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highlights

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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
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DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
	CSC			CSC
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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.

NOTE: As of July 3, 1978, documents from the following agencies in the Department of Health, Education, and Welfare are no longer being assigned to the Tuesday/Friday schedule: Alcohol, Drug Abuse and Mental Health Administration (ADAMHA); Center for Disease Control (CDC); Health Resources Administration (HRA); Health Services Administration (HSA); National Institutes of Health (NIH); and Public Health Service (PHS).

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[3195-01]

Title 3—The President

Memorandum of June 30, 1978

Determination Under Section 202(b)(1) of the Trade Act; Stainless Steel Table Flatware

Memorandum for the Special Representative for Trade Negotiations

THE WHITE HOUSE,
Washington, June 30, 1978.

Pursuant to section 202(b)(1) of the Trade Act of 1974 (19 U.S.C. 2252(b)(1)), I have determined the action I will take with respect to the report of the United States International Trade Commission (USITC), transmitted to me on May 8, 1978, concerning the results of its investigation of a petition for import relief filed by the Stainless Steel Flatware Manufacturers Association, Washington, D.C., on behalf of the domestic industry producing knives, forks, spoons, and ladles, with stainless steel handles, provided for in items 650.08, 650.09, 650.10, 650.12, 650.38, 650.39, 650.40, 650.42, 650.54, 650.55, and, if included in sets, 651.75 of the Tariff Schedules of the United States.

After considering all relevant aspects of the case, including those considerations set forth in section 202(c) of the Tade Act of 1974, I have determined that provision of import relief is not in the national economic interest.

The imposition of import relief would not be an effective means to promote adjustment in the industry. The dominant firm in the domestic industry currently utilizes the most advanced manufacturing equipment and, along with a number of smaller firms, should remain profitable. Most major domestic producers of flatware currently rely on imports in a substantial and increasing degree to supplement the particular product lines in which they specialize and this trend is expected to continue. Import relief in the form of a tariff rate quota has been in effect for 13 out of the past 20 years in order to facilitate adjustment in this industry and additional relief would be inappropriate. Providing import relief again would be inconsistent with the internationally accepted concept that import relief in escape clause cases should be of a temporary nature.

Import relief would substantially increase costs to consumers, have an adverse impact on consumer demand, and discriminate against low-income purchasers. Consumer costs may increase even further if the moderating influence that low price imports have on the prices of domestically produced flatware is eliminated. In a time when we are striving to control inflation, these added costs are unacceptable.

Employment losses since 1975 have been small and many of the unemployed workers are currently receiving trade adjustment assistance benefits. The USITC estimates that overall domestic production of flatware should gradually increase even in the absence of relief and this should have a stabilizing effect on the number of jobs in the industry. Further, expedited consideration of adjustment assistance petitions from workers, firms, and communities

is still in effect as a result of the Presidential determination on the 1976 import relief case.

This determination is to be published in the FEDERAL REGISTER.

Jimmy Carter

[FR Doc. 78-19023 Filed 7-6-78; 11:07 am]

[3195-01]

Proclamation 4577 July 4, 1978

Quantitative Limitation On The Importation Of Certain Meat

By the President of the United States of America

A Proclamation

The Act of August 22, 1964 (78 Stat. 594; 19 U.S.C. 1202 note), provides for the limitation of certain meat imports if import estimates exceed 110 percent of an adjusted base quantity for that year. The limitation applies to fresh, chilled, or frozen cattle meat and fresh, chilled, or frozen meat of goats and sheep, except lamb.

On December 30, 1977, the Secretary of Agriculture determined (43 FR 987) in accord with Section 2(b)(1) of the Act that the adjusted base quantity of meat for the calendar year 1978 is 1,183.9 million pounds. The Secretary now has estimated (in the 1978 third quarterly estimate) that the aggregate imports of meat for 1978 will be 1,492.3 million pounds. This estimate exceeds 110 percent of the previously determined adjusted base quantity for 1978.

In accord with Section 2(c) of the Act, the President must limit the import of meat to the adjusted base quantity for 1978 of 1,183.9 million pounds, unless he increases or suspends that limitation pursuant to Section 2(d) of the Act.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, by the authority vested in me by Section 2 of the Act, do hereby proclaim as follows:

1. The total quantity of the articles specified in item 106.10 (relating to fresh, chilled, or frozen meat) and item 106.20 (relating to fresh, chilled, or frozen meat of goats and sheep (except lamb)) of part 2B, schedule 1 of the Tariff Schedules of the United States, which may be entered, or withdrawn from warehouse, for consumption during the calendar year 1978, is limited to 1,183.9 million pounds.

2. In accord with Section 2(d) of the Act, I determine that the supply of meat described in Paragraph 1 hereof will be inadequate to meet domestic demand at reasonable prices.

3. The limitation proclaimed in Paragraph 1 hereof is suspended during the period of calendar year 1978, which is the period that I determine to be necessary to carry out the purposes of Section 2(d) of the Act.

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

Jimmy Carter

[FR Doc. 78-19026 Filed 7-6-78; 11:09 am]

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.

[3410-02]

Title 7—Agriculture

CHAPTER I—AGRICULTURAL MARKETING SERVICE (STANDARDS, INSPECTIONS, MARKETING PRACTICES), DEPARTMENT OF AGRICULTURE

PART 27—COTTON CLASSIFICATION UNDER COTTON FUTURES LEGISLATION

Deferral of Effective Date for Removing Augusta, Georgia from List of Bona Fide Spot Cotton Markets

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule defers until August 1, 1979 the removal of Augusta, Ga. from the list of bona fide spot cotton markets in § 27.93 of the Regulations for Cotton Classification under Cotton Futures Legislation (7 CFR Part 27). The date for the removal of Augusta, currently scheduled for August 1, 1978, is deferred for 1 year to provide additional time to further evaluate the market information needs in the State of Georgia and to develop a responsive program to meet those needs.

EFFECTIVE DATE: August 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Loyd Frazier, Marketing Services Branch, Cotton Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-2147.

SUPPLEMENTARY INFORMATION: On October 25, 1977 the U.S. Department of Agriculture issued a rule to remove Augusta, Ga. from the list of bona fide spot cotton markets effective August 1, 1978. The U.S. Cotton Futures Act (90 Stat. 1841-46; 7 U.S.C. 15b) requires the Secretary of Agriculture to designate bona fide spot markets which may be used to establish settlement differences for futures contracts. The act directs the Secretary to designate only those markets in which cotton is sold in sufficient volume and under such conditions that accurately reflect the value of grades for which standards have been established. The decision to remove Augusta from the list of 10 bona fide spot markets on August 1, 1978 was made after evaluation of comments received in response to a notice of proposed rulemaking issued on August 26, 1977 and all other relevant information. It was determined that Augusta market no longer met the criteria of a bona fide spot market as contained in the act.

The decision to remove Augusta from the list of bona fide spot markets on August 1, 1978, prompted the Department to explore alternative means and methods to provide producers and the cotton industry with Georgia price information. In this connection a meeting was held by the Department in Macon, Ga. on March 24, 1978. The meeting was attended by 20 cotton industry leaders but no concensus was reached as to the best means of providing price information on Georgia cotton. Participants were invited to submit written proposals to the Department.

A review of proposals received in the Department verified the absence of a clear concensus as to the best course of action to take to provide adequate market coverage for cotton interests in Georgia and surrounding States. Therefore, the Department finds that additional time is needed to (1) further evaluate and determine the need for price information and market news in Georgia and (2) develop a market information program that will be effective, functional and responsive to the needs that are identified.

§ 27.93 [Amended]

Accordingly, § 27.93 of the regulations (7 CFR 27.93) governing cotton classification under cotton futures legislation is amended to defer the removal of Augusta, Ga. from the list of bona fide spot cotton markets until August 1, 1979.

Dated: July 3, 1978.

WILLIAM T. MANLEY,
Acting Administrator.

[FR Doc. 78-18796 Filed 7-6-78; 8:45 am]

[1505-01]

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—CHILD NUTRITION PROGRAMS

PART 230—FOOD SERVICE EQUIPMENT ASSISTANCE PROGRAMS

Appendix—Second Apportionment of Food Service Equipment Assistance Funds Pursuant to Child Nutrition Act of 1966, for Fiscal Year 1978

Correction

In FR Doc. 78-16041 appearing at page 25134 in the issue for Friday, June 9, 1978; on page 25135, first column, in the table, "North Carolina" should read "North Dakota".

[Amdt. No. 2]

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment postpones until September 30, 1978 the final date by which certain provisions of the regulations governing State and local agency food delivery systems become effective. The Department is postponing the effective date because several States have indicated inability to meet the compliance deadline and because Congress is currently considering a waiver of State compliance.

DATE: This amendment becomes effective on July 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Jennifer R. Nelson, Acting Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8206.

SUPPLEMENTAL INFORMATION: On August 26, 1977, regulations for the Special Supplemental Food Program for Women, Infants and Children (WIC Program) were published in the FEDERAL REGISTER (42 FR 43205; 7 CFR Part 246). Section 246.10 of these regulations set forth design and operating requirements for State and local agency food delivery systems. The requirements of this section were to be implemented by July 26, 1978. Amendment number 1 to the regulations which was published in the FEDERAL REGISTER on June 2, 1978 (43 FR 23983), clarified these requirements.

In writing section 246.10, the Department believed it was the intent of Congress to assure that WIC participants receive the full WIC food package prescribed for them by making the prescription foods available free to participants, and that it was also Congressional intent to require strict Program accountability. To accomplish that intent, State and local agency food delivery systems were required to be structured to ensure that participants receive WIC foods free and to prohibit grocers from being reimbursed more than the actual purchase price of the supplemental foods. Uniformity of food delivery systems within the jurisdiction of the State and reconciliation of food instruments were required to improve State agency control of Program obligations and expenditures. Without these accountability provisions, funds, which could be used to serve additional participants, remain obligated in order to cover the full value of food instruments even though the full value of the food instruments was not used.

There is currently a legislative proposal before the Congress related to the extension of WIC Program authorization which would release one State from compliance with section 246.10 of the WIC Regulations. In addition, several other States have indicated inability to meet the July 26 deadline established for compliance. In order to allow time for Congressional consideration of the issues involved in a waiver and to provide cooperating agencies with additional time in which to make the required operational changes, the Department is postponing the effective date for implementation of the provisions of section 246.10 until September 30, 1978. Since WIC legislation expires on that date it is not possible to extend that date further at this time. However, if new legislation is passed, it is the Department's intention to publish regulations which would give the Secretary authority to grant extensions to States presenting a reasonable schedule for final compliance.

Because the effective date for implementing section 246.10 is almost at hand, it is impracticable and contrary to the public interest to issue this rule, postponing the effective date, as a proposed rule.

Therefore the Regulations are amended as follows: 7 CFR 246.10 part (a), as amended, is hereby amended by deleting the July 26, 1978, effective date for State and local agencies to implement the provisions of that section, and inserting September 30, 1978, in lieu thereof.

(Catalog of Federal Domestic Assistance, Program No. 10557).

Dated: June 30, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 78-18733 Filed 7-6-78; 8:45 am]

[3410-30]

[Amdt. No. 133]

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

Food Stamp Program; Adding Wisconsin as an SSI Cash-Out State

AGENCY: Food and Nutrition Service.

ACTION: Final rulemaking.

SUMMARY: States are currently permitted to provide the bonus value of food coupons to Supplemental Security Income (SSI) recipients by increasing their cash payment grant. This rule adds the State of Wisconsin as an SSI cash-out State effective July 1, 1978. To be considered an SSI cash-out State, the Secretary of Health, Education, and Welfare (HEW) must determine that the State's supplement to SSI benefits includes the bonus value of food coupons.

EFFECTIVE DATE: July 1, 1978.

FOR FURTHER INFORMATION CONTACT:

William R. Tlucek, Chief, State Agency Operations Branch, Family Nutrition Programs, 500 12th Street SW., Washington, D.C. 20250, 202-447-8360.

SUPPLEMENTARY INFORMATION: Pub. L. 93-233, as amended, permits States to provide the bonus value of food coupons to SSI recipients by increasing their cash payment grant. In accordance with this law, the Secretary of HEW has determined that effective July 1, 1978, Wisconsin will cash-out the bonus value of food coupons to its SSI recipients by increasing the State's supplemental payment. This rulemaking revises § 271.10(c) accordingly.

Because this rulemaking is done in compliance with the determination of the Secretary of Health, Education, and Welfare, and is based on a statutory requirement, the Department has determined that proposed rulemaking is unnecessary and not in the public interest.

Accordingly, Chapter II, Title 7, Code of Federal Regulations is amended as follows: Section 271.10(c)(1)(i) is revised; (c)(1)(ii) is amended by adding "Wisconsin" to the first sentence as follows:

§ 271.10 Eligibility and certification of supplemental security income recipients.

* * * * *

(c) *Food Stamp Eligibility of SSI recipients*—(1) *Ineligible SSI recipients.* (i) No SSI recipient shall be considered a household member or an elderly person for food stamp program purposes if he or she resides in the States of California, Massachusetts, or Wisconsin. The Secretary of Health, Education, and Welfare has determined that California, Massachusetts, and Wisconsin qualify as cash-out States pursuant to the provisions in Pub. L. 93-233, as amended.

(ii) In California, Massachusetts, and Wisconsin, * * *

* * * * *

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

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

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps.)

Dated: June 27, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 78-18566 Filed 7-6-78; 8:45 am]

[3410-02]

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

[Lemon Reg. 153]

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 July 9-15, 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: July 9, 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 July 3, 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 continues strong.

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.

§ 910.453 Lemon Regulation 153.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period July 9, 1978 through July 15, 1978, is established at 300,000 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: July 5, 1978.

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

[FR Doc. 78-18922 Filed 7-6-78; 8:45 am]

[3410-02]

[Nectarine Reg. 10, Amdt. 1]

PART 916—NECTARINES GROWN IN CALIFORNIA

Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment continues through May 31, 1979, the current minimum grade and size requirements for shipments of fresh California nectarines. The amendment takes into consideration the marketing situation facing the California nectarine industry, and is necessary to assure that shipments of nectarines will be of suitable quality and size in the interest of consumers and producers.

EFFECTIVE DATES: July 16, 1978, through May 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Nectarine Regulation 10 was published in the FEDERAL REGISTER on May 11, 1978 (43 FR 20218). On May 26, 1978, a proposal was issued (43 FR 22726) to extend the regulatory provisions through May 31, 1979. The notice allowed interested persons until June 27, 1978, to submit written comments pertaining to the proposed amendment. No such material was submitted.

The proposal was recommended by the Nectarine Administrative Committee established under the marketing agreement, as amended, and Order No. 916, as amended (7 CFR Part 916). This marketing agreement and order regulates the handling of nectarines grown in California and is effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

After consideration of all relevant matter presented, including the proposals in the notice and other available information, it is hereby found that the following amendment is in accordance with this marketing agreement and order and will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of nectarines are currently in progress and this amendment should be applicable to all such nectarine shipments in order to effectuate the declared policy of the act; (2) the amendment is the same as that specified in the notice to which no exceptions were filed; (3) the regulatory provisions are the same as those currently in effect; and (4) compliance with this amendment will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

Order. The provisions of Nectarine Regulation 10 (§ 916.352; 43 FR 20218) are revised to read as follows:

§ 916.352 Nectarine Regulation 10.

Order. (a) During the period July 16, 1978, through May 31, 1979, no handler shall handle:

(1) Any package or container of any variety of nectarines unless such nectarines grade at least U.S. No. 1. *Provided,* That nectarines 2 inches in diameter or smaller, shall not have fairly light colored, fairly smooth scars which exceed the aggregate area of a circle ⅜ inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle ½ inch in diameter: *Provided further,* That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen.

(2) Any package or container of Mayred variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 112 nectarines in the lug box;

(ii) Such nectarines in any container when packed other than as specified in subdivision (i) of this subparagraph (2) are of a size that a 16 pound sample, representative of the nectarines in the package or container, contains not more than 105 nectarines.

(3) Any package or container of Mayfair variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 108 nectarines in the lug box;

(ii) Such nectarines in any container when packed other than as specified in subdivision (i) of this subparagraph (3) are of a size that a 16 pound sample, representative of the nectarines in the package or container, contains not more than 102 nectarines.

(4) Any package or container of Crimson, Gold, June Belle, June Grand, May Grand, Red June, Spring Grand, Armking, Zee Gold, Apache, Spring Red, Red King, Early Sun-

grand, Independence, Moon Grand, Star Grand I, Star Grand II, Summer Grand, Sun Grand, Kent Grand, Early Star, Firebrite, or Red Diamond variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the lug box; or

(ii) Such nectarines in any container when packed other than as specified in subdivision (i) of this subparagraph (4) are of a size that a 16 pound sample, representative of the nectarines in the package or container, contains not more than 90 nectarines.

(5) Any package or container of Autumn Grand, Clinton-Strawberry, Fantasia, Flamekist, Flavortop, Gold King, Granderli, Grand Prize, Harry Grand, Hi-Red, Late Le Grand, Le Grand, Niagara Grand, Red Grand, Regal Grand, Richards Grand, Royal Grand, September Grand, Fairlane, Red Free, Bob Grand, Tom Grand, or Kings Kanyon variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the lug box; or

(ii) Such nectarines in any container when packed other than as specified in subdivision (i) of this subparagraph (5) are of a size that a 16 pound sample, representative of the nectarines in the package or container, contains not more than 78 nectarines.

(b) As used herein, "U.S. No. 1" and "standard pack" mean the same as defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145-51.3160): "No. 22D standard lug box" means the same as defined in section 1387.11 of the "Regulations of the California Department of Food and Agriculture", and all other terms mean the same as defined in the marketing order.

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

Dated July 3, 1978, to become effective July 16, 1978.

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

[FR Doc. 78-18797 Filed 7-6-78; 8:45 am]

[3410-02]

PART 948—IRISH POTATOES GROWN IN COLORADO—AREA NO. 3

Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation requires fresh market shipments of potatoes grown in Colorado—Area No. 3 to be inspected and meet minimum grade, size and maturity requirements. The regulation should promote orderly marketing of such potatoes and keep less desirable qualities and sizes from being shipped to consumers.

EFFECTIVE DATE: July 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-6393.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 97 and Order No. 948, both as amended, regulate the handling of potatoes grown in designated counties of Colorado Area No. 3. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The Colorado Area No. 3 Potato Committee, established under the order, is responsible for its local administration.

Notice of proposed rulemaking was published in the June 6, 1978, FEDERAL REGISTER (43 FR 24846) inviting comments by June 23, 1978. None was received.

This regulation is based upon recommendations made by the committee at its public meeting in Greely, Colo., on May 17, 1978.

The grade, size, maturity and inspection requirements specified herein are similar to those issued during past seasons. They are necessary to prevent potatoes of low quality or less desirable sizes from being distributed to fresh market outlets. They will benefit consumers and producers by standardizing and improving the quality of the potatoes shipped from the production area.

Exceptions are provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable.

Shipments are permitted to certain special purpose outlets without regard to the grade, size, maturity and inspection requirements, provided that safeguards are met to prevent such potatoes from reaching unauthorized outlets. Certified seed is exempt because requirements for this outlet differ greatly from those for fresh market. Shipments for use as livestock feed likewise are exempt. Since no purpose would be served by regulating potatoes used for charity purposes, such shipments are likewise exempt. Also potatoes for most processing uses are exempt under the legislative authority for this part.

Potatoes for prepeeling may be handled without regard to maturity requirements since skinning of such potatoes is of no consequence. Also, this year the maturity requirements terminate on December 31, 1978, because at that stage of the marketing season potatoes are generally mature with skins firmly set.

Findings. After consideration of all relevant matter presented, including the proposal set forth in the aforesaid notice which was recommended by the Colorado Area No. 3 Potato Committee, established pursuant to said marketing agreement and order, it is hereby found that the handling regulation, as hereinafter set forth, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after its publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of potatoes grown in the production area will begin on or about the effective date specified herein, (2) to maximize benefits to producers, this regulation should apply to as many shipments as possible during the marketing season, and (3) compliance with this regulation, which is similar to that in effect during previous marketing seasons, will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective date hereof.

The regulation is as follows:

§ 948.379 Handling regulation.

During the effective date hereof through June 30, 1979, no person shall handle any lot of potatoes grown in Area No. 3 unless such potatoes meet the requirements of paragraphs (a), (b), and (c) of this section, or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section.

(a) *Grade and size requirements—all varieties.* U.S. No. 2 or better grade, 1⅞ inches minimum diameter or 4 ounces minimum weight. However, Size B may be handled if U.S. No. 1 or better grade.

(b) *Maturity (skinning) requirements—all varieties.* Through December 31, 1978, for U.S. No. 2 grade, not more than "moderately skinned," and for all other grades, not more than "slightly skinned"; thereafter no maturity requirements.

