATKA MACKEREL	BOTTOM TRAWL	X	X	
	PACIFIC COD	BOTTOM TRAWL	X	X	
	SQUID	BOTTOM TRAWL	X	X	
	OTHER GROUNDFISH	BOTTOM TRAWL	X	X	
SMT	ARMORHEAD	BOTTOM TRAWL	X	X	
	ALFONSINS	BOTTOM TRAWL	X	X	
	OTHER GROUNDFISH	BOTTOM TRAWL	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

*) JAPAN MARINE FISHERY RESOURCE RESEARCH CENTER

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. JA-78-0724

1. Name of Vessel KAIYO-MARU NO.12
2. Visual Identifier (Call Sign) JPVX
3. Type of Vessel STERN TRAWLER
4. Length 49 M.
5. Gross Tonnage 350 M.T.
6. Net Tonnage 189 M.T.
7. Maximum Speed (knots) 12
8. Owner's Name and Address KAIYO GYOGYO KABUSHIKI KAISHA.
1-18, MINATOMACHI 1-CHOME, ISHINOMAKI, MIYAGIKEN.
9. Types of Processing Equipment
FLASH FREEZER, HEADER, EVISCERATOR.
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
BSA	POLLOCK	BOTTOM TRAWL	X	X	
	PACIFIC OCEAN PERCH	BOTTOM TRAWL	X	X	
	SABLEFISH	BOTTOM TRAWL	X	X	
	YELLOWFIN SOLE	BOTTOM TRAWL	X	X	
	OTHER FLOUNDERS	BOTTOM TRAWL	X	X	
	PACIFIC COD	BOTTOM TRAWL	X	X	
	SQUID	BOTTOM TRAWL	X	X	
	HERRING	BOTTOM TRAWL	X	X	
	OTHER GROUND FISH	BOTTOM TRAWL	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. JA-78-0723

1. Name of Vessel [illegible]
2. Visual Identifier (Call Sign) JPGI
3. Type of Vessel LONGLINER / FDT
4. Length 50.51 M
5. Gross Tonnage 97 MT
6. Net Tonnage 32 MT
7. Maximum Speed (knots) 10.5 KT
8. Owner's Name and Address KAKUDAI GYOGYO CO. LTD
88 HORIKIRI, KUSHIRA-KUSHIRA-CHO, YURI-GUN, AKITA, JAPAN
9. Types of Processing Equipment
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
C R B	TANNER CRAB	TRAPS (POTS)	X		

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMITS TO FISH WITHIN THE FISHERY CONSERVATION ZONE OF THE UNITED STATES

No.

In accordance with the provisions of the Fishery Conservation and Management Act of 1976, the Government of Cuba hereby submits this application for permits for vessels under its jurisdiction to fish within the Fishery Conservation Zone of the United States, or beyond that zone for anadromous species or Continental Shelf fishery resources subject to the jurisdiction of the United States, during the year 1978.

Fishing Vessel Identification Forms will be submitted in support of this application. The fishery plans, species, and catch contemplated for vessels of the Cuban flag are as follows:

Fishery Plans	Target Species	Total Tonnage Requested For Each Species (MT)
Gulf of Mexico, Sharks (bottom longline)	Sharks (various species)	1500
Atlantic Billfish and Sharks		

Submitted:
Date February 20, 1978

Signature of Authorized Official

Title [illegible]
Ministerio Industria Pesquera

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0001

1. Name of Vessel ESCAMERO 28 — 2. Visual Identifier (Call Sign) CO-2309
3. Type of Vessel LONGLINER — 4. Length 16:00 mt.
5. Gross Tonnage 26.51 Mt. — 6. Net Tonnage 25.77 Mt. — 7. Speed (knots) Maximum 6 Knots
8. Owner's Name and Address FLOTA DEL GOLFO, Calixto García No. 111 Regla, Ciudad Hab.
9. Types of Processing Equipment NONE
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
Gulf of México	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0003

1. Name of Vessel ESCAMERO 56 — 2. Visual Identifier (Call Sign) CO-2381
3. Type of Vessel LONGLINER — 4. Length 16:00 Mt.
5. Gross Tonnage 26.51 Mt. — 6. Net Tonnage 25.77 Mt. — 7. Speed (knots) Maximum 6 Knots
8. Owner's Name and Address FLOTA DEL GOLFO, Calixto García No. 111 Regla, Ciudad Habana
9. Types of Processing Equipment NONE
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
Gulf of México	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0002

1. Name of Vessel ESCAMERO 32 — 2. Visual Identifier (Call Sign) CO-2368
3. Type of Vessel LONGLINER — 4. Length 16:00 mt.
5. Gross Tonnage 26.51 Mt. — 6. Net Tonnage 23.77 Mt. — 7. Speed (knots) Maximum 6 Knots
8. Owner's Name and Address FLOTA DEL GOLFO, Calixto García No. 111 Regla, Ciudad Habana
9. Types of Processing Equipment NONE
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
Gulf of México	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0004

1. Name of Vessel ESCAMERO 69 — 2. Visual Identifier (Call Sign) CO-2301
3. Type of Vessel LONGLINER — 4. Length 16:00 mt.
5. Gross Tonnage 26.51 Mt. — 6. Net Tonnage 25.77 Mt. — 7. Speed (knots) Maximum 6 Knots
8. Owner's Name and Address FLOTA DEL GOLFO, Calixto García No. 111 Regla, Ciudad Habana
9. Types of Processing Equipment NONE
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
Gulf of México	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0005

1. Name of Vessel ESCAMERO 90 2. Visual Identifier (Call Sign) CO-0001
3. Type of Vessel LONGLINER 4. Length 16:00 Mt.
5. Gross Tonnage 26.01 Mt. 6. Net Tonnage 25.22 Mt. 7. Maximum Speed (knots) 8 Knots
8. Owner's Name and Address FLOTA DEL GOLFO, Calixto García No. 111 Reglo, Ciudad Habana
9. Types of Processing Equipment NONE
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Activity: Processing	Activity: Other Support
Gulf of Mexico	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag: ☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0007

1. Name of Vessel LAMDA XIII 2. Visual Identifier (Call Sign) CO-0100
3. Type of Vessel Longliner 4. Length 21.03 Mt.
5. Gross Tonnage 109.15 Mt. 6. Net Tonnage 69.26 Mt. 7. Maximum Speed (knots) 9 Knots
8. Owner's Name and Address FLOTA DEL GOLFO, Calixto García No. 111 Reglo, Ciudad Habana
9. Types of Processing Equipment NONE
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Activity: Processing	Activity: Other Support
Gulf of Mexico	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag: ☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0006

1. Name of Vessel ESCAMERO 93 2. Visual Identifier (Call Sign) CO-0002
3. Type of Vessel LONGLINER 4. Length 16:00 Mt.
5. Gross Tonnage 26.01 Mt. 6. Net Tonnage 25.22 Mt. 7. Maximum Speed (knots) 8 Knots
8. Owner's Name and Address FLOTA DEL GOLFO, Calixto García No. 111 Reglo, Ciudad Habana
9. Types of Processing Equipment NONE
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Activity: Processing	Activity: Other Support
Gulf of Mexico	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag: ☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0009

1. Name of Vessel LAMDA XXIV 2. Visual Identifier (Call Sign) CO-2705
3. Type of Vessel LONGLINER 4. Length 21.03 Mt.
5. Gross Tonnage 102.15 Mt. 6. Net Tonnage 69.26 Mt. 7. Maximum Speed (knots) 9 Knots
8. Owner's Name and Address FLOTA DEL GOLFO, Calixto García No. 111 Reglo, Ciudad Habana
9. Types of Processing Equipment NONE
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Activity: Processing	Activity: Other Support
Gulf of Mexico	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag: ☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0010

1. Name of Vessel LAMDA LIV
2. Visual Identifier (Call Sign) CO-2420
3. Type of Vessel LONGLINER
4. Length 21.63 m.
5. Gross Tonnage 107.15 Mt.
6. Net Tonnage 69.20 Mt.
7. Speed (knots) Maximum 9 Knots
8. Owner's Name and Address FLOTA CUBANA PESQUERA, Calixto Garcia No. 111 Reglas, Ciudad Habana
9. Types of Processing Equipment NONE
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Activity: Processing	Activity: Other Support
Gulf of Mexico	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0012

1. Name of Vessel LAMDA LXX
2. Visual Identifier (Call Sign) CO-2215
3. Type of Vessel LONGLINER
4. Length 21.63 Mt.
5. Gross Tonnage 107.15 Mt.
6. Net Tonnage 69.20 Mt.
7. Speed (knots) Maximum 9 Knots
8. Owner's Name and Address FLOTA CUBANA PESQUERA, Calixto Garcia No. 111 Reglas, Ciudad Habana
9. Types of Processing Equipment NONE
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Activity: Processing	Activity: Other Support
Gulf of Mexico	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0011

1. Name of Vessel LAMDA LVIII
2. Visual Identifier (Call Sign) CO-2270
3. Type of Vessel LONGLINER
4. Length 21.63 m.
5. Gross Tonnage 107.15 Mt.
6. Net Tonnage 69.20 Mt.
7. Speed (knots) Maximum 9 Knots
8. Owner's Name and Address FLOTA CUBANA PESQUERA, Calixto Garcia No. 111 Reglas, Ciudad Habana
9. Types of Processing Equipment NONE
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Activity: Processing	Activity: Other Support
Gulf of Mexico	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0013

1. Name of Vessel LAMDA LXXVI
2. Visual Identifier (Call Sign) CO-2301
3. Type of Vessel LONGLINER
4. Length 21.63 m.
5. Gross Tonnage 107.15 Mt.
6. Net Tonnage 69.20 Mt.
7. Speed (knots) Maximum 9 Knots
8. Owner's Name and Address FLOTA CUBANA PESQUERA, Calixto Garcia No. 111 Reglas, Ciudad Habana
9. Types of Processing Equipment NONE
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Activity: Processing	Activity: Other Support
Gulf of Mexico	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0014

1. Name of Vessel LAMDA LXXVII 2. Visual Identifier (Call Sign) CO-2186
3. Type of Vessel LONGLINER 4. Length 21.65 M.
5. Gross Tonnage 107.15 Mt. 6. Net Tonnage 69.26 Mt. 7. Maximum Speed (knots) 9 Knots
8. Owner's Name and Address FLOTA DEL GOLFO, Calixto Garcia No. 111 Regla, Ciudad Habana

9. Types of Processing Equipment NONE

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
Gulf of Mexico	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag?

☐ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0016

1. Name of Vessel LAMDA LXXXI 2. Visual Identifier (Call Sign) CO-2187
3. Type of Vessel LONGLINER 4. Length 21.65 m.
5. Gross Tonnage 107.15 Mt. 6. Net Tonnage 69.26 Mt. 7. Maximum Speed (knots) 9 Knots
8. Owner's Name and Address FLOTA DEL GOLFO, Calixto Garcia No. 111 Regla, Ciudad Habana

9. Types of Processing Equipment NONE

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
Gulf of Mexico	Shark	Bottom Longliner	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag?

☐ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0015

1. Name of Vessel LAMDA LXXX 2. Visual Identifier (Call Sign) CO-2190
3. Type of Vessel LONGLINER 4. Length 21.65 M.
5. Gross Tonnage 107.15 Mt. 6. Net Tonnage 69.26 Mt. 7. Maximum Speed (knots) 9 Knots
8. Owner's Name and Address FLOTA DEL GOLFO, Calixto Garcia No. 111 Regla, Ciudad Habana

9. Types of Processing Equipment NONE

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
Gulf of Mexico	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag?

☐ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0017

1. Name of Vessel CAYO LARGO 22 2. Visual Identifier (Call Sign) CO-2691
3. Type of Vessel LONGLINER 4. Length 16:00 mt.
5. Gross Tonnage 25.77 Mt. 6. Net Tonnage 25.77 Mt. 7. Maximum Speed (knots) 6 Knots
8. Owner's Name and Address FLOTA DEL GOLFO, Calixto Garcia No. 111 Regla, Ciudad Habana

9. Types of Processing Equipment NONE

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
Gulf of Mexico	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag?

☐ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0020

1. Name of Vessel LAUDA LXIX 2. Visual Identifier (Call Sign) CO-9122
3. Type of Vessel LONGLINER 4. Length 21.65 m.
5. Gross Tonnage 107.13 Mt. 6. Net Tonnage 69.96 Mt. 7. Speed (knots) Maximum 9 Knots
8. Owner's Name and Address FLOTA DEL GOLFO, Calixto Garcia No.111 Regla, Ciudad Habana
9. Types of Processing Equipment NONE
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity Catching	Processing	Other Support
Gulf of Mexico	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag?
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0026

1. Name of Vessel LAUDA XCI 2. Visual Identifier (Call Sign) CO-2336
3. Type of Vessel LONGLINER 4. Length 21.65 mt.
5. Gross Tonnage 107.18 Mt. 6. Net Tonnage 69.96 Mt. 7. Speed (knots) Maximum 9 Knots
8. Owner's Name and Address FLOTA DEL GOLFO, Calixto Garcia No.111 Regla, Ciudad Habana
9. Types of Processing Equipment NONE
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity Catching	Processing	Other Support
Gulf of Mexico	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag?
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0025

1. Name of Vessel LAUDA XC 2. Visual Identifier (Call Sign) CO-2335
3. Type of Vessel LONGLINER 4. Length 21.65 Mt.
5. Gross Tonnage 107.13 Mt. 6. Net Tonnage 69.96 Mt. 7. Speed (knots) Maximum 9 Knots
8. Owner's Name and Address FLOTA DEL GOLFO, Calixto Garcia No.111 Regla, Ciudad Habana
9. Types of Processing Equipment NONE
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity Catching	Processing	Other Support
Gulf of Mexico	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag?
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0028

1. Name of Vessel LAUDA C 2. Visual Identifier (Call Sign) CO-2337
3. Type of Vessel LONGLINER 4. Length 21.65 m.
5. Gross Tonnage 107.13 Mt. 6. Net Tonnage 69.96 Mt. 7. Speed (knots) Maximum 9 Knots
8. Owner's Name and Address FLOTA DEL GOLFO, Calixto Garcia No.111 Regla, Ciudad Habana
9. Types of Processing Equipment NONE
10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity Catching	Processing	Other Support
Gulf of Mexico	Shark	Bottom Longline	X		
ABS					

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag?
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0124

1. Name of Vessel M/P "AGUJA" 2. Visual Identifier (Call Sign) CUAD
3. Type of Vessel Cargo/transport 4. Length 42.70 Mt.
5. Gross Tonnage 11.10 Mt. 6. Net Tonnage 265 Mt. 7. Maximum Speed (knots) 9.3 Knots
8. Owner's Name and Address FLOTA CUBANA DEL GOLFO, Edificio Gonzalo No. 111 Manila, Ciudad Habana

9. Types of Processing Equipment NONE

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
Gulf of Mexico ABS					X

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag?
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0125

1. Name of Vessel M/P "MANJUARI" 2. Visual Identifier (Call Sign) CCSN
3. Type of Vessel Processing/mothership 4. Length 70.47 Mt.
5. Gross Tonnage 1264.02 Mt. 6. Net Tonnage 379.20 Mt. 7. Maximum Speed (knots) 10 Knots
8. Owner's Name and Address FLOTA CUBANA DEL GOLFO, Edificio Gonzalo No. 111 Manila, Ciudad Habana

9. Types of Processing Equipment Slicer for fillets shapes

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
Gulf of Mexico ABS				X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag?
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0126

1. Name of Vessel CHERNA 2. Visual Identifier (Call Sign) CONR
3. Type of Vessel STERN TRAWLER 4. Length 65.90 m.
5. Gross Tonnage 1,284.08 6. Net Tonnage 588.13 7. Maximum Speed (knots) 12
8. Owner's Name and Address EMPRESA FLOTA CUBANA DE PESCA, Muelle "Osvaldo Sanchez", Desemparados y Mercado, Luyanó, Apartado 74, Ciudad de La Habana, Cuba
9. Types of Processing Equipment NONE

10. Fisheries for Which Permit is Requested: Silver and red hake directed fisheries

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
NWA					X (including resupply, crew and observers transfers)

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0127

1. Name of Vessel RIO MAYARI 2. Visual Identifier (Call Sign) COKW
3. Type of Vessel STERN TRAWLER 4. Length 107.00 m
5. Gross Tonnage 2,635.00 6. Net Tonnage 1,160.00 7. Maximum Speed (knots) 15
8. Owner's Name and Address EMPRESA FLOTA CUBANA DE PESCA, Muelle "Osvaldo Sanchez", Desamparados y Mercado, Luyanó, Apartado 74, Ciudad de La Habana, Cuba
9. Types of Processing Equipment ~~FILLETING MACHINE (3); WASHING MACHINE (2); CHAMBER (12); FISH BLOCK PRESS (2) PNEUMATIC STAPLER (5); BOX~~ HEADING MACHINE (5); SKINNING MACHINE (1); FILLETING MACHINE (3); WASHING MACHINE (2); FISHMEAL PLANT (1); FISH OIL SEPARATOR (1); COMPRESSED AIR FREEZING STRAPPING-TOOL

10. Fisheries for Which Permit is Requested: Silver and Red Hake directed fisheries

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Processing	Other Support
NWA	Silver and Red hake	Mid-water trawl and bottom otter trawl	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:
☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. CU-78-0128

1. Name of Vessel GOLFO DE GUANACAHABIBES 2. Visual Identifier (Call Sign) COGY
3. Type of Vessel REFRIGERATED CARGO 4. Length 163.00 m
5. Gross Tonnage 10,549.07 6. Net Tonnage 6,436.66 7. Maximum Speed (knots) 21
8. Owner's Name and Address EMPRESA FLOTA CUBANA DE PESCA, Muelle "Osvaldo Sanchez", Desamparados y Mercado, Luyanó, Apartado 74, Ciudad de La Habana, Cuba
9. Types of Processing Equipment None

10. Fisheries for Which Permit is Requested: Silver and Red Hake directed fisheries

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Activity: Processing	Activity: Other Support
NWA					X (including cargo transport, resupply and crew transfer)

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

[FR Doc. 78-6832 Filed 3-16-78; 8:45 am]

federal register

FRIDAY, MARCH 17, 1978
PART VII

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

■

Flood Elevation Determinations

[4210-01]

Title 24—Housing and Urban Development

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-3362]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Town of Green River, Sweetwater County, Wyo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Green River, Sweetwater County, Wyo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the town of Green River, Wyo.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Green River, are available for review at Town Hall, 50 East Second North, Green River, Wyo.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the town of Green River, Wyo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Green River	Union Pacific RR. Bridge.	6,082
	Bridge to Expedition Island.	6,080
	Unita Dr. Bridge	6,078
	Teton Blvd	6,069

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

Issued: December 27, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6871 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI-3479]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Boulder, Boulder County, Colo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Boulder, Boulder County, Colo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100- ear) flood elevations, for the city of Boulder, Colo.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Boulder, are available for review at City Hall, 1777 Broadway, Boulder, Colo.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the city of Boulder, Colo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community of from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Locationn	Elevation in feet, national geodetic vertical datum
Boulder Creek	6th St	5,372
	9th St	5,360
	Broadway	5,348
	Arapahoe Ave	5,341
	17th St	5,325
	19th St	5,315
	Folsom Field	5,304
	24th St	5,297
	28th St	5,285
	30th St	5,272
	Arapahoe Ave	5,248
	Colorado & Southern RR.	5,225
South Boulder Creek	Arapahoe Ave	5,231
	Colorado & Southern RR.	5,220

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

Issued: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6872 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI-3612]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final flood Elevation Determinations for the Town of Milton, Sussex County, Del.

AGENCY: Federal Insurance Administration, HUD,

ACTION. Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Milton, Sussex County, Del. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the town of Milton, Del.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Milton, are available for review at Town Hall, 106 Union Street, Milton, Del.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the town of Milton, Del.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Broadkill River	Road St.	9
Round Pole Branch.	Downstream from Atlantic St.	9
Wagamons Pond	Shoreline	11

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

Issued: January 13, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6873 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI-3049]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Bellevue, Blaine County, Idaho

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Bellevue, Blaine County, Idaho. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to quality or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of Bellevue, Idaho.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Bellevue, are available for review at the Home of the Mayor, The Honorable Lloyd Johnson, Bellevue, Idaho.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the City of Bellevue, Idaho.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Big Wood River	Broadford Road	5,164
	Cedar Street	5,155
	Chestnut Street	5,141

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

Issued: October 13, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6874 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI-3613]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for The City of Belle Plaine, Sumner County, Kans.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Belle Plaine, Sumner County, Kans. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of Belle Plaine, Sumner County, Kans.

ADDRESSES: Maps and other information showing the detailed outlines of the flood prone areas and the final elevations for the City of Belle Plaine are available for review at City Hall, 401 North Merchant, Belle Plaine, Kans.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the City of Belle Plaine, Sumner County, Kans.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet national geodetic vertical datum
Euphrates Creek...	320 ft Upstream of Missouri Pacific RR..	1,202
	700 ft Upstream of Line St. at the 4th Ave. Culvert.	1,203

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

Issued: January 13, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6875 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI-3559]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for The City of Erie, Neosho County, Kans.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Erie, Neosho County, Kans. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of Erie, Neosho County, Kans.

ADDRESSES: Maps and other information showing the detailed outlines of the flood prone areas and the final elevations for the City of Erie are available for review at the City Clerk's Office, 224 South Main, City Hall, Erie, Kans. 66733.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assiatant Administrator, Office of Flood Insurance, 202-755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the City of Erie, Neosho County, Kans.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Puckets Run Creek.	Southern corporate limits.	888
	Fifth St	888
	Confluence with Puckets Run tributary between 2d and 3d Sts..	890
	Second St	892
	70 ft downstream of State St.	893
	State St	895
	Railroad St	896
	Northern corporate limit 60 ft downstream of Atchison, Topeka & Santa Fe Ry.	896
Tributary to Puckets Run Creek, (confluence between Second and Third Street)..	100 ft upstream of Walnut St.	890
	Second St	892
	Canville St	893
	Missouri-Kansas Texas-RR.	899

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

Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: January 13, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6876 Filed 3-16-78; 8:45]

[4210-01]

[Docket No. FI-3264]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Alexandria, Rapides Parish, La.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Alexandria, Rapides Parish, La. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of Alexandria, La.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Alexandria, are available for review at City Hall, Alexandria, La.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the City of Alexandria, La.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Red River	Kansas City Southern Railroad.	93
	Alexandria Pineville Expressway (U.S. Highways 71 and 165).	93
	Murray Ave. (U.S. Highway 165).	93
	U.S. Highways 71, 165, 167.	93
Chatlin Lake Canal.	Midway Ave. (Hudson Blvd.).	72
	Kansas City Southern RR.	74
	Willow Glen River Rd.	75
	Maple St	76
	Casson St	76
Chatlin Lake Canal West.	Missouri Pacific Railroad.	77
	Kansas City Southern Railroad.	77
	Fulton St	78
Mill Bayou	Jones Ave	76
	Broadway Ave	76
	Applewhite St	76
Sandy Bayou	Daspit St	75
	Renee St	76
	Third St	76
Hynson Bayou	Midway Ave. (Hudson Blvd.).	72
	Tulane Ave	72
	Willow Glen River Rd.	74
	Hammond Alley	75
	New York Ave	76
	Broadway Ave	76
	Cypress St	77
	Hoop St	77
	Houston St	78
	Masonic Dr	79
	Bryn Mawr Dr	81
	Georges Lane	82
	Monroe St	82
Horseshoe Drainage Canal.	Willow Glen River Rd.	73
	Lee St. extension	73
	Sterks Rd	74
	MacArthur Dr. (U.S. Highway 71).	74
	Masonic Dr. (U.S. Highway 165).	76
	Alden Ct.	77
	Jackson St. extension.	78
	Warren St	79
	Twin Bridges Rd. (State Highway 488).	80
Philip Bayou	3d St	75
	Missouri Pacific Railroad.	75
	Grahan Rd	76
	Texas & Pacific RR.	78
	State Highway 1	78
Bayou Rapides	4th St	79
	MacArthur Dr. (U.S. Highways 71, 165, 167).	79
Bayou Rapides diversion channel.	State Highway 28	73
	Bayou Rapides Rd.	73
East Prong Bayou.	Road to watertank (unnamed).	72
	Joyce St	74
	Unnamed bridge	74
Bayou Robert	Gene Ball Dr.	80
	Caroline St	80
	Masonic Dr	80
	Twin Bridges Rd.	80
	Heyman Lane	81

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

Issued October 13, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6877 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI-3378]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Town of Andover, Essex County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Andover, Essex County, Mass. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the town of Andover, Mass.

ADDRESSES: Maps and other information showing the detailed outlines

of the flood-prone areas and the final elevations for the town of Andover, are available for review at Town Hall, 20 Main Street, Andover, Mass.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581, or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the town of Andover, Mass.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the national Flood Insurance Act of 1968 (Title XIII of the housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Merrimack River...	Interstate 93	50
Shawsheen River ..	Interstate 93 (upstream).	75
	Interstate 93 (downstream).	74
	Andover St	71
	Balmoral St	34
	Boston & Maine RR.	34

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

Issued: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6878 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI-3445]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Township of St. Clair, St. Clair County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the township of St. Clair, St. Clair, County, Mich. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the township of St. Clair, Mich.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the township of St. Clair, are available for review at Township Hall, 1539 South Bartlett Road, St. Clair, Mich.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581, or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the township of St. Clair, Mich.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are.

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Pine River	New Fred W. Moore Highway.	595
	Vine St	600
	I-94 westbound.....	605
	Gratiot Rd	610
	Frith Rd	611
St. Clair River	Yankee Rd	581
	Newman Rd	581
	Davis Rd	582

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

Issued: January 17, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6879 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI-3443]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for The City of Menominee, Menominee County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Menominee, Menominee County, Mich.

These base (100-year) Flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of Menominee, Mich.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Menominee,

are available for review at City Hall, 2511 10th Street, Menominee, Mich.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the City of Menominee, Mich.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Green Bay	47th Ave	584
	3d St	584
	Henes Park Rd	584
	39th Ave	584
	Chicago and Northwestern RR.	584
	Harbor Dr	584
	Ogden Rd	584
	U.S. Highway 41	584
Menominee River	Chicago and Northwestern RR.	585
	Hattie St	587
	Scott Paper Co.—lower dam (upstream side).	596
	Scott Paper Co.—upper dam (upstream side).	610

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

Issued: December 27, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6880 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI-3202]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for Buchanan County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Buchanan County, Mo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt of show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for Buchanan County, Mo.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Buchanan County, are available for review at Buchanan County Courthouse, 5th and Jule Street, St. Joseph, Mo.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for Buchanan County, Mo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Missouri River	U.S. Highway 59	793
Platte River	State Highway 116.	822
	County Rd. E23S.	831
	State Highway H.	838
	County Rd. E7S	845
	State Highway 6	849
Castile Creek	State Highway 116.	820
	County Rd. E23S.	824
102 River	State Highway 6	856
	Cook Rd	858
Bee Creek	County Rd. E26S.	890
	State Highway 116.	897
	Interstate Highway 29.	908
	County Rd. E23S.	914
	County Rd. E20S.	937
Jenkins Branch	State Highway DD.	833
	State Highway H.	893
Third Fork Platte River.	County Rd. E7S	845
	U.S. Highway 36	847
	State Highway 6	854
	County Rd. E2N	864
	County Highway P.	871
Little Third Fork Platte River.	County Rd. N15E.	859

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

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6881 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI-2557]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Cabool, Texas County, Missouri

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Cabool,

Texas County, Mo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of Cabool, Mo.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Cabool, are available for review at City Hall, 618 Main Street, Cabool, Mo.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the City of Cabool, Mo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Big Pine River	Airport Rd.	1224
	U.S. Routes 60 and 63.	1234
	Cedar St.	1248
	Elm St and Route E.	1252
	Cannaday Lane	1268
Unnamed Tributary No. 1.	St. Louis & San Francisco RR.	1246
	Ozark Ave. and U.S. 60.	1249
	Summit Ave	1251
Unnamed Tributary No. 1.	Walnut St.	1254
	Spruce St.	1259
	2d St	1266
	Cedar St.	1270
	3d St	1272
	Tindel Terrace	1280
	Sycamore St.	1289
	Highland St	1301
	Meeker St.	1303
Unnamed Tributary No. 2.	Elm St	1254
Unnamed Tributary No. 3.	St. Louis & San Francisco RR.	1254
	Elm St and Route E.	1257
	Main St	1262
	Ozark Ave and U.S. 60.	1279
	Summit Ave	1285
	Garst St	1297

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

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6882 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI-3462]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Village of Wellsville, Allegany County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Village of Wellsville, Allegany County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Village of Wellsville, Allegany County, N.Y.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Wellsville, Allegany County, N.Y., are available for review at Village Clerk's Office, Wellsville, N.Y.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Village of Wellsville, Allegany County, N.Y.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Uurban Development Act of -1968 (Pub L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Genesee River	Northern corporate limits.	1,486
	Upstream of Madison St.	1,494
	Southern corporate limits.	1,499
Dyke Creek	Miller St. (extended).	1,500
	Northern corporate limits.	1,505

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

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6883 Filed 3-16-78; 8 :45 am]

[4210-01]

[Docket No. FI-2696]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Knightdale, N.C.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the Town of Knightdale, N.C. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt of show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the Town of Knightdale, N.C.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Town of Knightdale.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1969 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917).

An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

Maps and other information showing the detailed outlined of the flood-prone areas and the final elevations for the Town of Knightdale are available for review at Town Hall, Knightdale, N.C.

The final 100-year flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet national geodetic vertical datum
Mingo Creek	NCSR 2233	277
Poplar Creek	NCSR 2233	225
	NCSR 2513	251
	NCSR 2512	223

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

Issued: June 24, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6884 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI-3385]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for New Hanover County, N.C.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in New Hanover County, N.C. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NEFP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for New Hanover County, N.C.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for New Hanover County, are available for review at County Administration Building, 320 Chestnut Street, Wilmington, N.C.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for New Hanover County, N.C.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Cape Fear River	U.S. Route 74-76	11
	U.S. Route 421	11
	Seaboard Coast Line RR.	10
Northeast Cape Fear River.	U.S. Route 117 (near Cape Fear River).	11
	Seaboard Coast Line RR. (near Cape Fear River).	11
	U.S. Route 117 (upstream of Prince George Creek).	8
	Seaboard Coast Line RR. (upstream of Prince George Creek).	8
Island Creek	State Route 1002	8
	Sidbury Rd [1]	18
Prince George Creek.	North Carolina Route 133 [2].	12
	Seaboard Coast Line RR.	13
	North Carolina Route 132.	14
	Blue Clay Rd. (State Route 1318) [2].	19
	Sidbury Rd. (State Route 1336) [1].	29
Prince George Creek Tributary.	State Route 1335 [1]	23
Ness Creek	North Carolina Route 133 [1].	22
Smith Creek	North Carolina Route 133.	10
	Seaboard Coast Line RR.	10
	23d St	10
	Kerr Ave	10
	North Carolina Route 132 [1].	13
	North Carolina Route 132 [2].	15
Kings Grant Tributary.	North Carolina Route 132 [2].	15
	State Route 1327	32
Murrayville Tributary.	Murrayville Rd. (State Route 1322) [1].	24

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Murrayville Tributary.	Murrayville Rd. (State Route 1322) [3].	26
Spring Branch	Kerr Ave	10
	North Carolina Route 132 [1].	21
	North Carolina Route 132 [2].	24
Mott Creek	River Rd	12
	Antionette Dr	12
	U.S. Route 421 [1]	15
	North Carolina Route 132 [1].	19
	North Carolina Route 132 [2].	21
Bradley Creek	Mallard St	13
Bradley Creek Tributary.	State Route 1419 [1]	17
	U.S. Route 74 [1]	18

[1]Downstream side.
[2]Upstream side.

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

Issued: January 13, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6885 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI-3440]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEWS

Final Flood Elevation Determinations for Tillamook County, Oreg.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Tillamook County, Oreg. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for Tillamook County, Oreg.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Tillamook County, are available for review at County Courthouse, 911 Williams Street, Tillamook, Oreg.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for Tillamook County, Oreg.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator had developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Nehalem River	Oregon Coast Highway Bridge (Highway 101).	10
	Necanicum Highway Bridge.	14
	Southern Pacific RR. Bridge.	17
	Foley Creek Rd. Bridge.	26
North fork, Nehalem River.	Camp Four Rd. Bridge.	12
	Scovel Rd. Bridge	15
Miami River	Southern Pacific RR. Bridge.	9
	Miami River Bridge.	9
	Moss Creek Rd. Bridge.	22
	Longview Fibre Rd. Bridge.	46
Kilchis River	Southern Pacific RR. Bridge.	9
	Kilchis River Bridge.	11
	Boquist Rd. Bridge.	15
	Curz Rd. Bridge	27
	Bridge	30
Wilson River	Wilson River Bridge (Highway 101).	17
	Southern Pacific RR. Bridge.	20
	Sollie Smith Bridge.	26
Wilson River	Wilson River Highway Bridge.	54
Hoquarton Slough	Hoquarton Slough Bridge (Highway 101).	11
Trask River	Stillwell Bridge (Netarts Highway).	10
	Tone Bridge	16
	Trask River Bridge (Highway 101).	25
	Southern Pacific RR. Bridge.	28
	Johnson Bridge (Market Rd. No. 13).	35
Tillamook River	Tillamook River Bridge (Netarts Highway).	10
	Burton Bridge	11
Three Rivers	Highway 101 Bridge.	55
	Bridge (200 ft downstream of Cedar Creek).	110
	Bridge	187
Nestucca River	Pacific City Bridge.	14
	Woods Bridge	16
	Cloverdale Bridge	25
	Condor Bridge	42

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

Issued: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6886 Filed 3-16-78; 8:45 am]

[4210-10]

[Docket No. FI-3348]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Huntington, Chittenden County, Vt.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Huntington, Chittenden County, Vt. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Town of Huntington, Chittenden County, Vt.

ADDRESSES: Maps and other information showing the detailed outlines of the flood prone areas and the final elevations for the Town of Huntington are available for review at the Town Clerk's Office, R.F.D. No. 1, Box 66, Huntington, Vt.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Town of Huntington, Chittenden County, Vt.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Huntington River	Northern Corporate Limit.	526
	4000 feet Upstream of the Main Road Bridge.	567
	East Street Bridge.	618
	Town Highway No. 20.	646
	Main Road Bridge at .45 Miles Downstream of Brush Brook.	670
	Miles Road	710
	Confluence with Carpenter Brook.	719
	Confluence with Cobb Brook.	756
Cobb Brook	Main Road Bridge.	779
Cobb Brook	Charles Smith Road.	806

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

Issued: January 13, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6887 Filed 3-16-78; 8:45 am]

[4210-01]

[Docket No. FI-3601]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Winooski, Chittenden County, Vt.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Winooski, Chittenden County, Vt. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of Winooski, Chittenden County, Vt.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Winooski, Chittenden County, Vt., are available for review at Municipal Building, Winooski, Vt.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determination of flood elevations for the City of Winooski, Chittenden County, Vt.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Winooski River	Upstream of Central Vermont RR. Bridge.	115
	Upstream of U.S. Routes 2 and 7.	153
	Interstate Route 89 northbound.	168

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

Issued: January 13, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6888 Filed 3-16-78; 8:45 am]

[4210-01]

Docket No. FI-3253]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for Sheboygan County, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Sheboygan County, Wis. These base (100-year) Flood ele-

vations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for Sheboygan County, Wis.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Sheboygan County, are available for review at Sheboygan County Courthouse, 615 North 6th Street, Sheboygan, Wis.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410, 202-755-5581 or toll free line 800-424-8872.

SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Sheboygan County, Wis.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFP part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
North branch, Milwaukee River.	Farm Bridge	811
	State Trunk Highway 144.	811
	Farm Bridge	815
	County Trunk Highway SS.	817
	Cascade Rd	820
Silver Creek	Farm Bridge	809
	Camp Awana Rd	819
	County Trunk Highway DE.	847
	Creek Rd	849
Batavia Creek	County Trunk Highway SS.	817
	Farm Bridge	819
	State Trunk Highway 28.	842
Black River	Evergreen Rd	584
	Indian Mound Rd	588
Black River, tributary 1.	Lakeside Dr	585
	County trunk Highway KK.	593
Black River, tributary 2.	County Trunk Highway KK.	595
	County Trunk Highway EE.	617
Sheboygan River	Chicago & Northwestern RR.	590
	State Trunk Highway 28.	594
	State Trunk Highway 23.	686
	Meadowlark Rd	691
	County Trunk Highway TT.	704
	Alpine Rd	716
	County Trunk Highway O.	739
	County Trunk Highway M.	742
	Rio Rd	748
	Woodland Rd	753
	County Trunk Highway J.	759
	County Trunk Highway JM.	771
	County Trunk Highway JJ.	783
	County Trunk Highway A.	798
	Old County Trunk, Highway A.	802
	County Trunk Highway FF.	808
	Frankland Rd	814
	County Trunk Highway MM.	820
	Willow Rd	825
	County Trunk Highway EH.	828
	County Trunk Highway MC.	841
	Old Bridge	843
	State Trunk Highway 57.	844
Onion River	Qurtown Rd	669
	County Trunk Highway V.	695
	County Trunk Highway OO.	704
	State Trunk Highway 32.	711
Mullet River	Chicago & Northwestern RR.	677
	County Trunk Highway PP.	677
	Sumac Rd	724
	County Trunk Highway M.	739
	Willow Rd	754
	State Trunk Highway 57 North.	777
	State Trunk Highway 57 South.	778
	Pleasant View Rd.	783
	County Trunk Highway AC.	786
	Chicago, Milwaukee, St. Paul & Pacific RR.	789
	County Trunk Highway PP.	804
	Short Cut Rd	806
	State Trunk Highway 67.	817
	Terrace Ave	840
	State Trunk Highway 67.	841
	Woodland Rd	860
	Private road	868
	Abandoned bridge	884
La Budde Creek	Chicago, Milwaukee, St. Paul & Pacific RR.	884
Pigeon River	County Trunk Highway LS.	585
	Chicago & Northwestern RR.	591
	Mill Rd	594
	U.S. Highway 141.	615
	Golf Course Bridge.	625
	County Trunk Highway Y.	638
	Golf Course Bridge.	670
	County Trunk Highway J.	673
	Range Line Rd	677
	Playbird Rd	682
Fisher Creek	County Trunk Highway A.	707
	Farm Bridge	716
	County Trunk Highway FF.	724

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

Issued: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6889 Filed 3-16-78; 8:45 am]

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR PART 1917]

[Docket No. FI-3915]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE VILLAGE OF IRVINGTON, WESTCHESTER COUNTY, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Village of Irvington, Westchester County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Irvington Village Clerk's Office, 85 Main Street, Irvington, N.Y. Send comments to: Honorable Robert D. Reisman, Mayor of Irvington, 85 Main Street, Irvington, N.Y. 10533.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Village of Irvington, Westchester County, New York in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in Feet, national geodetic vertical datum
Sawmill River	Woodlands Lake Dam.	156
	Footbridge	158
	Conrail	163
	Corporate limits	163
Barney Brook	Footbridge off Woodbine Rd.	62
	Station Road (upstream side of Woodbine Rd).	78
	Private Way (upstream side of Station Road).	81
	Private Way (downstream side of Croton Aqueduct).	89
	Station Road (downstream side of Croton Aqueduct).	90
	Croton Aqueduct (upstream side).	95
	Private Way (upstream side of Croton Aqueduct).	99
	U.S. Route 9	114
	Private Way (upstream of U.S. Route 9).	145
	Harriman Rd (downstream side of Victor Dr).	154
	Footbridge (upstream side of Victor Dr).	162
	Sycamore Lane	177
	Private Way (upstream side of Sycamore Lane).	200
	Parkside Way (upstream side).	227
	Harriman Rd (upstream side of Parkside Way).	229
	Park Rd	239
	Footbridge (upstream side of Park Rd).	240
	Footbridge (upstream side of Hillside Terrace).	241
	Harriman Rd (upstream side of Hillside Terrace).	241
	Meadow Way	242
	Private Way (downstream side of Dunham Pl).	245
	Private Way (upstream side of Dunham Pl).	245
	Daisy Lane (upstream side).	264
	Private Way (upstream side of Daisy Lane).	267
	Footbridge (280 ft upstream of Daisy Lane).	272
	Footbridge (340 ft upstream of Daisy Lane).	273
	Footbridge (398 ft upstream of Daisy Lane).	273
	Private Way (downstream of Irvington Reservoir).	287
	Private Way (north side of Irvington Reservoir).	293
	Upstream limit of Detailed Study (9,413 ft above Buckhout St).	392
Barney Brook Tributary.	Confluence with Barney Brook.	100
	Station Rd	104
	Footbridge (290 ft upstream of Station Rd).	119
	Footbridge (450 ft upstream of Station Rd).	127
	Dows Lane	155
	U.S. Route 9	157
	Abbott Mews Rd	162
	East Clinton Ave	166
	Footbridge (1,200 ft upstream of East Clinton Ave).	212
	Footbridge (1,500 ft upstream of East Clinton Ave).	224
	Upstream limit of Detailed Study (3,948 ft. above confluence with Barney Brook).	260
Sunnyside Brook	ConRail	8
	Footbridge (414 ft.) upstream of ConRail.	11
	Private road (690 ft upstream of ConRail).	41
	Private road (1,030 ft upstream of ConRail).	59
	Private road (1,160 ft upstream of ConRail).	70
	Sunnyside Lane (downstream side of Old Croton Aqueduct).	91
	Footbridge (592 ft upstream of Sunnyside Lane).	119

Source of flooding	Location	Elevation in Feet, national geodetic vertical datum
Sunnyside Brook...	Footbridge (652 ft. upstream of Sunnyside Lane).	121
	Old Croton Aqueduct (upstream side).	151
	Footbridge (upstream side of Old Croton Aqueduct).	151
	Sunnyside Lane (upstream side of Old Croton Aqueduct).	193
	U.S. Route 9.....	209
	Private road (328 ft upstream of U.S. Route 9).	220
	Private road (770 ft upstream of U.S. Route 9).	252
	Private driveway (92 ft downstream of Hudson View Ave).	260
	Private driveway (20 ft. downstream of Hudson View Ave).	262
	Hudson View Ave.	265
	Footbridge (upstream of Hudson View Ave).	282
	Upstream limit of Detailed Study (6,587 ft above beginning of detailed study).	284

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

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6893 Filed 3-16-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3916]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE TOWN OF MARILLA, ERIE COUNTY, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Marilla, Erie County, New York.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qulaify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES:

The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Marilla Town Office, South 1740 Two Rod Road, Marilla, New York. Send comments to:

Mr. John Foss, Town Supervisors of Marilla, South 1740 Two Rod Road, Marilla, N.Y. 14102.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Marilla, Erie County, New York in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CRF 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entites. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Cayuga Creek	Corporate limit (downstream).	839
	Clinton St. (Route 354 bridge).	859
	Clinton St. Dam (upstream).	875
	Corporate limit (upstream).	899
Buffalo Creek.....	Porterville Rd.....	833
Little Buffalo Creek.	Confluence w/ tributary.	819
	Two Rod Rd. Bridge.	832
	Bullis Rd. Bridge .	841
	East Ave. Bridge ..	856
Tributary to Little Buffalo Creek.	Confluence w/ Little Buffalo Creek.	819
	Bullis Rd	845

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

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6894 Filed 3-16-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3917]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE CITY OF MOUNT VERNON, WESTCHESTER COUNTY, N.Y.

AGENCY: Federal Insurance Administration, HUD

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Mount Vernon, Westchester County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the pro-

posed base (100-year) flood elevations are available for review at Mount Vernon City Hall, Roosevelt Square, Mount Vernon, N.Y. Send comments to: Honorable Thomas E. Sharpe, Mayor of Mount Vernon, Roosevelt Square, Mount Vernon, N.Y. 10550.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Mount Vernon, Westchester County, N.Y., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Hutchinson River	South Fulton Ave.	13
	East 3d St	14
	East Lincoln Ave.	30
	Upstream corporate limits.	62
Bronx River	Oak St	76
	West Broad St	81
	ConRail, upstream.	83

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

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6895 Filed 3-16-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3918]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE TOWN OF PITTSFORD, MONROE COUNTY, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Pittsford, Monroe County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Pittsford Town Hall, 11 South Main Street, Pittsford, N.Y. Send comments to: Mr. Paul M. Spiegel, Town Supervisor of Pittsford, 11 South Main Street, Pittsford, N.Y. 14534.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for Pittsford, N.Y., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Irondequoit Creek	Downstream side of New York State Barge Canal.	398
	Upstream side of New York State Barge Canal.	410
	Downstream side of Thornell Rd.	417
Allen Creek	Confluence of Buckland Creek Footbridge, 1,160 ft downstream.	396
	From Allen Creek Rd.	410
	Allen Creek Rd.	427
East branch, Allen Creek.	Oak Hill Country Club Rd.	398
	Downstream side of ConRail Bridge.	410
	Route 31	418
	Upstream side of East Brook Rd.	424
	Woodland Dr	433
	Upstream side of New York State Barge Canal.	450
	West Jefferson St.	464
	Tobey Rd	482
	Stone Rd	515
	Confluence with tributary (1,800 ft upstream from Stone Rd.).	532
	Confluence with a tributary (740 ft downstream from Calkins Rd.).	566
	Calkins Rd	577
Mill Creek	Downstream side of East St.	412
	Upstream side of East St.	415
	Downstream side of Thornell Rd.	423
	ConRail	431
	Van Voorhis Rd	482

(National Flood Insurance Act of 1968 (title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Ad-

ministrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6896 Filed 3-16-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3919]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE TOWN OF POUGHKEEPSIE, DUTCHESS COUNTY, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Poughkeepsie, Dutchess County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Poughkeepsie Town Hall, Dutchess Turnpike, Poughkeepsie, N.Y. Send comments to: Mrs. Anna Buchholz, Town Supervisor of Poughkeepsie, P.O. Box 3209, Poughkeepsie, N.Y. 12063.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Poughkeepsie, Dutchess County, N.Y., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet national geodetic, vertical datum
Hudson River	Corporate limits, downstream.	8
	Confluence of Casper Kill Creek.	8
	Rudco Rd., Route 117 (extended).	9
	Corporate limits, city of Poughkeepsie, downstream.	9
	Corporate limits, city of Poughkeepsie, upstream.	9
	Corporate limits, upstream.	9
Wappinger Creek	ConRail Bridge	9
	New Hamburg Rd.	10
	Corporate limits, village of Wappingers Falls, downstream.	12
	Route 9	97
	Little Falls Dam	107
	Jackson Rd	115
	Confluence of branch 3, Wappinger Creek.	121
	Route 376	140
	Red Oaks Mill Dam.	145
	Red Oaks Mill Dam.	145
	Old Manchester Rd.	160
	Route 55	160
	Route 43	167
	Confluence of branch 6, Wappinger Creek.	177
	Corporate limits, upstream.	196
Branch 3 Wappinger Creek.	Confluence with Wappinger Creek.	121
	Vassar Rd	141
	Footbridge, 1,000 ft upstream from Vassar Rd.	158
	Hills Ter	160
	Hampton Rd	167
Branch 5 Wappinger Creek.	Confluence with Wappinger Creek.	167
	Footbridge, 975 ft upstream from mouth.	167
	Footbridge, 1,520 ft upstream from mouth.	167
	Brett Pl. (extended).	168
Branch 6 Wappinger Creek.	Confluence with Wappinger Creek.	177
	East Bank Rd	190
	Footbridge, 500 ft upstream from East Bank Rd.	192
	Route 44	195
	Tamarack Hill Rd	197
Casper Kill Creek	ConRail Bridges	8
	Footbridge, 1,470 ft above mouth.	22
	Private road, downstream end of Cobalt Lake.	37
	Bridge, upstream end of Cobalt Lake.	37
	Camelot Rd	42
	U.S. Route 9	72
	Dam, 120 ft upstream from U.S. Route 9.	83
	Private road, 1,250 ft upstream from U.S. Route 9.	87
	Private road, 4,000 ft upstream from U.S. Route 9.	90
	Footbridge, 5,000 ft upstream from U.S. Route 9.	90
	Footbridge, 6,050 ft upstream from U.S. Route 9.	91
	Private road, 6,500 ft upstream from U.S. Route 9.	93
	Abandoned bridge	99
	Slate Hill Dr	104
	Footbridge, 1,300 ft upstream from Slate Hill Dr.	107
	Footbridge, 1,700 ft upstream from Slate Hill Dr.	107
	Spackenkill Rd	112
	IBM Rd	121
	Route 376	127
	Footbridge, downstream end of Sunset Lake.	130
	Private road, upstream end of Sunset Lake.	133
	Footbridge, 3,000 ft downstream from Manchester Rd.	136
	Footbridge, 2,500 ft downstream from Manchester Rd.	136
	Private road, 1,500 ft downstream from Manchester Rd.	136
	Manchester Rd, downstream.	138
	Manchester Rd, upstream.	154
	Route 44	154
Fall Kill Creek	Extension of Howard St.	182

Source of flooding	Location	Elevation in feet national geodetic, vertical datum
Pall Kill Creek	Salt Point Turnpike.	183
	Railroad crossing.	186

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

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6897 Filed 3-16-78; 8:45 am]

[4210-01]

[24 CFR PART 1917]

[Docket No. FI-3920]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE TOWN OF SALAMANCA, CATTARAUGUS COUNTY, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Salamanca, Cattaraugus County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Office, Route 353, Salamanca, N.Y. Send comments to: Mr. Donald Leiper, Town Supervisor of Salamanca, R. D., Route 353, Salamanca, N.Y. 14779.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Salamanca, Cattaraugus County, N.Y. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, National geodetic vertical datum
Little Valley Creek.	Downstream Corporate Limits.	1,372
	Conrail Track (Downstream).	1,385
	Center Street.....	1,388
	Conrail Track (Upstream).	1,410
	Upstream Corporate Limit.	1,416

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

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6898 Filed 3-16-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3921]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE TOWN OF YATES, ORLEANS COUNTY, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Yates, Orleans County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Yates Town Hall, Main Street, Lydonville, N.Y. Send comments to: Mr. George Bane, Supervisor of the Town of Yates, Main Street, Lydonville, N.Y. 14098.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Yates, Orleans County, N.Y. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances

that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Johnson Creek	Yates corporate limits (upstream).	332
	Marshall Rd.....	331
	Angling Rd.....	329
	Lyndonville corporate limits (upstream).	325
	Lyndonville corporate limits (downstream).	315
	Blood Rd	297
	Woodworth Rd.....	291
	Yates corporate limits (downstream) (Town Line Rd.).	269
Lake Ontario	Town Lake Rd. (extended).	251
	Morrison Rd. (extended).	252
	Lydonville Rd. (extended).	252
	Marshall Rd. (extended).	252
	County Line Rd. (extended).	251

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

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PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6899 Filed 3-16-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3922]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE TOWN OF CHINA GROVE, ROWAN COUNTY, NORTH CAROLINA

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of China Grove, Rowan County, N.C. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, China Grove, N.C. Send comments to: Mr. M. Steve Luther, Town Clerk, Town of China Grove, P.O. Box 15, China Grove, N.C. 28023.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of China Grove, N.C., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
East Centerview Branch.	U.S. Highway 29...	744
Petrea Branch	Alternate Centerview Drive*.	759
Swearington Branch.	Spring Branch Lane*.	767
*Upstream side	Clinton Street** ...	754
**Downstream side.	Clinton Street*.....	759

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

Issued: December 27, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6900 Filed 3-16-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3923]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE TOWN OF MORRISVILLE, WAKE COUNTY, NORTH CAROLINA

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Morrisville, Wake County, N.C. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, Morrisville, N.C. Send comments to Mayor Wade Davis, P.O. Box 116, Morrisville, N.C. 27560.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Ad-

ministrator, Office of Flood Insurance, 202-755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Morrisville, N.C., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entites. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Crabtree Creek	N.C. State Route 54	289
	Southern Railway	290
Crabtree Creek Tributary 6.	Confluence with Crabtree Creek.	283
Morrisville tributary.	N.C. State Road 1002 [1]	293
	N.C. State Route 54 [1]	300
	Southern Railway [1]	304
Hatchet Grove tributary.	Confluence with Crabtree Creek.	295
	Morrisville corporate limits (station 6200) [2].	309
Coles branch	Morrisville corporate limits (downstream crossing).	329
	Morrisville corporate limits (upstream crossing).	329

[1] Upstream side.
[2] Station location is distance upstream from confluence with Crabtree Creek.

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

Issued: December 27, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6901 Filed 3-16-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3924]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE CITY OF BELLEVUE, SANDUSKY COUNTY, OHIO

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Bellevue, Sandusky County, OH. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Bellevue City Hall, 108 W. Main Street, Bellevue, OH. Send comments to: Hon. Phyllis A. Robertson, Mayor of Bellevue, 131 Ashford Avenue, Bellevue, OH 44811.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Bellevue, Sandusky County, OH in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Big Ditch	Upstream corporate limits.	776
	Norfolk & Western RR.	760
	Main St.	756
	Ner Rd.	751

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

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6902 Filed 3-16-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3925]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE VILLAGE OF MIDDLEPORT, MEIGS COUNTY, OHIO

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Village of Middleport, Meigs County, OH. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or

remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Village Hall, Middleport, OH. Send comments to: Mayor Fred Hoffman, Village Hall, 237 Race Street, Middleport, OH 45760.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Village of Middleport, OH, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Ohio River	Intersection of Second St. and Mill St..	576
	Intersection of Elm St. and Broadway St..	576

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

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6903 Filed 3-16-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3926]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE VILLAGE OF MURRAY CITY, HOCKING COUNTY, OHIO

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Village of Murray City, Hocking County, Ohio. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Village Hall, Murray City, Ohio. Send comments to: Mayor Lester Sorrell, P.O. Box 207, Murray City, Ohio 43144.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Village of Murray City, Ohio, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Snow Fork	Long St	714
	State Route 78	712

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

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6904 Filed 3-16-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3927]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE VILLAGE OF NEVILLE, CLERMONT COUNTY, OHIO

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the village of Neville, Clermont County, Ohio. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to

either adopt or show evidence of being already in effect in order to qulaify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Neville Village Hall, Forest Avenue, Neville, Ohio. Send comments to: Hon. Preston Swart, Mayor of Neville, Box 183, Neville, Ohio 45156.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the village of Neville, Clermont County, Ohio, in accordance with section 110 of the Flood Disaster Projection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CRF 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entites. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, above mean sea level
Ohio River	Between upstream and downstream corporate limits.	508

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

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6905 Filed 3-16-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3928]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE CITY OF ROCKY RIVER, CUYAHOGA COUNTY, OHIO

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Rocky River, Cuyahoga County, Ohio. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Rocky River City Hall, 21012 Hillard Boulevard, Rocky River, Ohio. Send comments to: Hon. Earl Martin, Mayor of Rocky River, 20200 Karmer Drive, Rocky River, Ohio 44116.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SE., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Rocky River, Cuyahoga County, Ohio, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Rocky River	Mouth of Rocky River.	576
	Lake Rd.	576
	Norfolk and Western.	578
	Detroit Ave.	579
Spencer Creek	Mouth of Spencer Creek.	576
	Westlake Rd.	583
	Norfolk and Western.	618
	I-90, upstream	629
	Detroit Ave., upstream.	654
	Hillard Blvd., upstream.	686
	Center Ridge Rd.	693

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

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6906 Filed 3-16-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3929]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE CITY OF WELLSVILLE, COLUMBIANA COUNTY, OHIO

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Wellsville, Columbiana County, Ohio. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, Wellsville, Ohio. Send comments to: The Honorable Wayne J. Rose, Mayor, City of Wellsville, 1200 Main Street, Wellsville, Ohio 43968.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Wellsville, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected location are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Ohio River	At southern corporate limit.	683
	At northeastern corporate limit.	685

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

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6907 Filed 3-16-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3930]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE CITY OF ELGIN, UNION COUNTY, OREG.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Elgin, Union County, Oreg. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, Elgin, Oreg. Send comments to: Mayor Rodney Flintoff, City Hall, Elgin, Oreg. 97827.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Elgin, Oreg., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Grande Ronde River.	Downstream corporate limits.	2,646
	Highway 82 Bridge.	2,649
	New Cedar Street Bridge.	2,654
	Upstream corporate limits.	2,658
Phillip's Creek	Downstream corporate limits.	2,656
	Highway 82 Bridge.	2,664
	Union Pacific RR Bridge.	2,677
	16th Avenue Bridge.	2,688
	Lumber yard access bridge.	2,730

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

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6908 Filed 3-16-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3931]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE CITY OF NORTH POWDER, UNION COUNTY, OREG.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of North Powder, Union County, Oreg. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, North Powder, Oreg. Send comments to: Mayor J. M. Brockway, City Hall, North Powder, Oreg. 97867.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or Toll Free Line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of North Powder, Oreg., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
North Powder River.	Thief Valley Road.	3244

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

Issued: December 28, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-6909 Filed 3-16-78; 8:45 am]

federal register

FRIDAY, MARCH 17, 1978
PART VIII

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

■

OCCUPATIONAL EXPOSURE TO 1, 2-DIBROMO-3-CHLOROPROPANE (DBCP)

Occupational Safety and Health Standards

[4510-26]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Occupational Exposure to 1,2-Dibromo-3-Chloropropane (DBCP)

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This standard is based on a determination by the Occupational Safety and Health Administration that the available scientific evidence establishes that employee exposure to DBCP presents a hazard of sterility and cancer. This standard replaces the emergency temporary standard (ETS) for exposure to DBCP (42 FR 45536 September 9, 1977), and limits employee exposure to DBCP to 1 part DBCP per billion parts of air (1 ppb) as an 8-hour time-weighted average concentration. The standard also prohibits eye and skin contact with DBCP. The standard provides for employee exposure monitoring, engineering controls and work practices, respirators, personal protective equipment and clothing, employee training, medical surveillance, regulated areas, hygiene practices and facilities, and record-keeping. The basis for this standard is OSHA's determination that human and animal data demonstrate that DBCP causes sterility and that animal data indicates that exposure to DBCP presents a cancer hazard to workers.

EFFECTIVE DATE: This new permanent standard is effective April 17, 1978. The provisions contained in the ETS are continued in effect until superseded by the new permanent standard.

FOR FURTHER INFORMATION CONTACT:

Mr. David Welsh, Office of Special Standards Programs, OSHA, Third Street and Constitution Avenue NW., Room N3663, Washington, D.C. 20210, 202-523-7174.

SUPPLEMENTARY INFORMATION: This permanent occupational safety and health standard is issued pursuant to sections 6(b), 6(c) and 8(c) of the Occupational Safety and Health Act of 1970 (the Act) (84 Stat. 1593, 1596, 1599; 29 U.S.C. 655, 657), the Secretary of Labor's Order No. 8-76 (41 FR 25059) and Title 29, Code of Federal Regulations (CFR) Part 1911. It amends Part 1910 of 29 CFR by revising 29 CFR 1910.1044, to provide a permanent standard for the regulation of occupational exposure to DBCP. In order to assure that affected employers and employees will be informed of the existence of these provisions and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the new requirements, the effective date of the revision to § 1910.1044 will be April 17, 1978. To provide continued protection for employees until that date, the provisions currently contained in § 1910.1044 are promulgated pursuant to sections 6(b), 6(c) and 8(c) of the Occupational Safety and Health Act as an occupational safety and health standard effective March 17, 1978. The revisions to § 1910.1044 will supersede the current provisions as of April 17, 1978. This standard applies to all employments in all industries covered by the Act, including "general industry", construction and maritime, excluding only agriculture. As discussed more fully below, only the labeling, training and emergency provisions of the standard apply to the handling of sealed, intact containers of DBCP.

I. Background

DBCP has been used as an agricultural nematocide since 1955. It is a dense yellow or amber liquid with a pungent odor at high temperatures. It has a low vapor pressure (0.8 mm Hg at 20° C) and is slightly soluble in water (1,000 ppm).

DBCP, a halogenated hydrocarbon, is produced primarily by the bromination of allyl chloride at room temperature, usually a vigorous reaction which requires cooling. DBCP is produced in the United States by Dow Chemical Company and Shell Oil Company. Mexico, Japan and Israel also manufacture DBCP and export DBCP to this country. About 12 million pounds of DBCP were consumed in 1972.

Following manufacture, DBCP is shipped to formulators who reprocess the chemical into products for consumer use. DBCP has been formulated into emulsifiable concentrates, liquid concentrates, powder, granules, and solid material. Formulating granular DBCP involves spraying liquid DBCP onto inert granules. The formulation of liquid and emulsified DBCP products usually involves the blending of technical grade DBCP with an emulsifier or solvent. The formulators may also distribute the technical grade product. About 80 formulators have labels registered with EPA for the approximately 160 products containing DBCP (42 FR 48026). The complete distribution chain generally includes the manufacture of technical grade DBCP, transportation to the formulator, formulation of DBCP-containing pesticides, distribution of DBCP-containing pesticides, and the agricultural consumption of DBCP pesticides. It is estimated that about 1,600 to 2,900 production employees in facilities manufacturing and formulating DBCP have been recently exposed to this chemical (exhibit 6, pp. 3-8).

Additionally, through the International Labor Organization's health hazard alert system OSHA has learned that, in addition to Japan, Mexico and Israel, the Netherlands, Finland and Sweden have also used DBCP. None of these nations was previously aware of the possible sterility effects of DBCP. All have suspended use of the substance, and Israel, Japan and the Netherlands have initiated further studies into the health effects of DBCP (exhibit 49).

II. History of Regulation

(1) Chronology of Events

In 1961, a research paper by Torkelson et al. recommended that occupational exposure to DBCP be controlled to less than 1 ppm in air (exhibit 4—56). This recommendation was based on observed reproductive effects in animals exposed to atmospheric concentrations of DBCP as low as 5 ppm. However, no national concensus standard of Federal standard for exposure to DBCP was developed prior to OSHA's emergency temporary standard discussed below.

In late July, 1977, preliminary results of semen analyses of 27 DBCP exposed employees at the Agricultural Chemical Division (a formulator of DBCP) of the Occidental Chemical Co. in Lathrop, Calif., indicated severely depressed sperm counts in eleven of these employees (exhibit 4-63). Based on these results, the Oil, Chemical and Atomic Workers (OCAW) requested on August 5, 1977, that the National Institute for Occupational Safety and Health (NIOSH) conduct a health hazard evaluation at this Occidental Chemical Co. plant. NIOSH contracted with Environmental Health Associates of Berkeley, Calif. to perform this evaluation, which later confirmed a high incidence of sterility and infertility at this plant.

Preliminary test results of employees at Dow Chemical Co.'s DBCP production facility in Magnolia, Ark., showed low sperm counts for several of these employees (exhibit 9, p. 54). On the basis of the results of these studies, Dow suspended production and sale of DBCP on August 12, 1977 (exhibit 9, p. 54). Shell Oil Co., the other major producer of DBCP in the United States, was not manufacturing DBCP at that time. Both Shell and Dow immediately requested the return of outstanding stocks of the substance (exhibit 4-60, 4-61).

In a telegram dated August 12, 1977, OSHA alerted approximately 80 man-

ufacturers and formulators to the potential hazard of worker exposure to DBCP (exhibit 4-56). On August 25, a guideline document detailing suggested work practices was forwarded to those same affected companies (exhibit 4-56).

On August 23, 1977, the Oil, Chemical and Atomic Workers International Union President, A. F. Grospiron, formally requested the Secretary of Labor to take immediate steps to prevent worker exposure to DBCP. Specifically OCAW requested that worker exposure be limited to one part DBCP per billion parts of air, and that a broad testing program to locate incidences of cancer and sterility among workers be established (exhibit 4-38).

(2) EMERGENCY TEMPORARY STANDARD

Based on a determination that the available data conclusively established that employee exposure to DBCP presented a grave danger of sterility as well as cancer, OSHA published an Emergency Temporary Standard (ETS) on September 9, 1977 (42 FR 45536) regulating DBCP exposure in the workplace. A correction document was published on September 16, 1977 (42 FR 46540). The emergency standard issued under sections 6(c) and 8(c) of the Act as 29 CFR 1910.1044, established an 8-hour time-weighted average (TWA) permissible exposure level of 10 parts DBCP per billion parts of air, with a permissible ceiling exposure level of 50 ppb as averaged over any 15 minute period in the workday. The ETS also established other requirements, including, for example, monitoring, methods of compliance, respiratory protection, medical surveillance and training.

Interested persons were invited to submit written data, views and arguments with respect to the issues raised by the ETS.

(3) THE SAN FRANCISCO INQUIRY

The California Department of Industrial Relations convened an inquiry to investigate the causes of the Occidental Chemical Co. DBCP incident, and to propose mechanisms to prevent any such occurrences in the future. The inquiry extended from October 12 through October 19, 1977. Participating were representatives of Occidential Chemical Co., Dow Chemical Co., Shell Oil Co., and the State of California as well as expert witnesses from the University of California at Berkeley. The transcripts of the inquiry and related exhibits were entered as exhibit 10 into the OSHA record for DBCP rulemaking.

(4) THE CINCINNATI CONFERENCE

A conference concerning DBCP was sponsored by NIOSH in Cincinnati, Ohio., on October 20 and 21, 1977. The purpose of the conference was to share information acquired by various groups concerning DBCP exposure. At this conference the findings of sterility at the Occidental Chemical Company were discussed, as well as the findings of Shell Oil Company and Dow Chemical Company at their DBCP manufacturing plants. Also, nationally recognized experts made presentations concerning DBCP-related issues such as semen analysis, mutagenicity, environmental monitoring and respiratory protection. The verbatim transcript of this conference was entered into the OSHA record as exhibit 9.

(5) THE PROPOSAL

In the November 1, 1977, issue of the FEDERAL REGISTER, OSHA published a comprehensive proposal for a permanent standard for occupational exposure to DBCP (42 FR 57266). The proposal called for an 8-hour TWA permissible exposure level of 1 ppb, with a ceiling of 10 ppb averaged over any 15 minute period. In addition, the proposal included a prohibition on skin exposure to the substance.

Unlike the ETS, the proposal required that the employer reduce employee exposures to or below the permissible exposure limit solely through engineering and work practice controls. Where these controls were not able to reduce exposures to within the permissible exposure limit, the proposal required that such controls be used to the greatest extent feasible and then be supplemented by the use of respirators.

The proposal allowed 30 days for interested parties to submit written comments, views and arguments, and announced that an informal public hearing for the submission of oral testimony would begin on December 13, 1977. Fourteen comments were received by OSHA. Twelve notices of intent to appear at the hearing were also received.

(6) THE HEARING

The OSHA rulemaking hearing (hereafter referred to as the hearing) was conducted from December 13 through December 15, 1977, before an Administrative Law Judge. The parties which were represented and presented oral testimony at the hearing were the Pesticide and Pollution Action Committee of Clemson University; South Carolina Peach Council; South Carolina Department of Agriculture; Industrial Union Department, AFL-CIO; Shell Oil Company; Oil, Chemical and Atomic Workers Union; California Department of Food and Agriculture; and California Department of Industrial Relations. All of these participants were given the opportunity to present testimony and to question other witnesses. Parties participating in the hearing were given until December 30, 1977, for the submission of new evidence, and until January 16, 1978, for the submission of post-hearing briefs and comments. Twenty-four post-hearing submissions were received.

(7) FINAL ENVIRONMENTAL IMPACT STATEMENT

In conjunction with the development of the proposed standard, OSHA prepared a draft environmental impact statement. The draft environmental impact statement was published in the FEDERAL REGISTER (42 FR 57266). On November 11, 1977, the Council on Environmental Quality published a notice of availability of the DBCP draft environmental impact statement (exhibit 7). In addition to the 45 day comment period specified in 29 CFR 1999.4 (g), the environmental impact of the proposed standard was also an issue at the DBCP hearing as provided by 29 CFR 1999.4 (h) and the notice of proposed rulemaking (42 FR 57266). A notice of availability of the final environmental impact statement for DBCP was published on March 3, 1978 by EPA (43 FR 8846).

(8) THE RECORD.

This permanent DBCP standard is based on a careful consideration of the entire record in this proceeding, including materials relied on in the emergency temporary standard, materials referenced in the proposal, and the record of the informal rulemaking hearing including the transcript, exhibits, and pre-hearing and post-hearing written comments. Copies of the official list of hearing exhibits, comments, and notices of intent to appear at the hearing can be obtained from the Docket Office, Docket H-061, Room S6212, U.S. Department of Labor, 3rd Street and Constitution Avenue, NW., Washington, D.C. 20210.

III. PERTINENT LEGAL AUTHORITY

The primary purpose of the Act is to assure, so far as possible, safe and healthful working conditions for every working man and woman. One means prescribed by Congress to achieve this goal is the authority vested in the Secretary of Labor to set mandatory safety and health standards. Occupational safety and health standards provide notice of the requisite conduct or exposure level and provide a basis for ensuring the existence of safe and healthful workplaces. The Act provides that:

The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employ-

ee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. (Section 6(b)(5))

Sections 2(b)(5) and (6), 20, 21, 22, and 24 of the Act reflect Congress' recognition that conclusive medical or scientific evidence including causative factors, epidemiological studies or dose-response data may not exist for many toxic materials or harmful physical agents. Nevertheless, standards cannot be postponed because definitive medical or scientific evidence is not currently available. Indeed, while final standards are to be based on the best available evidence, the legislative history makes it clear that "it is not intended that the Secretary be paralyzed by debate surrounding diverse medical opinion." House Committee on Education and Labor, Report No. 91-1291, 91st Cong., 2d Session, p. 18 (1970). This Congressional judgment is supported by the courts which have reviewed standards promulgated under the Act. In sustaining the standard for occupational exposure to vinyl chloride (29 CFR 1910.1017), the U.S. Court of Appeals for the Second Circuit stated that "It remains the duty of the Secretary to act to protect the working man, and to act even in circumstances where existing methodology or research is deficient. "Society of the Plastics Industry, Inc. v. Occupational Safety and Health Administration", 509 F. 2d 1301, 1308 (2nd Cir. 1975), cert. den., sub. nom., "Firestone Plastic Co. v. United States Department of Labor," 95 S. Ct. 1998, 4 L. Ed. 2d. 482 (1975).

A similar rationale was applied by the U.S. Court of Appeals for the District of Columbia in reviewing the standard for occupational exposure to asbestos (29 CFR 1910.1001). The Court stated that:

Some of the questions involved in the promulgation of these standards are on the frontiers of scientific knowledge, and consequently as to them insufficient data is presently available to make a fully informed factural determination. Decision-making must in that circumstance depend to a greater extent upon policy judgments and less upon purely factual judgments.