(c) *Inspection.* (1) No handler shall handle any potatoes for which inspection is required unless an appropriate inspection certificate has been issued with respect thereto and the certificate is valid at the time of shipment. For purpose of operation under this part it is hereby determined pursuant to paragraph (d) of § 948.40, that each inspection certificate shall be valid for a period not to exceed 5 days following

the date of inspection as shown on the inspection certificate.

(2) No handler may transport or cause the transportation by motor vehicle of any shipment of potatoes for which an inspection certificate is required unless each shipment is accompanied by a copy of the inspection certificate applicable thereto and the copy is made available for examination at any time upon request.

(d) *Special purpose shipments.* (1) The grade, size, maturity and inspection requirements of paragraphs (a), (b), and (c) of this section shall not be applicable to shipments of potatoes for:

(i) Livestock feed;

(ii) Charity;

(iii) Canning, freezing, and "other processing" as hereinafter defined; and

(iv) Certified seed potatoes (§ 948.6).

(2) The maturity requirements set forth in paragraph (b) of this section shall not be applicable to shipments of potatoes for prepeeling.

(e) *Safeguards.* Each handler making shipments of potatoes pursuant to paragraph (d) of this section shall:

(1) Prior to shipment, apply for and obtain a Certificate of Privilege from the committee;

(2) Furnish the committee such reports and documents as required, including certification by the buyer or receiver on the use of such potatoes; and

(3) Bill each shipment directly to the applicable buyer or receiver.

(f) *Minimum quantity.* For purposes of regulation under this part, each person may handle up to but not to exceed 1,000 pounds of potatoes per day without regard to the requirements of paragraphs (a) and (b) of this section, but this exception shall not apply to any shipment of over 1,000 pounds of potatoes.

(g) *Definitions.* The terms "U.S. No. 1," "U.S. No. 2," "Size B," "moderately skinned" and "slightly skinned" shall have the same meaning as when used in the United States Standards for Grades of Potatoes (7 CFR 2851.1540-2851.1566) including the tolerances set forth therein. The term "prepeeling" means the commercial preparation in a prepeeling plant of clean, sound, fresh potatoes by washing, peeling or otherwise removing the outer skin, trimming, sorting, and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 2852.2422 United States Standards for Grades of Peeled Potatoes (7 CFR 2852.2421-2852.2433). The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing." All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 97, as amended, and this part.

(h) *Applicability to imports.* Pursuant to § 8e of the act and § 980.1, "Import regulations" (7 CFR 980.1), round white varieties of Irish potatoes, except certified seed potatoes, imported into the United States during the period August 1, 1978, through June 4, 1979, shall meet the minimum grade, size, quality, and maturity requirements specified in paragraphs (a) and (b) of this section.

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

Dated July 3, 1978 to become effective July 10, 1978.

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

[FR Doc. 78-18798 Filed 7-6-78; 8:45 am]

[3410-05]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—1978 Crop Farm Stored Flue-Cured Tobacco Loan Supplement

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule announces the loan rates, availability, and maturity dates for loans on 1978 crop Flue-cured tobacco stored on farms. Under this rule, price support loans will be made available to eligible producers of Flue-cured tobacco stored on farms. This rule is necessary because market facilities for Flue-cured tobacco at times become crowded delaying producers' opportunity to sell such tobacco or to obtain price support through cooperative marketing associations.

EFFECTIVE DATE: July 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Dalton Ustynik (ASCS), 202-447-6611, P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: On Tuesday, March 21, 1978, a notice of proposed rulemaking was published in the FEDERAL REGISTER (43 FR 11707) stating that the Secretary of Agriculture was preparing to establish the support level for the 1978 crop of each eligible kind of tobacco and that no substantive changes were contemplated in the method of supporting tobacco or in the price support regulations appearing at 7 CFR Part 1464. The public was invited to comment on the proposed rule; Seven comments were received.

DISCUSSION OF COMMENTS

Five commenters favored continuation of the tobacco price support program without substantive change; two commenters opposed any price support for tobacco. The Secretary of Agriculture, however, is required by Federal law to make price support available to eligible producers of tobacco.

After considering all responses, the Secretary has determined that farm stored loans for Flue-cured tobacco will be continued at approximately 75 percent of the average level of support for Flue-cured tobacco. These regulations are issued without substantive change.

FINAL RULE

The general regulations governing price support for the 1978 and subsequent crops, and the Subpart—1972 and Subsequent Crops Flue-cured Tobacco Farm-Stored Loan Program Regulations, published at 37 FR 16931, are further supplemented for the 1978 crop of Flue-cured tobacco by revising 7 CFR, §§ 1421.420 through 1421.425 and the title of the subpart to read as follows:

Subpart—1978 Crop Farm Stored Flue-Cured Tobacco Loan Supplement

Sec.

1421.420 Availability.
1421.421 Farm storage interim loan rate.
1421.422 Rate of interest.
1421.423 Liquidation of loans.
1421.424 Delivery charge.
1421.425 Maturity of loans.

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101, 106, 401, 403, 63 Stat. 6 (7 U.S.C. 1441, 1445, 1421, and 1423).

Subpart—1978 Crop Farm Stored Flue-Cured Tobacco Loan Supplement

§ 1421.420 Availability.

Producers may obtain farm storage loans on their eligible Flue-cured tobacco stored in Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia. To do so, they must request such loans at the local county

ASCS office not later than November 1, 1978.

§ 1421.421 Farm storage interim loan rate.

The loan rate will be 91 cents per pound for regular varieties or 46 cents per pound for discount varieties on the quantity of eligible tobacco offered as security for such loans. Producers must certify that the grade of the variety of the tobacco offered is equal to or better than the average grade of a normal crop. If a producer certifies that the grade is below such average quality, the loan rate shall be 15 cents less than the loan rate which would otherwise apply.

§ 1421.422 Rate of interest.

Loans shall bear interest at the rate announced in a separate notice published in the FEDERAL REGISTER.

§ 1421.423 Liquidation of loans.

(a) Section 1421.19 of the general regulations (liquidation of farm storage loans) shall not apply to this program. Loans shall be liquidated by one of the following methods, at the producer's option: (1) Repayment of the principal, plus interest, on or before maturity to the county office which approved the loan. Repayment may be made by the producer, by the buyer, or by the marketing recorder when the tobacco securing the loan is sold. (2) Delivery of the tobacco as directed by CCC. Producers shall deliver to a cooperative association designated by CCC a quantity of Flue-cured tobacco eligible for price support having a settlement value equal to the outstanding principal balance of the loan. Delivery shall be made during the week beginning immediately after the close of the 1978 auction marketing season.

(b) The association will advise producers of the time and place at which the tobacco is to be delivered in liquidation of farm storge loans. The association will also determine the settlement value of tobacco delivered on the basis of the grade and quality thereof as determined by the inspection service of the Agricultural Marketing Service, USDA.

§ 1421.424 Delivery charge.

Notwithstanding the provisions of 1421.11 of the general regulations, there shall be no delivery charge on the tobacco delivered to the association.

§ 1421.425 Maturity of loans.

Farms storage loans on Flue-cured tobacco will mature on December 1, 1978, unless demand for repayment is made earlier.

Signed at Washington, D.C., on June 29, 1978.

STEWART N. SMITH,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 78-18734 Filed 7-6-78; 8:45 am]

[3410-37]

Title 9—Animals and Animal Products

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

SUBCHAPTER A—MANDATORY MEAT INSPECTION

PART 312—OFFICIAL MARKS, DEVICES, AND CERTIFICATES

PART 316—MARKING PRODUCTS AND THEIR CONTAINERS

Amendments to the Regulations Concerning "U.S. Retained" Tags and the Marking of Outside Containers of Condemned Livers

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rules.

SUMMARY: This document makes minor, nonsubstantive changes in the Federal meat inspection regulations. One change deletes an obsolete description of "U.S. Retained" tags. The other amendment corrects references to a regulation previously amended concerning condemned livers.

EFFECTIVE DATE: July 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. J. P. Lyons, Chief Staff Officer, Inspection Standards and Regulations Staff, Technical Services, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3219.

SUPPLEMENTARY INFORMATION: Program inspectors use the "U.S. Retained" tag (MP Form 427) to temporarily control seized carcasses and parts on slaughter floors. The form is a set of tags that separates into four individual tags each bearing an identical serial number. The individual tags are attached to the head, viscera, and each half of the retained carcass to maintain the related identity until a disposition is made. Each tag is prominently identified by the words "U.S. Retained" so that plant employees know the significance of it when it is attached to a carcass. Physical description of the full set of tags in the Code of Federal Regulations is unnecessary. Moreover, the current description, in the Federal meat inspection regulations, is obsolete. Rather than updating the description, the Administrator is deleting it to avoid amendments to the regulations each time the "U.S. Retained" tag (MP Form 427) is changed.

On June 11, 1976, § 314.10 of the meat inspection regulations regarding the condemnation of livers was amended (41 FR 23701). However, the citations contained in § 316.13(h) regarding the marking of outside containers of livers and referring to the regulation that was amended, were overlooked. This document corrects those citations to correspond with § 314.10, as amended.

Accordingly, the Federal meat inspection regulations (9 CFR 301.1 et seq.) are amended as follows:

§ 312.6 [Amended]

1. Section 312.6(a)(1) is amended by deleting the last sentence.

2. Section 316.13(h) is amended to read as follows:

§ 316.13 Marking of outside containers.

* * * * *

(h) The outside containers of livers prepared as described in § 314.10(b) shall be marked as prescribed in § 314.10(c) of this subchapter.

* * * * *

(Sec. 21, 34 Stat. 1260, as amended, 21 U.S.C. 621; 42 FR 35625, 35631.)

These amendments make minor alterations in the regulations. They do not create, alter, or revoke any rights or duties.

Accordingly, it is found upon good cause, under the administrative procedure provisions in 5 U.S.C. 553, that notice and other public procedure with respect to these amendments are unnecessary. And good cause is found for making these amendments effective July 7, 1978.

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: June 28, 1978.

ROBERT ANGELOTTI,
Administrator, Food Safety and Quality Service.

[FR Doc. 78-18865 Filed 7-6-78; 8:45 am]

[3410-37]

PART 331—SPECIAL PROVISIONS FOR DESIGNATED STATES AND TERRITORIES; AND FOR DESIGNATION OF ESTABLISHMENTS WHICH ENDANGER PUBLIC HEALTH AND FOR SUCH DESIGNATED ESTABLISHMENTS

SUBCHAPTER C—MANDATORY POULTRY PRODUCTS INSPECTION

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

Designation of the State of New Hampshire

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: The Secretary of Agriculture hereby designates the State of New Hampshire as required under section 301(c)(3) of the Federal Meat Inspection Act and section 5(c)(3) of the Poultry Products Inspection Act. Representatives of the Governor of New Hampshire have advised this Department that the State of New Hampshire is no longer in a position to continue administering the State meat and poultry inspection programs after June 30, 1978. Accordingly, effective August 6, 1978, all establishments operating under the New Hampshire meat or poultry inspection programs shall be subject to the provisions of titles I and IV of the Federal Meat Inspection Act and sections 1-4, 6-10, and 12-22 of the Poultry Products Inspection Act.

EFFECTIVE DATE OF THIS DOCUMENT: July 7, 1978.

FOR ADDITIONAL INFORMATION CONTACT:

Dr. J. K. Payne, Director, Federal-State Relations Staff, Field Operations, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-6313.

SUPPLEMENTARY INFORMATION: Representatives of the Governor of the State of New Hampshire have advised this Department that the State of New Hampshire is no longer in a position to continue administering the State meat inspection program after June 30, 1978, and have requested the Department to assume the responsibility for carrying out the provisions of titles I and IV of the Federal Meat Inspection Act, with respect to establishments within the State at which cattle, sheep, swine, goats, or equines are slaughtered or their carcasses, or parts or products thereof, are prepared for use as human food, solely for distribution within such State, and with respect to intrastate operations and transactions concerning meat products and other articles and animals subject to the Federal Meat Inspection Act, and persons, firms, and corporations engaged therein.

Also, representatives of the Governor of the State of New Hampshire have advised this Department that the State of New Hampshire is no longer in a position to continue administering the State poultry inspection program after June 30, 1978, and have requested the Department to assume the responsibility for carrying out the provisions of sections 1-4, 6-10, and 12-22 of the Poultry Products Inspection Act with respect to establishments within the State at which poultry are slaughtered or poultry products are processed for use as human food, solely for distribution within such State, and with respect to intrastate operations and transactions concerning products and other articles and animals subject to the Poultry Products Inspection Act, and persons, firms, and corporations engaged therein.

The Secretary heretofore determined that the State of New Hampshire had developed and activated requirements at least equal to the requirements under titles I and IV of the Federal Meat Inspection Act and sections 1-4, 6-10, and 12-22 of the Poultry Products Inspection Act. However, such titles and sections contemplate continuous, ongoing programs, and in view of the termination date now applicable to the New Hampshire programs, it is hereby determined that New Hampshire is not effectively enforcing requirements at least equal to those imposed under titles I and IV of the Federal Meat Inspection Act and sections 1-4, 6-10, and 12-22 of the Poultry Products Inspection Act. Therefore, notice is hereby given that the Secretary of Agriculture designates said State under section 301(c)(3) of the Federal Meat Inspection Act and section 5(c)(3) of the Poultry Products Inspection Act.

On August 6, 1978, the provisions of titles I and IV of the Federal Meat Inspection Act shall apply to intrastate operations and transactions in said State and to persons, firms, and corporations engaged therein, to the same extent and in the same manner as if such operations and transactions were conducted in or for "commerce," within the meaning of the Federal Meat Inspection Act, and any establishment in the State of New Hampshire which conducts any slaughtering or preparation of carcasses or parts or products thereof of cattle, sheep, swine, goats, horses, mules, or other equines, must have Federal inspection or cease its operations, unless it qualifies for an exemption under section 23(a) or 301(c) of the Federal Meat Inspection Act.

Also, on August 6, 1978, the provisions of sections 1-4, 6-10, and 12-22 of the Poultry Products Inspection Act shall apply to intrastate operations and transactions in said State and to persons, firms, and corporations engaged therein, to the same extent and in the same manner as if such operations and transactions were conducted in or for "commerce," within the meaning of the Poultry Products Inspection Act, and any establishment in the State of New Hampshire which conducts any slaughtering or processing of poultry or poultry products must have Federal inspection or cease its operations, unless it qualifies for an exemption under section 15 or 5(c)(2) of the Poultry Products Inspection Act.

Therefore, the operator of each such establishment who desires to continue any such operations after June 30, 1978, should immediately communicate with the Regional Director for Meat and Poultry Inspection, as listed below, for information concerning the requirements and exemptions under the Acts and application for inspection and survey of the establishment:

Dr. M. J. Hatter, Director, Meat and Poultry Inspection Program, Northeastern Region, Seventh Floor, 1421 Cherry Street, Philadelphia, Pa. 19102, telephone 215-597-4219.

§ 331.2 [Amended]

Accordingly, the table in § 331.2 of the Federal meat inspection regulations (9 CFR 331.2) is amended as follows:

1. In the "State" column, "New Hampshire" is added immediately below "Nevada."

2. In the "Effective date of application of Federal provisions" column, "August 6, 1978," is added on the line with "New Hampshire."

(Secs. 21 and 301(c), 34 Stat. 1260, as amended; 21 U.S.C. 621, 661(c); 42 FR 35625-35632.)

§ 381.221 [Amended]

Further, the table in § 381.221 of the poultry products inspection regulations (9 CFR 381.221) is amended as follows:

1. In the "State" column, "New Hampshire" is added immediately below "Nevada."

2. In the "Effective date of application of Federal provisions" column, "August 6, 1978," is added on the line with "New Hampshire."

(Secs. 5(c) and 14, 71 Stat. 441, as amended; 21 U.S.C. 454(c), 463; 42 FR 35625-35632.)

These amendments of the Federal meat inspection regulations and the poultry products inspection regulations are necessary to reflect the determination of the Secretary of Agriculture under section 301(c) of the Federal Meat Inspection Act and sec-

tion 5(c) of the Poultry Products Inspection Act. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Secretary. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public procedure is impracticable and unnecessary.

Done at Washington, D.C., on: June 30, 1978.

ROBERT ANGELOTTI,
Administrator, Food Safety and Quality Service.

[FR Doc. 78-18861 Filed 7-6-78; 8:45 am]

[7590-01]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

Clarifying Amendments

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: When § 20.103 of the Commission's Standards For Protection Against Radiation was amended recently the amendments did not indicate that radon-222 and its daughters may be averaged over 1 year, as specified in footnote 3 to appendix B of the Standards for Protection Against Radiation. This is clarified by the amendments set forth below. Minor editorial changes also are made.

EFFECTIVE DATE: July 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Stephen A. McGuire, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, phone 301-443-6920.

SUPPLEMENTARY INFORMATION: When § 20.103 of Part 20 was amended recently the amendments did not indicate that exposure to radon-222 and its daughters may be averaged over one year, as specified in footnote 3 to appendix B in Part 20. This is clarified by the amendments set forth below.

The following sentence is added as the first sentence in footnote 2 of § 20.103.

For radon-222, the limiting quantity is that inhaled in a period of one calendar year. * * *

In the final sentence of footnote 2, the word "materials" is changed to "nuclides".

The following sentence is added to footnote 3 of § 20.103:

* * * Multiply the concentration value specified in appendix B, table I, column 1, by 2.5×10^9 ml to obtain the annual quantity limit for Rn-222.

In § 20.405(a) the words "exposure of persons" are changed to "exposure of individuals".

Because these amendments relate solely to minor matters, the Commission has found that good cause exists for omitting notice of proposed rule making, and public procedure thereon, as unnecessary, and for making the amendments effective on July 7, 1978.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 20 are published as a document subject to codification.

§ 20.103 [Amended]

1. Footnotes 2 and 3 of § 20.103 of 10 CFR Part 20 are revised to read as follows:

[2]For radon-222, the limiting quantity is that inhaled in a period of one calendar year. For radioactive materials designated "Sub" in the "Isotope" column of the table, the concentration value specified is based upon exposure to the material as an external radiation source. Individual exposures to these materials may be accounted for as part of the limitation on individual dose in § 20.101. These nuclides shall be subject to the precautionary procedures required by § 20.103(b)(1).

[3]Multiply the concentration values specified in appendix B, table I, column 1, by 6.3×10^8 ml to obtain the quarterly quantity limit. Multiply the concentration value specified in appendix B, table I, column 1, by 2.5×10^9 ml to obtain the annual quantity limit for Rn-222.

§ 20.405 [Amended]

2. Paragraph 20.405(a) is amended by deleting the words "exposure of persons" and substituting therefor "exposure of individuals".

(Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); Sec. 201, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841).)

Dated at Bethesda, Md., this 23d day of June 1978.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

[FR Doc. 78-18737 Filed 7-6-78; 8:45 am]

[7535-01]

Title 12—Banks and Banking

CHAPTER VII—NATIONAL CREDIT UNION ADMINISTRATION

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

PART 721—INCIDENTAL POWERS

Share Accounts and Share Certificate Accounts; Incidental Powers

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: This rule removes the dividend ceiling on share certificates of $100,000 or more, and authorizes Federal credit unions to establish special share certificate programs for retirement accounts. The increases authorities will enable Federal credit unions to continue their operations without disruptions during credit contractions involving rising short-term interest rates.

SUMMARY: This rule removes the dividend ceiling on share certificates of $100,000 or more, and authorizes Federal credit unions to establish special share certificate programs for retirement accounts.

EFFECTIVE DATE: July 7, 1978.

ADDRESS: National Credit Union Administration, 2025 M Street NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT:

J. Leonard Skiles, Deputy General Counsel, at the above address, 202-632-4870.

SUPPLEMENTARY INFORMATION: To enable credit unions to continue their operations without disruption during credit contractions involving rising short-term interest rates, the National Credit Union Administration is amending its regulations governing share certificate accounts.

This amendment enables Federal credit unions to offer: (1) Special share certificates for IRA and Keogh accounts at a maximum dividend rate of 8 percent; and (2) share certificates with principal amounts of $100,000 or more at dividend rates determined by money market conditions. However, no Federal credit union may pay or declare dividends in excess of the maximum dividend rates set forth in article XIV, section 2 of its bylaws. Accordingly, the authority granted by these amendments is contingent upon an appropriate amendment to that section.

In utilizing these share certificates, credit unions are urged to consider the

needs of borrowers as well as savers and to consider the earnings limitations imposed by the one percent per month loan rate ceiling.

The National Credit Union Administration's decision to provide greater flexibility for Federal credit unions offering share certificates was taken, after consultation with the Board of Governors of the Federal Reserve System, the Department of the Treasury, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Federal Home Loan Bank Board, in order to increase returns for members by authorizing dividend rates paid on share certificates that are competitive with interest rates available in the market on instruments possessing similar characteristics. Creation of the new share certificate categories at this time should increase the flow of mortgage credit and assist the housing market. In order to facilitate the achievement of these objectives as rapidly as possible, the National Credit Union Administration finds that application of the notice and public participation provisions of 5 U.S.C. Section 553 would be contrary to the public interest and that good cause exists for making the amendments effective in less than 30 days.

Accordingly, 12 CFR 701.35 (b)(2) and (g) and 721.4(a) are amended as set forth below.

LAWRENCE CONNELL,
Administrator.

JUNE 28, 1978.

(Sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and Sec. 209, 84 Stat. 1104 (12 U.S.C. 1789.)

1. In § 701.35, paragraphs (b)(2) and (g) are amended to read as follows.

§ 701.35 Share accounts and share certificate accounts.

* * * * *

(b) * * *

(2) Share acounts and share certificate accounts offered shall be made available to all members on an equal basis. Special share certificate accounts may be established for funds deposited to the credit of, or in which the entire beneficial interest is held by, an individual pursuant to an Individual Retirement Account agreement or Keogh Plan as provided for by § 721.4. Such special share certificate accounts shall be made available on an equal basis to all members who qualify. No officer, director, member of the credit or supervisory committees, employee, or other official appointed or elected, shall be the holder of a share account or any type of share certificate account unless all qualifying members of the credit union are given an equal opportunity to become holders of such accounts.

* * * * *

(g) Maximum Dividend Rates—A Federal credit union may pay a maximum dividend, expressed as an annual rate, as follows:

(1) 7 percent on a share account;

(2) 7¾ percent on a share certificate account except as provided for below;

(3) 8 percent on a share certificate account which represents an investment of retirement account funds pursuant to § 721.4; or

(4) a rate determined by money market conditions on a share certificate account of $100,000 or more.

§ 721.4 [Amended]

2. In § 721.4 Trustees and custodians of pension plans, the first sentence of paragraph (a) is amended by deleting the word "solely" and by inserting the language "or share certificate accounts" after "share accounts".

[FR Doc 78-18732 filed 7-6-78; 8:45 am]

[8025-01]

Title 13—Business Aid and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Revision 6, Amendment 18]

PART 120—BUSINESS LOAN POLICY

Eligibility Illegal and Related Activities

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule adopts, as revised, a proposed regulation, published on December 21, 1977 (42 FR 63898), to make illegal and related business activities ineligible for financial assistance. The reason for this rule is to clarify SBA's position with respect to applications from businesses of this kind. The intended effect is to prohibit SBA financing which would be inconsistent with the public interest.

EFFECTIVE DATE: The amendment will be effective on July 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Evelyn Cherry, Chief, Special Projects Division, Office of Financing, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416, telephone: 202-653-6696.

SUPPLEMENTARY INFORMATION: Only two comments were received. One such comment pointed out that the question of eligibility poses a difficult judgmental problem where a product or service is equally capable of legal and illegal use. SBA is aware of this difficulty, and has modified the language of the regulation to reflect that an ineligible applicant must be substantially engaged in providing products or services used in connection with an illegal activity.

The other comment recommended that ineligibility be based on a past record of illegal activity, and that a loan be declared immediately payable if the borrower is convicted of an illegal business activity. SBA does not deem a past record of illegal activity as evidence of present illegal activity, and does not believe that repayment of a loan, following conviction, is sufficient to avoid the involvement of public funds in illegal activities.

Accordingly, the proposed rule is adopted with the clarification described above.

Pursuant to the authority contained in section 4(d) and Reorganization Plan No. 4 of 1965 (30 FR 9353) and section 5(b)(6) of the Small Business Act, 15 U.S.C. §§ 633(d) and 634(b), Part 120 of Title 13, Code of Federal Regulations, is amended by inserting a paragraph (9) in Section 120.2(d) to read as follows:

§ 120.2 Business Loans and Guarantees.

* * * * *

(d) Financial assistance will not be granted by SBA:

* * * * *

(9) If the applicant is engaged in an illegal activity; or is substantially engaged in the production, servicing, or distribution of products or services used in connection with an illegal activity. "Substantially engaged," (for this purpose), means that 30 percent or more of the gross income of the business is so derived.

(Catalog of Federal Domestic Assistance Program No. 59.012, Small Business Loans.)

Dated: June 26, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-18715 Filed 7-6-78; 8:45 am]

[3510-25]

Title 15—Commerce and Foreign Trade

CHAPTER III—INDUSTRY AND TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE

NUCLEAR RELATED EQUIPMENT

Transfer of Authority to License

AGENCY: Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The Nuclear Non-proliferation Act of 1978 authorizes the Nu-

clear Regulatory Commission to control exports of nuclear facility components and other nuclear items and substances having significance for nuclear explosive uses. Many of these commodities are currently on the commodity control list (CCL) and are licensed for export by the Office of Export Administration. This revision deletes the nuclear related commodities from the CCL, and in appropriate parts of the Export Administration regulations informs the exporters of the agency now regulating these commodities.

EFFECTIVE DATE: July 8, 1978.

[NOTE.—Applications received by the Department of Commerce prior to this date will be processed by that Department. Licenses issued before that date will remain valid for the duration authorized therein.]

FOR FURTHER INFORMATION CONTACT:

Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-4196.

Accordingly, the Export Administration Regulations (15 CFR Parts 368 et seq) are revised as follows:

PART 368—U.S. IMPORT CERTIFICATE AND DELIVERY VERIFICATION PROCEDURE

1. § 368.1(a)(2)(i)(*b*) is amended to read as follows:

§ 368.1 Effect of regulation.

(a) * * *
(2) * * *
(i) * * *

(*b*) By agreement with the Nuclear Regulatory Commission or the Department of Energy for nuclear equipment and materials under the export licensing jurisdiction of these agencies (see § 370.10(e)); and

* * * * *

PART 370—EXPORT LICENSING GENERAL POLICY AND RELATED INFORMATION

2. § 370.10(e) is revised to read as follows:

§ 370.10 Exports controlled by U.S. Government agencies other than Office of Export Administration.

* * * * *

(e) *Commodities subject to Atomic Energy Act.* Regulations administered by the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or the U.S. Department of Energy, Washington, D.C. 20545, govern the export of nuclear equipment and materials. These regulations are issued under the authority of the Atomic Energy Act of 1954, as amended. The commodities covered by these regulations are listed in supplement No. 3 to part 370.

3. A new supplement No. 3 is added to part 370 to read as follows:

Supplement No. 3—Nuclear Equipment and Material Under NRC Licensing Authority

(a) Nuclear reactors and specially designed or prepared parts and components therefor, as follows:

(1) Reactor pressure vessels, i.e., metal vessels as complete units or as major shop-fabricated parts therefor, which are specially designed to contain the core of a nuclear reactor and are capable of withstanding the operating pressure of the primary coolant.

(2) Reactor fuel charging and discharging machines, i.e., manipulative equipment specially designed or prepared for inserting or removing fuel in a nuclear reactor.

(3) Reactor control rods, i.e., rods specially designed or prepared for the control of the reaction rate in a nuclear reactor.

(4) Reactor pressure tubes, i.e., tubes specially designed or prepared to contain fuel elements and the primary coolant in a nuclear reactor at an operating pressure in excess of 50 atmospheres.

(5) Reactor primary coolant pumps, i.e., pumps specially designed or prepared for circulating the primary coolant in nuclear reactors.

(6) Zirconium tubes, i.e., zirconium metal and alloys in the form of tubes or assemblies of tubes specially designed or prepared for use in a nuclear reactor.

(7) Reactor internals, e.g., core support structures, control rod guide tubes, thermal shields, baffles, core grid plates, and diffuser plates specially designed or prepared for use in a nuclear reactor.

(8) Reactor control rod drive mechanisms, including detection and measuring equipment to determine flux levels.

(9) Any other component specially designed or prepared for use in a nuclear reactor.

(10) Specially designed or prepared parts and components for any of the above.

(b) Plants for the separation of the isotopes of source material, special nuclear material or lithium, and specially designed or prepared equipment and components therefor, as follows:

(1) Uranium hexafluoride (UF_6) corrosion resistant valves.

(2) Units capable of separating isotopes of source material, special nuclear material or lithium, such as: (i) Gas centrifuges, (ii) jet nozzle separation units, (iii) vortex separation units, and (iv) laser isotope separation units.

(3) Uranium hexaflouride (UF_6) corrosion resistant axial or centrifugal compressors, and specially designed or prepared seals for such compressors.

(4) Gaseous diffusion barriers specially desinged or prepared for use in separating isotopes of source material, special nuclear material, or lithium.

(5) Gaseous diffuser housings specially designed or prepared for use in plants for separating isotopes of source material, special nuclear material, or lithium.

(6) Heat exchangers specially designed or prepared for use in gaseous diffusion plants.

(7) Any other equipment or component specially designed or prepared for use in an isotope separation plant.

(8) Specially designed or prepared parts and components for any of the above.

(c) Plants for the reprocessing of irradiated nuclear reactor fuel elements or irradiated lithium and specially designed or prepared equipment and components therefor, as follows:

(1) Fuel element chopping machines, i.e., remotely operated equipment specially designed or prepared to cut, chop, or shear irradiated nuclear reactor fuel assemblies, bundles, or rods.

(2) Criticality safe tanks, i.e., small diameter, annular, or slab tanks specially designed or prepared for the dissolution of irradiated nuclear reactor fuel.

(3) Countercurrent solvent extractors specially designed or prepared for use in a reprocessing plant.

(4) Process control instrumentation specially designed or prepared for monitoring or controlling the processing of material in a reprocessing plant.

(5) Any other equipment or components specially designed or prepared for use in a reprocessing plant.

(6) Specially designed or prepared parts and components for any of the above.

(d) Plants for the fabrication of nuclear reactor fuel elements and specially designed or prepared parts and components therefor.

(e) Plants for the production of heavy water, deuterium, and deuterium compounds, and specially designed parts and components therefor.

(f) Nuclear material as follows:

(1) Special nuclear material, as follows: Plutonium, uranium-233, or uranium enriched above 0.711 percent by weight in the isotope uranium-235.

(2) Source material as follows: Uranium or thorium, other than special nuclear material; and ores which contain by weight 0.05 percent or more of uranium or thorium, or any combination of these.

(3) Byproduct material as follows: Radioactive material (except special nuclear material) produced by exposure to the radiation incident to the process of producing or using special nuclear material.

(4) Deuterium and any deuterium compound, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceed 1:5000.

(5) Nuclear grade graphite (graphite with a boron content of less than 5 parts per million and density greater than 1.5 grams per cubic centimeter).

PART 373—SPECIAL LICENSING PROCEDURES

4. The following commodities are deleted from supplement No. 1 to part 373:

Supplement No. 1—Commodities Excluded From Certain Special License Procedures.

* * * * *

3127 Valves, 3 cm or greater in diameter, with bellows seal, wholly made of or lined with aluminum, nickel, or alloy containing 60 percent or more nickel, either manually or automatically operated.

3318 Equipment specifically designed for the separation of isotopes of uranium and/or lithium.

3319 Machines, materials, or equipment specially designed for use in the processing of irradiated nuclear materials in order to isolate or recover fissionable materials, such as nuclear reactor fuel chopping (disassembling or dejacketing) machines, and countercurrent solvent extractors; and specially designed parts and accessories therefor.

3329 Gas centrifuges capable of the enrichment or separation of isotopes; and specially designed parts and equipment for gas centrifuges and gas centrifuge installations.

3330 Blowers and compressors (turbo, centrifugal, and axial flow types) wholly made of or lined with aluminum, nickel, or alloy containing 60 percent or more nickel, and having a capacity of 60 cubic feet per minute (1,700 liters per minute) or greater.

3333 Heat exchangers suitable for use in gaseous diffusion plants, i.e., heat exchangers made of aluminum, copper, nickel, or alloys containing more than 60 percent nickel, or combinations of these metals as clad tubes, designed to operate at subatmospheric pressure, with a leak rate of less than 10^{-4} atmospheres per hour under a pressure differential of 1 atmosphere.

3336 Major components designed or intended for use in a nuclear reactor such as:

(a) Reactor pressure vessels;

(b) Core support structures;

(c) Pumps, including coolant pumps;

(d) Helium circulators;

(e) Reactor fuel charging and discharging machines;

(f) Reactor control rods;

(g) Nuclear radiation detection and measuring instruments designed to measure neutron flux in connection with the determination of the power level of an operating nuclear reactor;

(h) Pipe valves;

(i) Equipment specially designed for filtering, purifying, separating, or treating radioactive impurities in the coolant of nuclear reactors;

(j) * * *

(k) * * *

(l) Specially designed parts and accessories therefor.

(Entry 3336 will now read as follows: 3336 Generators, turbine-generator sets, steam turbines, heat exchangers, and heat-exchanger-type condensers designed or intended for use in a nuclear reactor; and specially designed parts and accessories therefor.)

4336 Nuclear reactor fuel fabrication machinery and equipment n.e.s.; and specially designed parts and accessories, n.e.s.

4337 Process vessels specially designed for chemically processing radioactive material; and parts and accessories, n.e.s.

3541 Process control instrumentation specially designed or modified for monitoring or controlling the processing of irradiated fissionable or fertile materials or irradiated lithium.

3634 Artificial graphite having a boron content of less than, or equal to, 1 part per million, the total thermal neutron absorption cross section being less than, or equal to, 5 millibarns per atom.

3636 Tubes specially designed or prepared for use in a nuclear reactor, as follows:

(a) Tubes or tube assemblies made of zirconium metal and alloys containing more than 50 percent of zirconium by weight, in which the ratio of hafnium content to zirconium content is less than 1 part to 500 parts by weight; and

(b) Pressure tubes specially designed or prepared to contain fuel elements and the primary coolant in a nuclear reactor; and specially designed parts and accessories.

4636 Tubes specially designed or prepared for use in nuclear reactors and made of zirconium metal or alloys containing 50 percent or less zirconium by weight, in which the ratio of hafnium content to zirconium content is less than 1 part to 500 parts by weight.

3705 Deuterium and production equipment therefor, as follows:

(a) Deuterium and compounds, mixtures, and solutions containing deuterium, including heavy water and heavy parafins, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5,000 by number; and

(b) Plant and equipment specially designed for the production and/or concentration of deuterium oxide.

PART 378—SPECIAL NUCLEAR CONTROLS

§ 378.5 [Reserved]

5. § 378.5 is deleted and reserved.

Supplement No. 2 [Reserved]

Supplement No. 3 [Reserved]

6. Supplements No. 2 and 3 to part 378 are deleted and reserved.

PART 379—TECHNICAL DATA

7. § 379.4(b)(2)(i) is revised as follows:

§ 379.4 General license GTDR: Technical data under restriction.

* * * * *

(b) * * *

(2) * * *

(i) The commodity, plant, service or technical data, are not (and are not related to) a commodity identified by the code letter "A" following the export control commodity number (ECC No.) on the commodity control list (§ 399.1), or shown in supplement No. 2 or 3 to part 370 (controlled by U.S. Department of State and Nuclear Regulatory Commission respectively);

* * * * *

PART 399—COMMODITY CONTROL LIST AND RELATED MATTERS

8. The commodity control list, incorporated by reference at 15 CFR 399.1, is revised to delete the following commodities which are transferred to Nuclear Regulatory Commission licensing jurisdiction:

§ 399.1 Commodity control list; incorporation by reference.

* * * * *

Export control commodity No. and commodity description	Unit	Processing code	Validated license required	GLV dollar value limits T	V	Q
3127A Valves, 3 cm or greater in diameter, with bellows seal, wholly made of or lined with aluminum, nickel, or alloy containing 60 pct or more nickel, either manually or automatically operated; and specially designed parts and accessories therefor.		MG	QSTVWYZ	100	100	0
3318A Equipment specifically designed for the separation of isotopes of uranium and/or lithium; and specially designed parts and accessories therefor.		MG	QSTVWYZ	0	0	0
3319A Machines, materials, or equipment specially designed for use in the processing of irradiated nuclear materials in order to isolate or recover fissionable materials, such as nuclear reactor fuel chopping (disassembling or dejacketing) machines, and countercurrent solvent extractors; and specially designed parts and accessories therefor.		MG	QSTVWYZ	0	0	0
3329A Gas centrifuges capable of the enrichment or separation of isotopes; and specially designed parts and equipment for gas centrifuges and gas centrifuge installations.		MG	QSTVWYZ	0	0	0
3330A Blowers and compressors (turbo, centrifugal, and axial flow types) wholly made of or lined with aluminum, nickel, or alloy containing 60 pct or more nickel, and having a capacity of 60 cubic feet per minute (1,700 liters per minute) or greater; and specially designed parts and accessories therefor.		MG	QSTVWYZ	500	500	0
3333A Heat exchangers suitable for use in gaseous diffusion plants, i.e., heat exchangers made of aluminum, copper, nickel, or alloys containing more than 60 pct nickel, or combinations of these metals as clad tubes, designed to operate at sub-atmospheric pressure, with a leak rate of less than 10^{-4} atmospheres per hour under a pressure differential of 1 atmosphere; and specially designed parts and accessories therefor.		MG	QSTVWYZ	100	100	0
3336A Major components designed or intended for use in a nuclear reactor such as: (a) Reactor pressure vessels; (b) Core support structures; (c) Pumps, including coolant pumps; (d) Helium circulators; (e) Reactor fuel charging and discharging machines; (f) Reactor control rods; (g) Nuclear radiation detection and measuring instruments designed to measure neutron flux in connection with the determination of the power level of an operating nuclear reactor; (h) Pipe valves; (i) Equipment specially designed for filtering, purifying, separating, or treating radioactive impurities in the coolant of nuclear reactors; (j) * * * (k) * * * (l) Specially designed parts and accessories therefor.		MG	QSTVWYZ	100	100	0
4336B Nuclear reactor fuel fabrication machinery and equipment n.e.s.; and specially designed parts and accessories, n.e.s.		MG	QSTVWYZ	0	0	0
4337B Process vessels specially designed for chemically processing radioactive material; and parts and accessories, n.e.s.		MG	QSTVWYZ	100	100	0
3541A Process control instrumentation specially designed or modified for monitoring or controlling the processing of irradiated fissionable or fertile materials or irradiated lithium.		MG	QSTVWYZ	100	100	0
3634A Artificial graphite having a boron content of less than, or equal to, 1 part per million, the total thermal neutron absorption cross section being less than, or equal to, 5 millibarns per atom.		MG	QSTVWYZ	500	500	0
3636A Tubes specially designed or prepared for use in a nuclear reactor, as follows: (a) Tubes or tube assemblies made of zirconium metal and alloys containing more than 50 pct zirconium by weight, in which the ratio of hafnium content to zurconium content is less than 1 part to 500 parts by weight; and (b) Pressure tubes specially designed or prepared to contain fuel elements and the primary coolant in a nuclear reactor; and specially designed parts and accessories.	Lb	MG	QSTVWYZ	100	100	0
4636B Tubes specially designed or prepared for use in nuclear reactors and made of zirconium metal or alloys containing 50 pct or less zirconium by weight, in which the ratio of hafnium content to zirconium content is less than 1 part to 500 parts by weight.	No	MG	QSTVWYZ	100	100	0
3705A Deuterium and production equipment therefor, as follows: (a) Deuterium and compounds, mixtures, and solutions containing deuterium, including heavy water and heavy paraffins, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5,000 by number; and (b) Plant and equipment specially designed for the production and/or concentration of deuterium oxide.		MG	QSTVWYZ	100	100	0

9. Entry No. 3336A of the Commodity Control List, Incorporated by reference at 15 CFR 399.1, is revised to read as follows:

Export control commodity No. and commodity description	Unit	Processing code	Validated license required	GLV dollar value limits T	V	Q
3336A Generators, turbine-generator sets, steam turbines, heat exchangers, and heat exchanger type condensers designed or intended for use in a nuclear reactor; and specially designed parts and accessories therefor.		MG	QSTVWYZ	100	100	0

AUTHORITY: Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. app. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).

Dated: July 3, 1978.

STANLEY J. MARCUSS,
Deputy Assistant Secretary for Trade Regulation.

[FR Doc. 78-18834 Filed 7-6-78; 8:45 am]

[7020-02]

Title 19—Customs Duties

INTERNATIONAL TRADE COMMISSION

PART 210—INVESTIGATIONS OF ALLEGED UNFAIR PRACTICES IN IMPORT TRADE

Motions Practice, Investigations of Unfair Practices in Import Trade

AGENCY: United States International Trade Commission.

ACTION: Interpretive opinion.

SUMMARY: This opinion clarifies the practice for the disposition of motions filed according to the Commission's rules of practice and procedure in investigations of unfair practices in import trade. The Commission is also currently reviewing its regulations on the presentation and disposition of motions and interlocutory appeals to determine if any amendments to these regulations are in the public interest.

DATES: Effective on publication in July 7, 1978. Comments by August 7, 1978.

ADDRESS: Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Warren L. Dean, Esq., Office of General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C., telephone 202-523-0486.

SUPPLEMENTARY INFORMATION:

COMMISSION OPINION

Section 210.24(a) of the Commission's rules establishes the general rule for the presentation and disposition of motions in section 337 investigations as follows:

> During the time an investigation is before a presiding officer, all motions therein shall be addressed to the presiding officer. • • • When the presiding officer is not the Commission, any motion within his authority shall be ruled upon by him, and any motion upon which the presiding officer has no authority to rule shall be certified by him to the Commission with his recommendation, and the Commission shall then rule on the motion.