"Industrial Union Department, AFL-CIO v. Hodgson," 499 F. 2d 467, 474 (D.C. Cir. 1974).

In setting standards, the Secretary is expressly required to consider the feasibility of the proposed standards. Senate Committee on Labor and Public Welfare, S. Rep. No. 91-1282, 91st Cong., 2d Sess., p. 58 (1970). Nevertheless, considerations of technological feasibility are not limited to devices already developed and in use. Standards may require improvements in existing technologies or require the development of new technology. "Society of Plastic Industry, Inc. v. Occupational Safety and Health Administration", supra at 1309.

Where appropriate, the standards are required to include provisions for labels or other forms of warning to apprise employees of hazards, suitable protective equipment, control procedures, monitoring and measuring of employee exposure, employee access to the results of monitoring, and appropriate medical examinations. Standards may also prescribe recordkeeping requirements where necessary or appropriate for enforcement of the Act or for developing information regarding occupational accidents and illnesses (section 8(c)). The permanent standard for DBCP was developed on the basis of the above legal considerations.

IV. Major Issues

OSHA has concluded from the evidence in the record that DBCP presents a hazard of cancer and sterility to exposed workers. The results of well-designed animal studies indicate DBCP to be a potent carcinogen in two sexes of two mammalian species at two dose levels. Furthermore. DBCP has been found to cause positive results in microbial assays designed to detect chemicals capable of mutagenesis. This evidence, which has not been seriously challenged by any of the participants in the proceeding, leads to the conclusion that DBCP must be regulated as a human carcinogen.

Animal studies have also demonstrated that oral dosages of DBCP induce degeneration of testicular tissue, accompanied by a reduction of sperm count and abnormal sperm cell development.

These testicular effects were confirmed in humans with the recent discovery of sterility and infertility in a large number of male employees exposed to low levels of DBCP in the manufacture and formulation of pesticides. This evidence was also uncontroverted by hearing participants.

Accordingly, OSHA has concluded that the proven carcinogenic and sterilant potential of DBCP warrants limiting exposure to the lowest level feasible. OSHA has therefore established an eight-hour time-weighted average permissible exposure limit of 1 part per billion (ppb). OSHA has concluded, based on evidence presented in the record, that this limit represents the lowest exposure level achievable using present technology.

Additionally, based on evidence that DBCP can penetrate the skin, and that skin exposure is a significant rout of entry, OSHA has prohibited any skin contact with the substance.

The following discussion deals with the major issues involved in the proceeding.

(1) Whether DBCP has been experimentally proven to be a carcinogen

The carcinogenicity of DBCP in both sexes of two mammalian species (rats and mice) at two dose levels has been documented on the record with a study conducted by the National Cancer Institute (NCI) (exhibit 16). For this study, discussed more fully in the preambles to the ETS and the proposal, NCI used 50 animals of each sex of two species at each of two dose levels (400 total experimental animals) in addition to controls. The two dose levels, administered orally, were selected on the basis of a preliminary subchronic toxicity test (exhibit 16, p. 7). The duration of treatments ranged from 47 to 78 weeks (exhibit 16, p.v).

Dr. Elizabeth Weisburger, Chief of the Carcinogen Metabolism and Toxicology Branch of NCI, gave the following testimony at the hearing:

[The] final report indicated that among rats given DBCP, 100 percent in males and 77 percent in females in the high dose had gastric cancer. This is very highly significantly different from the rate in the controls.

At the low dose, 96 percent of the males and 78 percent of the females had stomach tumors. In addition, 62 percent of females on the high dose and 48 percent on the low dose had mammary carcinoma compared to zero among the controls. Also very highly significantly different.

Hemangiosarcomas were also increased in both males and females at the lower dose level. Furthermore, there were many metastases of these gastric tumors which invaded the stomach wall into the peritoneal cavity and throughout the body. (tr 80-81)

Dr. Weisburger went on to state that among mice, 96 percent of the males and 98 percent of the females on the higher dose developed gastric cancer. On the low dose the percentages were 93 and 100 respectively. As in rats, metastases of these tumors were also noted (tr 81). Dr. Weisburger concluded that "the data from this bioassay thus show that DBCP is a carcinogen in two species and both sexes of two species of animals at two dose levels, inducing tumors which were relatively rare in control or untreated animals." (tr 81)

Dow Chemical suggested that the high dose levels used in the NCI study may have influenced the observed incidences of both stomach and mammary tumors (exhibit 5-8). However, interim results of a recent DBCP dietary study conducted by Hazelton Laboratories and sponsored by Dow Chemical demonstrate that carcinogenic effects are apparent even at dose levels "unlikely to have caused irritation sufficient to increase the induction of cancer" (exhibit 5-8, p. 22).

In the Dow experiment, DBCP was administered to the rats in their food in quantities sufficient to provide dose levels of 0, 0.3, 1 and 3 mg/kg/day. The study period lasted for 104 weeks. The preliminary gross autopsy results revealed "tumor-like" lesions in 6 percent (3/54), 31 percent (17/55), and 64 percent (24/37) of the rats at dose levels of 0.3, 1, and 3 mg/kg/day respectively. Three percent (2/63) of the controls developed such lesions (exhibit 5-8, p. 22). These data further confirm the NCI conclusion that DBCP is carcinogenic.

OSHA concludes, therefore, that DBCP has been experimentally proven to be carcinogenic in animals.

(2) WHETHER DBCP HAS BEEN EXPERIMENTALLY DEMONSTRATED TO BE MUTAGENIC

There are indications from in vitro experiments that DBCP may cause mutagenic effects. Rosenkranz (1975) examined the effects of DBCP on two strains of *E. coli* and on two tester strains of *Salmonella typhimurium*, strains of bacteria normally used for mutagenic research. He concluded that DBCP causes positive results in microbial assays designed to detect chemicals capable of mutagenesis (exhibit 4-45, p. 10).

Dr. Arlene Blum, Research Associate in Biochemistry at the University of California, stated at the San Francisco inquiry (exhibit 10, p. 32) and Cincinnati conference (exhibit 9, p. 134) that DBCP also gave positive results using the Ames test, a bacterial screening test designed to detect chemicals capable of mutagenesis. She noted that DBCP produced results similar to those of the substance benzidine, a known human carcinogen (exhibit 9, p. 140).

Furthermore, a high correlation has been found between the results of in vitro mutagenicity tests and long-term animal carcinogenicity studies (exhibit 9, pp. 134, 135). OSHA finds that based on the evidence in the record, which was unchallenged, DBCP has been experimentally demonstrated to be mutagenic.

(3) WHETHER DBCP SHOULD BE REGULATED AS POSING A CARCINOGENIC RISK TO HUMANS

For all practical purposes, the detection of carcinogenic activity of chemicals is based on animal experimentation. Because of the difficulties of epidemiologic studies on humans exposed to potential carcinogens, there are usually no data which provide us definitive evidence as to whether cancer in man is due to a chemical that has been shown to be carcinogenic in animal studies. Moreover, ethical considerations cannot allow human experimentation where cancer is the expected response. However, nearly all chemical substances or mixtures that have been proven carcinogenic by direct observation in man have also been shown to be carcinogenic in experimental animals. OSHA maintains, therefore, that a substance which causes cancer in animals must be considered, as a policy matter, as posing a carcinogenic risk to workers. This view has been extensively discussed in other OSHA standards and forms the basis of this agency's and virtually every other agency's regulation of carcinogens. Furthermore, this view was not challenged during the course of the proceeding.

Based on the record, OSHA has concluded that animal experiments have conclusively demonstrated DBCP to be a chemical carcinogen, and therefore to pose a carcinogenic risk to workers. Accordingly in the absence of a demonstrated safe or no-effect level for human exposure to a carcinogen, OSHA believes that it must be assumed as a prudent policy matter, and in light of the scientific evidence available, that no safe level for exposure to DBCP exists (tr. 14-15). After a review of the complete record, OSHA has found no evidence which disputes this reasoning and accordingly concludes that DBCP should be regulated as posing a carcinogenic risk to humans.

(4) WHETHER DBCP HAS BEEN EXPERIMENTALLY SHOWN TO PRODUCE TESTICULAR EFFECTS

In 1961, Torkelson, et al. (exhibit 4-56) conducted experiments in which four animal species (rats, guinea pigs, rabbits and monkeys) were exposed to DBCP by inhalation. The test animals were subjected to 50-66 exposures of 12 ppm DBCP over 70 to 92 days (7 hours per day, 5 days per week). A 40 to 50 percent mortality was observed in the rat study groups which, in most cases, was attributed to lung infections. Examination at autopsy showed damage to the lungs, kidneys, digestive system, and "severe atrophy and degeneration of the testes of all species." In the rats this effect was accompanied by a reduced sperm count, abnormal cell development, and degeneration of the seminiferous tubules. As part of the study 15 male rats were exposed to 5 ppm 50 times in 70 days. At this exposure level the testicular weights of one half the rats were found to be reduced by 50 percent. This result was not statistically significant due to the large internal variation within the group. However, these findings did indicate a need for caution at low exposures to DBCP, and served as the basis for Torkelson's 1 ppm recommendation as a limit for occupational DBCP exposure.

A 1970 study by Faydysh et al. (exhibit 4-22) showed that a 70 mg/kg/day dose of DBCP, administered orally for 45 days, produced a necrotic action on the testicles of white rats.

A report in 1971 by Rakmatullaev (exhibit 4-43) disclosed that chronic (8 month) dietary exposures to DBCP at 5 mg/kg/day produced a distinct decrease in sperm motility (the ability of the sperm to move) for male rats and a decrease in the fertility rate of female rats mated to DBCP-exposed males.

Also, Reznik and Sprinchan reported in 1975 (exhibit 4-78) that acute (single dose, 100 mg/kg) and chronic (10 mg/kg/day for 4-5 months) doses of DBCP severely affected spermatogenesis in male rates.

Based on the above data which was unchallenged on the record, OSHA concludes that DBCP has experimentally produced testicular effects in animals.

(5) WHETHER DBCP HAS CAUSED INFERTILITY IN MALE WORKERS

As mentioned above, fertility studies were initiated in July 1977 as a result of increasing concern among workers of the Agricultural Chemical Division of Occidental Chemical Co. in Lathrop, Calif., that their low birth rate might be related to pesticide poisoning. Preliminary studies performed by Dr. Donald Whorton, a specialist in internal medicine and occupational diseases, indicated a surprising prevalence of abnormal sperm counts (exhibit 4-63) (tr. 223-225). As a result of these findings, NIOSH contracted with Environmental Health Associates to perform a Health Hazard Evaluation (exhibit 26) in August 1977. The results of this evaluation were that of the 107 workers studied, 13.1 percent (14) had azoospermia (no sperm) and an additional 16.8 percent (18) were oligospermic (having an abnormally low number of sperm present in the ejaculate causing infertility) (tr. 233). In a control group of 35 workers, one individual (2.9 percent) was azoospermic and none were oligospermic. Exposure levels at this plant had been found to range from 0.29 to 0.43 ppm as an 8-hour TWA (exhibit 9, p. 150 Tables IV and V). DBCP had been formulated at Occidental Chemical since 1957 (exhibit 10, p. 116).

Also of importance were Dr. Whorton's findings that reduced sperm counts correlated well with the number of months an employee was exposed to DBCP (tr. 232). He found that the longer an employee had been exposed to DBCP, the more likely the worker was to have a reduced sperm count. This evidence indicates a possible dose-response relationship in DBCP's toxic effects. Equally important were Dr. Whorton's findings that the observed sperm counts were the result of massive damage to the cells of the spermatogenic tubule. When viewed microscopically these tubules normally appear full with developing sperm cells (tr. Appendix I, p. 6). In the case of DBCP-affected males, how-

ever, the tubules appear empty (tr. Appendix I, p. 8).

In September 1977, Dow Chemical Co. reported that of 86 employees exposed to DBCP at a production facility in Magnolia, Ark., 24.2 percent (21) were found to be azoospermic, and 30.2 percent (26) were oligospermic (exhibit 9, p. 67-j, 67-k). During DBCP production, 8-hour TWA exposures were measured to range between 0.04 and 0.4 ppm (exhibit 4-77B). No local non-exposed group was studied as a control, but these results do show striking sperm count reduction when compared to those of control groups at other plants. These results, like those of Dr. Whorton, also indicated a correlation between sperm count depression and the degree of DBCP exposure (exhibit 9, p. 57). The duration of DBCP production at Magnolia was from mid-January, 1976 through August 11, 1977 (exhibit 10, p. 188).

In November 1977, Shell Chemical Company announced the final results of fertility tests of employees exposed to DBCP at their Denver and Mobile plants (exhibit 11). At Mobile, of 80 workers tested only 2.5 percent (2) were azoospermic while 13.8 percent (11) were oligospermic. These rates reportedly do not differ from control values. The duration of DBCP production at Mobile, however, was only slightly in excess of one year (April 1976 through July 1977).

At the Shell Denver plant, where DBCP production had begun in 1955 and ended February 1976, the results indicated abnormally low sperm counts. Of the 49 workers tested, 10.2 percent (5) were azoospermic and 14.3 percent (7) were oligospermic (exhibit 11—average of second and third semen analysis). Shell maintained that these data were similar to certain literature values (exhibit 11). However, Dr. Marshall cautioned against such a comparison at the OSHA hearing (tr. 237), indicating that much of the data in the literature may itself reflect a bias toward low sperm counts. For instance, many of the studies did not consider a continence (sexual abstinence) period before semen collection. Dr. Marshall made the point that a standardized continence period for semen collection is necessary in order to make valid comparisons of sperm counts (tr. 239).

A control group of 31 non-exposed Denver employees contained no azoospermics, but a surprising incidence of oligospermia (22.6 percent) (exhibit 11). Attempts to correlate length of exposure with sperm count using these data have not been successful. As a whole, the Denver results seem to indicate a DBCP effect as reflected in the high incidence of azoospermics among exposed employees, but such an analysis cannot be regarded as conclusive.

From the time industrial hygiene measurements were initiated in 1972 through the cessation of DBCP production in 1976, 8-hour TWA exposures at Denver consistently were measured to be in the range of 0.2 to 0.4 ppm (exhibit 9, p. 81).

Dow Chemical also reported, however, that studies on a DBCP-exposed population at their Midland, Mich., plant indicated that the sperm counts of 249 "potentially exposed" workers were comparable to those of 77 controls (exhibit 12). DBCP had been produced at the Midland plant from 1957 to 1976. In 1975, employee 8-hour TWA exposures to DBCP were measured to be between "none detectable" and 0.17 ppm (ehxibit 4-77B) Although these results are encouraging, they do not establish a safe or no effect level. The danger of DBCP exposure at very low levels (see Lathrop and Magnolia) are such as to discourage reliance on a no effect level based on one study.

In December 1977, OSHA was notified by telegram that initial tests had indicated sterility in five workers at Bromine Compounds, Ltd., Beersheva, Israel (exhibit 46-d). No data on levels of exposure has been received. Bromine Compounds, Ltd., had manufactured 300 tons of DBCP annually until production was halted in August, 1977.

A point of controversy on the record was the determination of what sperm count value would constitute oligospermia (an abnormally low number of sperm present in the ejaculate causing infertility). It is, of course, necessary to have some agreed upon standard against which to compare the results of the various studies. Values, indicating an abnormally low sperm count, which were suggested by participants at the Cincinnati conference ranged from ten million to 40 million sperm per milliliter ejaculate (exhibit 9, p.39, 57, 61, 125, 133-c). OSHA has selected for the purposes of this discussion a level of 20 million sperm per milliliter ejaculate below which a man is to be considered oligospermic. This selection was based on the testimony of Dr. Summer Marshall (a urologist in private practice in Berkeley, Calif., and an Associate Clinical Professor of Urology, School of Medicine, University of California at San Francisco) (tr. 236) as well as careful analysis of other expert testimony and literature sources.

Based on the above evidence OSHA concludes that exposure to DBCP has been demonstrated to produce infertility (reduced sperm count) and sterility in male workers at very low levels of exposure.

(6) WHETHER DBCP ALONE WAS THE CAUSAL AGENT OF THE OBSERVED INFERITILITY IN WORKERS

A problem encountered in assessing DBCP-induced infertility was the possibility that the observed effects were due to exposure to other substances present in these workplaces. For example, Dr. Whorton stated at the Cincinnati conference that some 224 chemicals were used in Occidental Chemical's Agricultural Chemical Division (exhibit 9, p. 29). DBCP was, however, immediately suspect at the Occidental plant due to: (1) The large amounts of DBCP handled there, and (2) the Torkelson report which showed substantial effects on rat testicles when atmospheric concentrations of DBCP were as low as 5 ppm. These suspicions were confirmed when the results of semen analyses of employees at the Shell and Dow DBCP plants showed severely depressed sperm counts (exhibit 11) (exhibit 9, p. 67-i, 67k). Although ethylene dibromide (EDB), a chemical which has experimentally been shown to produce reproductive effects in animals, was also being manufactured at Magnolia, this chemical was removed from suspicion by the preliminary results of sperm counts of employees from other EDB-producing plants (exhibit 9, p. 219, 235). These results indicated that the sperm counts of the employees exposed to EDB alone were in the normal range.

Based on the above evidence OSHA concludes that DBCP was the causative agent of the observed sterility and infertility effects in exposed workers.

(7) WHETHER DBCP-INDUCED INFERTILITY IS REVERSIBLE ONCE EXPOSURE HAS CEASED

At the Cincinnati conference Dr. John MacLeod, a nationally recognized fertility expert from Cornell University, discussed infertility studies concerning reversibility that were carried out with bis-dichloro acetyl diamine and X-radiation using prison volunteers. Bis-dichloro acetyl diamine "has similar effects to that of DBCP" in that "you get profound depression in testicular function to the point of azoospermia". This effect was found to be totally reversible, though the time period of recovery was not given (exhibit 9, p. 114-115). Dr. MacLeod also referred to "the extraordinary capacity of the human testes to recover from devastation" following bombardment with high doses of X-radiation (exhibit 9, p. 256). Recovery times were noted as ranging from 18 months to 2 years. However, there is a paucity of data concerning the reversibility of the effects of DBCP. As Dr. Whorton stated at the OSHA hearing:

> We have scant data with which to address the question of reversibility of DBCP-suppressed testicular function. The information that we do have suggests that a reversibility can occur in some cases, but that at some point along the dose-response curve, the damage may be permanent (tr. 234).

The question of the reversibility of DBCP-induced testicular effects therefore remains unanswered at this time.

Even if currently affected workers fully recover at some point in the future, the issue of reversibility is not determinative for regulatory purposes. OSHA can not allow workplace conditions which result in severe physical impairment such as sterility, regardless of possible future reversibility.

(8) DOES SUITABLE TECHNOLOGY EXIST IN ORDER TO COMPLY WITH THE REGULATION?

The technological feasibility of the DBCP standard has been assessed by JRB Associates, Inc. in a report entitled, "Economic Impact Assessment of the Occupational Safety and Health Administration's Standard on Occupational Exposure to 1, 2-Dibromo-3-chloropropane (DBCP)" (exhibit 6).

This study has concluded that compliance with the permissible exposure limit of 1 ppb is technologically feasible (exhibit 6, pp. 4-1). Furthermore, OSHA maintains that it is feasible to achieve ambient levels of 1 ppb solely through the implementation of engineering and work practice controls. These controls consist of totally enclosing the DBCP manufacturing and formulating facilities, maintaining such enclosures under negative air pressure, and removing the DBCP in the exhaust air via charcoal adsorption.

Evidence on the record indicates that DBCP manufacturers now routinely control 8-hour TWA exposures to levels ranging from 40 to 430 ppb in response to an informal exposure limit of 1 ppm (part per million) established prior to a full understanding of the serious nature of the DBCP hazard (exhibit 4-77B; exhibit 9, p. 150 Tables IV and V). Furthermore, the record indicates that these levels were maintained without the use of local exhaust ventilation (exhibit 10, p. 128, 129) or other control techniques. This indicates that there exists a great capacity for exposure reduction.

Moreover, exposure to bischloromethylether, a chemical known to be a human carcinogen, is currently controlled to 1 ppb (exhibit 6, p. 42). Therefore it may be concluded that in certain operations the technology currently exists to control airborne contaminants to ppb levels.

In the finding of feasibility OSHA has considered the relative sophistication of the companies presently manufacturing DBCP. Dow Chemical Co. and Shell Oil Co. are both large organizations with vast experience in the area of exposure control to toxic substances. It is not unreasonable to conclude therefore, that these companies are able to implement state-of-the-art control technologies given sufficient financial incentive to do so. Due to the lack of substitutes for DBCP (exhibit 15, p. 2) and the estimated magnitude of crop losses should DBCP not be available (exhibit 39-2), OSHA finds that such incentives should exist. The economic considerations appear even more favorable in light of the fact that up to the promulgation of the ETS, only two plants were active in the production of DBCP. Control technologies and resources can thus be concentrated in the relatively few workplaces where exposures exist.

OSHA further recognizes that engineering and work practice controls are expensive to implement, and that many formulators may have to cease DBCP operations.

Due to the extremely serious nature of the hazard of exposure to DBCP, the concentration of DBCP formulating operations in those companies capable of providing the necessary protection for their employees is desirable and necessary.

Post-hearing comments received from one DBCP manufacturer suggested that achieving the permissible exposure limit of 1 ppb is not feasible (exhibit 53, p. 6). These comments raised some specific engineering questions regarding the suggested engineering controls including the issues of explosion potential, the amount of charcoal needed, and certain operational requirements for incinerators which may have to be used in the event that the charcoal method is unsatisfactory.

The commenter has asserted that the technological feasibility assessment has failed to consider explosion potential (Exhibit 53, pg. 7). OSHA believes that the potential for achieving concentrations in the explosive range has always existed in chemical production facilities and continues to exist. The addition of an enclosure surrounding the process equipment should not increase the explosion risk during normal production, assuming the process equipment is well maintained and properly operated, and that the engineering controls function properly. Under emergency conditions, such as rupture or leak, any increased explosion risk attributable to the enclosure would be counteracted with controls similar to those that would be needed to guard the process equipment if it were not totally enclosed. These controls would include fixed explosion suppression systems triggered by the detection of potentially explosive mixtures, or similar devices.

In addition, to reduce explosion risk, enclosures should be designed with explosion-proof lighting, exhaust fans, and motors. This type of equipment is routinely used in chemical production facilities and its use is commonly considered good engineering practice. Use of this type of equipment was assumed by JRB in deriving the cost estimates for installing engineering controls. (Exhibit 6, pp. 4-6, 4-7, 4-10, 4-11.)

As to the amount of charcoal required and the lack of available data demonstrating the effectiveness of the charcoal adsorption method (Exhibit 53, p. 7), OSHA does not believe that actual demonstration of the feasibility of charcoal adsorption is necessary. The charcoal adsorption method of air purification is widely used in such applications as air-purifying respirators, laboratory clean rooms, and industrial processes. Furthemore, that charcoal will absorb DBCP is demonstrated by the fact that personal exposure air monitoring methods for DBCP rely on charcoal adsorption. The additional costs for more frequent replacement of the charcoal would be approximately $9,000 per facility per month of operation, a sum which does not alter significantly the conclusions of the JRB report. This figure includes the cost of obtaining additional charcoal, additional labor costs for recharging the adsorber more frequently, and the cost of disposing of the additional used charcoal. The calculations for these additional costs are based on the unit costs presented in the Economic Impact Assessment (exhibit 6, p. 4-8).

The comment that operational requirements and effluent handling requirements for an incinerator to remove DBCP from exhaust air were not assessed in the technological feasibility assessment is not in point. Incineration was identified as an alternate control system in the technology feasibility assessment. Operating requirements for fuel, which is clearly the major operating cost, were estimated at $36,000 per month per incinerator. There is no evidence in the record to support the claim that special equipment would be required to handle effluent from the incinerator.

In light of these arguments, OSHA has determined that the compliance with the standard is technologically feasible by installing engineering controls and implementing work practices. It should be noted that no substantive evidence was put in on the record by affected parties which refutes this conclusion.

OSHA has also found that the sampling and analysis of DBCP airborne concentrations at and below the level of 1 ppb is feasible, and has provided one such method on the record (exhibit 28) and in Appendix B of the final standard. The feasibility of sampling was not controverted on the record, although one commenter indicated that the sampling tubes may have to be refrigerated during shipment to prevent the loss of DBCP from the charcoal adsorbant (exhibit 53, p. 4).

(9) WHAT ARE THE ESTIMATED COSTS OF COMPLIANCE WITH THE DBCP REGULATION?

An economic impact analysis of the DBCP regulation was conducted by JRB Associates, Inc. (exhibit 6). The study has estimated the capital cost of

compliance for each plant manufacturing DBCP to be approximately $1,100,000. Also, additional annual operating costs for each plant manufacturing DBCP have been estimated to be approximately $50,000. There are currently two plants in the United States which manufacture technical grade DBCP.

For formulating plants, the average capital cost of compliance would be on the order of $610,000, and the average increase in annual operating costs would be approximately $12,500.

For employers involved solely in the transportation and distribution of DBCP pesticides, there would be increased compliance costs attributable to labeling, employee training, and emergency planning. These are the only requirements for workplaces dealing only with sealed, intact containers of DBCP. These costs would be on the order of $1,400 per facility in one-time costs for such items as signs, training packages, and an emergency plan.

In addition, these workplaces would incur an additional $600 annually for operating costs including instructor's time, and employees lost time for training, and labels, assuming no more than ten employees per distribution facility needed to be trained (exhibit 6, p. 5-11, 5-17, 5-18). These costs for distribution facilities do not appear in the JRB report, but are calculated based on JRB's estimated costs for labeling, employee training, and emergency planning in manufacturing and formulating facilities. Although the number of workplaces involved in the distribution of DBCP is not known with great certainty, it is believed to be less than 2,000 (exhibit 39-1).

In total, the capital costs of compliance are estimated as $12,300,000 and the estimated annual operating costs are on the order of $1,650,000. When amortizing the capital costs and including the operating costs, the annual cost of compliance is estimated as $3,650,000. The continued production of DBCP, therefore, appears economically feasible in light of the United States Department of Agriculture estimate of $300 million in crop losses should DBCP not be available. Based on all the evidence in the record, OSHA concludes that compliance with the standard is economically feasible. Post-hearing comments have been received from one manufacturer of DBCP asserting that the cost of complying would exceed the threshold value used by the Department of Labor for defining a "major" economic impact and therefore, additional economic analysis should be performed (exhibit 53, pp. 6-8). This assertion is based on additional costs of compliance projected for employers involved in the transportation, distribution, and application of DBCP pesticides. In addition, these comments have asserted that the installation of required engineering controls would result in a delay of 2-3 years before DBCP could be made available to the American farmer, and the crop loss attributed to such delay would be on the order of $300 million per year (exhibit 39-2).

OSHA finds that these assertions are not valid. With respect to the transportation and distribution of DBCP, those establishments dealing only with sealed containers of DBCP are required to comply with only the emergency, labeling, and employee training provisions. This constitutes a modification from the proposed standard on which the above mentioned comments were based. Therefore, although there will be some additional cost of compliance with the final standard for distribution facilities, these costs would not likely include the construction of separate facilities or the installation of shower and change room facilities, as the commenter has asserted, except where DBCP exposures can be reasonably anticipated. OSHA estimates the capital cost of compliance for DBCP distribution facilities to be approximately $1,400 per facility. In addition, OSHA estimates annual operating costs to be approximately $600 per facility. If these costs were added to the estimates provided by JRB to estimate the total cost to industry of compliance with the standard, the resultant total cost estimates still do not approach the threshold value used by the Department of Labor for defining "major" economic impacts.

The commenter's assertion that there will be increased compliance costs for DBCP applicators is incorrect. Applicators are exempt from coverage by the DBCP standard.

One commenter has asserted that there will be crop losses caused by delay in instituting engineering and work practice controls (exhibit 53). This assertion is believed by the provisions of the standard, which permits employers to provide respirators where engineering and work practice controls are not yet sufficient to reduce employee exposure within the permissible exposure limit. OSHA recognizes that there will necessarily be some lost time in DBCP producing and formulating facilities while engineering controls are being installed. However, since DBCP production and formulation is generally performed on a seasonal basis, rather than continually, it seems reasonable to conclude that the necessary engineering modifications could be made while DBCP would not otherwise be formulated, and that DBCP pesticides could be made available for distribution during the period when controls were being installed. Also, the standard does not prohibit the use of DBCP presently stockpiled by manufacturers. Therefore, there is no reason to believe DBCP will be unavailable because of the OSHA standard.

(10) PERMISSIBLE EXPOSURE LIMIT

On the basis of the observed carcinogenic and sterility effects of DBCP, OSHA has selected an 8-hour time-weighted average (TWA) permissible exposure level (PEL) of 1 part DBCP per billion parts air (ppb). Also, based on uncontroverted evidence that DBCP may be absorbed through the skin (exhibit 4-66), (exhibit 2-3, p. 5), OSHA has concluded that all skin contact with DBCP be prohibited.

There is no dispute that DBCP has been shown to be a highly potent carcinogen in animal experiments. However, any dose-response extrapolations of these results to human exposures are not possible using current scientific precepts, and the question of whether a "no effect" level exists with respect to carcinogenicity has not been answered on the record. No data is presently available to indicate that any given level of exposure to DBCP would, in fact, be free of carcinogenic risk to exposed individuals. However, even if specific levels of exposure could be demonstrated to be associated with the incidence of cancer, this could not, in and of itself, establish a safe level for exposure to DBCP. While specific thresholds to various carcinogens may theoretically exist for some individuals, such thresholds may vary substantially within any given population at risk as well as with time. Furthermore, the long latency periods involved in carcinogenesis make it difficult to demonstrate that an exposure level which appears not to induce cancer in the short run is in fact safe; 5-40 years may be required before exposure to a carcinogen might produce detectable cancers. However, since nearly all chemicals that have been proven carcinogenic by direct observation in man have also been shown to be carcinogenic in experimental animals, OSHA maintains that a substance which causes cancer in animals must be considered as posing a carcinogenic risk to workers.

The record also contains definitive evidence that DBCP has induced sterility and infertility in exposed workers. These effects were found to occur even at very low exposures ranging from 40 to 430 ppb DBCP. OSHA has found, however, that adequate epidemiologic data does not exist which provides sufficient information to accurately predict a "safe" or "no effect" level, assuming one exists, with respect to the sterilant effects of DBCP.

Therefore, considering (1) the very low levels at which DBCP induced sterility has been found to occur; (2) the remarkable carcinogenic potency of DBCP as demonstrated in animal experiments; (3) the nature of the haz-

ards of DBCP exposure, namely sterility and cancer; and (4) the inability to determine an exposure level that will eliminate the risk of cancer and sterility, OSHA deems it necessary to set the permissible exposure limit for DBCP at the lowest level technologically feasible.

Within the confines of feasibility OSHA has determined that a permissible exposure limit of 1 ppb as an 8-hour TWA best minimizes the cancer and sterility hazards of DBCP.

The record indicates that DBCP exposures are now controlled in manufacturing and formulating operations to levels ranging from 40 to 600 ppb. Furthermore, these levels have been achieved without prior knowledge of the severe hazards of DBCP exposure and, therefore, without the full utilization of highly sophisticated engineering controls.

Evidence on the record also indicates that an economic incentive exists for the continued production of DBCP. Compliance costs have been estimated to be on the order of $1,100,000 capital and $50,000 annual costs for manufacturing facilities, and $610,000 capital and $12,500 annual costs for formulating facilities. These costs are well below the estimate of $300,000,000 annual crop loss should DBCP not be available. Furthermore, for the post-plant control of nematodes, no suitable substitutes for DBCP have been found to exist. The unavailability of substitutes indicates that compliance costs for manufacturers and the formulators should be recoverable through increases in the price of DBCP to the consumer.

DBCP is also manufactured on a relatively limited production scale. Only two plants were engaged in DBCP production up to the time of the promulgation of the ETS. It has also been estimated that with a 1 ppb permissible exposure limit, only six formulators will continue to formulate DBCP. The concentration of DBCP production and formulation facilities further enhances the economic feasibility of compliance since such a market structure would better allow the pass through of compliance costs to consumers benefiting from DBCP use.

Shell Oil Co. and Dow Chemical Co., the two companies operating DBCP production facilities up until the promulgation of the ETS, are large organizations with considerable expertise in the control of exposures to toxic chemicals. OSHA concludes that these companies are in a position to provide the control equipment necessary to reduce DBCP exposure to permissible levels.

In the analysis of feasibility OSHA has considered (1) the levels of DBCP exposure attainable using existing controls; (2) the sophistication of existing control methodologies; (3) the economic incentives for continued DBCP production, including the costs of compliance, the inelasticity of demand, the limited scale of production, and the possible changes in market structure with respect to DBCP; and (4) the relative sophistication of the companies producing DBCP with respect to control technology. In light of these considerations OSHA finds that, for employee exposures to DBCP, a permissible exposure limit of 1 ppb is both technologically and economically feasible.

V. Summary and Explanation of the Standard

The final standard for occupational exposure to DBCP substantially reflects the provisions of the proposal (42 FR 57266) with two major exceptions.

The final standard, unlike the proposal, contains a limited exemption for workplaces where DBCP is present only in sealed, intact, containers. OSHA has determined that the likelihood of exposure and potential health risks to employees handling DBCP in sealed, intact containers does not justify the implementation of the more stringent provisions of the standard such as routine monitoring and medical surveillance. Moreover, such requirements are not necessary for the protection of employees handling sealed, intact, containers of DBCP. Accordingly, only the labeling, training and emergency provisions of the final standard apply to the storage, transportation, distribution and sale of sealed, intact containers of DBCP.

Also, OSHA has decided to delete the ceiling exposure requirement from the final standard. OSHA believes that compliance with the exposure limit of 1 ppb over an 8-hour day effectively limits the magnitude of short term exposures. For instance, a 30-minute exposure to 16 ppb DBCP, with no further DBCP exposure that day, represents a daily dose equal to an 8-hour exposure to 1 ppb.

All other language changes in the final as compared to the proposed standard are essentially non-substantive and are intended only to enhance the clarity of the particular requirement with respect to employer and employee understanding as well as enforceability of the provision.

Few comments or objections to the specific provisions of the standard were received. Where issues were raised in the course of the proceeding, they are discussed in the explanation of the major provisions of the standard which follows.

1. Paragraph (a)—*Scope and application.* The standard applies to all employments where DBCP is present with the two exceptions discussed below. The principal activities covered include the manufacture of DBCP, the formulation of pesticides containing DBCP, and related activities of packaging, repackaging, storage, transportation, and disposal of DBCP.

OSHA has determined that the storage, transportation, distribution and sale of sealed, intact containers of DBCP should be subject only to the labeling, training, and emergency provisions of the final standard. This is a change from the proposed standard and the ETS which did not contain the limitation. Participants in the rulemaking pointed out that the proposal would require employers to monitor exposure and require medical surveillance of employees who have only casual or limited contact and no discernible exposure to DBCP. Examples of such employees are maritime employees occasionally handling sealed drums of DBCP (exhibit 5-5) or distributors, jobbers and employees of retail outlets (exhibit 5-7). This limited exemption serves to maximize employee protection while minimizing unnecessary burdens.