Similarly, section 210.22, "Amendment to the pleadings and notice of investigation," provides that a motion to amend the complaint or a motion to amend the notice of investigation shall be certified to the Commission by the presiding officer with his recommendations.

There are no exceptions to the general rule established by section 210.24(a) that all motions requesting relief which the presiding officer is not specifically authorized by Commission rule to grant or deny shall be certified to the Commission with his recommendation for a ruling by the Commission. Under the rule, the denial of a motion which seeks relief vested in the discretion of the Commission must automatically come before the Commission in the form of a recommendation by the presiding officer to deny the motion, without any need for recourse to an appeal pursuant to section 210.60 of the rules. However, sections 210.50, "summary determinations" and 210.51, "termination of investigation" are unclear in specifying the presiding officer's authority to deny such motions. In these two cases an order of the presiding officer granting such a motion shall constitute a recommended determination to be certified to the Commission. On his own authority, however, the presiding officer may deny the relief sought in such motions. This procedure is designed to promote the efficiency and timeliness of the administrative process while reserving to the Commission the ultimate disposition of all matters arising in section 337 investigations. It has been specifically upheld by the Commission. (Certain Color Television Receiving Sets, inv. No. 337-TA-23, Commission Memorandum Opinion, dated May 24, 1977, remanding motion for summary determination to the presiding officer for a final ruling.) Adherence to these rules for the disposition of motions in its section 337 investigations involves a controlling question of law for which subsequent Commission review in a determination pursuant to section 210.55 of the Commission's rules may be an inadequate remedy.

In light of past practice for the presentation and disposition of motions, the Commission is at present reviewing sections 210.24(a) and 210.60 of its rules to determined whether any amendment of these sections would be in the public interest. Recommendations from interested persons on this subject will be considered if received on or before August 7, 1978.

By Order of the Commission:

Issued: June 21, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-18727 Filed 7-6-78; 8:45 am]

[4110-07]

Title 20—Employees' Benefits

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

[Regulation No. 4]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

Increase in Old-Age Benefit Amounts for Delayed Retirement; and Widow's and Widower's Insurance Benefits in Cases of Delayed Retirement

AGENCY: Social Security Administration, DHEW.

ACTION: Final rules.

SUMMARY: The rules provide that: (1) A person who first becomes eligible for an old-age insurance benefit after December 1978 and meets the requirements for a delayed retirement credit at age 65 shall have his or her primary insurance benefit increased by one-quarter of 1 percent (instead of one-twelfth of 1 percent) for each month between ages 65 and 72 for which he or she was entitled to a benefit but did not receive it because of work; and (2) a person entitled to a widow's or widower's insurance benefit shall have that benefit increased effective for months after May 1978 if the deceased worker was or would have been entitled to an increased old-age insurance benefit for the month before he or she died on the basis of delayed retirement credits.

They are necessary to reflect the provisions in the Social Security Amendments of 1977. The amendments to the regulations change the delayed retirement credit of a worker from only 1 percent a year to 3 percent and apply the credit under certain circumstances to widows and widowers.

EFFECTIVE DATE: June 1978 for widow's and widower's insurance benefits and January 1979 for old-age insurance benefits. Comments are due on or before August 7, 1978.

ADDRESSES: Although these rules are being published as final rules without a prior notice of proposed rulemaking, consideration will be given to any data, views, or arguments pertaining to the amendments which are submitted in writing to the Acting Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203.

Copies of all comments received in response to this notice will be availa-

ble for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Mrs. Vera Schlosser, Legal Assistant, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235. 301-594-7332.

SUPPLEMENTARY INFORMATION: Congress thought that individuals that don't get benefits between age 65 and age 72 should receive credit for the period during which they don't get benefits. The Social Security Act had provided that an old-age insurance benefit would be increased by one-twelfth of 1 percent for each month between ages 65 and 72 that the beneficiary was not paid a benefit because of work. The act was changed by Pub. L. 95-216 to provide that the benefit would be increased by one-quarter of 1 percent for each such month for anyone who first becomes eligible for old-age insurance benefits after December 1978.

Congress also thought it appropriate for a person entitled to a widow's or widower's insurance benefit to take advantage of the right to credits which the worker had before he or she died. Thus, the Social Security Amendments of 1977 provide for an increase in widow's and widower's insurance benefits if the old-age insurance beneficiary was or could have qualified for delayed retirement credits in the month he or she died.

Since these amendments and additions to the regulations reflect only what is mandated by the law, the Secretary finds that publication of a prior notice of proposed rulemaking would be unnecessary (5 U.S.C. 553(b)(B)).

(Secs. 205 and 1102 of the Social Security Act, as amended, 53 Stat. 1368, as amended, 49 Stat. 647, 42 U.S.C. 405 and 1302.)

(Catalog of Federal Domestic Assistance Program Nos. 13.803, Social Security-Retirement Insurance; 13.805, Social Security-Survivors Insurance.)

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

Dated: April 17, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: June 23, 1978.

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

Part 404 of Title 20 of the Code of Federal Regulations, as amended, is further amended as follows:

1. In § 404.282 paragraphs (a) and (b), and the example in paragraph (c) are revised to read as follows:

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

(a) *General.* The 1972 amendments to the act provided that beginning with months of entitlement after December 1972, a person's old-age insurance benefit could be increased because of "delayed retirement credits."

(1) *Before January 1979.* For months of entitlement after December 1972 and prior to January 1979, a person's old-age insurance benefit is increased for "delayed retirement credits" if that person:

(i) Has become first entitled to old-age insurance benefits in or after the month in which he or she became age 65; or

(ii) Has an old-age insurance benefit for the month in which he or she becomes age 65 and that benefit is not reduced for months of entitlement before age 65 (see §§ 404.410–404.413).

(2) *After December 1978.* Beginning with January 1979, a person may receive "delayed retirement credits" even though:

(i) the peson applies for and receives old-age insurance benefits before the month in which the person becomes age 65; or

(ii) the old-age insurance benefit for the month in which the person becomes age 65 is reduced for months of entitlement before age 65 (see §§ 404.410-404.413).

(b) *Amount of delayed retirement credit.* (1) A person's old-age insurance benefit is increased for each month in which the person:

(i) Is age 65 but not age 72;

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

(iii) Is not entitled to an old-age insurance benefit; or is entitled to such a benefit but does not receive it (see § 404.415).

(2) That increase is called a delayed retirement credit. The old-age insurance benefit is generally increased by one-twelfth of 1 percent of such benefit. If the person first becomes eligible for an old-age insurance benefit after December 1978, the person's old-age insurance benefit is increased by one quarter of 1 percent of that benefit.

(3) Such an increase is added to the insured person's old-age insurance benefit and the sum is rounded upward, if necessary, to the next higher multiple of $0.10 if the sum is not a multiple of $0.10.

Example. A is an insured worker when he reaches age 65 in January 1982, but decides not to file application for old-age insurance benefits immediately because he is still working. When he becomes 66 years old in January 1983, he stops working and files application for these benefits beginning with the same month. Based upon his earnings, his primary insurance amount is $226.30 and his full monthly old-age insurance benefit amount would be the same without any delayed retirement credits. However, he is not entitled to old-age insurance benefits for the 12 months from the month in which he became 65 (January 1982) until the first month in which he stops working (January 1983). Therefore, his monthly old-age insurance benefit is increased by 3 percent (one quarter of 1 percent times 12 months) to yield a total of $233.08, which is rounded upward to the next higher $0.10 to equal $233.10.

(c) * * *

Example. A is entitled to old-age insurance benefits in the month in which she attains age 65, July 1982. However, no benefits are paid to her in 1982, due to her continued work and earnings. Effective January 1983, she is entitled to an increase in her benefits on the basis of delayed retirement credits for the 6 months in 1982 (July through December) for which she was entitled to benefits because she was age 65 or over but was not paid a benefit. Therefore, effective January 1983, her monthly old-age insurance benefit is increased 1½ percent (i.e., one quarter of 1 percent for 6 months).

2. Section 404.305a is revised to read as follows:

§ 404.305a Increase in old-age insurance benefit amount on account of delayed retirement.

(a) *General.* A person may be entitled to a delayed retirement credit which will increase the amount of his or her old-age insurance benefit. If the benefit is based on a special minimum primary insurance amount, see paragraph (f) of this section.

(b) *Amount of delayed retirement credit.* If the person is eligible for old-age insurance benefits before 1979, the amount of the delayed retirement credit is one-twelfth of 1 percent of the person's old-age insurance benefit multiplied by the number of increment months to which he or she is entitled. If the person first becomes eligible for old-age insurance benefits after 1978, one-fourth of 1 percent is used instead of one-twelfth of 1 percent. (See paragraphs (c) and (d) of this section.)

(c) *Increment months.* Increment months are months that can be used to increase the amount of an old-age insurance benefit because of delayed or interrupted retirement. The number of increment months is the total number of months:

(1) In the period beginning with the month in which the person became age 65 or January 1971, whichever is later, and ending with the month immediately before the month in which he or she became age 72; and

(2) With respect to which he or she:

(i) Was fully insured, and

(ii) Either did not apply for an old-age insurance benefit or did not receive it because of work.

(d) *When increment months are determined and effective date of increase.* A person's increment months are determined for each year and are applicable to the person's old-age insurance benefits beginning with January of the year following the year for which the determination is made. (See paragraph (c) of this section.) In the case of a person who attains age 72 after 1972, the total number in increment months is determined for the period ending with the month immediately before the month he or she becomes 72 and is applicable to his or her old-age insurance benefit beginning with the month he or she becomes 72.

(e) *Benefit amounts affected.* Except for widow's or widower's benefits, the benefits for dependents and survivors are not increased because of "delayed retirement credits" of the insured person. The increase is added to the old-age insurance benefit even if the family maximum is exceeded.

(f) *Use of special minimum primary insurance amount.* If a person's regular primary insurance amount is lower than the special minimum primary insurance amount, but the regular primary insurance amount yields a higher old-age insurance benefit under the delayed retirement provision, the regular primary insurance amount is used to establish the old-age insurance benefit for that person. (See §§ 404.207 and 404.219.) However, the special minimum primary insurance amount is used for auxiliary benefits and the family maximum.

3. In section 404.330 paragraphs (b)(1))(4) are revised to read as follows:

§ 404.330 Widow's insurance benefits; rate of benefit.

* * * * *

(b) (1) *Basic benefit rate.* The amount of the widow's insurance benefit for any month after December 1972 is equal to the primary insurance amount of the deceased person upon whose earnings record such benefit is based. (See § 404.113a(c) for benefit rate under transitional insured status provisions, § 404.352 for minimum survivor's insurance benefit rate, and the other paragraphs of this section for exceptions.)

* * * * *

(4) *Benefit rate; deceased wage earner eligible for increased old-age insurance benefits prior to death.* (i) The amount of the widow's insurance benefit for any month after May 1978 is equal to the deceased wage earner's old-age insurance benefit increased, where applicable, as if the deceased wage earner were still alive if:

(*a*) the deceased wage earner was entitled to an old-age insurance benefit which was increased (or subject to being increased) because of delayed retirement (see § 404.305a) or the wage earner would have been entitled to such a benefit if he had submitted an appropriate application; and

(*b*) the deceased wage earner's primary insurance amount is less than the increased old-age insurance benefit which the deceased wage earner was receiving in the month immediately before the month in which he died, or which the deceased wage earner would have received in that month if he had submitted an appropriate application.

(ii) An increase may be applicable when the insured person dies before age 65, or the beneficiary received compensation for railroad service, or the beneficiary is entitled to a cost-of-living increase. (See §§ 404.280, 404.274, and 404.221.)

* * * * *

4. In § 404.333 paragraphs (b)(1) and (b)(4) are revised to read as follows:

§ 404.333 Widower's insurance benefits; rate of benefit.

* * * * *

(b) (1) *Basic benefit rate.* The amount of the widower's insurance benefit is equal to the primary insurance amount of the deceased person upon whose earnings record that benefit is based. (See § 404.352 for minimum survivor's insurance benefit rate, and the other paragraphs of this section for exceptions.)

* * * * *

(4) *Benefit rate; deceased wage earner eligible for increased old-age insurance benefits prior to death.* (i) The amount of the widower's insurance benefit for any month after May 1978 is equal to the deceased wage earner's old-age insurance benefit increased, where applicable, as if the deceased wage earner were still alive if:

(*a*) the deceased wage earner was entitled to an old-age insurance benefit which was increased (or subject to being increased) because of delayed retirement (see § 404.305a) or the wage earner would have been entitled to such a benefit if she had submitted an appropriate application; and

(*b*) the deceased wage earner's primary insurance amount is less than the increased old-age insurance benefit which the deceased wage earner was receiving in the month immediately before the month in which she died, or which the deceased wage earner would have received in that month if she had submitted an appropriate application.

(ii) An increase may be applicable when the insured person dies before age 65 or the insured person received compensation for railroad service, or the insured person is entitled to a cost-of-living increase. (See §§ 404.280, 404.274, and 404.221.)

* * * * *

5. Section 404.405 is revised by adding paragraph (q) reading as follows:

§ 404.405 Situations where total benefits can exceed maximum because of "savings clause".

* * * * *

(q) *Months after May 1978.* The "family maximum" for months after May 1978 is figured for all beneficiaries just as it would have been if none of them had gotten a benefit increase because of the retirement credit if:

(1) One or more persons were entitled (without the reduction required by § 404.406) to monthly benefits for May 1978 on the wages and self-employment income of a deceased wage earner;

(2) The benefit for June 1978 of at least one of those persons is increased by reason of a delayed retirement credit (see § 404.330(b)(4) or § 404.333(b)(4)); and

(3) The total amount of monthly benefits to which all those persons are entitled is reduced because of the maximum or would be so reduced except for certain restrictions (see § 404.403 and § 404.402(a)).

[FR Doc. 78-18514 Filed 7-6-78; 8:45 am]

[4110-07]

[Regulations No. 16, further amended]

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—Income and Exclusions

UNEARNED INCOME, SUPPORT AND MAINTENANCE IN CERTAIN HOUSEHOLD AND NONMEDICAL INSTITUTIONAL SITUATIONS

AGENCY: Social Security Administration, HEW.

ACTION: Final rule.

SUMMARY: This amendment to the regulations finalizes a body of policy which establishes rules for valuing support and maintenance provided in kind to persons in certain household and nonmedical institutional situations. The amendment to the regulations establishes a rebuttable presumption that the maximum value of in-kind support and maintenance (when it is not excluded from income under this Subpart K and when the one-third reduction in the standard payment amount does not apply) is

that amount which, for an individual with no other income, would result in payment at two-thirds of the applicable payment standard. That is, the maximum value is presumed to be the equivalent of one-third of the Federal payment standard plus the exclusion applicable to unearned income. The individual may rebut this presumption by establishing that the value of such support and maintenance is actually less than the presumed value in which event the lesser amount is counted. The regulation also makes it clear that, unless otherwise specified, "value" means current market value.

EFFECTIVE DATE: These amendments shall be effective July 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. S. J. Weissman, Legal Assistant, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-7341.

SUPPLEMENTARY INFORMATION: Regulations No. 16, Subpart K, § 416.1125 was published in the FEDERAL REGISTER as a notice of proposed rulemaking at 38 FR 27406, October 3, 1973, and given interim effect at 39 FR 3674, January 29, 1974; amended at 40 FR 48937, October 20, 1975; and further amended at 40 FR 54005, November 20, 1975.

It should be noted that § 416.1125(b) (the one-third reduction) and § 416.1125(j) (temporary absences) are also being published in this issue as an interim regulation. The interim regulation is being published simultaneously with this final regulation because the subject matters are so closely interrelated. By taking this action we believe we will provide interested persons with a clearer understanding of these substantive rules.

However, § 416.1125(f) (which concerns treatment of support and maintenance received by individuals residing in non-profit residential care institutions) has not been included in this final regulation, and will continue in effect on an interim basis. See notice of proposed rulemaking published on October 20, 1975 (40 FR 48939), and notice of proposed rulemaking published on November 20, 1975 (40 FR 54005).

Discussion of regulations: The amendment to the regulations (§ 416.1125(a)) defines in-kind support and maintenance as food, shelter, and clothing or any portion of any or all of these items. However, for purposes of applying § 416.1125(b) (see interim regulation in this issue on the one-third reduction), an eligible individual (or eligible couple) must be living in another person's household and receiving from that other person in-kind support and maintenance in the form of both food and shelter. If the individual is receiving less (only food, or only shelter, but not both) the one-third reduction does not apply.

This final amendment to the regulations deals with household situations where the one-third reduction does not apply (§ 416.1125(c)), and with the valuation of in-kind support and maintenance furnished under such circumstances (§ 416.1125 (d) and (e)). It also provides rules for the valuation of in-kind support and maintenance received by an eligible individual (or eligible couple) who resides in a nonmedical institution as described in § 416.1125 (g), (h), and (i).

This amendment to the regulations establishes a rebuttable presumption that, when in-kind support and maintenance is countable as unearned income and the one-third reduction in the standard payment amount does not apply, its maximum value is that amount which, for an individual with no other income, would result in payment at two-thirds of the applicable payment standard. That is, the total value of any food, clothing, and shelter received by an individual is presumed never to exceed one-third of the applicable Federal payment standard plus the exclusion applicable to unearned income. The presumed maximum value is always rebuttable if the individual can show that the actual value of the in-kind support and maintenance he or she receives is lower than the presumed amount. The means of establishing the actual value is directly related to the type of living arrangement involved. (Support and maintenance provided in kind to individuals in medical confinement is excluded from income under § 416.1109).

When an individual resides in a proprietary (for profit) institution, a payment arrangement solely between the institution and the individual (i.e., there is no third party vendor payment for support and maintenance) is considered a commercial transaction which does not result in income to that individual. For this reason, an individual is not considered to be receiving income from a proprietary institution if the institution accepts as payment in full either what the individual himself pays, or the individual's legally contracted indebtedness to the institution plus the amount of his or her own payment, if any. In addition, an individual who resides in a private nonprofit retirement home or similar nonprofit institution is not charged with income, if the institution itself or another nonprofit organization provides him or her with in-kind support and maintenance in the absence of an express obligation to do so without receiving payment. This is not because a commercial transaction is assumed to exist, but because the value of such support and maintenance is excluded from countable income by section 1611(a)(2)(A)(ii) of the act. (This exclusion itself is not dealt with in these amendments but appears in § 416.1125(f) which remains in effect on an interim basis; however, these amendments do deal with valuing in-kind support and maintenance from private nonprofit institutions where the exclusion does not apply.)

On the other hand, an individual is considered to be receiving countable income, even though he or she resides in a proprietary or private nonprofit institution, when a third party makes a nonexcludable vendor payment to the institution for his or her support and maintenance. In these situations, the presumed maximum value of the support and maintenance may be rebutted by showing that the actual amount of the third party vendor payment is less than the presumed value, in which event the lesser amount is counted.

An individual residing in a household may rebut the presumed maximum value by showing that the current market value of whatever in-kind support and maintenance he or she receives, less any payment made therefor out of his or her own funds, is lower than the presumed value. Rebuttal may be accomplished in this same way when an individual receives in-kind support and maintenance in any type of nonmedical institutional situation described in § 416.1125 (i)(1), (i)(2), and (i)(3). However, effective October 1, 1976, when in-kind support and maintenance is provided as a consequence of a vendor payment made by a State or local government under a program of assistance based on need, such income is not countable as provided by section 1612(b)(6) of the act as amended by section 505(b) of Pub. L. 94-566.

Discussion of comments: Interested persons were given the opportunity to submit, within 30 days, data, views, or arguments with regard to the proposed changes. Responses to the comments and changes made in the proposed amendment are discussed below. A number of comments were received from private, State, and local organizations as well as interested individuals.

Two States objected to the way in which the amount of the presumed maximum value of in-kind support and maintenance was established. They also urged establishment of separate presumptions for shelter only and food only. Based on our interpretation of section 1612(a)(2)(A) of the act, it would appear that Congress intended for every eligible individual, who received in-kind support and maintenance from another person while living in that person's household, to have other income at least equivalent to two-thirds of the Federal standard payment amount to spend at his or her own discretion, regardless of the

market value of the in-kind support and maintenance. Thus, in accordance with the statute, when the one-third reduction in the standard payment amount does not apply, countable in-kind support and maintenance is treated as unearned income; in order to give equitable treatment to individuals in these situations, the regulations provide that the maximum value of in-kind support and maintenance is presumed to be an amount which will assure the individual at least the equivalent of two-thirds of the Federal standard payment amount to spend at his or her own discretion. Therefore, no substantive change is required on this point. In addition, the act is silent with respect to separate valuations for food and shelter. While such separate presumptions are under consideration for possible future change, they are not being established at this time. We have, however, reworded the description of the valuation in paragraphs (d), (h), and (i) of § 416.1125 in an effort to make the rationale clearer in relation to the act and to emphasize the reasonableness of the presumption since it is always open to rebuttal.