The final rule distinguishes between "closed," and "sealed," containers. OSHA is concerned that containers, after being opened, may be closed in such a fashion as to expose employees to DBCP. For this reason, the exemption applies only to "sealed" containers, intending by the use of that term to exempt only containers of DBCP which are closed in such a manner as to contain the DBCP vapors. Additionally, since sealed containers may, during handling, develop leaks, the exemption is further limited to intact containers.

Therefore, where breakage of the container occurs, employers will be required to monitor, provide protective equipment and medical surveillance, and to comply with any other applicable provisions of the standard. To assure that all employees are aware of the hazardous nature of the contents of the containers, and are familiar with appropriate procedures for handling in case of emergency exposure, and because at some point in downstream occupational activities the containers will be opened, the training, labeling and emergency provisions apply to the handling of sealed, intact containers.

Finally, it should be noted that the regulation of sealed containers in this standard is consistent with that in other carcinogen standards (§§ 1910.1003-1910.1016) and the recently promulgated benzene standard (43 FR 5918).

The standard does not apply to exposures which result solely from the application and use of DBCP as a pesticide. On September 8, 1977, concurrent with OSHA's issuance of the ETS, the Administrator of the Environmental Protection Agency announced his intention to take two sus-

pension actions with respect to pesticide products containing DBCP (42 FR 48915), pursuant to his authority under section 6(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, (FIFRA). This Act allows the Administrator to suspend the registrations of a pesticide product whenever he determines that such action is necessary to prevent an "imminent hazard" during the time required for cancellation or change in classification proceedings.

On October 27, 1977, EPA issued a suspension order (42 FR 57543) which effected two suspension actions: A suspension of all pesticide products registered for food crop uses with respect to which residues of DBCP have been found or are anticipated on the edible portions of the food crops; and a conditional suspension with respect to all uses, based upon the Administrator's finding that an imminent hazard exists for pesticide applicators if DBCP products are used in accordance with current label restrictions.

The regulatory actions announced by EPA will have two important effects leading to increased protection of workers engaged in the application and use of DBCP as a pesticide. First, the suspension of use of DBCP pesticides for certain food crops will substantially reduce the number of applicator personnel and field workers who would otherwise have been exposed to DBCP.

Second, under the conditional suspension announced for all other uses, persons using DBCP for other uses will have to be certified applicators (and in some instances certified commercial applicators), or be working under the direct supervision of a certified applicator. Additionally, persons using DBCP for conditionally suspended uses will be required to wear protective clothing and respirators.

OSHA believes that this strategy of combined and cooperative regulatory actions by both EPA and OSHA is an effective approach to protecting all workers against the hazards of exposure to DBCP. Accordingly, this standard does not apply to exposures to DBCP which result solely from its application and use as a pesticide.

2. Paragraph (c)—*Permissible exposure limit.* The standard establishes a permissible exposure limit of 1 part DBCP per billion parts of air (1 ppb) as an 8-hour time-weighted average.

As discussed more fully above, the reported exposure of employees at concentrations significantly less than one part per million at several manufacturing and formulating plants and the resulting sterility in a substantial proportion of the exposed employees even at that level clearly indicates that a substantial reduction in exposure must be accomplished to mitigate the risk. There is, unfortunately, not complete information on the exact level necessary to eliminate the risk. Here, we cannot determine whether there is a safe level or threshold level below which reproductive effects would not occur.

Evidence from several animal tests in mammalian species conclusively demonstrates the carcinogenicity of DBCP.

OSHA policy, which is based on the best available scientific evidence, and which is consistent with the policies and recommendations of nearly all public bodies which have addressed the problem of exposure to cancer-causing substances, has been and is that a substance which causes cancer in animals must be regulated as posing a carcinogenic risk to workers. In the absence of a demonstrated "safe" or "no effect" level for human exposure to a carcinogen, it must be assumed, as a prudent policy matter, that no safe level exists.

Accordingly, the setting of an exposure level for DBCP cannot be based on a determination of a "safe" level which will eliminate the cancer and sterility hazard, but rather on a determination of a level which will minimize these hazards to the greatest extent possible, within the confines of feasibility.

Based on evidence that DBCP is absorbed through the skin, OSHA prohibits all skin contact with DBCP.

For the final standard, OSHA has not included the provision for a 15 minute ceiling exposure limit of 10 ppb which appeared in the proposal. OSHA believes that compliance with the exposure limit of 1 ppb over an eight-hour day effectively limits the magnitude of short term exposures.

Our assessment of technological feasibility, discussed above, indicates that an exposure limit of 1 ppb is technically feasible for both DBCP manufacturing and formulation operations (see exhibit 6, p. 4-1).

OSHA believes that isolation of workers from the process equipment may be necessary to minimize exposure to DBCP, and that this can be accomplished by totally enclosing the equipment in a building or in a separate room within a building. Automatic or remote control of the different loading, process, and packaging operations would be necessary, to eliminate any requirement for workers to enter the enclosure during the operation (exhibit 6, p. 4-4).

3. Paragraph (d)—*Notification of use.* The ETS required employers to notify the OSHA Area Director of the location of workplaces where DBCP is present, and to describe the conditions of use and exposure and the protective measures in effect. The standard does not require employers to report the same information again. Rather, any employer who has not yet notified the OSHA Area Office or who subsequently introduces DBCP into a workplace is required to report to the Area Director in the same manner as required by the ETS.

4. Paragraph (e)—*Regulated areas.* The standard requires the establishment of regulated areas where airborne concentrations of DBCP are in excess of 1 ppb. The purpose of establishing regulated areas is to limit DBCP exposures to as few employees as possible by barring access to these areas to all but those specifically authorized to be in the area. OSHA believes that control of employee exposures, appropriate exposure monitoring, medical surveillance, and limitation of potential exposure to the smallest number of workers all require regulated areas. The employer must designate as "authorized" any person whose duties require his or her presence in the area.

5. Paragraph (f)—*Exposure monitoring.* Section 6(b)(7) of the Act (29 U.S.C. s655) mandates that any standard promulgated under 6(b) of the Act shall, where appropriate, "provide for monitoring or measuring of employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees." The purposes of monitoring are to determine the extent of exposure, to identify the source of exposure, to enable the employer to select proper control methods and to evaluate the effectiveness of the selected methods. Thus, monitoring enables employers to meet the legal obligations of the standard to assure that their employees are not exposed to DBCP in excess of the prescribed levels. Additionally, monitoring enables employers to notify employees of their exposure level, as required by section 8(c)(3) of the Act, and to provide information necessary to the examining physician.

The exposure monitoring provisions intend that the employer determine the exposure for each employee exposed to DBCP. This does not require separate measurements for each employee. If a number of employees perform essentially the same job under the same conditions, it may be sufficient to monitor a significant fraction of such employees and obtain results that are representative of the exposures of the remaining employees.

Where exposures are determined to be above the permissible exposure limit, the employer is required to monitor monthly. Otherwise the employer must monitor quarterly. "Exposure" in this connection means the airborne concentrations in the workers' breathing zone, without regard to the use of respirators.

The employer is also required to redetermine the exposure of affected employees by monitoring if any

changes in production, processes, control measures or personnel occur which might cause new or additional exposures to DBCP.

One commenter stated that the required frequency of monitoring does not take into account the stability of airborne concentrations, and that in closed-system operations such frequent and repeated personal monitoring may be unnecessary (exhibit 4-8, p. 9). OSHA finds, however, that frequent monitoring is crucial considering the very low magnitude of the permissible exposure limit. Small leaks in control equipment, which may not be detectable during routine visual inspection, could lead to exposures well in excess of 1 ppb. The fact that DBCP has no detectable odor until 180 ppb, 180 times the permissible exposure limit, further supports the need for frequent monitoring.

An assessment of available methodology for sampling and analysis of airborne concentrations of DBCP indicates that it is possible to monitor employee exposures of 1 part per billion and below (tr. 317). Furthermore, at these concentrations sampling and analytical methodologies are available which have an accuracy, to a confidence level of 95 percent, of not less than plus or minus 25 percent. Using one method, for example, the samples may be collected by adsorption of DBCP on charcoal contained in a suitable holder such as glass tubing through which a volume of air is drawn. Analysis is then performed by gas chromatography, using electron-capture detection. These techniques, although they require care, are readily available and should pose no special difficulties for employers covered by this standard (tr. 319).

6. Paragraph (g)—*Methods of Compliance.* The standard requires the employer to institute engineering and work practice controls to reduce employee exposures to or below the permissible limit. This requirement is in accord with OSHA's policy that feasible engineering and work practice controls must be used as the primary methods of reducing employee exposures to toxic substances. This policy is based on the view that the most effective means of controlling employee exposures is to contain emissions at their source through use of mechanical means, combined with work practices, rather than reliance on the variability of human behavior so critical to the successful use of respirators.

In situations where engineering and work practice controls do not reduce exposures to the permissible exposure limit, these controls must nonetheless be used to reduce exposures to the lowest feasible level and be supplemented by the use of respirators. OSHA realizes that, under some particular circumstances, engineering and work practice controls may not be technologically feasible in a particular work operation. Therefore, the standard explicitly recognizes that an employer may demonstrate the infeasibility of engineering and work practice controls as to one or more operations in a particular process, and in these circumstances use respirators to provide the required protection. The question of whether an employer has met his burden of establishing that engineering and work practice controls are infeasible in a particular work operation involves the consideration of many complex factors and a rational balancing process. Factors such as levels of exposure, useful remaining life of the equipment and the effort made by the employer to implement such controls are relevant.

Respirators are the least satisfactory means of control because of certain difficulties inherent in their use. Respirators are capable of providing good protection only if they are properly selected for the concentrations of airborne contaminants present, properly fitted to the employee, worn by the employee and replaced when they have ceased to provide protection. While it is theoretically possible for all of these conditions to be met, it is more often the case that they are not. As a consequence, the protection of employees by respirators is not always effective.

In addition, a compliance program to reduce exposures to within the permissible exposure limits solely by means of engineering and work practice controls must be developed and implemented when the engineering and work practice controls presently being used do not reduce employee exposures to within the permissible exposure limit. Written plans for this program must be developed and furnished upon request to representatives of the Secretary, representatives of the Director, and affected employees. These plans must be reviewed and updated periodically to reflect the current status of the program.

7. Paragraph (h)—*Respirators.* The final standard provides that, whenever the permissible exposure limit is exceeded, in spite of implementation of all feasible engineering and work practice controls, the employer must provide and assure that employees use respirators. The standard contains a respirator selection table (Table 1) so the employer will provide the type of respirator which affords the proper degree of protection based on airborne concentrations of DBCP to which the employee may be exposed. The respirator selections in the final standard are identical to those in the proposal.

The standard restricts the selection of respirators to atmosphere-supplying respirators. One participant commented that atmosphere-supplying respirators are cumbersome, restrict movement, and, in the case of self-contained breathing apparatus, require frequent changing of air cylinders (Exhibit 4-8, p. 10). OSHA does not deny the difficulties of use of atmosphere-supplying respirators. However, DBCP does not have any useful warning properties at concentrations where air-purifying respirators may be safely used, and consequently, there is no warning of respirator leakage or breakthrough. The odor threshold of DBCP is estimated to be 180 ppb (exhibit 4-8, p. 10), 180 times the permissible exposure limit. Because of the extremely serious consequences to employee health which have been found in human exposures at 40 to 430 ppb (exhibit 9, p. 150 Tables IV and V) (exhibit 4-77B), we believe it imperative to minimize the risk of undetected exposure, and accordingly permit only atmosphere-supplying respirators.

The standard requires that the employee be properly trained to wear the respirator, to know why the respirator is needed and to understand the limitations of the respirator. An understanding of the hazards involved is necessary to enable the employee to take steps for his or her own protection. The respiratory protection program implemented by the employer must conform with 29 CFR 1910.134 (b), (d), (e), and (f). This section contains the basic requirements for use, cleaning, and maintenance of respirators.

To prevent skin irritation and to minimize the discomfort of respirator use, the standard requires that employees must be allowed to periodically wash their faces and respirator facepieces in order to remove any accumulation of DBCP or to reduce the chance of irritation from the wearing of the facepiece itself, such as a heat rash.

The standard requires that respirators and other clothing and equipment required for protection from exposure to DBCP shall be provided at no cost to the employee. OSHA has allocated the costs of respirators and clothing and equipment required for protection from DBCP exposure to the employer in order to effectuate the purposes of the Act. This language clarifies OSHA's position which has long been implicit in health standards proceedings under section 6(b) of the Act.

8. Paragraph (i)—*Emergencies.* This provision requires employee evacuation and cleanup where spills or leaks occur. Only employees with appropriate respirators and impermeable protective clothing are allowed in the area until the situation is restored to normal. It is important to note that all employees covered by the standard, including those who handle only sealed, intact containers of DBCP, are covered by the emergency provisions.

The employer must also provide the medical surveillance testing as specified by paragraph (m) (6) to any employee exposed to an emergency release of DBCP.

9. Paragraph (j)—*Protective clothing and equipment.* The standard requires that the employer provide and assure that employees who are subject to any possibility of skin or eye contact use impermeable protective clothing or equipment in order to minimize these hazards. OSHA is aware that since many formulating and producing facilities are located in warm climates, as a practical matter the impermeable protective clothing requirement may necessitate use of full body air-conditioned suits.

Evidence onthe record indicates that DBCP may be absorbed through the skin (exhibit 4–56), and that even very small amounts of DBCP on the skin are potentially hazardous (exhibit 4–8, p. 5). Therefore the standard requires the prompt removal of protective clothing and equipment which becomes contaminated with DBCP-containing liquids or solids. The standard also provides that this clothing and equipment must not be reworn until the DBCP has been removed from the clothing and equipment. Under no circumstances may clothing and equipment contaminated with DBCP-containing liquids and solids be worn into lunchrooms or lavatories.

The standard also requires that the employer clean, launder, or dispose of the required protective clothing to eliminate any potential exposure that might result were the clothing to be laundered by the employee at home.

The standard requires that protective clothing be provided in a clean and dry condition daily. Since skin contact with DBCP creates a potential for skin absorption, OSHA believes that the regular cleaning of contaminated work clothing plays an important role in the protection against the hazard. The standard also requires that protective clothing and equipment be maintained and replaced as needed in order to ensure effectiveness.

The standard provides that the employer assure that all protective clothing is removed at the end of each work shift, and that the clothing that is to be laundered, cleaned, or disposed of be placed in a closable container. The container must be constructed so as to prevent the release of DBCP vapors into the atmosphere. The purpose of this requirement is to prevent the contaminants on the clothing from being released into the ambient air or from being contacted by an individual handling the container.

Finally, the standard requires employers to inform those who handle the contaminated protective clothing of the potentially harmful effects of exposure to DBCP. This provision is designed to make clear the need to use proper care in handling of the contaminated protective clothing.

10. Paragraph (k)—*Housekeeping.* Removal and prevention of visible accumulations of liquid deposits of DBCP, or dusts containing DBCP, on all surfaces are important aspects in minimizing employee exposure. To assure that DBCP is not reintroduced into the workplace air, the standard prohibits dry sweeping or the use of compressed air for cleaning floors and other surfaces where DBCP is found. The standard also requires that when DBCP is present in liquid form, or as a resultant vapor, that all containers or vessels be enclosed to the maximum extent feasible and tightly covered when not in use to prevent the release of DBCP vapor into the work atmosphere.

For disposal of waste scrap, equipment or debris containing DBCP, the standard requires that this material be collected and disposed of in sealed or closed containers which prevent the dispersion of DBCP outside the containers. State environmental protection agencies designate appropriate landfills for the disposal of such waste.

11. Paragraph (l)—*Hygiene facilities and practices.* The standard specifies hygiene facilities and practices required for employee protection.

Change rooms are required, with separate storage for street and work clothing. OSHA believes that these facilities are necessary to minimize possible contacts with contaminated clothing, since DBCP is skin absorbable, and an irritant as well.

The standard requires the employer to provide shower facilities for employees, and that employees be required to take showers at the end of the workshift to remove any DBCP from their bodies. Section 1910.141(d)(3), which would be triggered by the standard, lists requirements for adequate showers.

The standard also requires that lavatory facilities which comply with § 1910.141(d) (1) and (2) be provided in sufficient number to assure that sufficient facilities are available for employees to wash when leaving the regulated area to eat or use toilet facilities.

The standard prohibits eating, smoking, drinking, or the keeping of food or smoking materials in regulated areas. Additionally, the standard prohibits the keeping of cosmetics in regulated areas to avoid the possibility that DBCP contaminated cosmetics would be inadvertently applied to the body.

The standard requires employers to provide lunchrooms free of DBCP contamination which are readily accessible to employees working in a regulated area. The purpose of this requirement is to minimize the risk of employee exposure to DBCP by ingestion or inhalation during eating.

13. Paragraph (m)—*Medical Surveillance.* Pursuant to section 6(b)(7) of the Act, the standard requires that each employer institute a medical surveillance program for all employees who work in regulated areas. OSHA believes that a medical surveillance program is necessary in dealing with the problem of employee exposure to DBCP.

The standard requires an opportunity for a medical examination for each employee before the first assignment to work with DBCP and annually thereafter. Where employees have received medical examination under the provisions of the ETS, the examination need not be repeated until one year from the date of that examination.

All examinations and procedures are required to be performed by or under the supervision of a licensed physician and provided without cost to the employee. While the physician will usually be selected by the employer, the standard does not so mandate, leaving the employer free to institute alternative procedures such as joint selection with the employee or selection by the employee. Clearly, a licensed physician is the appropriate person to be conducting a medical examination, and such a requirement is contained in the standard. However, certain parts of the required examination (e.g. taking of a history) do not necessarily require a physician's expertise and may be conducted by another person under the supervision of the physician.

The standard provides that a work history, medical history and medical examination be performed. The content of the examination is consistent with identification of the adverse health effects that have been associated with exposure to DBCP.

A commenter suggested that a standardized procedure be mandated for the collection of sperm and subsequent sperm count procedures (exhibit 53, p. 1). Recognizing that differing procedures may produce equally valid results, OSHA chose not to require specific sperm count procedures in the standard. Rather, a suggested protocol has been included in Appendix C.

Both the ETS and the proposal required measurement of serum testosterone levels. This requirement has been eliminated in the final on the basis of evidence that serum testosterone levels do not correlate with DBCP-induced toxicity (tr. 232–233).

Though evidence indicates that sperm counts are the best indicators of DBCP toxicity, the record indicates that the determinations of serum levels of follicle stimulating hormone (FSH), luteinizing hormone (LH), and,

in the case of females, estrogen, are also important in fertility assessment (tr. 232, 233) (exhibit 9, p. 41-45). These tests are especially important for females, vasectomized males, and other males unable to produce a semen specimen.

The emergency medical surveillance provisions reflect OSHA's concern for those employees who, because of equipment breakdown, container rupture or other causes, may be exposed to massive doses of DBCP. These workers may be at a relatively high risk for developing adverse fertility effects.

If a worker is exposed to an unexpected release of DBCP, the employer must, as soon as practicable, provide the employee an opportunity for a sperm count, or, in instances where an employee is unable to produce a semen specimen, a determination of serum levels of FSH, LH and estrogen (females). The employer is also required to provide these procedures three months later. The purpose of the three month repeat is that evidence on the record indicates that, since sperm take three months to mature, testicular damage would not be reflected in sperm count results until that time. The initial results would then serve as a baseline against which the repeat result could be compared.

The standard requires that the employer provide the physician with certain information. This includes: (1) A copy of the regulation; (2) a description of the affected employee's duties as they relate to the employee's exposure; (3) the results of the employee's exposure monitoring; (4) if any personal protective equipment is used or is to be used; and (5) information from previous medical examinations of the affected employee to the extent that they are not readily available to the physician. The purpose of making this information available to the physician is to aid in evaluation of the employee's health in relation to his assigned duties, and fitness to wear personal protective equipment when required.

The employer would be required to obtain and provide the employee with a written opinion from the examining physician containing: (1) The results of the medical tests; (2) the physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of health from exposure to DBCP; and (3) any recommended limitations upon the employee's exposure to DBCP and upon the use of protective clothing and equipment such as respirators. This written opinion must not reveal specific findings or diagnoses unrelated to occupational exposure to DBCP. A copy of the opinion must be provided to the affected employee by the employer.

The requirement that the employee be provided with a copy of the physician's written opinion will assure that the employee is informed of the results of the medical examination and may take any appropriate action. The purpose in requiring that specific findings or diagnoses unrelated to occupational exposure be excluded from the written opinion is to encourage employees to submit to medical examinations by removing the fear that employers may find out adverse or embarrassing information about their physical condition that has no relation to occupational exposures.

Among the issues in the DBCP rulemaking were whether OSHA should include a mandatory removal requirement—that is, a provision prohibiting the exposure of an employee to DBCP if the employee would be placed at increased risk of material impairment to health because of such exposure, and whether OSHA should include a rate retention provision—that is, a provision requiring the transfer of such employee to another job or providing that removal for medical reasons should not result in loss of earnings or seniority status to the affected employee. These issues, as OSHA has previously stated (41 FR 46780), are related and must be addressed together. Both employee and industry participants expressed their views as to several aspects of these issues in prehearing comments, in testimony during the hearing and in post hearing arguments. However, OSHA has conducted an informal public hearing on mandatory removal and rate retention for workers exposed to lead as part of the rulemaking proceeding on lead. Consideration of the critical issue of medical removal protection is being undertaken for several pending standards together. Once this consideration is completed, OSHA will determine the extent to which the conclusions on medical removal protection are appropriate for DBCP and whether to include those or similar provisions in the DBCP standard. The final standard published today, therefore, does not address the issues of mandatory removal and medical removal protection.

13. Paragraph (n)—*Employee information and training.* The standard requires the employer to provide a training program for employees potentially exposed to DBCP. OSHA believes that an information and training program is essential for the protection of employees, because an employee can do much to protect himself if informed of the nature of the hazards in the workplace. To be effective, an employee education system must, at the minimum, apprise the employee of the specific hazards associated with his work environment. For this reason, the employer would be required to inform each employee potentially exposed to DBCP of the nature of the related health problems, the necessity for exposure control, emergency procedures, and the medical and industrial hygiene monitoring programs.

The content of the training program is intended to apprise the employees of: (1) The hazards to which they are exposed; (2) the necessary steps to protect themselves, including avoiding exposures, using respiratory protection and availing themselves of the opportunity for medical examinations; (3) their role in reducing exposures; and (4) the contents of the standard. Section 6(b)(7) of the Act makes it clear that these are appropriate goals of an employee training program, and the standard, therefore, includes them.

The employer is also required to provide to the Secretary and the Director, upon request, all materials relating to the training program. This is intended to provide an objective check of compliance with the requirements of the standard.

14. Paragraph (o)—*Signs and labels.* OSHA believes that it is important, and section 6(b)(7) of the Act mandates, that appropriate forms of warning, including labels, be used to assure that employees are apprised of the hazards to which they are exposed in the course of their employment. OSHA believes, as a matter of policy, that employees should be given the opportunity to make informed decisions as to whether to work at a job under a particlular set of working conditions. Furthermore, OSHA believes since control of safety and health problems involves the cooperation of employees, success of a safety and health program is highly dependent upon the employee's understanding of the hazards involved in the job.

In light of the serious nature of the hazard of exposure to DBCP, OSHA does not believe that periodic training alone will adequately apprise employees of the health hazards of DBCP. However, OSHA believes that the requirement to post warning signs and labels when coupled with the training requirements discussed above will adequately do so.

The standard requires that nothing which contradicts or detracts from the effect of any sign required by this paragraph shall appear on or near any such required sign.

Due to the hazardous nature of exposure to DBCP, OSHA believes that emphasis should be placed on warning employees and other persons about the danger of exposure. For this reason, the standard includes a requirement that warning labels be affixed to all containers containing DBCP or products containing DBCP. The labeling provisions of the standard also require the employer to assure that warning labels are affixed

to any product containing DBCP when such product leaves the employer's workplace. This requirement is designed to protect any other employees who will be handling, transporting, or using this product. When an employer manufactures, formulates or sells a product containing a toxic substance, that employer is exposing not only his own employees but also the employees of other employers involved in handling, transporting or using the product. The extent of the obligation to inform should be commensurate with the extent of the exposure. This is especially true where the manufacturer, formulator or seller will in many cases be the only employer capable, through his unique knowledge of the substance, of providing the information needed for protection of other employees. (See the discussion in the recently promulgated benzene standard, 43 FR 5918, 5960.) However, where DBCP or products containing DBCP are sold, distributed or otherwise leave the employer's workplace bearing labels required by EPA under the regulations in 40 CFR Part 162, the labels required by this paragraph for products leaving the workplace need not be affixed. OSHA feels that the EPA labels adequately alert downstream employers and employees to the hazards of DBCP.

15. Paragraph (p)—*Recordkeeping.* Section 8(c)(3) of the Act provides for the promulgation of regulations requiring employers to maintain accurate records of employee exposure to potentially toxic or harmful physical agents which are required to be monitored or measured. Accordingly, the final standard requires that employers keep records of both monitoring and medical surveillance.

The standard provides that records must be kept to identify the employee and to accurately reflect the employee's exposure. Specifically, it must include: (a) The names, social security numbers and job classifications of the employees monitored, (b) the dates, number, duration and results of each of the samples taken, including a description of the representative sampling procedure used to determine employee exposure where applicable, (c) the type of respiratory protective devices worn by the employee, if any, and (d) a description of the sampling and analytical methods used, and evidence of their accuracy.

The required retention time for medical surveillance records and exposure monitoring records would be extended to 40 years or the duration of exposure plus 20 years, whichever is longer. Carcinogenic induction, if it occurs in an exposed human population, has usually been found by medical surveillance 20 to 40 years after initial exposure. While present medical knowledge does not permit the establishment of exposure limits for carcinogens based on scientific information of the mechanism of carcinogenic induction, it is quite possible that such fundamental scientific knowledge will be developed within the next decade or two. At that point, knowledge of exposure levels of employees will be significant for both developing scientifically valid exposure limits, and for more precisely determining whether exposures may be safely continued for such employees, or perhaps safely raised.

The standard also requires that the employer keep an accurate medical record for each employee who is subject to medical surveillance. Section 8(c)(1) of the Act authorizes the promulgation of regulations requiring an employer to keep such records regarding the employer's activities relating to the Act as are necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational illnesses. OSHA believes that medical records (like exposure monitoring records) are both necessary and appropriate to both the enforcement of the standards and the development of information regarding the causes and prevention of illness.

As explained above, it is necessary to relate employees' medical conditions to their exposure in order to develop information regarding cause and prevention. Medical records are necessary and appropriate for this purpose. Medical records are also necessary for the proper evaluation of an individual employee's health as well as providing a baseline against which the results of subsequent examinations may be compared. For all of these reasons, medical records are required.

The standard requires that employees or their designated representatives be provided access to examine and copy records of required monitoring. The purpose of this provision is to assure current employees that their exposure is being properly monitored and recorded, and that they are working in a safe and healthful environment. This is consistent with section 8(c)(3) of the Act which directs the Secretary to promulgate regulations providing "employees or their representatives with an opportunity to observe monitoring or measuring and to have access to the records thereof".

Exposure monitoring records indicating their own exposure must be made available to former employees or their designated representatives. Section 8(c)(3) of the Act explicitly provides, "former employees to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents". Records are available to designated representatives to assure access to the information by the current or former employee where he is incapacitated, unable to inspect or understand the records, or simply desires that his representative inspect them. The Act recognizes the legitimate role of employee representatives in assuring occupational safety and health.

The standard is also clarified to provide that medical records be made available upon request for examination and copying to a physician or other individual designated by the affected current employee or former employee. The purpose of the requirement is to protect the current or former employee's health by providing physicians and individuals designated by employees access to medical records useful in the diagnosis of illness. Records are available to designated representatives for the reasons noted above.

One commenter questioned the fact that the standard enables OSHA and NIOSH to have access to medical records without specifying confidentiality or otherwise limiting circulation of the information (exhibit 4-8, p. 14). OSHA recognizes that a physician's records may contain a wide range of personal and medical information deemed to be confidential or private. For this reason, the standard limits the contents of the medical record to such information as is related to DBCP exposure. Indeed, the standard requires in paragraph (m)(5)(ii) that the employer advise the physician that the physician's opinion, which becomes a part of the medical record, should not reveal findings unrelated to occupational exposure. The need of OSHA and NIOSH to have access to this information has already been thoroughly discussed. The privacy rights of the individuals would be appropriately protected by the Privacy Act and implementing regulations.

To assure that the records will be preserved for the required retention period, the standard requires an employer, who ceases to do business, to transfer his records to his successor and, in the event that there is no successor, to transfer the records to the Director of NIOSH.

16. Paragraph (q)—*Observation of monitoring.* Section 8(c)(3) of the Act authorizes the Secretary to require that employers provide employees or their representatives with the opportunity to observe monitoring of employee exposure to toxic substances or harmful physical agents. In accordance with this section, the standard contains provisions for such observation of DBCP monitoring. To assure that the right to observe is meaningful, observers are entitled to receive an explanation of the measurement procedure, to observe all steps related to the measurement procedure, and record the results obtained.

The observer, whether an employee or designated representative, must be

provided with, and is required to use, any personal protective devices required to be worn by employees working in the area that is being monitored, and must comply with all other applicable safety and health procedures.

17. Paragraph (r)—*Appendices.* The standard includes three appendices: Appendix A titled "Substance Safety Data Sheet", Appendix B titled "Substance Technical Guidelines", and Appendix C titled "Medical Surveillance Guidelines". It should be noted that appendices are for informational purposes only. None of the statements contained therein should be construed as imposing a mandatory requirement not otherwise in the standard or negating any requirement which is imposed by the standard.

The information in appendix A is specifically written for the employee. Appendix B contains additional scientific and technical information to aid the employer in complying with requirements of the standard. Appendix C gives the employer a means of providing the examining physician with an explanation of the potential health effects of exposure to DBCP and provides information needed by the physician to evaluate the results of the medical examination. Appendix C also lists other types of examinations, not required by the individual standard, which may help the physician in making an accurate determination of whether an employee should be exposed or should continue to be exposed to DBCP.

VI. Authority

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Accordingly, pursuant to sections 6(b), 6(c), and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1596, 1599, 29 U.S.C. 653, 655, 657), the Secretary of Labor's Order No. 8-76 (41 FR 25059), and 29 CFR Part 1911, Part 1910 of Title 29, Code of Federal Regulations, is hereby amended by revising § 1910.1044 to provide a permanent occupational safety and health standard for exposure to DBCP.

In order to ensure that affected employers and employees will be informed of the existence of the new provisions and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the new requirements, the effective date of the revision to § 1910.1044 will be April 17, 1978. To provide continued protection for employees until that date, the provisions currently contained in § 1910.1044 are promulgated pursuant to sections 6(b), 6(c), and 8(c) of the Occupational Safety and Health Act as an occupational safety and health standard effective March 17, 1978. The revision to § 1910.1044 will supersede these provisions as of April 10, 1978.

Signed at Washington, D.C., this 10th day of March 1978.

Eula Bingham,
Assistant Secretary of Labor.

§ 1910.1044 1,2-dibromo-3-chloropropane.

(a) *Scope and application.* (1) This section applies to occupational exposure to 1,2-dibromo-3-chloropropane (DBCP).

(2) This section does not apply to:

(i) Exposure to DBCP which results solely from the application and use of DBCP as a pesticide; or

(ii) The storage, transportation, distribution or sale of DBCP in intact containers sealed in such a manner as to prevent exposure to DBCP vapors or liquid, except for the requirements of paragraphs (i), (n) and (o) of this section.

(b) *Definitions.* "Authorized person" means any person required by his duties to be present in regulated areas and authorized to do so by his employer, by this section, or by the Act. "Authorized person" also includes any person entering such areas as a designated representative of employees exercising an opportunity to observe employee exposure monitoring.

"DBCP" means 1,2-dibromo-3-chloropropane, Chemical Abstracts Service Registry Number 96-12-8, and includes all forms of DBCP.

"Director" means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health, Education and Welfare, or designee.

"Emergency" means any occurrence such as, but not limited to equipment failure, rupture of containers, or failure of control equipment which may, or does, result in an unexpected release of DBCP.

"OSHA Area Office" means the Area Office of the Occupational Safety and Health Administration having jurisdiction over the geographic area where the affected workplace is located.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

(c) *Permissible exposure limit.*—(1) *Inhalation.* The employer shall assure that no employee is exposed to an airborne concentration of DBCP in excess of 1 part DBCP per billion parts of air (ppb) as an 8-hour time-weighted average.

(2) *Dermal and eye exposure.* The employer shall assure that no employee is exposed to eye or skin contact with DBCP.

(d) *Notification of use.* Within ten (10) days following the introduction of DBCP into the workplace, every employer who has a workplace where DBCP is present, shall report the following information to the nearest OSHA Area Office for each such workplace;

(1) The address and location of the workplace:

(2) A brief description of each process or operation which may result in employee exposure to DBCP;

(3) The number of employees engaged in each process or operation who may be exposed to DBCP and an estimate of the frequency and degree of exposure that occurs; and

(4) A brief description of the employer's safety and health program as it relates to limitation of employee exposure to DBCP.

(e) *Regulated areas.* (1) The employer shall establish, within each place of employment, regulated areas wherever DBCP concentrations are in excess of the permissible exposure limit.

(2) The employer shall limit access to regulated areas to authorized persons.

(f) *Exposure monitoring.*—(1) *General.* (i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to DBCP over an 8-hour period.

(ii) For the purposes of this paragraph, employee exposure is that exposure which would occur if the employee were not using a respirator.

(2) *Initial.* Each employer who has a place of employment in which DBCP is present, shall monitor each workplace and work operation to accurately determine the airborne concentrations of DBCP to which employees may be exposed.

(3) *Frequency.* (i) If the monitoring required by this section reveals employee exposures to be below the permissible exposure limit, the employer shall repeat these measurements at least quarterly.

(ii) If the monitoring required by this section reveals employee exposures to be in excess of the permissible exposure limit, the employer shall repeat these measurements for each such employee at least monthly. The employer shall continue monthly monitoring until at least two consecutive measurements, taken at least seven (7) days apart, are below the permissible exposure limit. Thereafter the employer shall monitor at least quarterly.

(4) *Additional.* Whenever there has been a production, process, control, or personnel change which may result in any new or additional exposure to DBCP, or whenever the employer has any reason to suspect new or additional exposures to DBCP, the employer shall monitor the employees potentially affected by such change for the

purpose of redetermining their exposure.

(5) *Employee notification.* (i) Within five (5) working days after the receipt of monitoring results, the employer shall notify each employee in writing of the measurements which represent the employee's exposure.

(ii) Whenever the results indicate that employee exposure exceeds the permissible exposure limit, the employer shall include in the written notice a statement that the permissible exposure limit was exceeded and a description of the corrective action being taken to reduce exposure to or below the permissible exposure limit.

(6) *Accuracy of measurement.* The employer shall use a method of measurement which has an accuracy, to a confidence level of 95 percent, of not less than plus or minus 25 percent for concentrations of DBCP at or above the permissible exposure limit.

(g) *Methods of compliance.*—(1) *Priority of compliance methods.* The employer shall institute engineering and work practice controls to reduce and maintain employee exposures to DBCP at or below the permissible exposure limit, except to the extent that the employer establishes that such controls are not feasible. Where feasible engineering and work practice controls are not sufficient to reduce employee exposures to within the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls, and shall supplement them by use of respiratory protection.

(2) *Compliance program.* The employer shall establish and implement a written program to reduce employee exposures to DBCP to or below the permissible exposure limit solely by means of engineering and work practice controls as required by paragraph (g)(1) of this section.

(ii) The written program shall include a detailed schedule for development and implementation of the engineering and work practice controls. These plans shall be revised at least every six months to reflect the current status of the program.

(iii) Written plans for these compliance programs shall be submitted upon request to the Assistant Secretary and the Director, and shall be available at the worksite for examination and copying by the Assistant Secretary, the Director, and any affected employee or designated representative of employees.

(iv) The employer shall institute and maintain at least the controls described in his most recent written compliance program.

(h) *Respirators.*—(1) *General.* Where respiratory protection is required under this section, the employer shall select, provide and assure the proper use of respirators. Respirators shall be used in the following circumstances:

(i) During the period necessary to install or implement feasible engineering and work practice controls; or

(ii) During maintenance and repair activities in which engineering and work practice controls are not feasible; or

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the permissible exposure limit; or

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are required under this section, the employer shall select and provide, at no cost to the employee, the appropriate respirator from Table 1 below and shall assure that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those approved by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR Part 11.

TABLE 1.—*Respiratory protection for DBCP*

Airborne concentration of DBCP or condition of use	Respirator type
(a) Less than or equal to 10 ppb.	(1) Any supplied-air respirator; or (2) any self-contained breathing apparatus.
(b) Less than or equal to 50 ppb.	(1) Any supplied-air respirator with full facepiece, helmet, or hood; or (2) any self-contained breathing apparatus with full facepiece.
(c) Less than or equal to 1,000 ppb.	(1) A Type C supplied-air respirator operated in pressure-demand or other positive pressure or continuous flow mode.
(d) Less than or equal to 2,000 ppb.	(1) A Type C supplied-air respirator with full facepiece operated in pressure-demand or other positive pressure mode, or with full facepiece, helmet, or hood operated in continuous flow mode.
(e) Greater than 2,000 ppb or entry and escape from unknown concentrations.	(1) A combination respirator which includes a Type C supplied-air respirator with full facepiece operated in pressure-demand or other positive pressure or continuous flow mode and an auxiliary self-contained breathing apparatus operated in pressure-demand or positive pressure mode; or (2) a self-contained breathing apparatus with full facepiece operated in pressure-demand or other positive pressure mode.
(f) Firefighting.....	(1) A self-contained breathing apparatus with full facepiece operated in pressure-demand or other positive pressure mode.

(3) *Respirator program.* (i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e), and (f).

(ii) Employees who wear respirators shall be allowed to wash their faces and respirator facepieces as needed to prevent potential skin irritation associated with respirator use.

(i) *Emergency situations.*—(1) *Written plans.* (i) A written plan for emergency situations shall be developed for each workplace in which DBCP is present.

(ii) Appropriate portions of the plan shall be implemented in the event of an emergency.

(2) Employees engaged in correcting emergency conditions shall be equipped as required in paragraphs (h) and (j) of this section until the emergency is abated.

(3) *Evacuation.* Employees not engaged in correcting the emergency shall be removed and restricted from the area and normal operations in the affected area shall not be resumed until the emergency is abated.

(4) *Alerting employees.* Where there is a possibility of employee exposure to DBCP due to the occurrence of an emergency, a general alarm shall be installed and maintained to promptly alert employees of such occurrences.

(5) *Medical surveillance.* For any employee exposed to DBCP in an emergency situation, the employer shall provide medical surveillance in accordance with paragraph (m) (6) of this section.

(6) *Exposure monitoring.* (i) Following an emergency, the employer shall conduct monitoring which complies with paragraph (f) of this section.

(ii) In workplaces not normally subject to periodic monitoring, the employer may terminate monitoring when two consecutive measurements indicate exposures below the permissible exposure limit.

(j) *Protective clothing and equipments.*—(1) *Provision and use.* Where there is any possibility of eye or dermal contact with liquid or solid DBCP, the employer shall provide, at no cost to the employee, and assure that the employee wears impermeable protective clothing and equipment to protect the area of the body which may come in contact with DBCP. Eye and face protection shall meet the requirements of § 1910.133 of this Part.

(2) *Removal and storage.* (i) The employer shall assure that employees remove DBCP contaminated work clothing only in change rooms provided in accordance with paragraph (l) (1) of this section.

(ii) The employer shall assure that employees promptly remove any protective clothing and equipment which becomes contaminated with DBCP-containing liquids and solids. This clothing shall not be reworn until the

DBCP has been removed from the clothing or equipment.

(iii) The employer shall assure that no employee takes DBCP contaminated protective devices and work clothing out of the change room, except those employees authorized to do so for the purpose of laundering, maintenance, of disposal.

(iv) DBCP-contaminated protective devices and work clothing shall be placed and stored in closed containers which prevent dispersion of the DBCP outside the container.

(v) Containers of DBCP contaminated protective devices or work clothing which are to be taken out of change rooms or the workplace for cleaning, maintenance or disposal, shall bear labels in accordance with paragraph (o)(3) of this section.

(3) *Cleaning and replacement.* (i) The employer shall clean, launder, repair, or replace protective clothing and equipment required by this paragraph to maintain their effectiveness. The employer shall provide clean protective clothing and equipment at least daily to each affected employee.

(ii) The employer shall inform any person who launders or clean DBCP-contaminated protective clothing or equipment of the potentially harmful effects of exposure to DBCP.

(iii) The employer shall prohibit the removal of DBCP from protective clothing and equipment by blowing or shaking.

(k) *Housekeeping.*—(1) *Surfaces.* (i) All workplace surfaces shall be maintained free of visible accumulations of DBCP.

(ii) Dry sweeping and the use of compressed air for the cleaning of floors and other surfaces is prohibited where DBCP dusts or liquids are present.

(iii) Where vacuuming methods are selected to clean floors and other surfaces, either portable units or a permanent system may be used.

(*a*) If a portable unit is selected, the exhaust shall be attached to the general workplace exhaust ventilation system or collected within the vacuum unit, equipped with high efficiency filters or other appropriate means of contaminant removal, so that DBCP is not reintroduced into the workplace air; and

(*b*) Portable vacuum units used to collect DBCP may not be used for other cleaning purposes and shall be labeled as prescribed by paragraph (o)(3) of this section.

(iv) Cleaning of floors and other surfaces contaminated with DBCP-containing dusts shall not be performed by washing down with a hose, unless a fine spray has first been laid down.

(2) *Liquids.* Where DBCP is present in a liquid form, or as a resultant vapor, all containers or vessels containing DBCP shall be enclosed to the maximum extent feasible and tightly covered when not in use.

(3) *Waste disposal.* DBCP waste scrap, debris, containers or equipment, shall be disposed of in sealed bags or other closed containers which prevent dispersion of DBCP outside the container.

(l) *Hygiene facilities and practices.*—(1) *Change rooms.* The employer shall provide clean change rooms equipped with storage facilities for street clothes and separate storage facilities for protective clothing and equipment whenever employees are required to wear protective clothing and equipment in accordance with paragraphs (h) and (j) of this section.

(2) *Showers.* (i) The employer shall assure that employees working in the regulated area shower at the end of the work shift.

(ii) The employer shall assure that employees whose skin becomes contaminated with DBCP-containing liquids or solids immediately wash or shower to remove any DBCP from the skin.

(iii) The employer shall provide shower facilities in accordance with 29 CFR 1910.141(d)(3).

(3) *Lunchrooms.* The employer shall provide lunchroom facilities which have a temperature controlled, positive pressure, filtered air supply, and which are readily accessible to employees working in regulated areas.

(4) *Lavatories.* (i) The employer shall assure that employees working in the regulated area remove protective clothing and wash their hands and face prior to eating.

(ii) The employer shall provide a sufficient number of lavatory facilities which comply with 29 CFR 1910.141(d) (1) and (2).

(5) *Prohibition of activities in regulated areas.* The employer shall assure that, in regulated areas, food or beverages are not present or consumed, smoking products and implements are not present or used, and cosmetics are not present or applied.

(m) *Medical surveillance.*—(1) *General.* (i) The employer shall make available a medical surveillance program for employees who work in regulated areas and employees who are subjected to DBCP exposures in an emergency situation.

(ii) All medical examinations and procedures shall be performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee.

(2) *Frequency and content.* At the time of initial assignment, and annually thereafter, the employer shall provide a medical examination for employees who work in regulated areas, which includes at least the following:

(i) A medical and occupational history including reproductive history.

(ii) A physical examination, including examination of the genito-urinary tract, testicle size and body habitus, including a determination of sperm count.

(iii) A serum specimen shall be obtained and the following determinations made by radioimmunoassay techniques utilizing National Institutes of Health (NIH) specific antigen or one of equivalent sensitivity:

(*a*) Serum follicle stimulating hormone (FSH);

(*b*) Serum luteinizing hormone (LH); and

(*c*) Serum total estrogen (females).

(iv) Any other tests deemed appropriate by the examining physician.

(3) *Additional examinations.* If the employee for any reason develops signs or symptoms commonly associated with exposure to DBCP, the employer shall provide the employee with a medical examination which shall include those elements considered appropriate by the examining physician.

(4) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this regulation and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The level of DBCP to which the employee is exposed; and

(iv) A description of any personal protective equipment used or to be used.

(5) *Physician's written opinion.* (i) For each examination under this section, the employer shall obtain and provide the employee with a written opinion from the examining physician which shall include:

(*a*) The results of the medical tests performed;

(*b*) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at an increased risk of material impairment of health from exposure to DBCP; and

(*c*) Any recommended limitations upon the employee's exposure to DBCP or upon the use of protective clothing and equipment such as respirators.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure.

(6) *Emergency situations.* If the employee is exposed to DBCP in an emergency situation, the employer shall provide the employee with a sperm count test as soon as practicable, or, if the employee has been vasectomized or is unable to produce a semen specimen, the hormone tests contained in paragraph (m)(2)(iii) of this section. The employer shall provide these same tests three months later.

(n) *Employee information and training.*—(1) *Training program.* (i) The

employer shall institute a training program for all employees who may be exposed to DBCP and shall assure their participation in such training program.

(ii) The employer shall assure that each employee is informed of the following:

(*a*) The information contained in Appendix A;

(*b*) The quantity, location, manner of use, release or storage of DBCP and the specific nature of operations which could result in exposure to DBCP as well as any necessary protective steps;

(*c*) The purpose, proper use, and limitations of respirators;

(*d*) The purpose and description of the medical surveillance program required by paragraph (m) of this section; and

(*e*) A review of this standard, including appendices.

(2) *Access to training materials.* (i) The employer shall make a copy of this standard and its appendices readily available to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(o) *Signs and labels.*—(1) *General.* (i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to or in combination with, signs and labels required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign or label required by this paragraph which contradicts or detracts from the required sign or label.

(2) *Signs.* (i) The employer shall post signs to clearly indicate all regulated areas. These signs shall bear the legend:

DANGER

1,2-Dibromo-3-chloropropane

(*Insert appropriate trade or common names*)

CANCER HAZARD

AUTHORIZED PERSONNEL ONLY

RESPIRATOR REQUIRED

(3) *Labels.* (i) The employer shall assure that precautionary labels are affixed to all containers of DBCP and of products containing DBCP in the workplace, and that the labels remain affixed when the DBCP or products containing DBCP are sold, distributed, or otherwise leave the employer's workplace. Where DBCP or products containing DBCP are sold, distributed or otherwise leave the employer's workplace bearing appropriate labels required by EPA under the regulations in 40 CFR Part 162, the labels required by this paragraph need not be affixed.

(ii) The employer shall assure that the precautionary labels required by this paragraph are readily visible and legible. The labels shall bear the following legend:

DANGER

1,2-Dibromo-3-chloropropane

CANCER HAZARD

(p) *Recordkeeping.*—(1) *Exposure monitoring.* (i) The employer shall establish and maintain an accurate record of all monitoring required by paragraph (f) of this section.

(ii) This record shall include:

(*a*) The dates, number, duration and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure;

(*b*) A description of the sampling and analytical methods used;

(*c*) Type of respiratory protective devices worn, if any; and

(*d*) Name, social security number, and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least 40 years or the duration of employment plus 20 years, whichever is longer.

(2) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance required by paragraph (m) of this section.

(ii) This record shall include:

(*a*) The name and social security number of the employee;

(*b*) A copy of the physician's written opinion;

(*c*) Any employee medical complaints related to exposure to DBCP;

(*d*) A copy of the information provided the physician as required by paragraphs (m)(4)(ii) through (m)(4)(iv) of this section; and

(*e*) A copy of the employee's medical and work history.

(iii) The employer shall maintain this record for at least 40 years or the duration of employment plus 20 years, whichever is longer.

(3) *Availability.* (i) The employer shall assure that all records required to be maintained by this section be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) The employer shall assure that all employee exposure monitoring records required by this section be made available for examination and copying to affected employees or their designated representatives.

(iii) The employer shall assure that former employees and former employee's designated representatives have access to such records as will indicate the former employee's own exposure to DBCP.

(iv) The employer shall assure that employee medical records required to be maintained by this section be made available, upon request, for examination and copying to the employee or former employee and to a physician or other individual designated by the affected employee or former employee.

(4) *Transfer of records.* (i) If the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by paragraph (p) of this section for the prescribed period.

(ii) If the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall transmit these records by mail to the Director.

(iii) At the expiration of the retention period for the records required to be maintained under paragraph (p) of this section, the employer shall transmit these records by mail to the Director.

(q) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees, or their designated representatives, with an opportunity to observe any monitoring of employee exposure to DBCP required by this section.

(2) *Observation procedures.* (i) Whenever observation of the measuring or monitoring of employee exposure to DBCP requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with personal protective clothing or equipment required to be worn by employees working in the area, assure the use of such clothing and equipment, and require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring or measurement, observers shall be entitled to:

(*a*) Receive an explanation of the measurement procedures;

(*b*) Observe all steps related to the measurement of airborne concentrations of DBCP performed at the place of exposure; and

(*c*) Record the results obtained.

(r) *Appendices.* The information contained in the appendices is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligation.

APPENDIX A—SUBSTANCE SAFETY DATA SHEET FOR DBCP

I. SUBSTANCE IDENTIFICATION

A. Synonyms and trades names: DBCP; Dibromochloropropane; Fumazone (Dow Chemical Company TM); Nemafume; Nemagon (Shell Chemical Co. TM); Nemaset; BBC 12; and OS 1879.

B. Permissible exposure:

1. *Airborne.* 1 part DBCP vapor per billion parts of air (1 ppb); time-weighted average (TWA) for an 8-hour workday.

2. *Dermal.* Eye contact and skin contact with DBCP are prohibited.

C. Appearance and odor: Technical grade DBCP is a dense yellow or amber liquid with a pungent odor. It may also appear in granular form, or blended in varying concentrations with other liquids.

D. Uses: DBCP is used to control nematodes, very small worm-like plant parasites, on crops including cotton, soybeans, fruits, nuts, vegetables and ornamentals.

II. HEALTH HAZARD DATA

A. Routes of entry: Employees may be exposed:

1. Through inhalation (breathing);
2. Through ingestion (swallowing);
3. Skin contact; and
4. Eye contact.

B. Effects of exposure:

1. *Acute exposure.* DBCP may cause drowsiness, irritation of the eyes, nose, throat and skin, nausea and vomiting. In addition, overexposure may cause damage to the lungs, liver or kidneys.

2. *Chronic exposure.* Prolonged or repeated exposure to DBCP has been shown to cause sterility in humans. It also has been shown to produce cancer and sterility in laboratory animals and has been determined to constitute an increased risk of cancer in man.

3. *Reporting Signs and Symptoms.* If you develop any of the above signs or symptoms that you think are caused by exposure to DBCP, you should inform your employer.

III. EMERGENCY FIRST AID PROCEDURES

A. *Eye exposure.* If DBCP liquid or dust containing DBCP gets into your eyes, wash your eyes immediately with large amounts of water, lifting the lower and upper lids occasionally. Get medical attention immediately. Contact lenses should not be worn when working with DBCP.

B. *Skin exposure.* If DBCP liquids or dusts containing DBCP get on your skin, immediately wash using soap or mild detergent and water. If DBCP liquids or dusts containing DBCP penetrate through your clothing, remove the clothing immediately and wash. If irritation is present after washing get medical attention.

C. *Breathing.* If you or any person breathe in large amounts of DBCP, move the exposed person to fresh air at once. If breathing has stopped, perform artificial respiration. Do not use mouth-to-mouth. Keep the affected person warm and at rest. Get medical attention as soon as possible.

D. *Swallowing.* When DBCP has been swallowed and the person is conscious, give the person large amounts of water immediately. After the water has been swallowed, try to get the person to vomit by having him touch the back of his throat with his finger. Do not make an unconscious person vomit. Get medical attention immediately.

E. *Rescue.* Notify someone. Put into effect the established emergency rescue procedures. Know the locations of the emergency rescue equipment before the need arises.

IV. RESPIRATORS AND PROTECTIVE CLOTHING

A. *Respirators.* You may be required to wear a respirator in emergencies and while your employer is in the process of reducing DBCP exposures through engineering controls. If respirators are worn, they must have a National Institute for Occupational Safety and Health (NIOSH) approval label (Older respirators may have a Bureau of Mines Approval label). For effective protection, a respirator must fit your face and head snugly. The respirator should not be loosened or removed in work situations where its use is required. DBCP does not have a detectable odor except at 1,000 times or more above the permissible exposure limit. If you can smell DBCP while wearing a respirator, the respirator is not working correctly; go immediately to fresh air. If you experience difficulty breathing while wearing a respirator, tell your employer.

B. *Protective clothing.* When working with DBCP you must wear for your protection impermeable work clothing provided by your employer. (Standard rubber and neoprene protective clothing do not offer adequate protection).

DBCP must never be allowed to remain on the skin. Clothing and shoes must not be allowed to become contaminated with DBCP, and if they do, they must be promptly removed and not worn again until completely free of DBCP. Turn in impermeable clothing that has developed leaks for repair or replacement.

C. *Eye protection.* You must wear splashproof safety goggles where there is any possibility of DBCP liquid or dust contacting your eyes.

V. PRECAUTIONS FOR SAFE USE, HANDLING, AND STORAGE

A. DBCP must be stored in tightly closed containers in a cool, well-ventilated area.

B. If your work clothing may have become contaminated with DBCP, or liquids or dusts containing DBCP, you must change into uncontaminated clothing before leaving the work premises.

C. You must promptly remove any protective clothing that becomes contaminated with DBCP. This clothing must not be reworn until the DBCP is removed from the clothing.

D. If your skin becomes contaminated with DBCP, you must immediately and thoroughly wash or shower with soap or mild detergent and water to remove any DBCP from your skin.

E. You must not keep food, beverages, cosmetics, or smoking materials, nor eat or smoke, in regulated areas.

F. If you work in a regulated area, you must wash your hands thoroughly with soap or mild detergent and water, before eating, smoking or using toilet facilities.

G. If you work in a regulated area, you must remove any protective equipment or clothing before leaving the regulated area.

H. Ask your supervisor where DBCP is used in your work area and for any additional safety and health rules.

VI. ACCESS TO INFORMATION

A. Each year, your employer is required to inform you of the information contained in this Substance Safety Data Sheet for DBCP. In addition, your employer must instruct you in the safe use of DBCP, emergency procedures, and the correct use of protective equipment.

B. Your employer is required to determine whether you are being exposed to DBCP. You or your representative have the right to observe employee exposure measurements and to record the result obtained. Your employer is required to inform you of your exposure. If your employer determines that you are being overexposed, he is required to inform you of the actions which are being taken to reduce your exposure.

C. Your employer is required to keep records of your exposure and medical examinations. Your employer is required to keep exposure and medical data for at least 40 years or the duration of your employment plus 20 years, whichever is longer.

D. Your employer is required to release exposure and medical records to you, your physician, or other individual designated by you upon your written request.

APPENDIX B—SUBSTANCE TECHNICAL GUIDELINES FOR DBCP

I. PHYSICAL AND CHEMICAL DATA

A. Substance Identification

1. Synonyms: 1,2-dibromo-3-chloropropane; DBCP, Fumazone; Nemafume; Nemagon; Nemaset; BBC 12; OS 1879. DBCP is also included in agricultural pesticides and fumigants which include the phrase "Nema———" in their name.
2. Formula: C3H5Br2 C1.
3. Molecular Weight: 236.

B. Physical Data:

1. Boiling point (760 mm HG): 195C (383F)
2. Specific gravity (water=1): 2.093.
3. Vapor density (air=1 at boiling point of DBCP): Data not available.
4. Melting point: 6C (43F).
5. Vapor pressure at 20C (68F): 0.8 mm Hg
6. Solubility in water: 1000 ppm.
7. Evaporation rate (Butyl Acetate=1): very much less than 1.
8. Appearance and odor: Dense yellow or amber liquid with a pungent odor at high concentrations. Any detectable odor of DBCP indicates overexposure.

II. FIRE EXPLOSION AND REACTIVITY HAZARD DATA

A. Fire

1. Flash point: 170F (77C)
2. Autoignition temperature: Data not available.
3. Flammable limits in air, percent by volume: Data not available.
4. Extinguishing media: Carbon dioxide, dry chemical.
5. Special fire-fighting procedures: Do not use a solid stream of water since a stream will scatter and spread the fire. Use water spray to cool containers exposed to a fire.
6. Unusual fire and explosion hazards: None known.
7. For purposes of complying with the requirements of § 1910.106, liquid DBCP is classified as a Class III A combustible liquid.
8. For the purpose of complying with § 1910.309, the classification of hazardous locations as described in article 500 of the National Electrical Code for DBCP shall be Class I, Group D.
9. For the purpose of compliance with § 1910.157, DBCP is classified as a Class B fire hazard.
10. For the purpose of compliance with § 1910.178, locations classified as hazardous locations due to the presence of DBCP shall be Class I, Group D.
11. Sources of ignition are prohibited where DBCP presents a fire or explosion hazard.

B. Reactivity

1. Conditions contributing to instability: None known.
2. Incompatibilities: Reacts with chemically active metals, such as aluminum, magnesium and tin alloys.
3. Hazardous decomposition products: Toxic gases and vapors (such as HBr, HCl and carbon monoxide) may be released in a fire involving DBCP.
4. Special precautions: DBCP will attack some rubber materials and coatings.

III. SPILL, LEAK AND DISPOSAL PROCEDURES

A. If DBCP is spilled or leaked, the following steps should be taken:

1. The area should be evacuated at once and re-entered only after thorough ventilation.

2. Ventilate area of spill or leak.

3. If in liquid form, collect for reclamation or absorb in paper, vermiculite, dry sand, earth or similar material.

4. If in solid form, collect spilled material in the most convenient and safe manner for reclamation or for disposal.

B. Persons not wearing protective equipment must be restricted from areas of spills or leaks until cleanup has been completed.

C. Waste Disposal Methods:

1. For small quantities of liquid DBCP, absorb on paper towels, remove to a safe place (such as a fume hood) and burn the paper. Large quantities can be reclaimed or collected and atomized in a suitable combustion chamber equipped with an appropriate effluent gas cleaning device. If liquid DBCP is absorbed in vermiculite, dry sand, earth or similar material and placed in sealed containers it may be disposed of in a State-approved sanitary landfill.

2. If in solid form, for small quantities, place on paper towels, remove to a safe place (such as a fume hood) and burn. Large quantities may be reclaimed. However, if this is not practical, dissolve in a flammable solvent (such as alcohol) and atomize in a suitable combustion chamber equipped with an appropriate effluent gas cleaning device. DBCP in solid form may also be disposed in a state-approved sanitary landfill.

IV. MONITORING AND MEASUREMENT PROCEDURES

A. Exposure above the permissible exposure limit.

1. *Eight Hour Exposure Evaluation:* Measurements taken for the purpose of determining employee exposure under this section are best taken so that the average 8-hour exposure may be determined from a single 8-hour sample or two (2) 4-hour samples. Air samples should be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee).

2. *Monitoring Techniques:* The sampling and analysis under this section may be performed by collecting the DBCP vapor on petroleum based charcoal absorption tubes with subsequent chemical analyses. The method of measurement chosen should determine the concentration of airborne DBCP at the permissible exposure limit to an accuracy of plus or minus 25 percent. If charcoal tubes are used, a total volume of 10 liters should be collected at a flow rate of 50 cc. per minute for each tube. Analyze the resultant samples as you would samples of halogenated solvent.

B. Since many of the duties relating to employee protection are dependent on the results of monitoring and measuring procedures, employers should assure that the evaluation of employee exposures is performed by a competent industrial hygienist or other technically qualified person.

V. PROTECTIVE CLOTHING

Employees should be required to wear appropriate protective clothing to prevent any possibility of skin contact with DBCP. Because DBCP is absorbed through the skin, it is important to prevent skin contact with both liquid and solid forms of DBCP. Protective clothing should include impermeable coveralls or similar fullbody work clothing, gloves, headcoverings, and workshoes or shoe coverings. Standard rubber and neoprene gloves do not offer adequate protection and should not be relied upon to keep DBCP off the skin. DBCP should never be allowed to remain on the skin. Clothing and shoes should not be allowed to become contaminated with the material, and if they do, they should be promptly removed and not worn again until completely free of the material. Any protective clothing which has developed leaks or is otherwise found to be defective should be repaired or replaced. Employees should also be required to wear splash-proof safety goggles where there is any possibility of DBCP contacting the eyes.

VI. HOUSEKEEPING AND HYGIENE FACILITIES

1. The workplace must be kept clean, orderly and in a sanitary condition;

2. Dry sweeping and the use of compressed air is unsafe for the cleaning of floors and other surfaces where DBCP dust or liquids are found. To minimize the contamination of air with dust, vacuuming with either portable or permanent systems must be used. If a portable unit is selected, the exhaust must be attached to the general workplace exhaust ventilation system, or collected within the vacuum unit equipped with high efficiency filters or other appropriate means of contamination removal and not used for other purposes. Units used to collect DBCP must be labeled.

3. Adequate washing facilities with hot and cold water must be provided, and maintained in a sanitary condition. Suitable cleansing agents should also be provided to assure the effective removal of DBCP from the skin.

4. Change or dressing rooms with individual clothes storage facilities must be provided to prevent the contamination of street clothes with DBCP. Because of the hazardous nature of DBCP, contaminated protective clothing must be stored in closed containers for cleaning or disposal.

VII. MISCELLANEOUS PRECAUTIONS

A. Store DBCP in tightly closed containers in a cool, well ventilated area.

B. Use of supplied-air suits or other impervious clothing (such as acid suits) may be necessary to prevent skin contact with DBCP. Supplied-air suits should be selected, used, and maintained under the supervision of persons knowlegeable in the limitations and potential life-endangering characteristics of supplied-air suits.

C. The use of air-conditioned suits may be necessary in warmer climates.

D. Advise employees of all areas and operations where exposure to DBCP could occur.

VIII. COMMON OPERATIONS

Common operations in which exposure to DBCP is likely to occur are: during its production; and during its formulation into pesticides and fumigants.

APPENDIX C.—MEDICAL SURVEILLANCE GUIDELINES FOR DBCP

I. ROUTE OF ENTRY

Inhalation; skin absorption

II. TOXICOLOGY

Recent data collected on workers involved in the manufacture and formulation of DBCP has shown that DBCP can cause sterility at very low levels of exposure. This finding is supported by studies showing that DBCP causes sterility in animals. Chronic exposure to DBCP resulted in pronounced necrotic action on the parenchymatous organs (i.e., liver, kidney, spleen) and on the testicles of rats at concentrations as low as 5 ppm. Rats that were chronically exposed to DBCP also showed changes in the composition of the blood, showing low RBC, hemoglobin, and WBC, and high reticulocyte levels as well as functional hepatic disturbance, manifesting itself in a long prothrombin time. Reznik et al. noted a single dose of 100 mg produced profound depression of the nervous system of rats. Their condition gradually improved. Acute exposure also resulted in the destruction of the sex gland activity of male rats as well as causing changes in the estrous cycle in female rats. Animal studies have also associated DBCP with an increased incidence of carcinoma. Olson, et al. orally administered DBCP to rats and mice 5 times per week at experimentally predetermined maximally tolerated doses and at half those doses. As early as ten weeks after initiation of treatment, DBCP induced a high incidence of squamous cell carcinomas of the stomach with metastases in both species. DBCP also induced mammary adenocarcinomas in the female rats at both dose levels.

III. SIGNS AND SYMPTOMS

A. Inhalation: Nausea, eye irritation, conjunctivitis, respiratory irritation, pulmonary congestion or edema, CNS depression with apathy, sluggishness, and ataxia.

B. Dermal: Erythema or inflammation and dermatitis on repeated exposure.

IV. SPECIAL TESTS

A. *Semen analysis:* The following information excerpted from the document "Evaluation of Testicular Function", submitted by the Corporate Medical Department of the Shell Oil Company (exhibit 39-3), may be useful to physicians conducting the medical surveillance program;

In performing semen analyses certain minimal but specific criteria should be met:

1. It is recommended that a minimum of three valid semen analyses be obtained in order to make a determination of an individual's average sperm count.

2. A period of sexual abstinence is necessary prior to the collection of each masturbatory sample. It is recommended that intercourse or masturbation be performed 48 hours before the actual specimen collection. A period of 48 hours of abstinence would follow; then the masturbatory sample would be collected.

3. Each semen specimen should be collected in a clean, widemouthed, glass jar (not necessarily pre-sterilized) in a manner designated by the examining physician. Any part of the seminal fluid exam should be initialed *only after liquifaction* is complete, i.e., 30 to 45 minutes after collection.

4. Semen volume should be measured to the nearest $\frac{1}{10}$ of a cubic centimeter.

5. Sperm density should be determined using routine techniques involving the use of a white cell pipette and a hemocytometer chamber. The immobilizing fluid most effective and most easily obtained for this process is distilled water.

6. Thin, dry smears of the semen should be made for a morphologic classification of the sperm forms and should be stained with either hematoxalin or the more difficult, yet more precise, Papanicolaou technique.

Also of importance to record is obvious sperm agglutination, pyospermia, delayed liquifaction (greater than 30 minutes), and hyperviscosity. In addition, pH, using nitrazine paper, should be determined.

7. A total morphology evaluation should include percentages of the following:

a. Normal (oval) forms,

b. Tapered forms,

c. Amorphous forms (include large and small sperm shapes),

d. Duplicated (either heads or tails) forms, and

e. Immature forms.

8. Each sample should be evaluated for sperm *viability* (percent viable sperm moving at the time of examination) as well as sperm *motility* (subjective characterization of "purposeful forward sperm progression" of the majority of those viable sperm analyzed) within two hours after collection, ideally by the same or equally qualified examiner.

B. *Serum determinations:* The following serum determinations should be performed by radioimmuno-assay techniques using National Institutes of Health (NIH) specific antigen or antigen preparations of equivalent sensitivity:

1. Serum follicle stimulating hormone (FSH);

2. Serum luteinizing hormone (LH); and

3. Serum total estrogen (females only).

V. TREATMENT

Remove from exposure immediately, give oxygen or artificial resuscitation if indicated. Contaminated clothing and shoes should be removed immediately. Flush eyes and wash contaminated skin. If swallowed and the person is conscious, induce vomiting. Recovery from mild exposures is usually rapid and complete.

VI. SURVEILLANCE AND PREVENTIVE CONSIDERATIONS

A. *Other considerations.* DBCP can cause both acute and chronic effects. It is important that the physician become familiar with the operating conditions in which exposure to DBCP occurs. Those with respiratory disorders may not tolerate the wearing of negative pressure respirators.

B. *Surveillance and screening.* Medical histories and laboratory examinations are required for each employee subject to exposure to DBCP. The employer should screen employees for history of certain medical conditions (listed below) which might place the employee at increased risk from exposure.

1. *Liver disease.* The primary site of biotransformation and detoxification of DBCP is the liver. Liver dysfunctions likely to inhibit the conjugation reactions will tend to promote the toxic actions of DBCP. These precautions should be considered before exposing persons with impaired liver function to DBCP.

2. *Renal disease.* Because DBCP has been associated with injury to the kidney it is important that special consideration be given to those with possible impairment of renal function.

3. *Skin desease.* DBCP can penetrate the skin and can cause erythema on prolonged exposure. Persons with pre-existing skin disorders may be more susceptible to the effects of DBCP.

4. *Blood dyscrasias.* DBCP has been shown to decrease the content of erythrocytes, hemoglobin, and leukocytes in the blood, as well as increase the prothrombin time. Persons with existing blood disorders may be more susceptible to the effects of DBCP.

5. *Reproductive disorders.* Animal studies have associated DBCP with various effects on the reproductive organs. Among these effects are atrophy of the testicles and changes in the estrous cycle. Persons with pre-existing reproductive disorders may be at increased risk to these effects of DBCP.

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(Secs. 6, 8, 84 Stat. 1593, 1596, 1599, (29 U.S.C. 655, 657); Secretary of Labor's Order 8-76 (41 FR 25059); (29 CFR 1911)

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FRIDAY, MARCH 17, 1978
PART IX

DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

■

FEDERAL ASSISTANCE UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Financial Assistance and Request for Preapplication

[4510–30]

DEPARTMENT OF LABOR

Employment and Training Administration

FEDERAL ASSISTANCE UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Financial Assistance and Request for Preapplication

Pursuant to the Comprehensive Employment and Training Act of 1973, as amended (hereafter referred to as the Act), the Secretary of Labor provides comprehensive manpower services throughout the United States with fiscal year 1979 funds. The program includes the development and creation of job opportunities and the training, education, and other services needed to enable individuals to secure and retain employment at their maximum capacity. This comprehensive manpower program will be carried out by qualified prime sponsors through financial assistance to be made available by the Secretary of Labor. Although many prime sponsors were designated in fiscal year 1978, each year eligible existing prime sponsors and those wishing to become prime sponsors must submit a preapplication for Federal assistance to be considered for the subsequent fiscal year funds. One application for designation as eligible applicant will suffice for titles I, II and VI, and for the following youth programs under title III: Youth Employment and Training Programs, Youth Community Conservation and Improvement Projects, and the Summer Program for Economically Disadvantaged Youth.

However, the preapplication for Special Grants to Governors must be separate and should contain the same information as is required in the General Procedures for Applying section following. Eligibility criteria and procedures for preapplication are described below:

Eligible applicants. In order to be eligible to receive financial assistance under titles I, II and VI of the Act, an applicant must be:

(a) A State;

(b) A unit of a general local government which has a population of 100,000 or more on the basis of the most satisfactory current data available to the Secretary;

(c) Any combination of units of general local government which includes any units of general local government qualifying under paragraph (b) above;

(d) A unit of general local government or combination of such units which shall automatically be considered as exceptional circumstance prime sponsors.

These are: (i) A unit of general local government which was a prime sponsor in the previous fiscal year, had a population of 100,000 or more persons according to the previous year's census update estimate, and has since fallen below 100,000 (but not below 90,000) in population; and

(ii) A combination of units of general local government which meet the requirements for consortia (except for the 100,000 population requirement) which were members of the same consortium in the previous fiscal year, and which contain at least one unit which had a population of 100,000 or more persons according to the previous year's census update estimate, but has since decreased below 100,000 (but not below 90,000) in population.

(e) Any unit of general local government or any combination of such units, without regard to population, which, in exceptional circumstances, is determined by the Secretary of Labor:

(1)(i) To serve a substantial portion of a functioning labor market area, or (ii) to be a rural area having a high level of unemployment; and

(2) To have demonstrated (i) that it has the capability for adequately carrying out programs under this Act, and (ii) that there is a special need for services within the area to be served, and (iii) that it will carry out such programs and services in such areas as effectively as the State; or

(f) A limited number of existing concentrated employment program grantees serving rural areas having a high level of unemployment which the Secretary determines have demonstrated special capabilities for carrying out programs in such areas and are designated by him for that purpose.