Several commenters opposed counting in-kind support and maintenance as income, when provided to individuals receiving foster care or living in their own households, because they believe it runs contrary to congressional intent. Title XVI clearly requires that support and maintenance be treated as unearned income, and the act makes no exception in these cases. However, section 505(b) of Pub. L. 94-566, enacted October 20, 1976, provides for the exclusion from countable income, of any assistance (in cash or in kind) provided under a State or local government funded program of assistance based on need. Again, although there has been no substantive change, paragraph (c) has been expanded to clarify the rules with respect to noninstitutional care situations.

One State felt that application of valuation rules for couples was unclear as stated in paragraph (d)(1). Accordingly, that paragraph has been reworded to explain the rule when one member of an eligible couple receives in-kind support and maintenance from another person while living in that person's household.

Other commenters urged that provision be made to reduce current market value by the amount of an individual's payment for support and maintenance. They also felt that making the amendment effective with December 1974 would disadvantage some individuals and deprive them of their due process rights. Paragraph (d) specifically provides for applying an individual's payment to reduce market value. Use of the presumed maximum value is always rebuttable if the individual can show that the actual value of the support and maintenance he or she receives is lower than the presumed amount. However, if the actual value should be in excess of the presumed maximum value, no more than that maximum will be taken into consideration in determining countable income. Thus, individuals with support and maintenance of greater value than the maximum will be advantaged by not having their SSI payments reduced below two-thirds of the maximum benefit while those whose support and maintenance is worth a lesser amount will receive the advantage of the lower figure in having their countable income established. The due process procedures (Subpart N of Regulations No. 16), under which the individual is fully informed in writing of the reason for any proposed change in payment or eligibility status and given the opportunity to appear and submit any material he or she wishes relating thereto before any reduction in the payment, appropriately accommodate and safeguard the individual's due process rights. Moreover, the presumed value rules made effective with December 1974, cannot charge an individual with more income than he or she actually has any more than the prior rules could. Accordingly, no changes have been made in either of these areas.

Four commenters objected to establishing supplemental security income eligibility and payment amount based on living arrangements. These objections cannot be accommodated since the act deals differently with various living arrangements; i.e., own household, public institutions, household of another person, and certain nonprofit institutions.

There were two comments questioning the complexity of determining the market value of in-kind support and maintenance; one of these also expressed skepticism that individuals would routinely be advised of their rebuttal rights. Difficulty with determining market value, particularly for individuals in their own households, was an important factor in adopting the presumed value approach. In effect, the market value is presumed to be a specified maximum amount (parallel to the amount specified by statute for individuals living in the household of another), unless an individual elects to rebut the presumption. The regulations clearly provide that the presumption is always open to rebuttal and the first developmental step in operating guides is to explain the presumption being applied and the individual's right to rebut it at any time. Although we do not yet have precise data on the frequency or difficulty with which the presumed value is rebutted when the market value is lower, quality assurance samples indicate that the instance of failure to rebut the presumption when it is appropriate to do so is miniscule.

There were a few other comments of an editorial nature and one urging legislative change which is beyond the scope of the regulations.

By way of clarification, paragraph (j) of § 416.1125 (redesignated paragraph (k)) has been revised with respect to the several effective dates applicable to the section. Corresponding clarifications appear in paragraphs (d), (e), (g), (h), and (i). A new paragraph (j) of § 416.1125 dealing with temporary absences as it applies to this section is being published in this issue as part of the Interim Regulations titled "One-Third Reduction for Living in Another Person's Household." In addition, the definition of in-kind support and maintenance in paragraph (a) has been reworded to bring it into conformity with the definition of income in § 416.1102.

Accordingly, with these editorial and clarifying changes, the proposed rules are adopted as set forth below.

(Sec. 1102, 1612, and 1631(d)(1) of the Social Security Act, 49 Stat. 647, as amended, 86 Stat. 1468, and 86 Stat. 1476; 42 U.S.C. 1302, 1382a, and 1383(d)(1).)

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program.)

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

Dated: March 20, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: June 28, 1978.

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

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows;

Section 416.1125[1] is amended by revising paragraphs (a), (c), (d), (e), (g), (h), and (i). Paragraph (j) is revised and redesignated paragraph (k). Section 416.1125 reads as follows:

§ 416.1125 Unearned income; support and maintenance.

(a) *General.* Unearned income includes support and maintenance furnished in cash or in kind unless otherwise excluded under this subpart K. Support and maintenance in kind en-

[1] Section 1125 was published as a notice of proposed rulemaking at 38 FR 27406, October 3, 1973, and given interim effect at 39 FR 3674, January 29, 1974; and amended at 40 FR 48937, October 20, 1975 and at 40 FR 54004, November 20, 1975.

compasses food, clothing, and shelter or any portion of any or all of such items. Unless otherwise specified herein, the value of in-kind support and maintenance refers to its current market value. For purposes of this subpart K, the term standard payment amount refers to the Federal payment rate as described in §§ 416.410–416.413.

* * * * *

(c) *Household situations not included under paragraph (b) of this section.* The reduction in the payment standard for living in the household of another and described in paragraph (b)(1) of this section will not apply in the following situations and support and maintenance provided in kind will be valued as provided herein and in paragraphs (d) and (e) of this section:

(1) In the case of an eligible individual (or eligible individual and eligible spouse) who lives in another person's household and receives in-kind support and maintenance from that other person in the form of food only or shelter only, but not both.

(2) In the case of an eligible individual with an eligible spouse, where only the individual or the spouse is living in another person's household and receiving in-kind support and maintenance from that other person. In such case, any support and maintenance received in-kind will be included as unearned income. Absent evidence of a lesser value, the support and maintenance provided to the member of the couple in another person's household will be valued at one-sixth of the payment standard for a couple.

(3) In the case of an individual who is subject to the provisions of this part regarding the deeming of income (§ 416.1185 (published as a notice of proposed rulemaking with interim effect at 39 FR 2487 and amended at 42 FR 3316, January 18, 1977) or § 416.1190) and who is living in the household of the person from whom income is or would be deemed. In such case, any support and maintenance furnished by the person in whose household the individual is living is not counted as income.

(4) In the case of an eligible individual (or eligible individual and eligible spouse) who lives in his or her own household, including a commercial establishment (e.g., rooming or boarding house).

(5) In the case of an eligible individual (or eligible individual and eligible spouse) who has been placed in a noninstitutional care situation and receives nonexcludable in-kind support and maintenance. For purposes of this section, a noninstitutional care situation exists when: (i) an individual or couple is placed by a public or private agency under a specific program of protective placement such as foster or family care; and (ii) the placement is in a private household which is licensed or otherwise approved by the placing agency to provide such care; and (iii) the placing agency retains responsibility for continuing supervision; and (iv) the person providing the care accepts payment from the individual, the placing agency, or some other party.

(d) *Valuation of support and maintenance for individuals in household situations.* When an eligible individual (or eligible spouse) lives in a household (i.e., is not in an institution), the reduction in the payment standard described in paragraph (b) of this section is inapplicable, and the provisions of §§ 416.1185 (see paragraph (c)(3)) and 416.1190 do not apply, any support and maintenance received in kind but not received in lieu of cash wages (see § 404.429(c) of this chapter) is unearned income. In such cases effective with payments for December 1974, the maximum value of such support and maintenance is presumed to be that amount which, for an individual or a couple with no other income, would result in payment at two-thirds of the applicable payment standard; i.e., the value is presumed to be one-third of the payment standard, plus the exclusion applicable to unearned income. This presumption will be applied in determining the benefits payable unless it is rebutted by the individual's establishing that the current market value of such support and maintenance, less any payment he makes therefor, is lower than the presumed value. This rule will apply in the following circumstances:

(1) When an eligible individual (or eligible individual and eligible spouse) lives in the household of another and receives from that other person only support or maintenance in kind as described in paragraph (c)(1) of this section. These provisions do not apply, however, in the case of a couple when only one member of that couple is receiving in-kind support and maintenance from another person while living in that other person's household. For that member of the couple, the valuation in paragraph (c)(2) of this section applies; if the other member of the couple receives support and maintenance in kind, effective with December 1974, the presumed value of that support and maintenance is one-sixth of the couple's payment standard plus half of the exclusion applicable to unearned income. (If the second member of the couple is in an institution, the presumed value rule for that person is effective with April 1975.)

(2) When an eligible individual (or eligible spouse) lives in his own household, including a commercial establishment, and receives support and maintenance in kind.

(e) *Individuals to whom income is deemed.* When an eligible individual (or eligible spouse) lives in the household of the person from whom income is, or would be, deemed (§ 416.1185 (see paragraph (c)(3)) or § 416.1190) and receives in-kind support and maintenance, from a source other than his essential person, ineligible spouse, or (if the individual is a child) parent or spouse of parent, the value of such support and maintenance will be treated as unearned income in addition to any deemed income. Effective with payments for December 1974, the maximum value of such support and maintenance is presumed to be the same amount as described in paragraph (d) of this section and the same rules pertaining to application and rebuttal of that presumption will be applied.

* * * * *

(g) *Individual in proprietary* (for-profit) *nonmedical institution; no third party payment for support and maintenance.* In the case of an eligible individual (or eligible spouse) living in a proprietary (for-profit) institution for other than medical care, with no payments being made by a third party to the institution for such individual's support and maintenance, effective with payments for April 1975 the value of in-kind support and maintenance provided by that institution does not result in income to the individual under the following circumstances:

(1) The individual makes payment to the institution and the institution accepts that amount as payment in full, or

(2) The individual contracts a legal debt to the institution for his support and maintenance, regardless of whether the amount owed represents full market value, and the institution accepts the amount of the debt plus the individual's payment, if any, as payment in full.

(h) *Individual in private nonprofit or proprietary* (for-profit) *nonmedical institution; third party pays toward support and maintenance.* In the case of an eligible individual (or eligible spouse) residing in a proprietary (for-profit) or private nonprofit institution for other than medical care, (see § 416.1109 for medical confinements) on whose behalf a third party makes payment to such institution for such individual's support and maintenance, the individual will be considered to be receiving in-kind support and maintenance which is unearned income. However, effective with payments for April 1975, the value of such support and maintenance is presumed to be that amount which, for an individual with no other income, would result in payment at two-thirds of the applicable payment standard; i.e., the value is presumed to be one-third of the standard payment amount plus the exclu-

sion applicable to unearned income. However, this presumption may be rebutted by the individual's establishing that the actual amount of the third party payment is less than the presumed value. This rule will apply in the following circumstances:

(1) The eligible individual (or eligible spouse) is in a private nonprofit institution as described in paragraph (f) of this section and a third party, other than another private nonprofit organization, makes a vendor payment on his behalf, or

(2) The eligible individual (or eligible spouse) is in a proprietary nonmedical institution and a third party makes a vendor payment on his behalf.

(i) *Individual in other type of nonmedical institution.* In the case of an eligible individual (or eligible spouse) in the types of nonmedical institutions described in paragraphs (i)(1), (i)(2) and (i)(3) of this section, nonexcludable support and maintenance provided by the institution, regardless of whether a third party pays for some or all of such support and maintenance, is unearned income. However, effective with payments for April 1975, the maximum value of such support and maintenance provided in kind is presumed to be that amount which, for an individual with no other income, would result in payment at two-thirds of the applicable payment standard; the value is presumed to be one-third of the standard payment amount plus the exclusion applicable to unearned income. This presumption may be rebutted by the individual's establishing that the current market value of such support and maintenance, less any payment he makes therefor, is lower than the presumed value. This rule will apply in the following circumstances:

(1) The eligible individual (or eligible spouse) is in a private nonprofit institution as described in paragraph (f) of this section and an express obligation exists to provide full support and maintenance without receiving current or future payment for doing so, or

(2) The eligible individual (or eligible spouse) is in a public or private nonprofit institution for education or vocational training, or

(3) The eligible individual (or eligible spouse) is in any other public nonmedical institution under circumstances to which § 416.231(a)(1) does not apply.

* * * * *

(k) *Effective dates.* The provisions set forth in this section are effective with January 1974 unless specifically indicated to the contrary.

[FR Doc. 78-18706 Filed 7-6-78; 8:45 am]

[4110-07]

[Regulation No. 16]

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

Subpart K—Income and Exclusions

UNEARNED INCOME, ONE-THIRD REDUCTION FOR LIVING IN ANOTHER PERSON'S HOUSEHOLD

AGENCY: Social Security Administration, HEW.

ACTION: Interim regulation.

SUMMARY: The interim regulation concerns the one-third reduction in the standard payment amount applicable in the Supplemental Security Income (SSI) program for an individual living in another person's household and receiving in-kind support and maintenance in the form of both food and shelter from that other person. The rules dealing with the application of the one-third reduction provision are being published at this time in the form of an interim regulation due to the breadth of the proposed changes, the added specificity, and the length of time which has elapsed since the previously published notice (with interim effectiveness) of October 20, 1975 (40 FR 48937). These rules are designed to streamline and simplify the rules governing the one-third reduction in the applicable SSI standard payment amount and to achieve a more equitable application of policy.

EFFECTIVE DATE: The interim regulation is being given retroactive effectiveness as of October 1, 1976, for all new and pending claims and for all redetermined cases which do not receive lower SSI payments solely because of the amendment. For further details respecting the effective date of these regulations, see the "effective date" section of the Supplementary Information section. Prior to final adoption of the interim regulation consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing on or before August 7, 1978.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203. Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Mr. S. J. Weissman, Legal Assistant, Office of Policy and Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-7341.

SUPPLEMENTARY INFORMATION: Regulations No. 16, Subpart K was published in the FEDERAL REGISTER as a notice of proposed rulemaking at 38 FR 27406, October 3, 1973, and given interim effect at 39 FR 3674, January 29, 1974, and amended at 40 FR 48937, October 20, 1975.

It should be noted that § 416.1125 (a), (c), (d), (e), (g), (h), (i), and (k) concerning the valuation of support and maintenance in certain household and nonmedical institutional situations is also being published in this issue as a final amendment. Those final regulations and this interim regulation are being published simultaneously because the subject matters are so closely interrelated. By taking this action we believe we will provide interested persons with a clearer understanding of these substantive rules.

EFFECTIVE DATE

To repeat, the interim regulation is being given retroactive effectiveness as of October 1, 1976, for all new and pending claims and for all redetermined cases which do not receive lower SSI payments solely because of the amendment. Policy changes which can be applied only in the light of individual factual circumstances cannot be effectuated instantaneously for all cases, but must be introduced on a flow basis. For cases which are not reached until some time after the general effective date of the new policy, it would be unfair to treat as incorrect, payments which the eligible individual previously received and thought to be correct. In any redetermination where the amendment to the regulations causes the eligible individual (or eligible couple) to receive a lower SSI payment or become ineligible, and where there has been no actual change in living arrangements, the amendment will be implemented beginning with the first day of the quarter following the quarter of the redetermination.

There are several reasons why it is in the best interest of the public to publish these changes with retroactive effectiveness. The Commissioner of Social Security directed that the policies reflected in the interim regulation be implemented as of October 1, 1976, because the new policies are, on balance, highly beneficial to the overwhelming majority of eligible and potentially eligible individuals. A delay would be detrimental because it would permit continued lack of uniformity in case adjudication and public misunderstanding caused by the complexities and subjectiveness contained in the prior rules governing the application of the one-third reduction. The policy

reflected in this interim regulation meets an urgent need of providing equitable guides that can be applied with greater objectivity and uniformity.

Discussion of comments: Interested parties were given the opportunity to submit within 30 days, data, views or arguments with regard to the one-third reduction. A number of comments were received from private, State and local organizations as well as interested individuals.

Several commenters vehemently protested the application of the one-third reduction and recommended its elimination on the basis that it places an undue financial hardship on eligible and potentially eligible individuals. This comment was a common theme running through a majority of the letters received. Elimination of the one-third reduction is beyond the scope of these regulations as the one-third reduction is specifically required by statute.

Other commenters objected that the amendment was too general and failed to cover the application of the one-third reduction in depth. Monitoring of the regulation, has proven this criticism true. The revised amendment, contained herein, is designed to provide greater specificity.

The remaining comments can best be described as a misunderstanding in the public's mind. As an example, many commenters were concerned that the one-third reduction would adversely affect an individual's Federal old-age, survivors and disability benefits under title II of the Social Security Act. We would point out that the one-third reduction applies only to the SSI program; it has no application whatsoever in determining eligibility or benefit amounts under Title II of the Social Security Act.

Background: Section 1612(a)(2)(A) of the Social Security Act requires that, in establishing supplemental security income eligibility, there be taken into consideration unearned income in the form of support and maintenance, both in cash and kind. Subparagraph (i) then provides the following special rule for an individual living in the household of another person: "In the case of any individual * * * living in another person's household and receiving support and maintenance in kind from such person, the dollar amounts otherwise applicable [i.e., the standard payment amount] * * * shall be reduced by 33⅓ percent in lieu of including such support and maintenance in the unearned income of such individual * * *"

Under the interim regulations (see § 416.1125(b) at 40 FR 48937 dated October 20, 1975), the one-third reduction in the Federal standard payment amount applies to an eligible individual (or both members of an eligible couple) who lives in another person's household and receives support and maintenance in kind in the form of both food and shelter (room and board) from such person. The one-third reduction applies regardless of whether the individual (or couple) is making any payment for support and maintenance (received in the form of both room and board) to the person in whose household he or she is living. The one-third reduction in the standard payment amount applies only for months wholly spent in the household of another person.

The effects of this interim regulation have been reviewed since its inception. The overall results indicate that lack of specificity in the regulation is a problem and has led to operating guides which are complex and difficult to understand and apply. This, in turn, has caused public misunderstanding and difficult case adjudication.

Because of these difficulties more than a year has been spent in formulating new policy. Our main objective is to provide equitable guides that can be applied with objectivity and uniformity and which are consistent with the statutory language contained in the law. These revised policies are discussed in detail under the discussion of regulations section of this preamble.

Definitions: The following definitions are provided for ease of reference.

A "household" refers to a personal place of residence which is not a commercial establishment (e.g., a rooming or boarding house), a noninstitutional care home as defined in § 416.1125(c), or an institution as defined in § 416.231 (b).

"In-kind support and maintenance" means food, clothing and shelter or any portion of any or all of such items. However, for purpose of applying the one-third reduction, an individual must receive in-kind support and maintenance at a minimum in the form of both food and shelter.

"Total household operating expenses" means the average of total monthly expenditures for food, rent or mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewer services and garbage collection services. Such an average is generally based on total household expenses for the 12-month period prior to determination.

Discussion of regulations: This interim regulation provides that the standard payment amount for an eligible individual (or couple) who lives in another person's household and receives support and maintenance in kind from such person will be reduced by one-third in lieu of determining the actual value of such support and maintenance.

An eligible individual (or couple) is presumed to be living in another person's household when the eligible individual (or couple) lives in a household which has at least one other member who is not: (1) The individual's spouse; or (2) a minor child; or (3) a person whose income is deemable to the eligible individual. However, an individual (or couple) is not considered to be living in another person's household when: (1) The eligible individual (or a living-with spouse) has an ownership or life estate interest in the home; or (2) the eligible individual (or a living-with spouse) is liable to the landlord for payment of any portion of the rental charges; or (3) the eligible individual is living in a substitute home in the form of a noninstitutional care situation; or (4) the eligible individual pays at least his or her pro rata share of total household operating expenses. A pro rata share is determined by dividing the average monthly household operating expenses by the number of persons in the household, regardless of age or individual consumption of any of the items which comprise household operating expenses. Payment of an amount which is within $5 of the average monthly pro rata share will be considered to meet the pro rata requirement.

When an eligible individual (or couple) lives throughout a month in another person's household (as described in the first sentence of the preceding paragraph), he or she will be presumed to be receiving in-kind support and maintenance in the form of both food and shelter from the person in whose household he or she lives, and the one-third reduction will be applied. However, applicability of the one-third reduction may be rebutted by showing that the eligible individual (or couple) does not live in another person's household, does not live there throughout a month, or does not receive both food and shelter from the person in whose household he or she lives. An individual who lives in another person's household but receives his or her food from a third party or purchases (i.e., pays for) his or her own food is not receiving both food and shelter from that person in whose household he or she lives and, thus the one-third reduction does not apply. Also, an eligible individual (or couple) who lives in a household where all other residents are recipients of some form of public income maintenance is assumed not to be receiving in-kind support and maintenance (food and shelter) from the household unless there is evidence to the contrary.

When it is determined that the one-third reduction does apply, the amount of the reduction is not rebuttable. There is a flat one-third reduction in the standard payment amount

regardless of any payment the individual may make toward his or her support and maintenance unless that payment is at least his or her pro rata share of the total average monthly household operating expenses.

The one-third reduction in an eligible couple's standard payment amount applies whenever both members receive in-kind support and maintenance from another person while living in that person's household; this is true whether the members of the eligible couple are both in the same household or are in different households as long as they continue to be considered an eligible couple for SSI purposes (§ 416.1040(c)).

However, the full one-third reduction does not apply to only one member of an eligible couple. When only one member of an eligible couple is living in another person's household and receiving in-kind support and maintenance from that person the full one-third reduction provision does not apply, but the support and maintenance received by such member is unearned income which is presumed to have a value equivalent to one-sixth of the couple's standard payment amount. This presumption may be rebutted by showing that the value of what is received is less than one-sixth of the applicable standard payment amount. (See § 416.1125(c)(2)).

When the one-third reduction does apply, any additional in-kind support and maintenance an individual receives, from any source, is not counted as income.

A new paragraph (j) has been added to § 416.1125 which provides rules for the treatment of in-kind support and maintenance during periods of temporary absence from a permament living arrangement. This paragraph states that a temporary absence exists when an eligible individual (or couple) has lived in a household or institution for at least one month and upon departing intends to and does return to his or her living arrangement within the same calendar month as, or in the month immediately following, his or her departure. If receipt of countable in-kind support and maintenance is taken into consideration based on his or her permanent living arrangement (i.e., through application of the one-third reduction or of the presumed maximum value rules), the same support and maintenance is considered to exist for purposes of computing payment during a period of temporary absence.

Prior operating policy which has been eliminated, provided for use of a "community rate" to establish that an individual was paying for his or her room and board. Under that policy, if an individual was paying for room and board an amount at least equal to that for which he or she could live commercially elsewhere in the community, he or she was assumed to be paying in full for support and maintenance and the one-third reduction did not apply. Under this interim regulation if an individual does not own or rent the premises and is paying less than his or her pro rata share of household expenses, the one-third reduction will apply.

The community rate concept was eliminated because it bore no necessary relationship to the current market value of the support and maintenance an individual actually received. Moreover, this concept was open to varied interpretations and thus, it could not be applied with any consistency on a national basis. Because of this change, a small number of persons receiving a full SSI benefit may be subject to the one-third reduction if their payment for support and maintenance is less than a pro rata share of household operating expenses. These few are disadvantaged and, for them, the new rules have not been made applicable until the quarter after such a determination has been made.

Prior operating policy requiring an individual to participate in household decisions as well as in household expenses, is also removed. This is a liberalization which will advantage those who have been subject to the one-third reduction because, despite payment of a pro rata share of expenses they have not shared in household decisions. Very often this policy proved detrimental to the aged and mentally retarded. In addition, specific rules are given in the amendment for determining what constitutes household operating expenses and how to calculate an individual's pro rata share.

In view of the magnitude of the changes and additions to § 416.1125, the paragraphs as hereby revised or added to that section of the regulations are summarized herein as follows:

Paragraph (b)(1) states the general rule for application of the one-third reduction to an eligible individual or eligible couple living in another person's household.

Paragraph (b)(2) explains when an eligible individual will be considered to be living in another person's household.

Paragraph (b)(3) explains when an eligible individual will not be considered to be living in another person's household.

Paragraph (b)(4) states when the one-third reduction is applicable.

Paragraph (b)(5) explains what constitutes household operating expenses and how a pro rata share of those expenses is determined for purposes of determining whether an individual is living in his or her own household.

Paragraph (b)(6) states how the application of the one-third reduction can be rebutted.

Paragraph (b)(7) explains the relationship between deeming and the one-third reduction.

Paragraph (b)(8) provides the effective date.

Finally, a new paragraph (j) has been added which provides rules for the treatment of in-kind support and maintenance during periods of temporary absence.

The interim regulation is to be issued under the authority contained in sections 1102 and 1612(a)(2) of the Social Security Act, 49 Stat. 647 as amended, 86 Stat. 1468; 42 U.S.C. 1302 and 1382(a)(2).

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program.)

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

Dated: March 20, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: June 28, 1978.

Joseph A. Califano, Jr.,
Secretary of Health, Education, and Welfare.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

Section 416.1125[1] is amended by revising paragraphs (b)(1), (b)(2), (b)(3) and adding paragraphs (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), and (j) to read as follows:

§ 416.1125 Unearned income; support and maintenance.

* * * * *

(b) *One-third reduction for individual living in another person's household.* (1) *General.* The standard payment amount for an eligible individual (or both members of a couple as defined in § 416.120(c)(5)), who lives in another person's household and receives support and maintenance in kind from such person, will be reduced by one-third in lieu of determining the value of such support and maintenance as unearned income to the eligible individual (or couple). The one-third reduction when applicable, is made beginning with the first full calendar month in which an eligible individual (or couple) lives in another person's household and receives both food

[1] Section 416.1125(b) was published as a notice of proposed rulemaking at 38 FR 27406, October 3, 1973 and given interim effect at 39 FR 3674, January 29, 1974 and amended at 40 FR 48937, October 20, 1975.

and shelter from that other person, and ends with the last such full calendar month. The one-third reduction in the standard payment amount applies regardless of any payment the individual (or couple) may make toward the support and maintenance unless, effective October 1976, that payment meets the requirements of paragraph (b)(3)(iv) of this section. Effective with amounts payable for December 1974, when the one-third reduction applies, any additional in-kind support and maintenance an eligible individual (or couple) receives is not counted as income regardless of the source.

(i) For purposes of this paragraph (b), the one-third reduction applies for a particular month only if an eligible individual lives in another person's household throughout a calendar month except for temporary absences (see paragraph (j) of this section) and receives in-kind support and maintenance in the form of both food *and* shelter from the person in whose household he or she lives. An individual may live in two or more households during an entire month and be subject to the one-third reduction if he or she does not maintain his or her own household during this period.

(ii) In the case of an eligible couple (see § 416.120(c)) the one-third reduction in the payment standard applies only when both members of the couple receive in-kind support and maintenance in the form of both food and shelter from another person while living in that person's household throughout a month. The one-third reduction applies whether the members of the couple are in the same household or in different households provided that they have not been separated for more than 6 months (§ 416.1040). However, effective with October 1976, for any full calendar month during which one member of a couple is institutionalized as described in § 416.231(a)(2), each member of the couple is treated as an eligible individual and one of them may be subject to the one-third reduction for any full calendar month he or she lives in the household of another and receives both food and shelter from the householder.

(iii) Where the one-third reduction is not applicable, but the eligible individual (or couple) is receiving in-kind support and maintenance which is not excluded from income under the provisions of this subpart K, such support and maintenance is valued as described in paragraphs (c) through (i) of this section.

(2) *Another person's household.* A household refers to a personal place of residence which is not a commercial establishment (e.g., a rooming or boarding house), a noninstitutional care home as defined in § 416.1125(c), or an institution as defined in § 416.231(b). An eligible individual (or couple) will be presumed to be living in another person's household (except as provided by paragraph (b)(3)), whenever the individual (or couple) lives in a household which has at least one other member who is not:

(i) The individual's spouse (as defined in § 416.1005); or

(ii) A minor child; or

(iii) A person whose income is deemable to the individual under § 416.1185 (published as a notice of proposed rulemaking with interim effect at 42 FR 3316, January 18, 1977) or § 416.1190.

(3) *Not another person's household.* An individual is not considered to be living in another person's household when:

(i) The eligible individual or a living-with spouse has an ownership or life estate interest in the home; or

(ii) The eligible individual or a living-with spouse is liable to the landlord for payment of any portion of the rental charges; or

(iii) The eligible individual is living in a substitute home in the form of a noninstitutional care situation as defined in § 416.1125 (c)(5); or

(iv) The eligible individual is paying at least a pro rata share of the average monthly total household operating expenses as described in paragraph (b)(5) of this section.

(4) *Receiving in-kind support and maintenance.* When an eligible individual (or couple) lives in another person's household (as described in paragraph (b)(2)), he or she will be presumed to be receiving in-kind support and maintenance in the form of both food and shelter from the person in whose household he or she lives, and the one-third reduction will apply unless the presumption is rebutted as provided in paragraph (b)(6).

(5) *Total household operating expense.* Total household operating expenses means the average of total monthly expenditures for food, rent or mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewer services and garbage collection services. The term refers only to amounts actually expended by the household for the purposes specified in this paragraph (5); it does not include the value of any in-kind support and maintenance provided by a source external to the household. A pro rata share of total household operating expenses is determined by dividing the monthly average of these expenses by the number of persons in the household regardless of age or individual consumption of any of the items. Payment of an amount which is within $5 of the monthly pro rata share is considered to meet the pro rata requirement. A pro rata share is generally determined by averaging the specified household expenses for the 12-month period prior to determination. If independent or collateral verification is not available to establish payment of a pro rata share the eligible individual (or couple) shall state the reason therefor and submit other evidence of probative value.

(6) *Rebuttal.* Applicability of the one-third reduction may be rebutted by showing that an eligible individual:

(i) Does not live in another person's household; or

(ii) Does not live in another person's household throughout a month; or

(iii) Does not receive both food and shelter from the person in whose household he or she lives. An individual who purchases (i.e., pays for) his or her own food, or who receives food from someone other than the householder is not receiving in-kind support and maintenance as required in paragraph (b)(4); or

(iv) Effective with payments for October 1976, an individual is presumed not to be receiving food and shelter from a household in which all members are recipients of some form of public income maintenance unless there is evidence to the contrary. Public income maintenance payments are those made under:

(*a*) Title IV-A of the Social Security Act (Aid to Families with Dependent Children), or

(*b*) Title XVI of the Social Security Act (Supplemental Security Income Program including mandatory State Supplementation pursuant to section 212 of Pub. L. 93-66 and optional State Supplementation as described in section 1616 of the Social Security Act), or

(*c*) The Migration and Refugee Assistance Act of 1962, or

(*d*) The Indochina Migration and Refugee Assistance Act of 1975, or

(*e*) The Disaster Relief Act of 1974, or

(*f*) General assistance provided by the Bureau of Indian Affairs, or

(*g*) General assistance provided by State or local governments.

(7) *Deeming.* When an eligible individual and a person whose income must be deemed to the eligible individual under § 416.1185 (see paragraph (b)(2)(iii) of this section) or § 416.1190 both live in another person's household within the meaning of this paragraph (b), the deeming rules apply to the eligible individual in addition to the one-third reduction rules.

(8) *Effective date.* The provisions set forth in this paragraph (b) are effective October 1, 1976. However, in the case of any recipient who receives a lower supplemental security income payment or becomes ineligible upon redetermination solely through the application of these rules (i.e., there has been no actual change in his or her living arrangement) the provisions

are effective on the first day of the quarter following the redetermination.

* * * * *

(j) *Temporary absence.* (1) A temporary absence exists when an eligible individual (or couple):

(i) (*a*) Has been in a particular living arrangement for at least one full calendar month; and

(*b*) Upon departing from his or her permanent living arrangement intends to and does return to that living arrangement within the same calendar month as, or in the month immediately following, his or her departure therefrom. However, when an individual enters a medical institution under the conditions described in § 416.231(a)(2), with the intention of returning to his or her prior living arrangement, a temporary absence is also considered to exist for any months not wholly spent in such an institution (unless the provisions of § 416.231(c) apply). In such cases, countable in-kind support and maintenance received during the months of entry into and exit from the medical institution is treated under the rules applicable to his or her permanent living arrangement; or

(ii) Is a child (as defined in § 416.1050) under age 22 who is away at school, regardless of the duration of the absence, but who comes home on weekends or lengthy holidays and vacations (or for extended visits in accordance with school regulations).

(2) When an eligible individual is temporarily absent from his or her permanent living arrangement (either household or institutional) the receipt of in-kind support and maintenance, if any, is considered to be unchanged during the absence. If receipt of countable in-kind support and maintenance is taken into consideration based on the individual's permanent living arrangement (i.e., through application of a one-third reduction as described in paragraph (b) or through application of the presumed maximum value rules contained in paragraph (d), (g), (h), or (i) of this section, as appropriate), the same support and maintenance is considered to exist for purposes of computing his or her payment during a period of temporary absence. In-kind support and maintenance provided only during a temporary absence, and not as part of a permanent living arrangement, is not taken into consideration since the individual is still responsible for maintaining permanent living quarters during such an absence. In a deeming situation, however, the provisions of paragraph (e) continue to apply.

[FR Doc. 78-18708 Filed 7-6-78; 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

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Subpart B—Redelegations of Authority From the Commissioner of Food and Drugs

SERVICE FELLOWSHIPS

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the delegation of authority regulations regarding service fellowships. Concurrent with the reorganization of the Office of the Commissioner (published in the FEDERAL REGISTER of April 18, 1978 (43 FR 16418)), the titles of all Assistant Commissioners were either abolished or changed to Associate Commissioner. This amendment deletes the reference to the obsolete title from this delegation of authority.

EFFECTIVE DATE: July 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis, unless prohibited by a restriction written into the document designating that person as "acting," or unless not legally permissible.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 5 is amended by revising § 5.26 to read as follows:

§ 5.26 Service fellowships.

The Associate Commissioners, the Directors of Bureaus, the Director of the National Center for Toxicological Research, and the Executive Director of Regional Operations are authorized to designate persons to receive service fellowships in the Food and Drug Administration Staff Fellowship Program under section 207(g) of the Public Health Service Act.

Effective date. This regulation shall be effective July 7, 1978.

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

Dated: June 27, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-18346 Filed 7-6-78; 8:45 am]

[4110-03]

[Docket No. 78N-0118]

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Subpart B—Redelegations of Authority From the Commissioner of Food and Drugs

CERTIFICATION OF TRUE COPIES

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority for certifying true copies and using the Department seal. It adds agency officials heading major organizations outside the Washington metropolitan area and certain headquarters officials to the list of delegates and otherwise corrects organization and position titles.

EFFECTIVE DATE: July 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis, unless prohibited by a restriction written into the document designating that person as "acting," or unless it is not legally permissible.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), part 5 is amended by revising § 5.22 to read as follows:

§ 5.22 Certification of true copies and use of the Department seal.

(a) The following officials are authorized to certify true copies of, or

extracts from, any books, records, papers, or other documents on file within the Food and Drug Administration; to certify that copies are true copies of the entire file; to certify the complete original record, or to certify the nonexistence of records on file within the Food and Drug Administration; and to cause the seal of the Department to be affixed to such certifications:

(1) Associate and Deputy Associate Commissioners.

(2) The Director of the Executive Secretariat.

(3) Executive Officer, Office of the Commissioner.

(4) The Director of the Division of Management Systems and Policy of the Office of Management and Operations.

(5) The Executive Director and Deputy Executive Director of Regional Operations.

(6) The Director and Deputy Director of the Bureau of Drugs; and the Director of the Office of Planning and Evaluation, the Associate Director and Deputy Associate Director for Compliance, and the Directors of the Divisions of: Methadone Monitoring; Drug Product Quality; Drug Labeling Compliance; and Drug Manufacturing of that Bureau.

(7) The Director and Deputy Director of the Bureau of Foods; and the Associate Director for Management, the Associate Director for Compliance, and the Directors of the Divisions of: Regulatory Guidance; Food Technology; and Retail Food Protection of that Bureau.

(8) The Director and Deputy Director of the Bureau of Radiological Health; and the Associate Director for Administration and the Director of the Division of Compliance of that Bureau.

(9) The Director and Deputy Director of the Bureau of Biologics; and the Associate Director for Compliance and the Director of the Division of Compliance of that Bureau.

(10) The Director of the Bureau of Veterinary Medicine; and the Associate Director for Management, the Associate Director and Deputy Associate Director for Surveillance and Compliance and the Director and Deputy Director of the Division of Compliance of that Bureau.

(11) The Director and Deputy Director of the Bureau of Medical Devices; and the Assistant Director for Program Operations, the Associate Director for Regulatory Policy, the Associate Director for Compliance, and the Director of the Division of Compliance Operations of that Bureau.

(12) The Director and Executive Director of the National Center for Toxicological Research.

(13) Regional Food and Drug Directors and District Directors.

(14) Director, Winchester Engineering and Analytical Center.

(15) Director, Minneapolis Center for Microbiological Investigations.

(b) The following officials are authorized to cause the seal of the Department to be affixed to agreements, awards, citations, diplomas, and similar documents.

(1) Associate and Deputy Associate Commissioners.

(2) The Director of the Division of Personnel Management of the Office of Management and Operations.

(c) The Federal Register Writer and his alternates of the Office of Regulatory Affairs are authorized to certify true copies of FEDERAL REGISTER documents.

Effective date. This regulation shall be effective July 7, 1978.

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

Dated: June 29, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-18559 Filed 7-6-78; 8:45 am]

[4110-03]

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Subpart B—Redelegations of Authority From the Commissioner of Food and Drugs

DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document revises the regulations setting forth delegations of authority regarding disclosure of official records and information. This action is taken because of the recent reorganization of the Office of the Commissioner (published in the FEDERAL REGISTER of April 18, 1978 (43 FR 16418)) and because of the need to provide authority to additional program officials. This revision will provide program officials with authority to make determinations at a level closely affiliated to the subject matter involved.

EFFECTIVE DATE: July 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis, unless prohibited by a restriction written into the document designating him as "acting," or unless it is not legally permissible.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), part 5 is amended by revising § 5.23 to read as follows:

§ 5.23 Disclosure of official records.

(a) The following officials are authorized to make determinations to disclose official records and information under part 20 of this chapter, except that only the officials listed in paragraph (a)(1) may disclose official records and information under §§ 20.82 and 20.85 of this chapter.

(1) Associate and Deputy Associate Commissioners.

(2) Director of the Executive Secretariat.

(3) Executive Officer, Office of the Commissioner.

(4) Chief of the Administrative Proceedings Staff of the Division of Management Systems and Policy of the Office of Management and Operations.

(5) Program officials at all organizational levels down to and including branch level in Bureaus, National Center for Toxicological Research, and Executive Director of Regional Operations.

(6) Regional Food and Drug Directors and District Directors.

(7) Director, Winchester Engineering and Analytical Center.

(8) Director, Minneapolis Center for Microbiological Investigations.

(9) Chiefs of branches Field/District Offices and Centers.

(10) Freedom of Information Officers and other employees engaged in Freedom of Information activities.

(b) The Chief of the Drug Listing Branch of the Division of Drug Labeling Compliance of the Bureau of Drugs is authorized to sign affidavits regarding the presence or absence of records of Registration of Drug Establishments.

(c) The Associate Director for Compliance and the Director of the Division of Product Surveillance of the Bureau of Medical devices are authorized to sign affidavits regarding the presence or absence of medical device establishment registration records.

(d) The Chief of the Records Section of the Administrative Services Branch, Division of Management Services, Office of Management and Operations, is authorized to sign affidavits regarding the presence or absence of records in the files of that section.

Effective date. This regulation shall be effective July 7, 1978.

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

Dated: June 29, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-18563 Filed 7-6-78; 8:45 am]

[4110-03]

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 77F-0265]

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

Ethylene-Vinyl Acetate Copolymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration is amending the food additive regulations to provide for the use of xanthan gum as an adjuvant in the production of food-packaging materials. Morton Chemical Co. filed a petition for such use.

DATES: Effective July 7, 1978; objections by August 7, 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:

John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Notice was given in the FEDERAL REGISTER of September 23, 1977 (42 FR 48393) that a petition (FAP 7B3324) had been filed by Morton Chemical Co., 110 N. Wacker Dr., Chicago, Ill. 60606, proposing that §177.1350 *Ethylene-vinyl acetate copolymers* (21 CFR 177.1350) be amended to provide for the safe use of xanthan gum in aqueous dispersions of ethylene-vinyl acetate copolymers used in the production of food-packaging material.

The commissioner of Food and Drugs has evaluated data in the petition and other relevant material and concludes that §177.1350 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), Part 177 is amended in §177.1350 by adding new paragraph (a)(5), to read as follows:

§ 177.1350 Ethylene-vinyl acetate copolymers.

* * * * *

(a) * * *

(5) Xanthan gum as identified in §172.695 for use as a thickening agent at a level not to exceed 1 percent by weight of coating solids in aqueous dispersions of ethylene-vinyl acetate copolymers, where such copolymers are used only as coatings or a component of coatings.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before August 7, 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 July 7, 1978.

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

Dated: June 27, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-18347 Filed 7-6-78; 8:45 am]

[4110-03]

[Docket No. 77N-0176]

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

Dextrans (Average Molecular Weight Below 100,000)

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document affirms that dextrans (average molecular weight below 100,000) are generally recognized as safe (GRAS) as indirect human food ingredients. The document also deletes the GRAS listing of dextrans (average molecular weight below 100,000) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review being conducted by the agency.

EFFECTIVE DATE: This regulation shall be effective July 7, 1978.