General procedures for applying. In accordance with section 102(c) (1) of the Act, and in order to be considered eligible for prime sponsorship, the Secretary of Labor hereby informs all potentially eligible applicants that they must submit a preapplication for Federal assistance no later than April 7, 1978.

The preapplication must be submitted to the appropriate Regional Administrator, Employment and Training Administration (ETA), the Governor, and appropriate State and areawide clearinghouses (see OMB Circular A–95 as revised and published in the FEDERAL REGISTER on January 13, 1976).

The preapplication will consist of Standard Form SF 424, prescribed by Federal Management Circular No. 74–7, as revised and published in the FEDERAL REGISTER on November 21, 1975, with an attachment giving the following information:

(a) Population of area(s) to be served;

(b) Certification that the prime sponsor applicant, except for CEP and consortia prime sponsor applicants, has the required general government authority, as defined in § 94.4 of the October 18, 1977, regulations;

(c) Name of any ineligible unit of general local government, located within the prime sponsor applicant's jurisdiction, that has informed the prime sponsor applicant that it will not be participating in the prime sponsor applicant's plan;

(d) Certification that the development of the applicant's plan will be in accordance with the requirements of the Act and regulations;

(e) The signature of the chief elected official(s) or chief executive officer(s), as appropriate, of each applicant. For a newly formed consortium, and for a consortium in which one or more members have joined or withdrawn, the signature of the chief elected official or chief executive officer of each consortium member is required. In the case of an established consortium with no membership changes, the preapplication may, with the consent of all consortium members, be signed by the consortium's chief executive officer.

Independently eligible applicants. Attachment 1 is a list of those jurisdictions which the Secretary has determined may be eligible on the basis of the most satisfactory current data to be prime sponsors under section 102(a) (1), (2), and (4) and section 103(a) (2) (D) of the Act. The list includes: (1) All units of general local government which have a population of 100,000 or more according to a 1976 update of the 1970 official census as published by the U.S. Bureau of the Census; (2) those units of general local government which had a population of 100,000 or more according to the 1974 census update but which have fallen below 100,000 but are above 90,000 as of the 1976 census estimates or the 1975 and 1976 census estimates, (3) all States; and, (4) Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Jurisdictions previously independently eligible must fall below 100,000 but not below 90,000 in population for three years consecutively, before being eliminated in the third consecutive year from the list of independently eligible applicants. If the population of the jurisdiction is below 90,000 it will be eliminated from the list that year.

Special application procedures for units of government which have less than 100,000 population desiring to be prime sponsors because of exceptional cirumstances. Any unit of general local government which does not have a population of 100,000, but wishes to named a prime sponsor because of exceptional circumstances under the provisions of section 102(a)(4) should submit a preapplication according to procedures set forth above. In addition, the preapplication should include information relative to:

(1) The labor market area(s) in which the unit of general local government is located;

(2) The proportion of the labor market area population which resides

within the jurisdiction of the unit of general local government;

(3) The unit of general local government's administrative and organizational capability for adequately carrying our programs under the Act;

(4) The unit of general local government's ability to carry out the program as effectively as the State, e.g., past experience in operating multicomponent employment and training programs, effective linkages with community based organizations and programs, administrative efficiency in terms of costs, and existence and effective operation of an Operational Planning Grant, a public service employment program or other employment and training related services; and

(5) The special need for services within the area to be served, e.g., a high proportion of groups within the population such as disadvantaged youth, offenders, high school dropouts, a high unemployment rate, substantial outmigration, or unique commuting problems.

Rural concentrated employment program grantees. Any of the existing four Concentrated Employment Employment Program (CEP) prime sponsors serving a rural area having a high level of unempoyment and desiring to serve as a prime sponsor again should submit a preapplication according to the procedures set forth above. In addition, such a CEP must cite whatever special capabilities it has demonstrated in carrying out employment and training programs.

Consortia. Combinations of units of general local government may form a consortium to plan and operate a comprehensive manpower program. The nature of consortia arrangements is set forth in detail in § 95.3(a)(3), published in the FEDERAL REGISTER on October 18, 1977.

In order to encourage consortia which comprise substantial portions (e.g., 75 percent) of labor market areas, the Secretary may use up to 5 percent of the funds available for Title I of the Act to provide additional funding for such consortia.

Consortia which do not serve such areas shall not be eligible for additional funds. Prior to making decisions concerning these funds, the Regional Administrator, ETA, shall consult with the Governors of the appropriate States and afford them an opportunity to make recommendations.

A consortium must submit a preapplication according to the procedures set forth above. In addition, each consrotium shall submit a formal agreement including all items required by § 95.11(b) of the October 18, 1977, regulations to the appropriate Regional Administrator, ETA, by May 19,1978. An established consortium which submitted a formal written agreement last year may attest in writing that the agreement is the same or specify amendments to the agreement. The formal agreement or attestation must be signed by the chief elected official or chief executive officer of each consortium member. Only one such agreement is necessary for designation under all titles.

Title II Indian Programs. Indian tribes on Federal and State reservations which contain areas of substantial unemployment, as specified in §§ 94.4(c)(2) and 94.4(cc) and 96.41(c) of the October 18, 1977, regulations, are eligible for funding under Title II. Eligible tribes which are currently Title II prime sponsors or feel they will be eligible for Title II funds in Fiscal Year 1979 should submit their preapplications to the Director, Division of Indian and Native American Programs, 601 D Street NW., Washington, D.C. 20213, in accordance with the procedures found at 29 CFR 97.111.

List of ETA regional offices. All preapplication information and consortia agreements (described above) must be submitted to the appropriate Regional Administrator, ETA. The names, addresses and areas of responsibility of the Regional Administrators are listed on Attachment No. 2.

Implementation schedule. Titles I and II grants for Fiscal Year 1979 will be executed by October 1, 1978. Revised Titles I and II regulations will be published following reauthorization of CETA. Planning estimates will be released about June 15, 1978, for title I and about July 15, 1978, for titles II and VI. Prime sponsors will be expected to submit their final grant applications to the appropriate Regional Administrator by September 1, 1978. A more detailed CETA grant cycle schedule for Fiscal Year 1979 will be published shortly in the FEDERAL REGISTER.

LISTING OF JURISDICTIONS OF 100,000 OR MORE POPULATION FOR COMPREHENSIVE EMPLOYMENT AND TRAINING ACT OF 1973

ALABAMA

Birmingham, Huntsville, Mobile, Montgomery, Calhoun County, Jefferson County, Mobile County, Tuscaloosa County, and balance Alabama.

ALASKA

Municipality of Anchorage, and balance Alaska.

ARIZONA

Phoenix, Tucson, Mesa, Maricopa County, and balance Arizona.

ARKANSAS

Little Rock, Pulaski County, and balance Arkansas.

CALIFORNIA

Anaheim, Berkeley, Fremont, Fresno, Garden Grove, Glendale, Huntington Beach, Long Beach, Los Angeles, Oakland, Pasadena, Riverside, Sacramento, San Bernardino, San Diego, San Francisco City/County, San Jose, Santa Ana, Stockton, Sunnyvale, Torrance, Alameda County, Butte County, Contra Costa County, Fresno County, Humboldt County, Kern County, Los Angeles County, Marin County, Merced County, Monterey County, Orange County, Riverside County, Sacramento County, San Bernardino County, San Diego County, San Joaquin County, San Luis Obispo County, San Mateo County, Santa Barbara County, Santa Clara County, Santa Cruz County, Solano County, Sonoma County, Stanislaus County, Tulare County, Ventura County, Yolo County, and balance California.

COLORADO

Aurora, Colorado Springs, Denver City/County, Lakewood, Pueblo, Adams County, Arapahoe County, Boulder County, El Paso County, Jefferson County, Larimer County, Weld County, and balance Colorado.

CONNECTICUT

Bridgeport, Harford City, New Haven City, Stamford City, Waterbury City and balance Connecticut.

DELAWARE

New Castle County, and balance Delaware.

DISTRICT OF COLUMBIA

FLORIDA

Ft. Lauderdale, Hialeah, Hollywood, Jacksonville City/Duval County, Miami, Orlando, St. Petersburg, Tampa, Alachua County, Brevard County, Broward County, Dade County, Escambia County, Hillsborough County, Howard County, Lee County, Leon County, Manatee County, Okaloosa County, Orange County, Palm Beach County, Pasco County, Pinellas County, Polk County, Sarasota County, Seminole County, Volusia County, and balance Florida.

GEORGIA

Atlanta, Columbus City/Muscogee County, Macon, Savannah, Clayton County, Cobb County, De Kalb County, Fulton County, Gwinnett County, Richmond County, and balance Georgia.

HAWAII

Honolulu City/Honolulu County, and balance Hawaii.

IDAHO

Boise, and balance Idaho.

ILLINOIS

Chicago, Peoria, Rockford, Champaign County, Cook County, Du Page County, Kane County, Sangamon County, St. Clair County, Tazewell County, La Salle County, Lake County, Macon County, Madison County, McHenry County, McLean County, Rock Island County, Will County, and balance Illinois.

INDIANA

Evansville, Ft. Wayne, Gary, Hammond, Allen County, Delaware County, Elkhart County, LaPorte County, Lake County, Indianapolis city/Marion County, South Bend, St. Joseph County, Madison

County, Tippecanoe County, Vigo County, and balance Indiana.

IOWA

Cedar Rapids, Des Moines, Black Hawk County, Davenport, Woodbury County, and balance Iowa.

KANSAS

Kansas City, Topeka, Wichita, Johnson County, and balance Kansas.

KENTUCKY

Lexington City/Fayette County, Louisville, Jefferson County, Kenton County, and balance Kentucky.

LOUISIANA

Baton Rouge City/East Baton Rouge Parish, New Orleans City/Parish, Shreveport, Calcasieu Parish, Jefferson Parish, Lafayette Parish, Ouachita Parish, Rapides Parish, and balance Louisiana.

MAINE

Cumberland County, Kennebee County, Penobscot County, York County, and balance Maine.

MARYLAND

Baltimore, Anne Arundel County, Baltimore County, Hartford County, Howard County, Montgomery County, Prince Georges County, Washington County, and balance Maryland.

MASSACHUSETTS

Boston City, Cambridge, Fall River[1], New Bedford[1], Springfield, Worcester, and balance Massachusetts.

MICHIGAN

Ann Arbor, Detroit, Flint, Grand Rapids, Lansing, Livonia, Warren, Bay County, Berrien County, Oakland County, Ottawa County, Saginaw County, St. Clair County, Calhoun County, Genesee County, Ingham County, Jackson County, Kalamazoo County, Kent County, Macomb County, Monroe County, Muskegon County, Washtenaw County, Wayne County, and balance Michigan.

MINNESOTA

Minneapolis, St. Paul, Anoka County, Dakota County, Hennepin County, Ramsey County, St. Louis County, Sterns County, Washington County, and balance Minnesota.

MISSISSIPPI

Jackson, Harrison County, Jackson County, and balance Mississippi.

MISSOURI

Independence City, Kansas City, Springfield City, St. Louis City, Jackson County, Jefferson County, St. Charles County, St. Louis County, and balance Missouri.

MONTANA

NEBRASKA

Lincoln City, Omaha City, and balance Nebraska.

[1]Population below 100,000 for the first time.

NEVADA

Las Vegas City, Clark County, Washoe County, and balance Nevada.

NEW HAMPSHIRE

Hillsborough County, Rockingham County, and balance New Hampshire.

NEW JERSEY

Elizabeth City, Jersey City, Newark City, Paterson City, Trenton City,[1] Atlantic County, Bergen County, Burlington County, Camden County, Cumberland County, Essex County, Gloucester County, Hudson County, Mercer County, Middlesex County, Monmouth County, Morris County, Ocean County, Passaic County, Somerset County, Sussex County, Union County, and balance New Jersey.

NEW MEXICO

Albuquerque City, and balance New Mexico.

NEW YORK

Albany City, Buffalo City, New York City, Rochester City, Syracuse City, Town of Amherst, Town of Cheektowaga, Town of Tonawanda, Yonkers City, Town of Babylon, Town of Brookhaven, Town of Huntington, Town of Islip, Town of Smithtown, Town of Hempstead, North Hempstead Township, Oyster Bay Township, Albany County, Broome County, Chautauqua County, Chemung County, Dutchess County, Erie County, Monroe County, Niagara County, Oneida County, Onondaga County, Orange County, Oswego County, Rensselaer County, Rockland County, Saratoga County, Schenectady County, St. Lawrence County, Steuben County, Ulster County, Westchester County, and balance New York.

NORTH CAROLINA

Charlotte City, Greenboro, Davidson County, Durham City, Raleigh City, Winston-Salem City, Buncombe County, Cumberland County, Gaston County, Guilford County, Onslow County, Wake County, and balance North Carolina.

NORTH DAKOTA

OHIO

Akron City, Canton City, Cincinnati City, Cleveland City, Columbus City, Dayton City, Parma City, Toledo City, Youngstown City, Allen County, Ashtabula County, Butler County, Clark County, Clermont County, Columbiana County, Cuyahoga County, Franklin County, Greene County, Hamilton County, Lake County, Licking County, Lorain County, Lucas County, Medina County, Mahoning County, Montgomery County, Portage County, Richland County, Stark County, Summitt County, Trumbull County, Wood County, and balance Ohio.

OKLAHOMA

Oklahoma City, Tulsa City, Cleveland County,[2] Comanche County, Oklahoma County, and balance Oklahoma.

OREGON

Portland City, Clackamas County, Jackson County, Lane County, Marion County, Multnomah County, Washington County, and balance Oregon.

[2] Population below 100,000 for the second time.

PENNSYLVANIA

Allentown City, Erie City, Philadelphia City/County, Pittsburgh City, Allegheny County, Beaver County, Berks County, Blair County, Bucks County, Butler County, Cambria County, Centre County, Chester County, Cumberland County, Dauphin County, Delaware County, Erie County, Fayette County, Franklin County, Lackawanna County, Lancaster County, Lawrence County, Lebanon County, Lehigh County, Luzerne County, Lycoming County, Mercer County, Montgomery County, Northampton County, Northumberland County, Schuylkill County, Washington County, Westmoreland County, York County, and balance Pennsylvania.

PUERTO RICO

Bayamon Municipio, Caguas Municipio, Carolina Municipio, Ponce Municipio, San Juan Municipio, and balance Puerto Rico.

RHODE ISLAND

Providence City, and balance Rhode Island.

SOUTH CAROLINA

Columbia City, Anderson County, Charleston County, Greenville County, Lexington County, Richland County, Spartanburg County, and balance South Carolina.

SOUTH DAKOTA

Minnehaha County, and balance South Dakota.

TENNESSEE

Chattanooga City, Knoxville City, Memphis City, Nashville City/Davidson County, Hamilton County, Knox County, Sullivan County, and balance Tennessee.

TEXAS

Amarillo City, Arlington, Austin City, Beaumont City, Corpus Christi City, Dallas City, El Paso City, Fort Worth City, Garland, Houston City, Irving, Lubbock City, Pasadena, San Antonio City, Bell County, Bexar County, Brazoria County, Cameron County, Dallas County, Ector County, Galveston County, Harris County, Hidalgo County, Jefferson County, Smith County, Tarrant County, Taylor County, Waco County, Wichita Count, and balance Texas.

UTAH

Salt Lake City, Davis County, Salt Lake County, Utah County, Weber County, and balance Utah.

VERMONT

Chittenden County, and balance Vermont.

VIRGINIA

Alexandria City, Chesapeake City, Hampton City, Newport News City, Norfolk City, Portsmouth City, Richmond City, Roanoke City, Virginia Beach City, Arlington County, Chesterfield County, Fairfax County, Henrico County, Prince William County, and balance Virginia.

WASHINGTON

Seattle City, Spokane City, Tacoma City, Clark County, King County, Kitsap County, Pierce County, Snohomish County, Spokane County, Yakima County, and balance Washington.

WEST VIRGINIA

Cabell County, Kanawha County, and balance West Virginia.

WISCONSIN

Madison City, Milwaukee City, Brown County, Dane County, Kenosha County, Marathon County, Milwaukee County, Outagamie County, Racine County, Rock County, Sheboygan County, Waukesha County, Winnebago County, and balance Wisconsin.

WYOMING

VIRGIN ISLANDS

AMERICAN SAMOA

GUAM

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

TRUST TERRITORIES

NOTE.—Any jurisdiction whose name does not appear on this list which has Bureau of Census certified documentation to support the fact that its population has increased to 100,000 should submit such documentation, along with a preapplication, according to the procedures contained herein.

REGIONAL ADMINISTRATORS EMPLOYMENT AND TRAINING ADMINISTRATION

Location	*States in region*
Region I, Boston	
Luis Sepulveda, Regional Administrator, ETA, U.S. Department of Labor, J. F. Kennedy Building, Room 1703, Boston, Mass. 02203.	Connecticut, Maine, Massachusetts, Vermont, Rhode Island, New Hampshire.
Region II, New York	
Thomas C. Komarek, Acting Regional Administrator, ETA, U.S. Department of Labor, 1515 Broadway, Room 3713, New York, N.Y. 10036.	New York, Puerto Rico, New Jersey, Virgin Islands, Canal Zone.
Region III, Philadelphia	
J. Terrell Whitsitt, Regional Administrator, ETA, U.S. Department of Labor, Post Office Box 8796, Philadelphia, Pa. 19101.	Delaware, Virginia, Maryland, Pennsylvania, West Virginia, District of Columbia.
Region IV, Atlanta	
David T. Duncan, Acting Regional Administrator, ETA, U.S. Department of Labor, 1371 Peachtree Street NE., Room 405, Atlanta, Ga. 30309.	Alabama, Florida, Georgia, Mississippi, Kentucky, North Carolina, South Carolina, Tennessee.
Region V, Chicago	
Richard C. Gilliland, Regional Administrator, ETA, U.S. Department of Labor, 230 South Dearborn Street, Sixth Floor, Chicago, Ill. 60604.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
Region VI, Dallas	
William S. Harris, Regional Administrator, ETA, U.S. Department of Labor, 555 Griffin Square Building, Room 316, Dallas, Tex. 75202.	Arkansas, Oklahoma, Texas, Louisiana, New Mexico.
Region VII, Kansas City	
Richard G. Miskimins, Regional Administrator, ETA, U.S. Department of Labor, 911 Walnut Street, Federal Building, Kansas City, M0. 64106.	Iowa, Missouri, Nebraska, Kansas.
Regional VIII, Denver	
Floyd E. Edwards, Regional Administrator, ETA, U.S. Department of Labor, 16122 Federal Office Building, 1961 Stout Street, Denver Colo. 80202.	Colorado, Utah, South Dakota, North Dakota, Montana, Wyoming.
Region IX, San Francisco	
William J. Haltigan, Regional Administrator, ETA, U.S. Department of Labor, Box 36084, San Francisco, Calif. 94102.	Arizona, California, Hawaii, Nevada, Guam, American Samoa, Trust Territory of the Pacific Islands.
Region X, Seattle	
Jess C. Ramaker, Regional Administrator, ETA, U.S. Department of Labor, Federal Office Building, Room 1145, 909 First Avenue, Seattle, Wash. 98174.	Alaska, Idaho, Oregon, Washington.

Signed at Washington, D.C., this 6th day of March 1978.

ROBERT ANDERSON,
Administrator, Office of Comprehensive Employment Development.

[FR Doc. 78-7170 Filed 3-16-78; 8:45 am]

federal register

FRIDAY, MARCH 17, 1978
PART X

SECURITIES AND EXCHANGE COMMISSION

■

Securities Transactions By Members of National Securities Exchanges

[8010-01]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-14563; File No. S7-613]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND THE GENERAL RULES AND REGULATIONS THEREUNDER

Securities Transactions by Members of National Securities Exchanges

AGENCY: Securities and Exchange Commission.

ACTION: Final and temporary rules, and interpretations.

SUMMARY: Section 11(a) of the Securities Exchange Act of 1934 prohibits members of national securities exchanges from effecting transactions for certain accounts. The Commission is announcing (i) the adoption under that section of a temporary rule, (ii) the adoption of a final rule, (iii) the promulgation of technical amendments to a temporary rule previously adopted, and (iv) the publication of interpretations of certain terms used in that section. The rules permit members to effect transactions subject to section 11(a) under specified conditions. Interested persons are requested to consider the rules, amendments and interpretations adopted and to submit comments on them to the Commission.

DATES: The final and temporary rules and the amendments will become effective on May 1, 1978. Comments should be received by April 15, 1978.

ADDRESSES: Interested persons should submit six copies of their views and comments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, and should refer to File No. S7-613. All submissions will be made available for public inspection at the Commission's Public Reference Section, Room 6101, 1100 L Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Richard A. Steinwurtzel, Esq., 202-755-7974 or Charles M. Horn, Esq., 202-755-8747, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

INTRODUCTION

Section 11(a) of the Securities Exchange Act of 1934 (the "Act")[1] was added by the Securities Acts Amendments of 1975 (the "1975 Amendments").[2] Section 11(a)(1)[3] makes it unlawful for a member of a national securities exchange to "effect" transactions on that exchange for three kinds of accounts (collectively referred to as "covered accounts"):

(i) The member's own account ("proprietary account");

(ii) The account of a person associated with the member; and

(iii) An account over which the member or any person associated with the member exercises "investment discretion" ("discretionary account").

Section 11(a) was effective immediately upon its enactment for persons who became exchange members after May 1, 1975. Its effectiveness is delayed until May 1, 1978, for transactions by persons who were exchange members on May 1, 1975.[4]

The prohibitions of section 11(a)(1) are subject to eight exemptions provided in subsections (A) through (H).[5] These include: (i) Transactions by a dealer acting as market maker; (ii) transactions for the account of an odd-lot dealer in its registered securities; (iii) stabilizing transactions in connection with participation in a distribution of securities; (iv) arbitrage and hedge transactions; and (v) transactions to offset transactions made in error.

An exemption is provided in subsection (E)[6] for transactions for accounts of natural persons and their estates and trusts. In addition, a general exemption for a member's proprietary transactions is provided in subsection (G)[7] if (i) the member is engaged primarily in a public securities business (the "business mix" test), and (ii) the transactions "yield," in accordance with rules adopted by the Commission, priority, parity, and precedence to transactions for accounts of persons who are not members or associated with members of the exchange. Finally, the Commission is authorized in subsection (H) to grant, by rule, additional exemptions consistent with the purposes of the section, the protection of investors, and the maintenance of fair and orderly markets.[8]

Pursuant to its authority under section 11(a) and other sections of the Act, the Commission is publishing certain interpretive statements and taking the rulemaking actions summarized below:

(I) INTERPRETATION OF THE TERM "INVESTMENT DISCRETION"

The term "investment discretion" under section 3(a)(35) of the Act[9] is interpreted to exclude a relationship between a person and an account in which the person must obtain authorization from the account before effecting any transaction for the account (i.e., prior authorization on a trade-by-trade basis).

(II) EFFECT VERSUS EXCUTE RULE (TEMPORARY RULE 11a2-2(t))

The temporary effect versus execute rule as adopted will add an exemption to those provided in subsections (A) through (H) of section 11(a)(1). The temporary rule will allow a member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member (the "executing member") to execute the transactions directly on the floor of the exchange. The conditions of the effect versus execute rule are:

(a) The member will be required to transmit the order from off the floor of the exchange;

(b) The member will not be permitted to participate in the execution of the transaction after its transmission to the executing member (although it may participate in clearing and settling the transaction); and

(c) In the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the member nor any associated person thereof may retain any direct or indirect compensation in connection with effecting the transaction; provided, however, that this condition would not apply to the extend that the person or persons authorized to transact business for the account have expressly provided otherwise by written contract referring to section 11(a) of the Act and the rule, executed on or after March 15, 1978, by each of them and by such exchange member or such associated person, and such member or such associated person makes disclosure at least annually of the total amount of all transaction-related compensation retained by it or any associated person during the preceding year (or such shorter period as may be covered by the disclosure), which amount shall be exclusive of all amounts paid to others during that period for services rendered in effecting such transactions.

(III) LOOK-THROUGH RULE (RULE 11a1-2)

The look-through rule as adopted will eliminate disparities of treatment under sec-

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[1] 15 U.S.C. 78k(a).

[2] Pub. L. No. 94-29 (June 4, 1975).

[3] 15 U.S.C. 78k(a)(1).

[4] Section 11(a)(3), 15 U.S.C. 78k(a)(3).

[5] 15 U.S.C. 78k(a)(1)(A) through (H).

[6] 15 U.S.C. 78k(a)(1)(E).

[7] 15 U.S.C. 78k(a)(1)(G).

[8] The Commission is authorized by section 11(a)(2), 15 U.S.C. 78k(a)(2), to extend the prohibition of section 11(a) on transactions for covered accounts (i) to members' exchange transactions (other than market maker and odd-lot dealer transactions) which would otherwise be exempt under section 11(a)(1); (ii) to over-the-counter market transactions (other than market maker transactions) by members and nonmember broker-dealers; and (iii) to exchange transactions (other than market maker transactions) by nonmember broker-dealers. The Commission's authority under that section is complemented by sections 11(b) and 15(c)(5), 15 U.S.C. 78k(b) and 78o(c)(5).

[9] 15 U.S.C. 78c(a)(35).

tion 11(a) between accounts carried by the member directly and accounts carried in the name of an associated person. The rule accomplishes that result by allowing a member to effect a transaction for an account held by the member in the name of an associated person if the member could have effected the transaction if it held the account directly. All exemptions which are available to members will also be available to associated persons. Language has been added to the rule to make it clear that an associated person using the exemption provided by Subsection (G) for proprietary transactions must independently meet the "business mix" test contained in that Subsection.[10]

(IV) MEMBERS' PROPRIETARY TRANSACTIONS

The Commission has adopted technical amendments to the proprietary trading rule (Rule 11a1-1(T)) implementing the proprietary trading exemption of subsection (G) in order to clarify, among other things, the point at which the order identification and yielding conditions under that rule attach. The Commission also has provided a discussion of the treatment under section 11(a)(1) of transactions by specialists for their investment accounts and transactions by floor traders. In that connection, the Commission has not revised its interpretation that the natural person exemption under section 11(a)(1))(E) is unavailable to natural person members. In addition, the Commission has considered a rulemaking petition filed by the New York Stock Exchange, Inc. (the "NYSE").

(V) WITHDRAWAL OF OTHER RULE PROPOSALS

The Commission is withdrawing other rule proposals published in its March 1977 Release.

The remainder of this Release consists of the following sections:

I. SECTION 11(a) AND THE COMMISSION'S LEGISLATIVE RECOMMENDATIONS, RULEMAKING ACTIONS, AND INTERPRETIVE STATEMENTS.

II. APPLICATION OF THE TERM "INVESTMENT DISCRETION" TO ADVISORY RELATIONSHIPS

III. THE EFFECT VERSUS EXECUTE RULE (TEMPORARY RULE 11a2-2(T)) FOR TRANSACTIONS FOR ALL COVERED ACCOUNTS

IV. THE LOOK-THROUGH RULE (RULE 11a1-2) FOR TRANSACTIONS FOR ACCOUNTS OF ASSOCIATED PERSONS

V. THE SCOPE OF EXEMPTIONS FOR MEMBERS' PROPRIETARY TRANSACTIONS

VI. WITHDRAWAL OF OTHER RULE PROPOSALS

VII. STATUTORY BASIS

I. SECTION 11(a) AND THE COMMISSION'S LEGISLATIVE RECOMMENDATIONS, RULEMAKING ACTIONS, AND INTERPRETIVE STATEMENTS

The legislative history of section 11(a) indicates that the Congress intended in that section to address trading advantages available to exchange members and conflicts of interest in money management. The Congress indicated that exchange members should not be allowed to benefit in their own proprietary trading from certain trading advantages understood to derive from membership and that legislative action to address the combination of brokerage and money management was needed in order to eliminate any potential for abuse of the conflicts of interest inherent in the combination of those functions.[11] The House Report on H.R. 4111, the House version of the 1975 Amendments, asserted that limitations on exchange member trading from off the floor were necessary as a general matter in light of the off-floor trader's ability to execute decisions faster than public investors, his reputed "feel for the market," and other trading advantages.[12] The Senate Report on S. 249, the Senate version of the 1975 Amendments, focused on problems thought to result from the combination of money management and brokerage, suggesting that a money manager which also performed the brokerage function for its managed accounts might breach its fiduciary obligations in a number of ways, including "churning" its managed accounts in order to increase its brokerage commissions.[13]

Shortly after the enactment of the 1975 Amendments, it became apparent that the Commission, the self-regulatory organizations, and various segments of the securities industry had differing views as to the scope of section 11(a) and its application to the activities of exchange members. Accordingly, the Commission promptly began to explore how the apparent ambiguities and problems presented by the section could be resolved. The Commission issued two releases on section 11(a), the first in January, 1976 (the "January 1976 Release")[14] and the second in March, 1977 (the "March 1977 Release").[15]

In the January 1976 Release, the Commission adopted the proprietary trading rule (Rule 11a1-1(T)) as a temporary rule to implement the exemption provided by section 11(a)(1)(G) for a member's transactions for its own account and proposed the lookthrough rule (Rule 11a1-2), which applied to transactions by a member for the account of an associated person. In addition, the Commission addressed a number of policy and interpretive questions under secton 11(a), including: (i) the meaning of the term "effect" in section 11(a), and thus the reach of the prohibition on effecting transactions; and (ii) the availability of the natural person exemption under subsection (E) of section 11(a)(1) for proprietary transactions effected by natural person members, including floor traders.

In the March 1977 Release, the Commission gave additional consideration to the principal interpretive issues raised in the first release in light of the commentators' responses. In order to focus further discussion on the problems presented by section 11(a), the Commission proposed three rules: (i) the effect versus execute rule (Rule 11a2-2), dealing with all covered accounts; (ii) the single fee rule (Rule 11a1-3), dealing with discretionary accounts; and (iii) the priority rule (Rule 11a2-1), dealing with a member's transactions for its own account.

In proposing those rules, the Commission pointed out that, in certain

[10] The exemptions provided in section 11(a)(1), in the look-through rule and in the effect versus execute rule, operate independently. For example, a transaction for an associated person's account may be effected without relying on either rule if that transaction qualifies for a statutory exemption under section 11(a)(1) (e.g., arbitrage transactions under section 11(a)(1)(D)). A transaction qualifying for exemption under the look-through rule may be effected without compliance with the requirements of the effect versus execute rule. Similarly, a transaction effected in compliance with the effect versus execute rule need not qualify for exemption under the look-through rule.

[11] Securities Reform Act of 1975, Report of the House Comm. on Interstate and Foreign Commerce, Together with Minority Views, to Accompany H.R. 4111 (the House Report), H.R. Rep. No. 94-123, 94th Cong., 1st Sess. 54-57 (1975); Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249 (the Senate Report), S. Rep. No. 94-75, 94th Cong., 1st Sess. 60-69 (1975).

[12] House Report, at 54-55.

[13] Senate Report, at 62-65. The Senate Report concluded that, although there was "no evidence" that the possible conflicts of interest had led to widespread breaches of fiduciary duty, "the existence of these conflicts is extremely troublesome." Id., at 65. See also Securities Industry Study, Report of the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs (the Senate Industry Study), S. Rep. No. 93-13, 93d Cong., 1st Sess. 75, n. 68, and 86, n. 120 (1973).

[14] Securities Exchange Act Release No. 12055 (Jan. 27, 1976), 41 FR 8075 (Feb. 24, 1976).

[15] Securities Exchange Act Release No. 13388 (Mar. 18, 1977), 42 FR 16745 (Mar. 29, 1977).

cases, the rule proposals presented different solutions to the same problem or were otherwise duplicative. The Commission further suggested that it anticipated that the discussion process would assist it in choosing principles embodied in some of the rules while discarding others.[16]

The Commission has been presented with a diversity of views concerning certain interpretive problems under the section, including principally: (i) the scope of the term "effect" as used in the section; (ii) the scope of the natural person exemption provided in subsection (E) of section 11(a)(1); and (iii) the breadth of the definition of the term "investment discretion" as used in section 11(a) and thus the reach of the prohibition on transactions for accounts to which the member renders advisory services. During the two and one-half years since section 11(a) was enacted, the Commission has examined the potential operation of section 11(a) with a view to applying the section's provisions to the securities markets as they exist now and as they may evolve within the developing national market system.

The Commission has, nevertheless, concluded that the current schedule for full effectiveness on May 1, 1978 is likely to present substantial problems and has so advised the Congress. Recommending to Congress that the full effectiveness of section 11(a) be delayed until November 1, 1979,[17] the Commission pointed to developments in the markets that have dramatically altered the circumstances which the Congress had considered in enacting section 11(a). The Commission also advised the Congress that section 11(a) might not have the results intended by the Congress and that full effectiveness of the section on May 1, 1978 would likely impede achievement of the competitive goals of a national market system and, indeed, could engender anticompetitive effects that were not, and could not have been, anticipated by the Congress in 1975. The Commission further indicated that it had been unable to conclude that it could solve all those problems through rulemaking. The Commission suggested that the recommended eighteen month delay in section 11(a)'s full effectiveness would give affected persons time to plan for that effectiveness. Morever, the Commission stated that delay would permit time for reassessment of the consequences of applying section 11(a) to the securities markets of 1978 and as they may develop thereafter.

The Commission continues to believe that it cannot now solve through rulemaking all the problems which full effectiveness of section 11(a) will likely cause. The Commission believes, however, that there is a need to resolve, to the extent practicable, some of the ambiguities and controversy concerning the meaning and application of the section. The Commission recognizes, moreover, the need to prepare for full implementation of section 11(a) on May 1, 1978 if the pending legislation does not pass by then. In preparing for the full effectiveness of section 11(a) on May 1, 1978, the Commission is mindful of the need to tailor its regulatory program to current market conditions in order to address some of the problems referred to above. Accordingly, the Commission is today adopting the rules and interpretations presented in this Release in order to provide immediate guidance to members presently subject to section 11(a) and to prepare for full effectiveness of that section on May 1, 1978. Although notice of the substance of the rules adopted today and of the subjects and issues involved has previously been given in the January 1976 and March 1977 Releases, the Commission has determined to solicit further public comment in order to evaluate whether it should amend the rules today adopted or propose new ones.

The Commission recognizes that trading and structural changes in the markets are occurring with increasing rapidity, particularly as steps are implemented toward the establishment of a national market system. As a result, additional rulemaking action under section 11(a) may well be necessary as the markets to which the section applies experience further evolution. Accordingly, the Commission believes it is particularly important for commentators to assist it in identifying ways in which the implementation of section 11(a) may require further adjustment as additional progress is made toward a national market system.

II. Application of the Term "Investment Discretion" to Advisory Relationships

Section 11(a)(1) prohibits a member of a national securities exchange from effecting on the exchange any transaction for an account over which the member or its associated person exercises "investment discretion."[18] Under subsection (E) of section 11(a)(1), however, transactions for discretionary accounts of natural persons and their estates and trusts are exempt from that prohibition. Accordingly, the prohibition relates to discretionary accounts other than such natural person accounts.