ADDRESS: Written objections may be sent to the office of the Hearing Clerk (HFC-20), Food and Drug Administration, Room 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: In the FEDERAL REGISTER of November 18, 1977 (42 FR 59518), a proposal was published to affirm dextrans (average molecular weight below 100,000) as generally recognized as safe (GRAS) when used as indirect human food ingredients only. It also proposed to delete the GRAS listing of dextrans (average molecular weight below 100,000) as direct human food ingredients. This action is in accord with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), relating to the affirmation of GRAS food ingredients, copies of the scientific literature review on dextrans (average molecular weight below 100,000) and the report of the Select Committee have been made available for public review in the office of the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

In addition to proposing the actions described earlier, the Commissioner

gave public notice that he was unaware of any prior-sanctioned food ingredient use for this ingredient other than for the proposed conditions of use. Persons asserting additional or extended uses, in accordance with approvals granted by the U.S. Department of Agriculture or the Food and Drug Administration prior to September 6, 1958, were given notice to submit proof of such sanction so that the safety of the prior-sanctioned use could be determined at this time. That notice was also an opportunity to have prior-sanctioned uses of dextrans (average molecular weight below 100,000) approved by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181), provided the prior-sanctioned use could be affirmed as safe on the basis of information and data now available to the Commissioner. Notice was also given that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert such sanction at any future time.

No reports of prior-sanctioned use for dextrans (average molecular weight below 100,000) were submitted in response to the proposal. Therefore, in accordance with that proposal, any right to assert a prior sanction for a use of dextrans (average molecular weight below 100,000) under conditions different from those set forth in this regulation has been waived.

Two comments were submitted in response to the Commissioner's proposal and supporting data and information on dextrans. A summary of the comments and the Commissoner's conclusions thereon are as follows:

The comments requested retention of dextrans on the GRAS list and additional time for comment on the proposal because of current developmental food research on the ingredient. Commercial applications for the ingredients were stated to be approximately 1 year in the future and impossible to project at this time. The comments also suggested that dextrans were safe, based upon their long use in clinical products and known metabolism. One of the comments suggested that considerable food use of dextrans could result from this research and that data on safe pharmaceutical use in Europe could be made available to FDA at a future but unspecified date.

The Commissioner concludes that the points raised in these comments do not justify an undetermined delay in promulgating this regulation. The GRAS safety review of dextrans has been completed, and it would not be in the public interest to delay issuance of a final rule on their use in food pending the outcome of developmental research on possible new uses. In the event that new uses are discovered, their review and approval should be appropriately addressed through petition procedures (21 CFR 170.35 or 171.1).

In addition, since use patterns of pharmaceuticals would be expected to differ from those of food, data submitted on pharmaceutical uses of dextrans may be inadequate for judging their safe use in food. The comment's statement concerning the lack of evidence of physical harm caused by dextrans was not supported by scientific documentation. This unsupported statement cannot form a sufficient basis for an extension, especially if the extension would result in approving direct and unknown uses food. It was stated in the proposal that there was insufficient information upon which to base an approval for direct food use of dextrans. The Commissioner therefore concludes that the reasons offered for an extension of the comment period and for retention of GRAS status for direct food use of dextrans are insufficient and that no change in the proposal is warranted. Accordingly, the rule is being promulgated without change. The direct food use of dextrans is an unapproved food additive, and food containing directly added dextrans is adulterated within the meaning of section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342).

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), Part 182 and 186 are amended as follows:

§ 182.1275 [Revoked]

1. In Part 182, by deleting §182.1275 *Dextrans.*

2. In Part 186, by adding new §186.1275 to Subpart B, to read as follows:

§ 186.1275 Dextrans.

(a) Dextrans (CAS Reg. No. 9004-54-0) are high molecular weight polysaccharides produced by bacterial fermentation of sucrose. Commercially available dextrans are synthesized from sucrose by *Leuconostoc mesenteroides* strain NRRL B-512(F). Partial depolymerization and purification of the fermented mixture shall produce a product that is free of viable microorganisms.

(b) The ingredient meets the following specification: Ash, less than 0.1 percent; crude fat, less than 0.15 percent; protein, less than 1.0 percent; average molecular weight, less than 100,000; specific rotation, +200 degrees; arsenic, less than 1 part per million; total heavy metals (as lead), less than 10 parts per million; solvent residue (acetone), less than 15 parts per million.

(c) the ingredient is used or intended for use as a constituent of food-contact surfaces.

(d) The ingredient is used at levels not to exceed good manufacturing practice.

(e) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation is effective on July 7, 1978.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)).)

Dated: June 27, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-18345 Filed 7-6-78; 8:45 am]

[4110-03]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Levamisole Phosphate Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The regulations are amended to state that Cyanamid Agricultural de Puerto Rico, Inc., is the sponsor of a new animal drug application (NADA) providing for subcutaneous use of levamisole phosphate injection as an anthelmintic in cattle. In addition, the dosage is corrected to read 2 milliliters per 100 pounds of body weight.

DATE: Effective May 12, 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: In the FEDERAL REGISTER of May 12, 1978 (43 FR 20489), a document reflecting approval of NADA 102-437V did not indicate that Cyanamid Agricultural de Puerto Rico, Inc., Manati, Puerto Rico 00701, is the sponsor of this levamisole-containing product. In addition, under the conditions of use, the amount should have read "2 milliliters per 100 pounds of body weight, subcutaneously in the neck." This document amends the regulations to designate the correct sponsor and to indicate the proper dosage.

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 522 is amended in § 522.1244 by revising paragraphs (b) and (c)(1) to read as follows:

§ 522.1244 Levamisole phosphate injection.

* * * * *

(b) *Sponsor.* See No. 043781 in § 510.600(c) of this chapter.

(c) * * *

(1) *Amount.* 2 milliliters per 100 pounds of body weight, subcutaneously in the neck.

* * * * *

Effective date. This regulation is effective May 12, 1978.

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

Dated: June 28, 1978.

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

[FR Doc. 78-18712 Filed 7-6-78; 8:45 am]

[4110-03]

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Tolnaftate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This amendment to the regulations reflects approval of a new animal drug application (NADA) filed by Schering Corp., providing for dermatological use of tolnaftate cream for treatment of ringworm lesions in dogs and cats.

EFFECTIVE DATE: July 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert A. Baldwin, Bureau of Veterinary Medicine (HFV-114), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Schering Corp., Galloping Hill Road, Kenilworth, N.J. 07033, filed an NADA (37-502V) providing for dermatological use of tolnaftate cream in dogs and cats for the treatment of ringworm lesions. The application was approved on March 27, 1968. This action places in the Code of Federal Regulations an approval that was granted before approvals were published. This administrative action reflects a previously approved NADA and neither requires reevaluation of the basic NADA nor constitutes a reaffirmation of the drug's safety and effectiveness. Because the NADA was approved prior to July 1, 1975, a summary of the safety and effectiveness data and information submitted in accordance with § 514.11(e) (2)(ii) (21 CFR 514.11(e)(2)(ii)) to support this application is not required.

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 § 524.2350 to read as follows:

§ 524.2350 Tolnaftate cream.

(a) *Specifications.* The drug contains 1 percent tolnaftate (2-naphthyl-*N*-methyl-*N*-(3-tolyl) thionocarbamate) in an anhydrous cream base.

(b) *Sponsor.* See No. 000085 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) The drug is indicated for treatment of ringworm lesions due to *Microsporum canis* and *Microsporum gypseum* in dogs and cats.

(2) A small amount of the cream is applied to the affected areas once or twice a day for 2 to 4 weeks. The areas to be treated are first cleared of exudate and the hair clipped if the areas are not already denuded. The cream is massaged into each lesion and immediate surrounding area until the cream is no longer visible.

(3) If no response is seen after 2 weeks of treatment with the drug the diagnosis should be reviewed.

(4) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. This regulation shall be effective July 7, 1978.

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

Dated: June 28, 1978.

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

[FR Doc. 78-18711 Filed 7-6-78; 8:45 am]

[4110-03]

Selenium Disulfide Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Abbott Laboratories providing for the use or a selenium disulfide suspension on dogs as a cleansing shampoo and as an agent for removing skin debris. This approval reflects compliance with the results of the NAS/NRC evaluation of the product.

EFFECTIVE DATE: July 7, 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: Abbott Laboratories, Inc. Abbott Park, North Chicago, Ill. 60064, filed a supplemental new animal drug application (NADA 8-422V) providing for the use of selenium disulfide suspension on dogs. The product is used as a cleansing shampoo and as an agent for removing skin debris associated with dry eczema, seborrhea, and nonspecific dermatoses. The application was originally approved May 16, 1952. The particular product was one of several that were the subject of a National Academy of Sciences/National Research Council (NAS/NRC) efficacy study of pesticide chemicals having drug claims and subject to registration as pesticides as well as new animal drugs. In the study the agency concluded that Seleen, Abbott Laboratories' brand of selenium disulfide suspension, used as a canine shampoo, is probably not effective as a pesticide but may be effective as an antimicrobial (antifungal) agent. The NAS/NRC dermatological evaluation found the drug probably effective, requiring certain labeling revisions. In the dermatological evaluation, the product was found to be an excellent cleansing agent and an aid in removing fleas and lice (as would be the case with any shampoo). The evaluation stated that claims concerning the effectiveness of the product for demodectic mange and fungus infections should be documented.

The firm has responded by submitting a supplemental NADA, by providing information to update their application, and by submitting revised labeling in which claims not supported by the Academy's evaluation were deleted.

This document for the NAS/NRC approval of selenium disulfide suspension reflects a previously approved NADA. Because the NADA was approved prior to July 1, 1975, a summary of the safety and effectiveness data and information submitted in accordance with § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)) to support this application is not required.

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 § 524.2101 to read as follows:

§ 524.2101 Selenium disulfide suspension.

(a) *Specifications.* The product contains 0.9 percent weight/weight (w/w) selenium disulfide (1 percent weight/volume (w/v)).

(b) *Sponsor.* See No. 043731 in § 510.600(c)(2) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* One to two ounces per application.[1]

(2) *Indications for use.* For use on dogs as a cleansing shampoo and as an agent for removing skin debris associated with dry eczema, seborrhea, and nonspecific dermatoses.[1]

(3) *Limitations.* Use carefully around the scrotum and eyes, covering scrotum with petrolatum and instilling boric acid ophthalmic ointment into eyes. Allow shampoo to remain for 5 to 15 minutes prior to thorough rinsing. Repeat at 4- to 7-day intervals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.[1]

Effective date. This regulation becomes effective July 7, 1978.

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

Dated: June 27, 1978.

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

[FR Doc. 78-18564 Filed 7-6-78; 8:45 am]

[1] These conditions are NAS/NRC reviewed and deemed effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter.

[4110-03]

PART 510—NEW ANIMAL DRUGS

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Salicylic Acid; Listing of Drug Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the animal drug regulations to designate The Shurjets Co., Inc., as the sponsor of a new animal drug application which has been previously approved covering the use of salicylic acid as an ingredient of a device (teat dilator) for removal of scar tissue in the teat canal of milk-producing cows. This amendment results from the submission of a supplemental application.

EFFECTIVE DATE: July 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Myron C. Rosenberg, Bureau of Veterinary Medicine (HFV-125), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-1788.

SUPPLEMENTARY INFORMATION: The Shurjets Co., Inc., 2080 West 15th Street, Loveland, Colo. 80537, has filed a supplement to its application (NADA 10-481V) providing for a change of address of the firm. Accordingly, under section 512(i) of the Federal Food, Drug, and Cosmetic Act, the regulations are amended to reflect the approved sponsor and approval of the supplement. Initial approval of the application resulted in publication of a food additive regulation (§ 121.249(b)) under section 409 of the act in the FEDERAL REGISTER of October 5, 1963 (28 FR 10749). The regulation was recodified as § 529.2090 in the FEDERAL REGISTER of March 15, 1976 (41 FR 10984) under section 512 of the act.

Amemdment of the regulations to reflect this change does not require a reevaluation of the NADA, nor does it constitute a reaffirmation of the safety and effectiveness data supporting the NADA.

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), Parts 510 and 529 are amended as follows:

1. In Part 510, § 510.600 is amended by adding a new sponsor alphabetically to paragraph (c)(1) and numerically to (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.*
* * * * *	
The Shurjets Co., Inc., 2080 West 15th St., Loveland, Colo. 80537.....	035999
* * * * *	

(2) * * *

Drug listing No.	*Firm name and address*
* * * * *	
035999....	The Shurjets Co., Inc., 2080 West 15th St., Loveland, Colo. 80537.
* * * * *	

2. Part 529 is amended in § 529.2090 by adding new paragraph (b) to read as follows:

§ 529.2090 Salicylic acid.

* * * * *

(b) *Sponsor.* See No. 035999 in § 510.600(c) of this chapter.

* * * * *

Effective date. This regulation is effective July 7, 1978.

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

Dated: June 27, 1978.

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

[FR Doc. 18562 Filed 7-6-78; 8:45 am]

[4110-03]

[Docket Nos. 75N-0171; 76N-0082]

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Antibiotics, Nitrofuran, and Sulfonamides; Correction

AGENCY: Food and Drug Administration.

ACTION: Correction.

SUMMARY: In FR Doc. 77-9874 appearing at page 18611 in the issue of Friday, April 8, 1977, on page 18616 in the table in § 558.58(e)(1) (21 CFR 558.58(e)(1)), in item (iii) under the column heading "Amprolium and ethopabate in grams per ton," "(0.015 pct)" is corrected to read "(0.0125 pct)".

EFFECTIVE DATE: April 8, 1977.

FOR FURTHER INFORMATION CONTACT:

Robert P. Schmidt, Bureau of Veterinary Medicine (HFV-224), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3390.

Dated: June 27, 1978.

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

[FR Doc. 78-18561 Filed 7-6-78; 8:45 am]

[1505-01]

SUBCHAPTER F—BIOLOGICS

[Docket No. 78N-0101]

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

Color Coding for Blood Grouping Serum; Correction

Correction

In FR Doc. 78-12512, appearing at page 19844 in the issue for Tuesday, May 9, 1978, third column, bottom line of SUPPLEMENTARY INFORMATION, "§60.28(a)(1)" should read "§660.28(a)(1)".

[4830-01]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 7551; LR-214-74]

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

PART 301—PROCEDURE AND ADMINISTRATION

Annual Returns for Employee Retirement Benefit Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the filing of annual returns for employee retirement benefit plans. Changes in the applicable tax law were made by the Employee Retirement Income Security Act of 1974 ("ERISA"). The regulations would provide the public with the guidance needed to comply with ERISA and would also affect all employers and plan administrators with funded plans of deferred compensation.

DATE: The regulations are generally effective for plan years beginning after September 2, 1974.

FOR FURTHER INFORMATION CONTACT:

William D. Gibbs of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention:CC:LR:T), 202-566-3293 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 10, 1978, the FEDERAL REGISTER published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 404, 6033 and 6047 and the Procedure and Administration Regulations (26 CFR Part 301) under sections 6058 and 6652 of the Internal Revenue Code of 1954 (43 FR 5854). The amendments were proposed to conform the regulations to section 1031 of the Employee Retirement Income Security Act of 1974 (88 Stat. 943). A public hearing was held on April 13, 1978. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Relief From Filing

Section 301.6058-1(c)(5) of the proposed amendments allowed the Commissioner to relieve an employer or plan administrator from reporting information on the appropriate forms which was reported on other returns to the Service. That discretion has been broadened to allow the Commissioner to relieve employers and plan administrators from reporting information, regardless of whether the information is reported on other forms to the Service.

Delayed Effective Date for Penalties

In the case of forms required to be filed under section 6058 on or before July 31, 1978, no penalties will be imposed under section 6652(f) with respect to a period of time ending before [the later of August 1, 1978 or the first day of the first month beginning 30 days after publication of these regulations].

Clarifying Amendments

Several minor clarifying changes have been made to the proposed amendments.

Drafting Information

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

Adoption of Amendments to the Regulations

Accordingly, the proposed amendments are adopted with changes as set forth below:

PARAGRAPH 1. Section 301.6058-1 as set forth in paragraph 6 of the notice of proposed rulemaking is amended by revising the third sentence of paragraph (a)(2) to read as follows:

§ 301.6058-1 Information required in connection with certain plans of deferred compensation.

(a) *Reporting of information.* * * *

(2) *Plans subject to requirements.* * * *

The term also includes: funded plans of deferred compensation which are not qualified plans; funded governmental plans and church plans, whether or not qualified (See sections 414(d) and 414(e); and plans maintained outside the United States primarily for nonresident aliens (as described in subsection (b)(4) of section 4 of Subtitle A of Title I of the Employee Retirement Income Security Act of 1974 (88 Stat. 840)).

* * * * *

Par. 2. Section 301.6058-1 as set forth in paragraph 6 of the notice of proposed rulemaking is changed by revising paragraphs (a)(3) and (c)(5) to read as follows:

§ 301.6058-1 Information required in connection with certain plans of deferred compensation.

(a) *Reporting of information.* * * *

(3) *Required Information.* The information required to be furnished on the forms prescribed by section 6058 (a) shall include such information concerning the qualification of the plan, the financial condition of the trust, fund, or custodial or fiduciary account which is a part of the plan, and the operation of the plan as shall be required by the forms, applicable accompanying schedules and related instructions applicable to the annual period.

* * * * *

(c) *Other rules applicable to annual returns.* * * *

(5) *Relief from filing.* Notwithstanding paragraph (a) of this section, the Commissioner may, in his discretion, relieve an employer, or plan administrator, from reporting information on the forms prescribed by section 6058 (a). This discretion includes the ability to relieve an employer, or plan administrator, from filing the applicable form.

* * * * *

(Secs. 6058 and 7805, Internal Revenue Code of 1954 (88 Stat. 945 and 68A Stat. 917; 26 U.S.C. 6058 and 7805).)

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: June 29, 1978.

DONALD C. LUBICK,
Assistant Secretary of the Treasury.

The amendments to 26 CFR Part 1 and 26 CFR Part 301 are as follows:

INCOME TAX REGULATIONS

PARAGRAPH 1. Section 1.404(a)-2A is amended by revising the section title and the first sentence of paragraph (a). As amended, § 1.404(a)-2A reads as follows:

§ 1.404(a)-2(A) Information to be furnished by employer; taxable years ending on or after December 31, 1971, and before December 31, 1975.

(a) *In general.* For any taxable year ending on or after December 31, 1971, and before December 31, 1975, any employer who maintains a pension, annuity, stock bonus, profit-sharing, or other funded plan of deferred compensation shall file the forms prescribed by this section. * * *

* * * * *

§ 1.6033 [Deleted]

PAR. 2. Section 1.6033 is deleted.

PAR. 3. Section 1.6033-2 is amended by revising paragraphs (a)(3)(ii) and (h)(3) to read as follows:

§ 1.6033-2 Returns by exempt organizations; taxable years beginning after December 31, 1969.

(a) *In general.* * * *

(3) * * *

(ii) For taxable years ending on or after December 31, 1971, and before December 31, 1975, every employee's trust described in section 401(a) which is exempt from taxation under section 501(a) shall file an annual return on Form 990-P. The trust shall furnish such information as is required by such form and the instructions issued with respect thereto.

* * * * *

(h) *Records, statements, and other returns of tax-exempt organizations.* * * *

(3) An organization which has established its exemption from taxation under section 501(a), including an organization which is relieved under section 6033 and this section from filing annual returns of information, is not relieved of the duty of filing other returns of information. See, for example, sections 6041, 6043, 6051, 6057, and 6058 and the regulations thereunder.

* * * * *

§ 1.6047 [Deleted]

PAR. 4. Section 1.6047 is deleted.

PAR. 5. Paragraph (c) of § 1.6047-1 is amended to read as follows:

§ 1.6047-1 Information to be furnished with regard to employee retirement plan covering an owner-employee.

* * * * *

(c) *Penalties.* For civil penalty for failure to file a return required by this section, and for criminal penalty for furnishing fraudulent information under this section, see §§ 301.6652-3 and 301.7207-1, respectively.

* * * * *

REGULATIONS ON PROCEDURE AND ADMINISTRATION

PARAGRAPH 6. There is inserted in the appropriate place the following new section:

§ 301.6058-1 Information required in connection with certain plans of deferred compensation.

(a) *Reporting of information*—(1) *Annual return.* For each funded plan of deferred compensation an annual return must be filed with the Internal Revenue Service. The annual return of the plan is the appropriate Annual Return/Report of Employee Benefit Plan (Form 5500 series) as determined under these forms. The annual period for the annual return of the plan shall be either the plan year or the taxable year of the employer maintaining the plan as determined under these forms. These forms are hereinafter referred to as the "forms prescribed by section 6058(a)."

(2) *Plans subject to requirements.* For purposes of this section, the term "funded plan of deferred compensation" means each pension, annuity, stock bonus, profit-sharing, or other funded plan of deferred compensation described in part 1 of subchapter D of chapter 1. Accordingly, the term includes qualified plans under sections 401(a), 403(a), and 405(a); individual retirement accounts and annuities described in sections 408(a) and 408(b); and custodial accounts under section 403(b)(7). The term also includes: funded plans of deferred compensation which are not qualified plans; funded governmental plans and church plans, whether or not qualified (See sections 414(d) and 414(e)); and plans maintained outside the United States primarily for nonresident aliens (as described in subsection (b)(4) of section 4 of Subtitle A of Title I of the Employee Retirement Income Security Act of 1974; (88 Stat. 840)). The term does not include annuity contracts described in section 403(b)(1) or individual retirement accounts (an individual participant or surviving beneficiary in such account must file under paragraph (d)(2) of this section) and bonds described in sections 408(c) and 409.