In response to the January 1976 and March 1977 Releases, several commentators observed that it is unclear whether the term "investment discretion" covers certain kinds of services they provide for accounts. They observed that many members provide brokerage and a wide variety of advisory services to accounts under circumstances where the account holder in fact makes the final investment decision. They contended that a broad interpretation of "investment discretion" would inappropriately subject these relationships to the prohibition of section 11(a) and thereby disrupt mutually beneficial advisory relationships between members and their accounts. Those respondents asserted that the Commission should define "investment discretion" to include only those relationships between members and their accounts where the member in fact makes the investment decisions.[19]

The legislative history of section 11(a) indicates, as noted above, that the discretionary account prohibition in that Section was intended in large part to address potential abuses arising out of the combination of brokerage and money managment.[20] In interpreting the meaning of "investment discretion," and thus the scope of that prohibition, the Commission believes it should look to the functional relationship between the adviser and the account. There is a substantive differ-

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[16]March 1977 Release, at text accompanying n. 3.

[17]Letters from Harold M. Williams to Walter F. Mondale, Thomas P. O'Neill, Jr., Harley O. Staggers, and Harrison A. Williams (Feb. 22, 1978), and Memorandum of the Securities and Exchange Commission in Support of its Recommendation that the Congress Delay the Full Effectiveness of Section 11(a) Until November 1, 1979. The bill recommended by the Commission was introduced in the House of Representatives on February 23, 1978 as H.R. 11140. 121 Cong. Rec. H1486 (daily ed. Feb. 23, 1978).

[18]Section 3(a)(35) of the Act, 15 U.S.C. 78c(a)(35), provides:

A person exercises "investment discretion" with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this title and the rules and regulations thereunder.

[19]Responses of Baker, Watts & Co. (June 30, 1977); Ferris & Co., Inc. (May 11, 1977); and H. O. Peet & Co., Inc. (June 2, 1976), Securities and Exchange Commission File No. S7-613 (hereinafter "File No. S7-613").

[20]Senate Report, at 63-65.

ence between an adviser's relationship with an account in which the adviser has all decisionmaking authority and an advisory relationship where, even though the adviser makes recommendations and executes the account's orders, the account retains exclusive authority to make, and actually does make, the investment decisions.

In recognition of these differences, the Commission believes that "investment discretion" under subsection (B) of section 3(a)(35) should not be construed to include an arrangement whereby the adviser obtains prior trade-by-trade authorization from the account. That Subsection defines investment discretion to include a relationship where a person "directly or indirectly * * * makes *decisions* as to what securities or other property shall be purchased or sold by or for the account *even though some other person may have responsibility for such investment decisions.*"[21] The Commission believes that subsection (B) was designed to deal with the situation where the adviser makes decisions for an account, and not with the situation where the adviser makes only investment recommendations to the account, regardless of the fact that those recommendations may have considerable influence on investment decisions. The situation where that influence is so powerful that it controls the investment decisions made by the account, the Commission believes, was intended to be covered by subsection (C) of section 3(a)(35). That subsection authorizes the Commission to adopt rules to include within the term "investment discretion" the situation where a person "otherwise exercises such influence with respect to the purchase and sale of securities or other property" as the Commission determines, by rule, should be included within the meaning of the term for reasons of the public interest or the protection of investors.[22] The Commission has not adopted any rules under that subsection.

This interpretation of "investment discretion" conforms with Congressional expressions with respect to the intent of section 11(a). The Oversight Report recently issued by the House Subcommittee on Oversight and Investigations and the House Subcommittee on Consumer Protection and Finance stated that a member organization would be exercising "investment discretion" over "accounts as to which the member is vested with a formal trading authorization or in fact makes investment decisions," but indicated that the term "investment discretion" was not intended to cover "the most common relationship, in which a broker merely renders advice which may be accepted or rejected."[23] The determination as to whether the adviser or the account makes the investment decisions turns, of course, on the facts of each relationship. That determination will not be controlled by the mere appearance of trade-by-trade authorizations which conceal the fact that decisions actually are made by the adviser.

III. The Effect Versus Execute Rule (Temporary Rule 11a2-2(T)) for Transactions for All Covered Accounts

The Commission has determined to adopt, with certain modifications and as a temporary rule, the effect versus execute rule. Set forth below is a discussion of the meaning of the term "effect," a description of the rule as adopted, and a discussion of how it operates.

A. The Scope of the Term "Effect"

Section 11(a) prohibits members' transactions for covered accounts "effected" on an exchange. The term "effect" is not defined in the section, and thus the reach of the prohibition is not clear on the face of the section. The term "effect" might be interpreted to cover only transactions executed directly on the exchange by a member, or might be interpreted also to include transactions executed indirectly by the use of the services of another member. In the January 1976 Release, the Commission adopted the latter, broader construction of "effect." The Commission adopted this statutory interpretation on the basis of the meaning of the term "effect" in section 11(a)(2)(C) of the Act,[24] and in other sections of the Act.[25]

At the same time, however, the Commission asked commentators specifically whether it would be appropriate to adopt an exemptive rule for transactions which a member effects for its covered accounts through another member. The Commission also inquired whether any such rule should contain prohibitions against reciprocal business arrangements.[26]

Commentators criticized the Commission's interpretation of "effect." They argued that the legislative history of section 11(a) does not contain any indication that members should be prohibited from referring transactions for their covered accounts to other, unaffiliated members for execution. Several commentators argued that the Commission's broad interpretation of "effect," prohibiting the introduction of such transactions, would discriminate needlessly between members' proprietary exchange transactions and those of non-members and would unfairly deprive members of the ability to manage institutional accounts.[27]

In the March 1977 Release, the Commission restated its earlier interpretation of the term "effect" as used in section 11(a).[28] The Commission observed, however, that section 11(a) could be viewed as "intended in large part to redress a perceived competitive imbalance favoring member firms which would use advantages of time and place given them by direct access."[29] Accordingly, the Commission proposed for comment the effect versus execute rule.

The effect versus execute rule would provide an exemption for all member transactions for covered accounts that are referred to other members for execution and are executed in accordance with certain conditions. The proposed effect versus execute rule was designed to put members and non-

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[21] Emphasis added.

[22] The Senate Industry Study, in defining the need for legislation to control conflicts of interest in money management and brokerage, stated:

The Test of "management" for purposes of this prohibition would focus upon the de facto authority to make the day-to-day investment decisions for the fund without reference [to] where the ultimate legal responsbility lies for the investment of the institution's assets. This practical test should reduce the danger of evasion of the prohibition through artifically structured arrangements.

Senate Industry Study, at 86. See also Regulation of Securities Trading by Members of National Securities Exchanges and the Sale of Investment Advisers of Registered Investment Companies, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S.470, S. Rep. No. 93-187, 93d Cong., 1st Sess. 14 (1973).

[23] Oversight of the Functioning and Administration of the Securities Acts Amendments of 1975, Report, Together with Additional Views, by the Subcomm. on Oversight and Investigations and the Subcomm. on Consumer Protection and Finance of the House Comm. on Interstate and Foreign Commerce (the Oversight Report), Comm. Print No. 95-27, 95th Cong., 1st Sess. 9, n. 26 (1977).

[24] 15 U.S.C. 78k(a)(2)(C).

[25] January 1976 Release, at text accompanying n. 19, and March 1977 Release, at n. 154.

[26] January 1976 Release, Question 3.

[27] Responses of the Association of the Bar of the City of New York (Apr. 15, 1976); Baer & McGoldrick on behalf of Weiss, Peck & Greer (June 15, 1976); Goldman, Sachs & Co. and Salomon Brothers (June 22, 1976); Merrill Lynch, Pierce, Fenner & Smith Incorporated (received June 16, 1976); the New York Stock Exchange, Inc. (June 25, 1976); and the Securities Industry Association (May 13, 1976), File No. S7-613.

[28] March 1977 Release, at text accompanying nn. 149-155.

[29] March 1977 Release, at text accompanying n. 154.

members on the same footing, to the extent practicable, in light of the purposes of section 11(a).

Although the Commission received extensive comment on other rules proposed under section 11(a), it received only limited comment on the effect versus execute rule. Non-member financial intermediaries commenting on the March 1977 Release either did not have any serious reservations on the rule[30] or did not comment at all on it. Exchanges and their members generally supported the effect versus execute rule on the grounds that the Commission's interpretation of the statutory term "effect" was too broad and that that term should be limited to the member's direct execution of transactions on the exchange. Several of those commentators supported the effect versus execute rule as a means to allow regional and small members to continue to effect transactions on behalf of small institutional accounts over which they exercise investment discretion.[31] Most commentators supporting the rule conditioned their support on the deletion of the access plan requirement contained in the rule as proposed.

Several months after the Commission proposed the effect versus execute rule, the House Subcommittee on Oversight and Investigations and the House Subcommittee on Consumer Protection and Finance issued their joint Oversight Report on the Commission's implementation of the 1975 Amendments. In considering how section 11(a) should be implemented in light of the Congressional purposes, the Oversight Report observed that the Commission's statutory interpretation of "effect" "goes too far." The Report stated that a "primary purpose" of section 11(a) was to put members and non-member money managers on the same footing, and indicated that exchange members should be able to arrange for others to execute transactions for accounts under management, because non-members are permitted to do so.[32]

B. ADOPTION OF THE EFFECT VERSUS EXECUTE RULE

As noted above, the Commission has determined to adopt, with certain modifications and as a temporary rule, the effect versus execute rule. The Commission has added to the rule a definition of the term "effect" that includes all functions performed in causing a securities transaction to be transmitted, executed, cleared and settled. The Commission has provided that definition in order to eliminate any uncertainty as to the functions which are comprehended within the term "effect" as used in section 11(a) and the effect versus execute rule. At the same time, the conditions and limitations included in the effect versus execute rule are designed to accord with the Congressional purposes behind section 11(a).

Despite the breadth of the statutory term "effect,"[33] the legislative history of section 11(a) and the recent Oversight Report support the view that section 11(a) should operate to put exchange member money managers on the same footing with non-member money managers for purposes of their tranactions for covered accounts.[34] Accordingly, the Commission has included in the effect versus execute rule a requirement that transactions for covered accounts effected pursuant to the rule be transmitted from off the exchange floor. In addition, the initiating member will not be permitted to participate in executing the transaction in any way that makes use of the initiating member's right of physical presence on the exchange floor. The effect versus execute rule would permit the initiating member to perform clearance and settlement for transactions effected pursuant to the rule because the performance of those functions does not depend on any trading advantages exclusively available to members.[35] Members' transactions for discretionary accounts pursuant to the exemption afforded by the rule, however, would be subject to a prohibition against receipt of transaction-related compensation, discussed below, absent specific consent to the contrary by the person or persons authorized to transact business for such accounts.[36]

C. STRUCTURE OF THE EFFECT VERSUS EXECUTE RULE

The rule permits an exchange member to effect a transaction directly on the exchange floor if the transaction qualifies for exemption under any of the statutory exemptions set forth in subsections (A) through (H) of section 11(a)(1) and any Commission rules adopted thereunder. In addition to these other exemptions, the rule also permits an exchange member (the "initiating member") to effect transactions for accounts covered by section 11(a) if effected in compliance with four conditions:

(i) The transaction must be executed on the floor, or through use of the facilities, of the exchange by a member (the "executing member") which is not an associated person of the initiating member;

(ii) The order must be transmitted from off the exchange floor;

(iii) Neither the initiating member nor any associated person of the initiating member may participate in the execution of the transaction at any time after the order for the transaction has been so transmitted; and

(iv) In the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any direct or indirect compensation in connection with effecting the transaction; provided, however, that this condition would not apply to the extent that the person or persons authorized to transact business for the account have expressly provided otherwise by written contract referring to Section 11(a) of the Act and the rule, executed on or after March 15, 1978 by each of them and by such exchange member or associated person exercising investment discretion, and such member or such associated person makes disclosure at least annually of the total amount of all transaction-related compensation retained by it or any associated person during the preceding year (or such shorter period as may be covered by the disclosure), which amount shall be exclusive of all amounts paid to others during that period

[30] Response of Hill, Christopher and Phillips, P.C., on behalf of Loomis, Sayles & Co., Inc.; T. Rowe Price Associates, Inc., Scudder, Stevens & Clark; Stein Roe & Farnham; and Wellington Management Co. (July 8, 1977), File No. S7-613.

[31] Responses of the Association of the Bar of the City of New York (June 29, 1977); the Chicago Board Options Exchange, Inc. (Aug. 10, 1977); H. O. Peet & Co., Inc. (July 12, 1977); Merrill Lynch, Pierce, Fenner & Smith Inc. (July 13, 1977); the New York Stock Exchange, Inc. (received July 25, 1977); Oppenheimer & Co., Inc. (July 14, 1977); Robert W. Baird & Co. Inc. (July 14, 1977); Scott & Stringfellow, Inc. (July 11, 1977); the Securities Industry Association (July 15, 1977); TBK Partners, Ltd. (July 19, 1977); and Wertheim & Co., Inc. (May 11, 1977), File No. S7-613. The Philadelphia Stock Exchange, Inc. criticized the effect versus execute rule on the ground that it would promote the establishment of reciprocal arrangements among members. Response of the Philadelphia Stock Exchange, Inc. (July 15, 1977), File No. S7-613. See also responses of the American Council of Life Insurance (July 15, 1977), and Shufro, Rose & Ehrman (Apr. 22, 1977), File No. S7-613. The Philadelphia Stock Exchange, Inc. also suggested that the effect versus execute rule would be an unattractive alternative for a member not desiring to pay commissions to another member or to give up all control over the execution of its covered account transactions by an unaffiliated member.

[32] *Oversight Report*, at 10. The Oversight Report, however, also discussed a member's receipt of compensation on brokerage transactions for managed accounts. *See* text accompanying n. 44 *infra*.

[33] March 1977 Release, at n. 154.

[34] The legislative history of Section 11(a) focuses on competitive disparities between members and non-members in managing money. See House Report, at 54-57; Senate Report, at 60-69. The Congress indicated, nevertheless, that it would not be necessary to force a complete segregation between brokers and money managers in order to redress those disparities. See Senate Industry Study, at 86-87; Securities Industry Study, Report of the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce, H.R. Rep. No. 92-1519, 92d Cong., 2d Sess. 149 (1972).

[35] See text accompanying n. 42 infra.

[36] See text accompanying nn. 42-52 infra.

for services rendered in effecting such transactions.

The effect versus execute rule is being adopted under sections 3(b),[37] 11(a)(1)(H), and 11(a)(2) of the Act. The rule uses the term "effect" in the broad sense which the Commission believes that term has in section 11(a) and other parts of the Act. The modifications between the rule as proposed and the rule as adopted consist of (i) addition of a definition of the term "effect" for purposes of the rule; (ii) addition of the compensation limitation; (iii) deletion of an access plan requirement;[38] and (iv) certain technical changes to clarify the rule's meaning.

D. OPERATION OF THE EFFECT VERSUS EXECUTE RULE

In order to provide guidance as to the application of the effect versus execute rule, various aspects of the rule are discussed below.

1. PARTICIPATION BY INITIATING MEMBER

The rule provides that neither the initiating member nor any associated person of that member may participate[39] in the execution of the transaction an any time after the order has been transmitted to the exchange floor. That requirement is designed to prevent members which have their own brokers on the floor from using those associated persons to influence or guide the execution of the order by the executing member.[40] The non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor.[41]

Several commentators on the March 1977 Release asserted that the term "effect" as used in section 11(a) should not be read to prevent a member from clearing and settling transactions on behalf of covered accounts.[42] As noted above, the rule is written to permit the initiating member to perform those functions, even though it would otherwise be precluded from doing so by Section 11(a)'s general prohibition applicable to effecting transactions on an exchange. The participation limitation in the rule terminates upon execution, and thus does not prevent members from performing the clearance and settlement functions for covered account transactions effected pursuant to the rule.[43]

2. DISCRETIONARY ACCOUNT TRANSACTIONS

Transactions for the managed accounts of natural persons and their estates and trusts continue to be exempted under the rule without limitation. The conditions under which a member may effect a transaction pursuant to the effect versus execute rule for any other account over which it or an associated person exercises "investment discretion" include all those which apply to proprietary and associated person transactions effected in compliance with the rule.[44] At the same time, however, the Ovesight Report indicated that it would be "clearly unlawful" under section 11(a) for an exchange member to retain any compensation from its discretionary accounts for arranging to have other members execute transactions for such accounts. Accordingly, the Commission has determined to include in the effect versus execute rule a concept proposed in the March 1977 Release prohibiting the member (or its associated person) from retaining[45] any transaction-related compensation in connection with effecting transactions for discretionary institutional accounts.

The Commission has added a paragraph to the effect versus execute rule defining the phrase "compensation in connection with effecting the transaction."[46] Although members will be permitted under the effect versus execute rule to perform various functions which are included within the rule's definition of "effect" (e.g., clearance and settlement), the rule will not permit members to retain any direct or indirect compensation for performing such functions (e.g., by calculating the management fee on the basis of a formula accomplishing such a result), except in accordance with the consent and disclosure provisions.

The prohibition on a member's receipt of compensation based on transactions was presented as a possible regulatory approach under section 11(a) in the March 1977 Release, in the context of the single fee rule.[47] Although the Commission has determined to withdraw that rule,[48] the Commission advised commentators in the March 1977 Release that the rules then proposed were in many respects different solutions to the same problem and that, in adopting a regulatory program under section 11(a), the Commission might choose some of the principles set forth at that time while discarding others.[49] The inclusion in the effect versus execute rule of the limitation on transaction-related compensation with respect to discretion-

[37] 15 U.S.C. 78c(b).

[38] A basic element common to the effect versus execute rule and the other rules proposed by the Commission in the March 1977 Release was a requirement that transactions for covered accounts effected under those rules could be effected only on an exchange which filed with, and had approved by, the Commission a plan (in the form of comprehensive exchange rules). The plan would (i) set forth objective criteria with respect to membership and access to exchange and member services on and off the floor, including specific time periods for action on all applications for membership or access to services, and (ii) delineate precisely the scope of exchange jurisdiction to be exercised over persons associated with members. That proposal does not appear to be necessary at this time in light of the Commission's broad authority under the Act concerning exchange member access and regulation. Accordingly, the Commission has determined to withdraw the access plan proposal and has deleted it from the effect versus execute rule as adopted.

[39] Two commentators raised questions with respect to the meaning of "participate" as that term is used in the effect versus execute rule. Responses of Oppenheimer & Co., Inc. (July 14, 1977) and the Securities Industry Association (July 15, 1977), File No. S7-613.

[40] The executing member may be an "upstairs" member or member firm, as well as an exchange specialist or other floor member.

[41] The off-floor transmission requirement will be deemed to have been met if a covered account order is transmitted from off the floor directly to the specialist, for example, by means of an electronic order-routing system such as the NYSE Designated Order Turnaround System.

[42] Responses of the New York Stock Exchange, Inc. (received July 25, 1977); Securities Settlement Corporation (Feb. 1, 1977); and Merrill Lynch, Pierce, Fenner & Smith Incorporated (July 13, 1977), File No. S7-613.

[43] In light of the adoption of the effect versus execute rule, the commission has determined not to act favorably on a suggestion by the NYSE that it adopt a rule permitting members to execute, clear and settle covered account transactions and receive compensation therefor. Other NYSE rulemaking suggestions are discussed in the text accompanying nn. 70-73 and nn. 78-84 infra.

[44] See text accompanying nn. 35-37 supra.

[45] A member which acts merely as a remitter of compensation from a managed account to other unaffiliated members, and other persons engaged to perform those functions involved in effecting a transaction, would not, of course, "retain" that compensation. The prohibition would prevent a member from retaining compensation through commission splitting or recapture of any transaction-related compensation by reciprocity or other means. For example, a member would not be permitted to retain any compensation by arranging to have an affiliate receive or retain such compensation. See Section 20 of the Act, 15 U.S.C. 78t. While the detection and prosecution of reciprocal practices may be difficult in many cases, the Commission intends to exercise its enforcement powers to prevent, to the extent practicable, the development of such practices under the effect versus execute rule.

[46] That definition includes any compensation "directly or indirectly received or calculated on a transaction-related basis for the performance of any function involved in effecting a securities transaction."

[47] March 1977 Release, at text accompanying nn. 134-148.

[48] See n. 50 infra, and text following n. 85 infra.

[49] March 1977 Release, at text accompanying n. 3.

ary account transactions implements that procedure.[50]

There are likely to be circumstances in which those authorized to transact business for discretionary accounts[51] may find it more costly, or otherwise not in the best interests of the account, to pay separately for money management and brokerage. In some cases, the payment of transaction-related fees as an offset to, or perhaps even a substitute for, management fees computed solely on an asset-related basis may better suit the investment needs of those accounts. Those accounts are in the best position to judge whether the arrangements made with their account managers are suitable to their investment needs and whether the performance of those account managers measures up to their needs and expectations. For that reason, the Commission has concluded that it would not be inconsistent with the intent of the Congress in section 11(a) to permit those authorized to transact business for accounts managed by exchange members or their associated persons to provide expressly in their written contracts with their advisers for transaction-related compensation pursuant to the Commission's rule.

Each such authorized person would be required to execute the agreement. The agreement would have to refer explicitly to section 11(a) of the Act and the effect versus execute rule and provide express authorization for the member to retain compensation in connection with effecting transactions for the discretionary account and would have to be executed on or after March 15, 1978. In addition, a member or an associated person executing such an agreement will be obliged to furnish the person or persons authorized to transact business for the account with a periodic statement concerning the receipt of transaction-related compensation from the account. That statement must be furnished at least once a year and must set forth the total amount of compensation retained by the member or any associated person in connection with transactions effected for the account during the period for which the statement is provided, exclusive of amounts paid to others for services rendered in effecting the transactions. The contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests.[52]

The Commission will, nevertheless, monitor the use of that limited permission. Should it appear that exchange members are abusing the trust and confidence placed in them through transaction-related compensation arrangements, the Commission will revoke that permission. In addition, the Commission will consider carefully all comments received on the rule and may act at any time to limit or indeed to eliminate the provision for contractual modification.

IV. The Look-Through Rule (Rule 11a1-2) for Transactions for Accounts of Associated Persons

A. Purposes of the Look-Through Rule

Section 11(a)(1) prohibits members from effecting transactions for the accounts of associated persons. That prohibition results in a broader limitation than the limitation on a member's transactions for its own account and the accounts which it carries for unaffiliated customers. Whereas section 11(a)(1) does not prevent the member from effecting transactions for its unaffiliated customers, transactions for the unaffiliated customers of the associated person are prohibited if the associated person introduces those transactions to the member through an omnibus account which the member carries in the name of that associated person. In addition, even though a member is permitted under section 11(a)(1)(E) to effect transactions for the discretionary accounts of its natural person customers, the structure of section 11(a)(1) causes the exemption for transactions for discretionary accounts of natural persons to be unavailable if the associated person is the account manager and introduces the transactions to its affiliated member through an omnibus account. Finally, since the exemption in section 11(a)(1)(G) is limited to proprietary transactions by a member (as opposed to proprietary transactions of a member's associated person), the associated person is prohibited from having its proprietary transactions effected by its affiliated member in reliance on subsection (G) even where the associated person independently meets the business mix test in section 11(a)(1)(G)(i).

The Conference Report on the 1975 Amendments recommended that the Commission give careful consideration to granting an exemption from the blanket prohibition of section 11(a) to members' trading for all accounts carried in the name of an associated person but in which no associated person has an economic interest and over which no associated person exercises investment discretion.[53]

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[50]The Commission's decision not to adopt the single fee rule responds to the concern expressed that the rule might be considered to perpetuate certain advantages inherent in exchange membership, and thereby raise for non-member fiduciaries complex questions which Section 11(a) would otherwise diminish or eliminate. See *Tannenbaum* v. *Zeller*, 552 F. 2d. 402 (2d Cir.), *cert. denied*, 98 S. Ct. 421 (1977); *Fogel* v. *Chestnutt*, 533 F. 2d 731 (2d Cir. 1975), *cert. denied*, 429 U.S. 824 (1976); *Moses* v. *Burgin*, 445 F. 2d 369 (1st Cir.), *cert. denied*, 404 U.S. 994 (1971). See also *Papilsky* v. *Berndt*, [1976–1977 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶95,627 (S.D.N.Y. June 24, 1976). Unlike the proposed single fee rule, the effect versus execute rule requires that a member utilize an unaffiliated broker in effecting transactions for managed accounts. See also text following n. 85 infra.

[51]The phrase "person or persons authorized to transact business for such account," as used in the effect versus execute rule, is used also in Rule 17a-3(a)(9) under the Act, 17 CFR 240.17a-3(a)(9). In many cases, such persons are acting on behalf of others who are the beneficial owners of the account. As fiduciaries, they owe the highest duty of loyalty to those beneficial owners and have a clear legal obligation to monitor diligently the activities of exchange members and others in exercising their discretionary powers. *Meinhard* v. *Salmon*, 249 N.Y. 458, 464 (1928). A member which churns a managed account is engaged in a manipulative, deceptive and fraudulent practice within the meaning of Sections 10(b) and 15(c)(1) of the Act, 15 U.S.C. 78j(b) and 78o(c)(1), and Rules 10b-5 and 15c 1-7 thereunder, 17 CFR 240.10b-5 and 240.15c1-7. A fiduciary would not be fulfilling its responsibilities if it failed to take reasonable steps to ensure that persons hired to exercise investment discretion over its account do not churn the account or otherwise engage in improper activities.

[52]The Commission's proposed confirmation rule would require an exchange member managing a customer's account to provide a confirmation of each transaction to that account. The confirmation would have to include specific information on any compensation received by that exchange member in connection with the transaction. See proposed Rule 10b-10(a) under the Act. That information would provide additional assistance to accounts which elect to compensate their exchange members on a transaction-related basis in policing adequately the performance of fiduciary duty by that account manager.

[53]The Conference Report on S. 249 stated:

Section 11(a) prohibits an exchange member from effecting any transaction for the account of an associated person. Accordingly, a member firm would be prohibited from effecting any transaction for the account of a parent or sister corporation, regardless of the economic interests of the parent or sister corporation in the account. For example, a parent of a member firm would be prohibited from maintaining an omnibus account with the member even though it effects through that account only trades for public customers. The conferees believe, however, that members' trading for accounts of associated persons may under proper circumstances be consistent with the purposes of this section if such persons have no economic interest in such accounts. The SEC therefore should give careful consideration to granting an exemption from the blanket prohibition of section 11(a) to members' trading for all accounts carried in the name of an associated person but in which no associated person has an economic interest and over which no associated person exercises investment discretion.

Securities Acts Amendments of 1975, Conference Report to Accompany S. 249, H.R. Rep. No. 94-229, 94th Cong., 1st Sess. 105–106 (1975).

In January 1976, the Commission proposed the look-through rule (Rule 11a1-2)[54] pursuant to section 11(a)(1)(H) of the Act. That rule would exempt from section 11(a) a member's transactions effected (i) for the account of an associated person and for the benefit of the associated person, or (ii) for the account of the associated person but for the benefit of a customer of the associated person, in circumstances where the member itself would be permitted under section 11(a) and other rules thereunder to effect the transaction for an account of the same character held directly by the member.

Commentators generally endorsed the look-through rule.[55] Exchanges and exchange members, including domestic affiliates of foreign financial intermediaries, supported the rule as an important means to permit foreign access to the United States securities markets. The Department of the Treasury also endorsed the look-through rule, stating that it would be consistent with national policy regarding foreign broker-dealer access to the United States securities markets. The NYSE, however, advised that (i) the statutory exemptions under section 11(a)(1) should not be available to a member's associated person unless that associated person independently satisfies the criteria of those exemptions, and (ii) the rule should not permit a member to effect a transaction for an account over which a person associated with the member exercises investment discretion.[56]

B. ADOPTION OF THE LOOK-THROUGH RULE

The Commission has determined to adopt the look-through rule, with one modification. A transaction for an account carried in the associated person's name under the look-through rule may be effected only if the member itself could have effected the transaction under section 11(a)(1) and the rules thereunder for an account which it carried directly. For example, if a member proposed to effect a transaction for the omnibus account of the associated person but for the benefit of public customers of that person, the member would be permitted to effect the transaction pursuant to the look-through rule because the member would be able under section 11(a) to effect transactions for the accounts of its own public customers. If a member proposed to effect a transaction for the proprietary account or a discretionary account of the associated person, however, the member would not be permitted to effect it on the exchange unless the member could effect that transaction for a proprietary or discretionary account which it held directly pursuant to a separate statutory exemption or one created by Commission rule.

The Commission believes that the look-through rule, by exempting a member's tranactions effected for public customers of an associated person, is consistent with the Congressional purposes set forth in section 11(a). The look-through rule also permits a member to effect any transaction for the proprietary account of its associated person provided that the member would be able to effect that transaction for its own account under section 11(a)(1) and the rules thereunder. The Commission believes that for the purposes of section 11(a) there should be no difference between transactions for the account of a member allowed under section 11(a)(1) and transactions for the account of a person associated with that member, provided that these transactions are effected in the same manner and are subject to the same conditions.

The look-through rule will ensure that the availability of a statutory or rule exemption under section 11(a) will not turn upon whether the transaction is for the account of a member or for the account of its associated person. Accordingly, the rule will remove incentives that might otherwise exist for members and their associated persons to restructure their corporate organizations solely in response to section 11(a).

In order to achieve this result fully, one modification to the look-through rule is necessary. That modification is the addition of a requirement that an associated person satisfy a "business mix" test for proprietary transactions effected by a member for the associated person's account pursuant to the proprietary trading exemption of section 11(a)(1)(G). That "business mix" test, which is set forth in section 11(a)(1)(G)(i) and rule 11a1-1(T), will ensure that members and associated persons will be similarly treated under that exemption.[57]

Interested persons are cautioned, however, that the look-through rule is available only for specific kinds of transactions for associated persons, i.e., transactions for which there is a specific exemption under section 11(a)(1) or the rules thereunder. The look-through rule does not create an exemption for other types of transactions, in particular transactions for institutional accounts over which an associated person exercises investment discretion or transactions for the proprietary account of an associated person which does not meet the "business mix" test of section 11(a)(1)(G).[58] Consequently, members desiring to effect transactions of this nature may do so only in accordance with the effect versus execute rule as adopted or some other exemption.[59]

V. THE SCOPE OF EXEMPTIONS FOR MEMBERS' PROPRIETARY TRANSACTIONS

Section 11(a) prohibits an exchange member from effecting any transaction on that exchange for its own ac-

[54] January 1976 Release, at text accompanying nn. 28-34.

[55] Commentator reactions to the look-through rule are summarized in greater detail in the March 1977 Release, Appendix A, at text accompanying nn. 31-36. Three other respondents more recently voiced (or reiterated) support for the look-through rule. Responses of Lewco Securities Corp. (Dec. 20, 1977); Merrill Lynch, Pierce, Fenner & Smith Inc. (July 13, 1977); and Richardson Securities Inc. (May 3, 1977), File No. S7-613.

[56] Response of the New York Stock Exchange, Inc. (June 25, 1976), File No. S7-613.

[57] In connection with satisfying the "business mix" test of Section 11(a)(1)(G)(i), an associated person and a member are required to be treated in a non-discriminatory manner. The Commission expects an associated person to be subjected to no greater burden than a member currently must satisfy.

[58] Transactions for associated persons' accounts which qualify for exemption under subsection (A), (B), (C), (D), (E) or (F) of section 11(a)(1) continue, of course, to be entitled to those exemptions. See discussion of the effect versus execute rule in text accompanying nn. 32-52 supra.

[59] In the March 1977 Release, the Commission suggested that adoption of the look-through rule should be considered in tandem with the implementation of a proposed amendment to Rule 17a-3(a)(9), 17 CFR 240.17a-3(a)(9), which would in part permit the monitoring of members' and associated persons' compliance with section 11(a). March 1977 Release, at n. 83. As a practical matter, that proposed amendment would require all institutions, including foreign intermediaries, transacting business through United States broker-dealers to disclose to the Commission upon request the identities of those persons on whose behalf those institutions are acting. Although the amendment to Rule 17a-3(a)(9) was originally designed in part as an aid in monitoring compliance with section 11(a), its potential as a general enforcement aid, and the important questions of international law and policy raised by its application to foreign institutional accounts, led the Commission to consider it as a separate regulatory initiative. See Securities Exchange Act Release No. 13149 (Jan. 10, 1977), 42 FR 3312 (Jan. 18, 1977). That proposed amendment has attracted a broad range of adverse comment and presents policy questions that extend beyond section 11(a), particularly since the foreign secrecy law and other problems it addresses are present regardless of whether foreign intermediaries effect transactions through their own affiliates or through unaffiliated exchange members. The Commission has determined not to make a decision with respect to the adoption or withdrawal of that proposed amendment in the context of the section 11(a) rulemaking proceedings.

count.[60] There are, as noted earlier, a number of statutory exemptions under section 11(a)(1).[61] In addition, the Commission adopted the proprietary trading rule (Rule 11a1-1(T)) in the January 1976 Release and today announced the adoption of the effect versus execute rule (Rule 11a2-2(T)). Both rules permit a member to effect proprietary transactions under specifically prescribed conditions.[62] The following discussion reviews several matters of importance to a member's proprietary transactions under section 11)a), including technical amendments being made to the proprietary trading rule (Rule 11a1-1(T)), and the application of section 11(a) to floor trading activities and specialists' investment account transactions. Also discussed below is a rulemaking petition filed the NYSE.

A. THE PROPRIETARY TRADING RULE (RULE 11a1-1(T))

Under section 11(a)(1)(G), a member may effect transactions for its own account if (i) the member satisfies the "business mix" test contained in section 11(a)(1)(G) (i), and (ii) the transaction is effected in accordance with Commission rules which, as a minimum, assure that such transactions are not inconsistent with the maintenance of fair and orderly markets and yield priority, parity, and precedence to orders for the accounts of persons who are not members or associated persons of members. Rule 11a1-1(T) implements the proprietary trading exemption of section 11(a)(1)(G). Comments on this rule were reviewed in the March 1977 Release.[63]

The Commission has adopted several technical amendments to Rule 11a1-1(T). Paragraph (a) of the rule is amended to clarify the fact that a member's compliance with the terms of Rule 11a1-1(T) would be deemed also to be in compliance with section 11(a)(1)(G)(ii). Paragraph (c) of the rule is amended to provide greater specificity with respect to the point at which a member must announce or otherwise indicate to the specialist and to other members then present for trading that he is presenting an order for the account of a member. In addition, paragraph (d) is amended to provide greater specificity with respect to the point at which the yielding requirement of that paragraph attaches. The remaining amendments provide clarification or are grammatical.

The Commission has not adopted Rule 11a1-1(T) in a permanent form for several reasons. First, the general prohibition of section 11(a)(1) will not be fully effective until May 1, 1978. Consequently, neither the Commission nor the exchanges have had any opportunity to test the operation of Rule 11a1-1(T) in any active trading environment in which section 11(a) is fully effective. Second, while it is unclear at this time whether the order identification process and yielding requirements are practicable, that doubt may not be resolved until after May 1, 1978.[64] The Commission plans to continue its review of Rule 11a1-1(T) and to consider this question at a later date.[65]

B. FLOOR TRADING ACTIVITIES

The term "floor trading" describes proprietary trading (other than market making activities) conducted by exchange members on the equity floors of national securities exchanges. Floor trading transactions are thus distinguished from other members' proprietary transactions initiated from off the floor. Rule 11a1-1,[66] adopted under the version of section 11(a) which was in effect before adoption of the 1975 Amendments and which authorized the Commission to regulate or prevent floor trading by exchange members, currently permits floor traders grandfathered under section 11(a)(3) to effect transactions on the exchange floor for their own accounts under certain conditions.

Effective May 1, 1978, section 11(a)(1) will make it unlawful, subject to exemptions under that provision and rules adopted thereunder, for a member to effect a transaction for its own account on an exchange to which it belongs. The two statutory exemptions to the general prohibition of section 11(a)(1) that might be thought to apply to most floor trading transactions are subsection (E) for "natural persons," and subsection (G) for proprietary trading by exchange members.[67]

The Commission thoroughly considered the availability of those two exemptions in the January 1976 Release and in the March 1977 Release[68] and continues to believe for the reasons then stated that the natural person exemption under subsection (E) was intended to apply only to transactions for a member's associated natural persons and transactions for the discretionary accounts of natural persons. Transactions for the account of a natural person member are not exempted under subsection (E). Moreover, the proprietary trading exemption under subsection (G) is conditioned by a proviso that requires members using the exemption to be primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers and acting as broker, or any one or more of such activities, and whose gross income normally is derived principally from such business and related activities. Most floor traders do not engage to any significant extent in other lines of business, such as those enumerated in that proviso, and are therefore unable to rely upon subsection (G). Accordingly, in the absence of an exemptive rule under section 11(a)(1)(H), most floor traders will be prohibited from effecting transactions for their own accounts.

Nevertheless, floor traders who do not qualify for the subsection (G) exemption are not necessarily forced to leave exchange floors after May 1, 1978. Although required to cease traditional floor trading, they may engage in other floor activities permitted under section 11(a). For example, section 11(a) would not impede floor traders from becoming competing specialists on the stock exchanges, or from otherwise assuming market making obligations pursuant to rules which exchanges may wish to formulate in the future, in order to qualify for the market making exemption under sec-

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[60] The term "member" of an exchange is defined under section 3(a)(3)(A) of the Act, 15 U.S.C. 78c(a)(3)(A), and includes any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker and any registered broker or dealer with which such a natural person is associated.

[61] See text accompanying nn. 4-7 supra.

[62] See text accompanying nn. 32-52 supra.

[63] March 1977 Release, appendix A, at text accompanying nn. 17-30. See also response of the New York Stock Exchange, Inc. (received July 25, 1977), File No. S7-613.

[64] There would seem to be no reason, however, to question the practicality of the rule in contexts other than active trading situations involving multiple parties.

[65] Certain commentators on the January 1976 Release raised questions concerning the "business mix" test of section 11(a)(1)(G)(i). In particular, it was contended that market making revenues and investment advisory fees should be included within the types of revenue satisfying that test. The types of activities specified in subsection (G)(i) refer essentially to the distribution of securities, the purchase or sale of securities on an agency or principal basis in transactions with customers, and "related activities." While market making activities involving the purchase or sale of securities to or from customers are "related" to those functions, fees for money management and other advisory functions do not appear to the Commission to be so related and the income derived from these activities may not be included among revenues satisfying that test.

[66] 17 CFR 240.11a-1.

[67] Since floor traders do not have market making responsibilities, act as block positioners, quote two-sided markets, or make other mandatory contributions to market liquidity, the exemption under section 11(a)(1)(A) for market making transactions does not apply to their activities. The section 11(a) exemptions for stabilizing, arbitrage and hedge transactions are unlikely to apply to floor trading transactions.

[68] January 1976 Release, at text accompanying nn. 26-27 and n. 27; March 1977 Release, at text accompanying nn. 86-123.

tion 11(a)(1)(A). On the options exchanges, floor members trade for their account as market makers and qualify for the market making exemption under section 11(a)(1)(A) when acting in that capacity.[69]

On December 23, 1977, the NYSE urged the Commission to adopt exemptive rules for several specific kinds of member proprietary trading, including floor trading.[70] The other suggestions are reviewed below. In particular, the NYSE suggested that a rule be adopted to exempt transactions executed on the floor, or through the facilities, of an exchange by a competitive trader registered as such with an exchange pursuant to a rule equivalent to NYSE Rule 111.[71]

The Commission has carefully considered the NYSE's proposals, but does not believe it would now be appropriate to adopt an exemption for floor trading which the Congress previously declined to adopt.[72] Moreover, the proprietary trading exemption under section 11(a)(1)(G) contains a specific yielding requirement as a limitation. It would not appear consistent with the purposes of section 11(a)(1), particularly in connection with the concerns expressed over the special trading advantages enjoyed by members located on exchange floors,[73] to adopt a specific exemption for floor trading without a comparable yielding requirement. In addition, it may not be appropriate to accord more privileged status to floor trading transactions than that accorded to other members' proprietary transactions under section 11(a)(1)(G), particularly in view of the "business mix" test in section 11(a)(1)(G)(i). Accordingly, the Commission does not believe that it should act favorably on the NYSE's suggestion at this time. Nevertheless, the NYSE's letter is annexed in full text to this Release, and the Commission encourages commentators who see some merit to the NYSE's proposals to submit detailed comments responding to the Commission's concerns. The Commission will carefully consider all such comments.

C. SPECIALISTS' INVESTMENT ACCOUNT TRANSACTIONS

In the January 1976 Release, the Commission suggested that specialists' transactions for their investment accounts would not qualify for any exemption under section 11(a)(1), other than perhaps section 11(a)(1)(G), and asked on what basis such an exemption, if any, should be framed.[74] Commentators on that question unanimously favored an exemption which would permit investment transactions by any specialist. The NYSE, for example, stated that specialists' investment account transactions are subject to rules governing trading in specialty securities and should qualify for an absolute exemption regardless of the "business mix" test under section 11(a)(1)(G)(i). It argued that "investment" accounts essentially are a matter of bookkeeping to establish capital gains tax treatment and thereby to assist the specialist in accumulating inventory in its specialty stocks.[75] The Philadelphia Stock Exchange, Inc. and one other commentator agree for similar reasons.[76]

While section 11(a)(1) does not provide a specific exemption for trading by specialists for investment accounts, the exemption under section 11(a)(1)(A) covers transactions by a dealer acting in the capacity of market maker. Since the term "market maker" is defined under section 3(a)(38) to include any specialist permitted to act as a dealer, a specialist may be entitled to rely upon the market making exemption to the extent he effects any transaction within the performance of his obligations to the market.[77] The market maker exemption would not, however, be available for transactions by specialists which represent investment or trading decisions outside the ambit of their market making functions.

D. NYSE RULEMAKING PETITION

As noted earlier, the NYSE urged the Commission to adopt two exemptive rules. The first exemption would permit a member to effect transactions on behalf of its covered accounts through transmission of orders for such accounts from off the trading floor of the exchange to an unaffiliated member. The Commission believes its effect versus execute rule adequately addresses that matter.[78] The NYSE's second exemption would permit members to conduct floor trading activities under certain conditions and to effect proprietary transactions in listed bonds, as part of special offerings and bids and exchange distributions and acquisitions under NYSE Rules 391 and 392,[79] and in the course of liquidating positions established at the request of a duly authorized official. The NYSE suggestion for a floor trading exemption was considered above. The Commission's determinations with respect to the NYSE's other suggestions are set forth below. As noted above, however, the Commission invites comments on all of the NYSE's proposals, and will carefully evaluate those comments.

1. PRINCIPAL BOND TRANSACTIONS

The NYSE suggested an exemption for members' proprietary transactions in listed bonds which are effected to facilitate an order of a public customer.[80] NYSE members are required to effect only odd-lot listed bond business on the NYSE[81] and, as a result, are not prevented from conducting a listed bond business in the over-the-counter market. Section 11(a)(1)(B) provides an exemption covering any transaction for the account of an odd-lot dealer in a security in which he is so registered. The NYSE, may, accordingly, wish to formulate rules for a new class of odd-

[69] Those floor members include market makers, specialists, and registered options traders. They are generally subject to both affirmative and negative obligations while engaged in executing principal transactions on the floors of the options exchanges with respect to any class of option contract. See Rules 170 (b) and (d) and 958 (b) and (c), American Stock Exchange Guide (CCH) ¶9310, ¶9758; Rule 8.7, Chicago Board Options Exchange Guide (CCH) ¶2277; Rule 6 of Article XLVII, Midwest Stock Exchange Guide (CCH) ¶2096; Section 79 of Rule VI, Pacific Stock Exchange Guide (CCH) ¶4278; Rule 1014 (a) and (c), Philadelphia Stock Exchange Guide (CCH) ¶ 3014.

Rule 11b-1 under the Act, 17 CFR 240.11b-1, regulates the conduct of specialists and essentially requires a member registered as a specialist with an exchange to be subject to both affirmative and negative obligations in connection with his dealer function. To the extent options floor members have assumed those obligations when trading in a class of options, their trading may be viewed as specialist trading and would satisfy the first part of the definition of market maker under section 3(a)(38), 15 U.S.C. 78c(a)(38), which includes "any specialist permitted to act as a dealer." Therefore, such trading would qualify for the market making exemption under section 11(a)(1)(A).

Market makers on the Pacific Stock Exchange, Inc. and registered options traders on the Philadelphia Stock Exchange, Inc., however, are not subject to any affirmative obligation imposed by rule, in connection with trading outside of their assigned classes of option contracts. Section 79 of Rule VI, Pacific Stock Exchange Guide (CCH) ¶4278; Rule 1014 (d) and (i), Philadelphia Stock Exchange Guide (CCH) ¶3014. Those activities, therefore, do not qualify for the market making exemption in section 11(a)(1)(A).

[70] Letter from James E. Buck to Andrew M. Klein (Dec. 23, 1977), File No. S7-613.

[71] See, e.g., New York Stock Exchange Guide (CCH) ¶ 2111.

[72] Former Rule 19b-2 contained an exemption for registered floor traders. See Rule 19b-2(a)(6), 17 CFR 240.19b-2(a)(6) (1973). See also March 1977 Release, at text accompanying nn. 89-111.

[73] House Report, at 54-55.

[74] January 1976 Release, Question 3.

[75] Response of the New York Stock Exchange, Inc. (June 25, 1976), File No. S7-613.

[76] Responses of the Philadelphia Stock Exchange, Inc. (May 4, 1976) and Ferris & Co., Inc. (July 13, 1976), File No. S7-613.

[77] See, e.g., Section 11(b) of the Act and Rule 11b-1 thereunder.

[78] See n. 43 supra.

[79] New York Stock Exchange Guide (CCH) ¶2391, 2392.

[80] Other commentators made similar suggestions. Responses of Asiel & Co. (June 30, 1977 and June 14, 1976) and Mabon Nugent & Co. (May 10, 1977 and April 19, 1976), File No. S7-613.

[81] NYSE Rule 396, New York Stock Exchange Guide (CCH) ¶2396.

lot bond-dealers satisfying this exemption. Such rules would require Commission approval under section 19(b) of the Act and should ensure that a registered odd-lot dealer in listed bonds is acting solely in the capacity of an odd-lot dealer.

The specific exemption requested by the NYSE raises several significant problems. Although its objective would be to facilitate public customers' orders, the NYSE rule suggestion does not contemplate a requirement that the transaction exempted be necessary in order to fill such orders or even that the member possess such an order before effecting a proprietary transaction. In view of these problems and the absence of a demonstrated basis on which to adopt a rule such as that suggested by the NYSE, the Commission does not believe that it should act favorably on that suggestion at this time.

2. SPECIAL DISTRIBUTIONS AND ACQUISITIONS

The NYSE suggested the adoption of an exemption for exchange member distribution and acquisition activities effected under NYSE Rules 391 and 392. Those rules allow members to assist customers in the acquisition or disposition of large blocks of securities by taking positions in these securities, or to engage other members in the effecting of special exchange distributions or acquisitions.[82]

The NYSE indicated that members' activities under NYSE Rules 391 and 392 have an "acknowledged benefit to the execution of customer orders." The NYSE did not provide any explanation of those benefits. Moreover, the NYSE suggestion did not address possible alternative courses of action available to members under section 11(a)(1). Accordingly, the Commission does not believe that a sufficient basis under section 11(a) has been established upon which to act favorably on that suggestion and has not determined to do so at this time.

3. PROPRIETARY TRANSACTIONS EFFECTED AT A FLOOR OFFICIAL'S REQUEST

The NYSE suggested the adoption of a rule exempting floor members' proprietary transactions effected at the request of an exchange official to correct order imbalances and the liquidation of any position so acquired. The NYSE pointed out that these activities currently are permissible under Rule 11a-1. The NYSE, however, did not provide any justification to support such an exemption. Moreover, the Congress declined to adopt a similar exemption that was contained in former Rule 19b-2.[83] In addition, the NYSE did not submit any information with respect to benefits to the exchange market that would be produced by such transactions. The NYSE rules provide for the appointment of temporary specialists to assist regular and relief specialists in correcting order imbalances.[84] To the extent transactions by such temporary specialists are effected in compliance with the affirmative and negative obligations of specialists, they qualify for exemption under section 11(a)(1)(A). The NYSE did not demonstrate any need for an additional exemption for transactions effected by other members at the request of a floor official. Accordingly, the Commission has not determined to act favorably on that suggestion at this time.

VI. WITHDRAWAL OF OTHER RULE PROPOSALS

A. THE PROPOSED PRIORITY RULE (RULE 11a2-1)

The priority rule was proposed in the March 1977 Release. It was intended to address, in a fashion that eliminated special treatment for different classes of proprietary transactions, the concerns expressed by the Congress that exchange members not be permitted time and place advantages over the public in their dealings on exchanges. To accomplish this, the priority rule would permit all exchange members (including floor traders) to effect proprietary transactions regardless of whether they could meet the "business mix" test contained in the proprietary trading exemption in section 11(a)(1)(G)(i). The priority rule would require all members' proprietary trading (other than odd-lot dealers' transactions) to yield priority to non-members' orders, notwithstanding whether a statutory exemption under section 11(a) would otherwise be available. The priority rule was proposed pursuant to the Commission's power to exempt transactions under section 11(a)(1)(H) and its power to regulate dealer transactions under sections 11(a)(2), 11(b) and 15(c)(5).

Commentators strongly opposed the priority rule. They argued that there is not sufficient justification for restricting the statutory exemptions under section 11(a)(1) and that non-member proprietary transactions would not be governed by the priority rule and therefor would enjoy a competitive advantage over similar member orders. They also argued that a member's associated person would not be impeded from using available exemptions under section 11(a)(1) and, as a result, a member would simply avoid the priority rule by shifting proprietary transactions into the account of its associated person. Others had doubts about the mechanical feasibility of the priority rule. Finally, commentators argued that the Commission lacks the authority to limit the availability of the market-making exemption under section 11(a)(1)(A) and the authority to exempt proprietary transactions by members not meeting the "business mix" test under section 11(a)(1)(G)(i).

The Commission believes that it has the authority to adopt the priority rule. Nevertheless, the Commission has determined to withdraw proposed Rule 11a2-1 primarily because it believes that it would be more appropriate to consider the policy questions associated with priority in the context of its actions to facilitate the establishment of a national market system.[85]

B. THE PROPOSED SINGLE FEE RULE (RULE 11a1-3)

The single fee rule was proposed in March 1977. It would exempt transactions by any exchange member for a discretionary account if the member did not charge that account any separate fee based on transactions. It would not, however, preclude payment of commissions by the managed institutional account to an unaffiliated broker. The single fee rule was proposed pursuant to the Commission's authority in section 11(a)(1)(H).

The single fee rule attracted considerable adverse comment. Non-member financial intermediaries suggested that the rule would permit exchange members to combine money management and brokerage and would therefore be inconsistent with the purposes of section 11(a) and outside of the Commission's authority to adopt exemptive rules under section 11(a)(1)(H). Commentators also contended that the single fee rule would produce new problems such as "reverse churning," inflated management fees, reciprocal practices among members which manage institutional accounts, and generally higher costs to managed institutional accounts. More-

[82]Response of the New York Stock Exchange, Inc. (received July 25, 1977), File No. S7-613.

[83]Rule 19b-2(a)(7), 17 CFR 240.19b-2(a)(7) (1973).

[84]NYSE Rule 104.17, New York Stock Exchange Guide (CCH) ¶2104.17.

[85]In its recent statement regarding the development of a national market system, the Commission stated that one of the basic tenets of a national market system was the assurance of auction-type trading protections for all public limit orders and the execution of all such orders on the basis of time and price priority alone. Securities Exchange Act Release No. 14416 (January 26, 1978), 43 FR 4354 (February 1, 1978).

over, others argued, the single fee rule would impose a de facto obligation on institutional fiduciaries to seek exchange membership and would present a number of practical difficulties to money managers in light of state laws that limit the amount of management fees which investment managers may receive. Finally, commentators asserted that the single fee rule would impose an untested pricing concept on the securities industry and would eliminate the pricing flexibility and unrestricted choice of services that a managed institutional account may find important.

The Commission is withdrawing the single fee rule because the adoption of the effect versus execute rule (Rule 11a2-2(T)) makes the adoption of the single fee rule unnecessary at this time. The single fee rule would provide only a limited exemption from section 11(a) for certain types of accounts which, the Commission believes, will benefit from the effect versus execute rule.[86]

VII. Statutory Basis

The Securities and Exchange Commission, acting pursuant to the Securities Exchange Act of 1934, and particularly sections 2, 3, 6, 10, 11, 11A, 15, and 23 thereof (15 U.S.C. 78b, 78c, 78f, 78j, 78k, 78k-1, 78o, and 78w), hereby adopts Rule 11a1-2 and Temporary Rule 11a2-2(T) and amendments to Rule 11a1-1(T). The Commission has determined that these rules and amendments are consistent with the purposes of section 11(a), the protection of investors, and the maintenance of fair and orderly markets. The Commission further deems Temporary Rule 11a2-2(T) to be necessary and appropriate in the public interest and for the protection of investors and to maintain fair and orderly markets.

With respect to substantive revisions of Temporary Rule 11a2-2(T), notice of the subjects and issues addressed by that rule and those revisions has been provided in the January 1976 and March 1977 Releases. The prohibition on transaction-related compensation is consistent with the Commission's previously published view that, subject to the statutory exemptions in section 11(a)(1), section 11(a) prohibits an exchange member from executing or arranging to have other members execute transactions on the exchange for an account over which that member or its associated person exercises investment discretion. A specific prohibition on transaction-related compensation was incorporated in the single fee rule, proposed Rule 11a1-3. The Commission stated in the March 1977 Release that its rule proposals were in many respects different solutions to the same problem and that the Commission might choose some of the principles set forth at that time while discarding others. The other revisions made in Rules 11a1-1(T), 11a1-2, and 11a2-2(T) are technical or clarifying in nature. The prompt adoption of Temporary Rule 11a2-2(T), moreover, is necessary to provide immediate guidance to members of national securities exchanges with respect to the application of section 11(a), as discussed above. Accordingly, the Commission finds, pursuant to the Administrative Procedure Act (5 U.S.C. 551 et seq.), that further notice and public procedure are not necessary.[87] Nevertheless, comments are being solicited on these rules so that the Commission can consider whether additional action may be necessary, either before or after May 1, 1978.

The Commission finds that the rules and amendments being adopted today will not impose any burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The amendments to Rule 11a1-1(T) are technical in nature and do not impose any additional burden on competition. The adoption of rule 11a1-2 will establish an exemption permitting members to effect transactions for associated persons and their customers and may increase competition on exchanges. Accordingly, that rule does not impose any additional burden on competition. In adopting Temporary Rule 11a2-2(T), the Commission is providing certain exemptive relief for many exchange members, but that action does not remove all burdens on competition in money management by exchange members imposed by section 11(a). Burdens on competition resulting from section 11(a), in the context of the Commission's rulemaking actions, have been discussed above.[88]

Part 241 of Chapter II of Title 17 of the Code of Federal Regulations is amended, effective immediately, by the inclusion of this release therein. Part 240 of Chapter II of Title 17 of the Code of Federal Regulations is amended, effective May 1, 1978, as follows:

§ 240.11a1-1(T) Transactions yielding priority, parity, and precedence.

(a) A transaction effected on a national securities exchange for the account of a member which meets the requirements of section 11(a)(1)(G)(i) of the Act shall be deemed, in accordance with the requirements of section 11(a)(1)(G)(ii), to be not inconsistent with the maintenance of fair and orderly markets and to yield priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange if such transaction is effected in compliance with each of the following requirements:

(1) A member shall disclose that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated, and any member through whom that bid or offer is communicated shall disclose to others participating in effecting the order that it is for the account of a member.

(2) Immediately before executing the order, a member (other than the specialist in such security) presenting any order for the account of a member on the exchange shall clearly announce or otherwise indicate to the specialist and to other members then present for the trading in such security on the exchange that he is presenting an order for the account of a member.

(3) Notwithstanding rules of priority, parity, and precedence otherwise applicable, any member presenting for execution a bid or offer for its own account or for the account of another member shall grant priority to any bid or offer at the same price for the account of a person who is not, or is not associated with, a member, irrespective of the size of any such bid or offer or the time when entered.

(b) A member shall be deemed to meet the requirements of section 11(a)(1)(G)(i) of the Act if during its preceding fiscal year more than 50 percent of its gross revenues was derived from one or more of the sources specified in that section. A member may rely on a list of members which are stated to meet the requirements of section 11(a)(1)(G)(i) if such list is prepared, and updated at least annually, by the exchange. In preparing any such list, an exchange may rely on a report which sets forth a statement of gross revenues of a member if covered by a report of independent accountants for such member to the effect that such report has been prepared in accordance with generally accepted accounting principles.

§ 240.11a1-2 Transactions for certain accounts of associated persons of members.

A transaction effected by a member of a national securities exchange for the account of an associated person thereof shall be deemed to be of a kind which is consistent with the purposes of section 11(a)(1) of the Act, the protection of investors, and the maintenance of fair and orderly markets if the transaction is effected.

(a) For the account of and for the benefit of an associated person, if, assuming such transaction were for the account of a member, or

[86] See also n. 50 supra.

[87] *See* 5 U.S.C. 553(b).

[88] See also January 1976 Release and March 1977 Release.

(b) For the account of an associated person but for the benefit of an account carried by such associated person, if, assuming such account were carried on the same basis by a member, the member would have been permitted, under section 11(a) of the Act and the other rules thereunder, to effect the transaction; *Provided, however,* That a transaction may not be effected by a member for the account of and for the benefit of an associated person under section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder unless the associated person derived, during its preceding fiscal year, more than 50 percent of its gross revenues from one or more of the sources specified in section 11(a)(1)(G)(i) of the Act.

§ 240.11a2-2(T) Transactions effected by exchange members through other members.

(a) A member of a national securities exchange (the "initiating member") may not effect a transaction on that exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion unless:

(1) The transaction is of a kind described in paragraphs A through H of section 11(a)(1) of the Act and is effected in accordance with applicable rules and regulations thereunder; or

(2) The transaction is effected in compliance with each of the following conditions:

(i) The transaction is executed on the floor, or through use of the facilities, of the exchange by a member (the "executing member") which is not an associated person of the initiating member;

(ii) The order for the transaction is transmitted from off the exchange floor;

(iii) Neither the initiating member nor an associated person of the initiating member participates in the execution of the transaction at any time after the order for the transaction has been so transmitted; and

(iv) In the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof retains any compensation in connection with effecting the transaction; *Provided, however,* That this conditions shall not apply to the extent that the person or persons authorized to transact business for the account have expressly provided otherwise by written contract referring to section 11(a) of the Act and this section executed on or after March 15, 1978, by each of them and by such exchange member or associated person exercising investment discretion.

(b) For purposes of this section, a member "effects" a securities transaction when it performs any function in connection with the processing of that transaction, including, but not limited to, (1) transmission or an order for execution, (2) execution of the order, (3) clearance and settlement of the transaction, and (4) arranging for the performance of any such function.

(c) For purposes of this section, the term "compensation in connection with effecting the transaction" refers to compensation directly or indirectly received or calculated on a transaction-related basis for the performance of any function involved in effecting a securities transaction.

(d) A member, or an associated person of a member, authorized by written contract to retain compensation in connection with effecting transactions pursuant to paragraph (a)(2)(iv) of this section shall furnish at least annually to the person or persons authorized to transact business for the account a statement setting forth the total amount of all compensation retained by the member or any associated person thereof in connection with effecting transactions for that account during the period covered by the statement, which amount shall be exclusive of all amounts paid to others during that period for services rendered in effecting such transactions.

(e) A transaction effected in compliance with the requirements of this section shall be deemed to be of a kind which is consistent with the purposes of section 11(a)(1) of the Act, the protection of investors, and the maintenance of fair and orderly markets.

(Secs. 2, 3, 4, 6, 7, 11, 18, 89 Stat. 97, 104, 110, 111, 121, 155 (15 U.S.C. 78b, 78c, 78f, 78k, 78k-1, 78o, 78w); Secs. 2, 3, 10, 23, 48 Stat. 881, 882, 891, 901, as amended (15 U.S.C. 78j).)

* * * * *

As indicated above, the Commission is interested in receiving further comment on the various actions it has announced today. The Commission is particularly interested in commentators' views concerning:

(i) The Commission's confirmation of its prior interpretation confining the availability of the "natural person" exemption contained in section 11(a)(1)(E) of the Act to exchange member transactions effected for accounts of the member's associated natural persons and discretionary accounts of natural persons;

Adoption of Temporary Rule 11a2-2(T) in the form set forth above, especially:

(a) The contractual provision set forth in the proviso to paragraph (a)(2)(iv) of the rule;

(b) The definitions of the term "effect" and "compensation in connection with effecting the transaction" set forth in paragraphs (b) and (c) of the rule, respectively; and

(c) The disclosure requirement set forth in paragraph (d) of the rule; and

(iii) The Commission's determination to refrain from taking rulemaking action at this time to implement the suggestions advanced by the NYSE in its letter of December 23 1977,[**] especially with respect to:

(a) Exemptive relief for floor traders, either through an additional rule or revision of the Commission's interpretation of the "natural person" exemption;

(b) Exemptive relief to permit exchange members to execute transactions in listed bonds as principal on the floor;

(c) Exemptive relief to permit exchange members to execute principal transactions in accordance with exchange rules governing special distributions on exchanges, such as NYSE Rules 391 and 392; and

(d) Exemptive relief for principal transactions effected at the request of a floor official to correct an order imbalance (or to liquidate a position so acquired).

To facilitate public comment on the foregoing matters, the NYSE's letter of December 23, 1977 is published in full as Appendix A to this Release. Commentators who wish to urge that the Commission take action to implement any of the NYSE's requests should take special care to demonstrate how such action would be consistent with section 11(a), its purposes and legislative history, and the views of the Commission articulated herein and in the January 1976 and March 1977 Releases.

Notwithstanding this solicitation of additional comments, persons affected by section 11(a) of the Act should not refrain from taking such steps as may appear necessary to them to ensure that they are in a position to comply fully with that Section and the Commission's rules and interpretations thereunder announced in this Release.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 14, 1978.

THE NEW YORK STOCK EXCHANGE,
December 23, 1977.

ANDREW M. KLEIN, ESQ.,
Director, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C.

DEAR MR. KLEIN: Given the impending effectiveness of Section 11(a) of the Securities Exchange Act of 1934, as amended, and the consensus of concern as to its likely ramifications, the Exchange thought it might prove useful to indicate its perception of the minimum implementive rulemaking which commends itself for Commission action, at this time. For these purposes, it is assumed that, except as indicated herein, rules previously adopted or proposed under the Section will be withdrawn or repealed.

Section 11(a) prohibits an exchange member from effecting a transaction on that exchange for his own account, that of an associated person or an account over which either exercises investment discretion. Various exceptions are specified in the

[**] See n. 43 supra and text accompanying nn. 70-73 and nn. 78-84.

Section which afford relief primarily with respect to firm proprietary trading. Briefly, the exemptions pertain to: market makers (11(a)(1)(A)), odd-lot dealers (11(a)(1)(B)), stabilizing transactions (11(a)(1)(C)), arbitrage and hedge transactions (11(a)(1)(D)), transactions for natural persons (11(a)(1)(E)), error corrections (11(a)(1)(F)), transactions for a member's own account whose business is comprised of specified types of activities and which are effected in compliance with commission rules not inconsistent with fair and orderly markets (11(a)(1)(G)), and, any other transaction of a kind which the Commission, by rule, determines is consistent with the purposes of 11(a), the protection of investors, and the maintenance of fair and orderly markets.

Absent modification by Commission rule and assuming the strict interpretation of the word "effect" as well as the unavailability of the "natural person" exemption for a member, as previously expressed in Commission releases on 11(a),[1] transactions by Exchange members for their own accounts are virtually eliminated. Members of the Exchange are thus effectively prevented from simultaneously acting as money managers and as brokers for institutional accounts.

A further complication is that the exemption afforded in 11(a)(1)(G) provides no relief from the dilemma of an Exchange member trading for the firm account since in most instances it would be unable to meet the business mix requirement even were the unnerving complex problem of order identification satisfactorily resolved. Additionally, the definition of "associated person," under the Act, has been extended beyond a "natural person" to include all manner of institutional affiliates, parents and subsidiaries; and the so-called "managed account" may embody not only the exercise of discretion over impressively large pools of money but even the many modest types of managed capital such as church or other similar moderate portfolios.

Assuming the scenario described above, the Competitive Floor Trader would become a vestige of the past—deprived of his "natural" identity and unlikely to fit within the mold of the necessary gross income test of an SEC rule designed to implement Section 11(a)(1)(G)[2]—and this notwithstanding a fairly stringent system of regulation under SEC Rule 11a-1. The bond trader who, to accommodate the needs of his customer, trades on the Floor in Exchange listed bonds as principal, could no longer act in the best interests of that customer. His brother member who assumes a risk position at the request of a Floor official, (for the purpose of assisting the specialist in correcting order imbalances), would be restricted in liquidating positions so acquired. Each would be precluded from claiming an exemption since neither may be formally acting in the capacity of a specialist or market maker while in effect and in economic substance performing similar salutary functions. Those participating in Rules 391 and 392 Special Block Offerings and Distributions, not susceptible of normal processing on the Exchange Floor, would be barred despite their acknowledged benefit to the execution of customer orders.

Two points merit special mention. It has been the unanimous view of commentators that the Commission's restrictive reading of the natural person exemption to apply only to a two-legged associated person and not to a two-legged member, is unreasonable. This conclusion is derived not only from the Congressionally defined term "member" (at Section 3(a)(3)(A) of the Act) which specifically includes natural persons, but equally, from the Commission's suggestion that the Congress may have indulged in error in providing an exemption under 11(a)(1)(E). Clarification of this aspect would be helpful in restoring the natural equilibrium and harmony of the statute and the intent of the Congress.

Secondly, one cannot equitably ignore the much publicized dispute surrounding the appropriate meaning to be accorded the term to "effect" a transaction. The recent Report of the operative oversight subcommittees of the House Committee on Interstate and Foreign Commerce (Committee Print No. 95-27, 95th Cong., 1st Sess. 1977, 9-11) made plain the view of the draftsmen that "effect" and "execute" are to be read as synonyms except that the initiating member should not share in the compensation to be received by the unaffiliated executing member for having made such brokerage arrangements. We understand that that construction is not meant to preclude the initiating broker from providing a clearing function (which may be described as in the nature of a ministerial off-Floor transaction completion function) and being compensated therefor.

Fully mindful that the files of the Commission and the records of the Congress are replete with legal argumentation concerning the 11(a) rule proposals and initiatives, it is not our intention to retread those waters. Nor are we unappreciative of the creativity displayed and initiatives taken by the Commission in this complex area.[3] Rather, in that same spirit of reason and good faith, and taking into consideration the perhaps unintentional severe impact and implications of the Section as briefly described herein, we would respectfully request that the Commission, promptly act upon the following matters through the medium of its authority under 11(a)(1)(H) and 23(a) of the Act and Rule IV of its Rules of Practice. It is suggested that each of the following matters (and those noted above) is consistent with the guidelines pronounced by the Committee of Conference "that the Commission has authority to exempt any transaction of any kind from the prohibitions if it determines that such exemption is not inconsistent with the protection of investors and the public interest * * * [and] that such exemptive authority * * * be exercised in a manner consistent with the purposes of the general prohibition and the expressions of Congressional intent." (H.R. Rep. No. 94-229, 94th Cong., 1st Sess. (1975), 106.)

to those existing domestic member organizations as are creatures of the increasing common holding company superstructures.

Accordingly, the Exchange would commend its adoption at this time.

1. That the Commission, acting pursuant to its above stated authority, adopt a rule providing that:

"A member (the 'initiating member') of a national securities exchange shall not be deemed 'to effect' a transaction on such exchange within the meaning of Section 11(a)(1) of the Securities Exchange Act of 1934, provided that the transaction is executed on the trading floor of such exchange by a member (the 'executing member') which is not the initiating member and is not an associated person of the initiating member and the order for such transaction is transmitted by the initiating member to the executing member from off the trading floor of such exchange. The foregoing shall not preclude the performance of a clearing function by the initiating member and the receipt of compensation therefor."

2. That the Commission adopt rules signifying the consistency of the following types of transactions with the provisions of Section 11(a)(1) of the Act:

a. Floor trading activities by Competitive Traders;

b. Principal floor transactions in listed bonds;

c. Transactions in conformity with NYSE Rules 391 and 392; and

d. Proprietary transactions effected at the request of a duly authorized floor official to correct an order imbalance, and the liquidation of any position so acquired.

A proposed formulation which would effectuate the foregoing proposition might be cast in the following terms.

"A transaction on a national securities exchange by any "member" thereof, as such term is defined at section 3(a)(3)(A) of the Act, as amended, partaking in the nature of:

(1) Transactions executed on the floor or through the facilities of, an exchange, by a Competitive Trader registered as such with an exchange pursuant to a rule equivalent to NYSE Rule 111;

(2) Principal transactions in listed bonds engaged in to facilitate an order of a public customer;

(3) Transactions executed on the floor of an exchange in conformity with procedures equivalent to those set forth in NYSE Rule 391 or 392; and

(4) The liquidation of any position acquired by a member in proprietary transactions entered into at the request of a duly authorized floor official to correct an order imbalance

shall be deemed of a kind which is consistent with the purposes of section 11(a)(1) of the Act, the protection of investors, and the maintenance of fair and orderly "markets."

3. That the Commission clarify by an official Note, constituting a textual part of the foregoing rules, or by separate rule (pursuant also to section 3(b) of the Act) that:

a. The term "natural person," for purposes of section 11(a)(1)(E), includes a natural person who is a member of a national securities exchange; and

b. That transactions effected by specialists, in the specialty stocks, for their investment accounts are encompassed by the language "any transaction by a dealer acting in the capacity of a market maker" within the meaning and intendment of section 11(a)(1)(A) of the Act.

The Commission is respectfully referred to previous communications had under File No. S7-613. The staff of the Exchange would be most pleased to meet with members of the Commission or its designees.

Sincerely,

J. E. Buch.

[FR Doc. 78-7235 Filed 3-16-78; 8:45 am]

[1] Securities Exchange Act Releases No. 12055 (January 27, 1976) and 13388 (March 18, 1977).

[2] Rule 11a1-1(T).

[3] These initiatives include the Commission's proposal (Rule 11a1-2) that would tend to equate transactions for associated persons—whether for their own benefit or for that of their unaffiliated customers—with those for members. The recent experience of the Exchange has demonstrated that the absence of such a "look-through" provision has served as the major impediment to the "open access" espoused in Section 6(b)(2) of the Act by alienating likely and aspiring foreign (dominated) members and is of equal major and material concern

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