(3) *Required information.* The information required to be furnished on the forms prescribed by section 6058(a) shall include such information concerning the qualification of the plan, the financial condition of the trust, fund, or custodial or fiduciary account which is a part of the plan, and the operation of the plan as shall be required by the forms, applicable accompanying schedules and related instructions applicable to the annual period.

(4) *Time of filing.* The forms prescribed by section 6058(a) shall be filed in the manner and at the time as required by the forms and related instructions applicable to the annual period.

(b) *Who must file*—(1) *In general.* The annual return required to be filed under section 6058(a) and paragraph (a) of this section for the annual period shall be filed by either the employer maintaining the plan or the plan administrator (as defined in section 414(g)) of the plan for that annual period. Whether the employer or plan administrator files shall be determined under the forms prescribed by section 6058(a) and related instructions applicable to the annual period. Nothing in these forms shall preclude an employer from filing the return on behalf of the plan administrator, or the plan administrator from filing on behalf of the employer.

(2) *Definition of employer.* For purposes of subparagraph (1) of this paragraph, the term "employer" includes a sole proprietor and a partnership.

(c) *Other rules applicable to annual returns*—(1) *Extensions of time for filing.* For rules relating to the extension of time for filing, see section 6081 and the regulations thereunder and the instructions on the forms prescribed by section 6058(a).

(2) *Amended filing.* Any form prescribed by this section may be filed as an amendment to a form previously filed under this section with respect to the same annual period pursuant to the instructions for such forms.

(3) *Additional information.* In addition to the information otherwise required to be furnished by this section, the district director may require any further information that is considered necessary to determine allowable deductions under section 404, qualification under section 401, or the financial condition and operation of the plan.

(4) *Records.* Records substantiating all data and information required by this section to be filed must be kept at all times available for inspection by internal revenue officers at the principal office or place of business of the employer or plan administrator.

(5) *Relief from filing.* Notwithstanding paragraph (a) of this section, the Commissioner may, in his discretion, relieve an employer, or plan administrator, from reporting information on the forms prescribed by section

6058(a). This discretion includes the ability to relieve an employer, or plan administrator, from filing the applicable form.

(d) *Special rules for individual retirement arrangements*—(1) *Application.* This paragraph, in lieu of paragraph (a) of this section, applies to an individual retirement account described in section 408(a) and an individual retirement annuity described in section 408(b), including such accounts and annuities for which a deduction is allowable under section 220 (spousal individual retirement arrangements).

(2) *General rule.* For each taxable year beginning after December 31, 1974, every individual who during such taxable year—

(i) Establishes or maintains an individual retirement account described in section 408(a) (including an individual who is a participant in an individual retirement account described in section 408(c)).

(ii) Purchases or maintains an individual retirement annuity described in section 408(b), or

(iii) Is a surviving beneficiary with respect to an account or annuity referred to in this subparagraph which is in existence during such taxable year, shall file Form 5329 (or any other form designated by the Commissioner for this purpose), as an attachment to or part of the Form 1040 filed by such individual for such taxable year, setting forth in full the information required by that form and the accompanying instructions.

(3) *Special information returns.* If an individual described in subparagraph (2) of this paragraph is not required to file a Form 1040 for such taxable year, such individual shall file a Form 5329 (or any other designated form) with the Internal Revenue Service by the 15th day of the 4th month following the close of such individual's taxable year setting forth in full the information required by that form and the accompanying instructions.

(4) *Relief from filing.* The Commissioner may, in his discretion, relieve an individual from filing the form prescribed by this paragraph.

(5) *Retirement bonds.* An individual who purchases, holds, or maintains a retirement bond described in section 409 may be required to file a return under other provisions of the Code.

(e) *Actuarial statement in case of mergers, etc.* For requirements with respect to the filing of actuarial statements in the case of a merger, consolidation, or transfer of assets or liabilities, see section 6058(b) and section 414(l) and the regulations thereunder.

(f) *Effective dates*—(1) *Section 6058 (a) requirements.* The rules with respect to annual returns required under section 6058(a) (the rules in this section, other than paragraph (e) thereof) are effective for plan years beginning after September 2, 1974.

(2) *Section 6058(b) requirements.* The requirements of section 6058(b) relating to mergers, etc., and paragraph (e) of this section are effective on September 2, 1974, with respect to events described in section 6058(b) occurring on or after such date.

PAR. 7. Section 301.6652-3 is amended by adding a new paragraph (a)(3) to read as follows:

§ 301.6652-3 Failure to file information with respect to employee retirement benefit plan.

(a) *Amount imposed.* * * *

(3) *Annual return of funded plan of deferred compensation.* Under section 6652(f) the amount described in this subparagraph is imposed in each case in which there is a failure to file the annual return described in section 6058(a) on behalf of a plan described in § 301.6058-1(a) at the time and in the manner prescribed therefor (determined with regard to any extension of time for filing). The employer maintaining the plan is liable for the amount imposed with respect to a failure to so file the annual return in each case in which the employer must file the return under § 301.6058-1(a). The plan administrator (within the meaning of section 414(g)) is liable for the amount imposed in each case in which the plan administrator must file the return under § 301.6058-1(a). In the case of an individual retirement account or annuity described in section 408, the individual described in § 301.6058-1(d)(2) who must file the annual return under § 301.6058-1(d) is liable for the amount imposed with respect to a failure to so file the annual return. The amount imposed is $10 for each day during which the failure to file the annual return on behalf of a plan for a year continues. However, the total amount imposed with respect to a failure to file on behalf of a plan for any year shall not exceed $5,000.

* * * * *

[FR Doc. 78-18800 Filed 7-3-78; 4:23 pm]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 923-4; PP 7E1968/R154]

SUBCHAPTER E—PESTICIDE PROGRAMS

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

Dimethyl Tetrachloroterephthalate

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide dimethyl tetrachloroterephthalate on upland cress. The amendment to the regulations was requested by the Interregional Research Project No. 4. This rule establishes a maximum permissible level for residues of the herbicide on upland cress.

EFFECTIVE DATE: June 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Mrs. Patricia Critchlow, Registration Division (WH-569), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C., 202-426-2516.

SUPPLEMENTARY INFORMATION: On April 18, 1978, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (43 FR 16352) in response to a pesticide petition (PP 7E1968) submitted to the Agency by Dr. C. C. Compton, Coordinator, Interregional Research Project No. 4, New Jersey State Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, on behalf of the Agricultural Experiment Station of Tennessee. This petition proposed that 40 CFR 180.185 be amended by the establishment of a tolerance for combined residues of the herbicide dimethyl tetrachloroterephthalate and its metabolites monomethyl tetrachloroterephthalate and tetrachloroterephthalic acid in or on the raw agricultural commodity upland cress at 5 parts per million (ppm). No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.185 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before August 7, 1978, file written objections with the Hearing Clerk, EPA, Room M-3708, 401 M Street SW., Washington, D.C. 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by the grounds legally sufficient to justify the relief sought.

Effective on July 7, 1978, part 180, subpart C, section 180.185 is amended by alphabetically inserting a tolerance in the table on upland cress at 5 ppm as set forth below.

(Statutory Authority: Section 408(e) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a(e)).)

Dated: June 29, 1978.

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

Part 180, subpart C, section 180.185 is amended by alphabetically inserting a tolerance on upland cress at 5 ppm in the list of commodities to read as follows:

§ 180.185 Dimethyl tetrachloroterephthalate; tolerances for residues.

* * * * *

Commodity:	*Parts per million*
* * * * *	
Cress, upland	5
* * * * *	

[FR Doc. 78-18698 Filed 7-6-78; 8:45 am]

[4310-84]

Title 43—Public Lands: Interior

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5641]

[Wyoming 29043]

WYOMING

Partial Revocation of Reclamation Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This order restores the lands described to the operation of the public land laws generally, including the United States mining laws.

EFFECTIVE DATE: August 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Eldon Hayes, 202-343-8731.

By virtue of the authority contained in section 204 of the Act of October 21, 1976, 43 U.S.C. 1701, et seq., it is ordered as follows:

1. Public Land Order No. 2695 of June 11, 1962, withdrawing lands for the Savery-Pot Hook Project, is hereby revoked so far as it affects the following described lands:

SIXTH PRINCIPAL MERIDIAN

T. 12 N., R. 90 W.,
Sec. 1, lot 1;
Sec. 8, SE¼;
Sec. 17, NE¼NE¼.
T. 13 N., R. 91 W.,
Sec. 27, SW¼NW¼.

The areas described aggregate 280.03 acres in Carbon County.

The lands are located near the population centers of Savery, Dixon, and Baggs, Wyo. The terrain varies from flat to rolling hills to mountainous. Vegetative cover is primarily sagebrush and brush-shrubs with an understory of grass and forbs species. Juniper is predominant in the mountainous areas.

2. At 10 a.m. on August 4, 1978, the lands shall be open to operation of the public land laws generally, including the U.S. mining laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 10 a.m. on August 4, 1978, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The lands have been and will continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Cheyenne, Wyo. 82001.

GUY R. MARTIN,
Assistant Secretary of the Interior.

[FR Doc. 78-18744 Filed 7-6-78; 8:45 am]

[4310-84]

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5642]

[Colorado 24401]

COLORADO

Powersite Restoration No. 751; Partial Revocation of Powersite Reserve No. 121

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This order will partially revoke Powersite Reserve No. 121. It has been determined that these lands will not be developed for power purposes but will be restored to the operation of the public land laws.

EFFECTIVE DATE: August 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Eldon G. Hayes, 202-343-8731.

By virtue of the authority contained in section 204 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714, and pursuant to the determination by the Federal Power Commission (now the Federal Energy Regulatory Commission) in DA-504-Colorado, it is ordered as follows:

1. The Executive Order of July 2, 1910, creating Powersite Reserve No. 121, is hereby revoked so far as it affects the following described lands:

SIXTH PRINCIPAL MERIDIAN

T. 6 N., R. 99 W.,
Sec. 22, SW¼SE¼;
Sec. 24, NE¼SW¼;
Sec. 26, lots 12, 13, 14, and SW¼SW¼;
Sec. 27, lots 1, 13, 14.

The area described aggregates 212.61 acres in Moffat County.

Of the land described, the NE¼SW¼ of section 24 containing 40 acres, is patented. The SW¼SE¼ section 22, and lot 1, section 27, are public lands which remain withdrawn under Public Land Order No. 2632 of March 13, 1962, for the Savery-Pot Hook Reclamation Project.

2. The State of Colorado has waived its right to select lands for highway rights-of-way or material sites as provided by the Federal Power Act of June 10, 1920, 16 U.S.C. 818.

3. At 10 a.m. on August 4, 1978, the above described lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on August 4, 1978, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The public lands in this order have been and continue to be open to applications and offers under the mineral leasing laws, and to location under the U.S. mining laws.

Inquiries concerning the public lands should be addressed to the State Director, 700 Colorado State Bank Building, 1600 Broadway, Denver, Colo. 80202.

GUY R. MARTIN,
Assistant Secretary of the Interior.

JUNE 29, 1978.

[FR Doc. 78-18743 Filed 7-6-78; 8:45 am]

[6712-01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Editorial Amendments Concerning Frequencies Available for Assignment to Ship Stations

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The Commission is editorially amending its rules to eliminate certain inconsistencies regarding frequencies that are available for assignment to ship stations. One section of the rules permits their use but these frequencies do not appear in the list of available frequencies. This action will correct this inconsistency.

EFFECTIVE DATE: July 17, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Kemp J. Beaty, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION:

Adopted: June 29, 1978.

Released: July 3, 1978.

1. Section 83.352(b) of the Commission's rules makes provisions for the use of the frequencies 121.5 MHz and 123.1 MHz for assignment to ship stations for scene of action search and rescue operations between ships and aircraft using DSB (6A3) emission. However, these frequencies are not shown under Section 83.351 "Frequencies available". We are therefore editorially amending the table under section 83.351(a) and adding the limitations of use under section 83.351(b)(10) of the rules to reflect the availability of these frequencies.

2. Authority for this amendment is contained in section 4(i) and 303 (c) and (r) of the Communications Act of 1934, as amended, and section 0.231(d) of the Commission's rules. Since the amendment is editorial in nature the public notice, procedure and effective date provisions of 5 U.S.C. 553 do not apply.

3. In view of the above, *it is ordered*, That the rule amendment set forth below is adopted effective July 17, 1978.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083 (47 U.S.C. 154, 303, 307).)

FEDERAL COMMUNICATIONS COMMISSION,
R. D. LICHTWARDT,
Executive Director.

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended to read as follows:

In § 83.351, paragraph (a) the table designator under "Carrier frequency" is amended from MHz to kHz, the table is amended and (b)(10) is added to read as follows:

§ 83.351 Frequencies available.

(a) * * *

Carrier frequency	Conditions of use	
(kHz)	Section	Limitations
13158.0	83.354	3, 21, 66
* * * * *		
22136.4	83.360	13, 16, 74
(MHz)		
121.5	83.352	10
123.1	83.352	10
* * * * *		

(b) * * *

(10) The frequencies 121.5 MHz and 123.1 MHz (class A3 emission) are available for assignment to ship stations for scene of action search and rescue operations between ships and aircraft.

* * * * *

[FR Doc. 78-18680 Filed 7-6-78; 8:45 am]

[4910-22]

Title 49—Transportation

CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

[Docket No. MC-69-2. Amdt. No. 77-7]

PART 395—HOURS OF SERVICE OF DRIVERS

Driver's Daily Log and Multi-Day Log, Extension of Use

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment extends from June 30, 1978, to September 30, 1978, the period during which the driver's daily log form (MCS-59) and multi-day log forms (MCS-139 and MCS-139A) are in effect.

EFFECTIVE DATE: July 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Gerald Davis, Chief, Driver Requirements Branch, Regulations Division, Bureau of Motor Carrier Safety, 202-426-9767; Mr. Gerald Tierney, Office of Chief Counsel, 202-426-0346, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.s.t., Monday-Friday.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) has advised the Department of Transportation that the driver's daily log and multi-day log forms have been authorized for use until September 30, 1978. In order to accomplish this extension, sections 395.8 and 395.9 of the Federal Motor Carrier Safety Regulations are being amended to extend the requirement for the use of either the multi-day log (Form Nos. MCS-139 and MCS-139A) or the daily log (Form MCS-59) through September 30, 1978.

Dr. Robert A. Kaye, Director, Bureau of Motor Carrier Safety, Federal Highway Administration, has determined that because the issuance of this rule change is an emergency, neither a notice of proposed rulemaking nor compliance with Executive Order 12044 is required. The failure to issue a final rule extending the time period in which logs are required would result in confusion within the motor carrier industry about its responsibilities under 49 CFR Part 395. Numerous inquiries received in the past several weeks indicate that many persons are confused about the actual dates on which OMB authorization for both the multi-day and single-day logs terminate. The expedited issuance of this rule is the only method of providing clarification and assuring that carriers are aware of the obligation to prepare and maintain drivers' daily logs after June 30, 1978.

Accordingly, 49 CFR Chapter III is amended as follows:

1. Section 395.8 is amended by revising paragraph (a) and adding a new paragraph (u) as follows:

Section 395.8(a) is revised as follows:

§ 395.8 Driver's daily log.

(a) Except as provided in section 395.9 and in paragraph (t) and (u) of this section, every motor carrier shall require that a driver's daily log, Form MCS-59 set forth below, shall be made in duplicate by every driver used by him or it and every driver who operates a motor vehicle shall make such a log. Failure to make logs, failure to make required entries therein, falsification of entries, or failure to preserve logs shall make both the driver and the carrier liable to prosecution. Driv-

er's logs shall be prepared and retained in accordance with the provisions of paragraphs (b) through (s) of this section.

* * * * *

(u) Form MCS-59 may be used through September 30, 1978.

Accordingly, 49 CFR Chapter III is amended as follows:

2. Section 395.9(x) is amended to read as follows:

§ 395.9 Driver's Multi-Day Log.

* * * * *

(x) *Effective Time.* Carriers may use Forms MCS-139 and 139A through September 30, 1978.

(49 U.S.C. 304; 49 CFR 1.48, 301.60.)

Issued: June 30, 1978.

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

[FR Doc. 78-18716 Filed 7-6-78; 8:45 am]

[7035-01]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. 338]

PART 1109—REQUIREMENTS AND PROCEDURES RELATING TO RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Standards and Procedures for the Establishment of Adequate Railroad Revenue Levels

AGENCY: Interstate Commerce Commission.

ACTION: Correction of final rule.

SUMMARY: This document corrects a final rule on Standards and Procedures for the establishment of adequate railroad revenue levels which appears at page 25774 of the FEDERAL REGISTER of June 14, 1978. Schedule A of 49 CFR 1109.25 is corrected to prevent the unintentional omission of certain data.

EFFECTIVE DATE: Effective immediately.

FOR FURTHER INFORMATION CONTACT:

Janice M. Rosenak 202-275-7693 or Harvey Gobetz 202-275-7656.

SUPPLEMENTARY INFORMATION: A notice of amended final rule in this proceeding was served June 7, 1978, and published in the FEDERAL REGISTER June 14, 1978 (43 FR 25774). It has come to the attention of the Commission that the revised Schedule A to the adopted regulation makes an unintended substantive change in the data required to be reported.

Line 20 of the original Schedule A called for data on the net investment in railroad property. In the revised Schedule A, the computation of net investment was broken down into lines 20a through 20g to reflect the Commission's conclusions concerning working capital, treatment of accounts 90, 76, and 80, and deduction of the deferred tax account. In the revised Schedule, too, the source for the property investment figure was changed in the interest of simplification. However, it appears that use of the new source shown would result in the unintentional omission of the leased property element that was included in the original Schedule A source.

In order to avoid this omission, Schedule A and the Conversion Table are corrected as shown below. Copies of this correction notice shall be available to the public at the Office of the Secretary of the Commission, and the notice shall be published in the FEDERAL REGISTER.

Issued at Washington, D.C., June 27, 1978.

By the Commission, Chairman O'Neal.

NANCY L. WILSON,
Acting Secretary.

Accordingly, 49 CFR 1109.25 is corrected by deleting the source references on lines 20b, 20c, and 20d of Schedule A and the Schedule A Conversion Table, and substituting those shown below:

SCHEDULE A

Line No.	Item (a)	Source (b)
20b	Net road and equipment	A. R. schedule 335, L. 39, column (d) minus column (e)..
20c	Interest during construction	A. R. schedule 335A, L. 47 total
20d	Other elements of investment (debits).	Account 80 debits contained in A. R. schedule 335A, L. 51 total..

SCHEDULE A CONVERSION TABLE

Line No.	System of accounts effective Jan. 1, 1978	System of accounts prior to Jan. 1, 1978
20b	A. R. schedule 335, L. 39, column (d) minus column (e).	A. R. schedule 211 N-1, L. 39, column (d) minus column (e)..
20c	A. R. schedule 335A, L. 47 total	A. R. schedule 211 N-2, L. 47 total
20d	Account 80 debits contained in A. R. schedule 335A, L. 51 total.	Account 80 debits contained in A. R. schedule 211 N-2, L. 51 total..

[FR Doc. 78-18731 Filed 7-6-78; 8:45 am]

[1505-01]

Title 50—Wildlife and Fisheries

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

PART 26—PUBLIC ENTRY AND USE

Back Bay National Wildlife Refuge, Va.

Correction

In FR Doc. 78-16946, appearing at page 26314 in the issue of Monday, June 19, 1978, the "Effective Date" paragraph should read, "EFFECTIVE DATE: July 19, 1978 through December 31, 1979."

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.

[7590-01]

NUCLEAR REGULATORY COMMISSION

[10 CFR Part 35]

HUMAN USES OF BYPRODUCT MATERIAL

Misadministration Reporting Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering amending its regulations to require licensees to (1) keep records of all misadministrations of radioactive material or radiation from radioactive material, and (2) promptly report potentially dangerous misadministrations to the NRC, to the patient's referring physician, and to the patient or the patient's responsible relative.

DATES: Comment period expires October 5, 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 Podolak, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, phone 301-443-6910.

SUPPLEMENTARY INFORMATION: Following its organization under the Energy Reorganization Act of 1974 (Pub. L. 93-438), NRC, with a view to possible changes, began reviewing its regulations and procedures about licensing and regulation of nuclear facilities and materials originally promulgated by the Atomic Energy Commission (AEC).

On March 9, 1973, the AEC published a proposed rule in the FEDERAL REGISTER (38 FR 6399) that would have required licensees to report to the AEC and to the patient all misadministrations of byproduct material and also would have required licensees to determine that paramedical (allied health) personnel were adequately trained in the safe use of radioactive materials. Because 5 years have elapsed since the AEC requirement was proposed, it is being withdrawn and a new NRC proposed misadministration recordkeeping and reporting requirement, 10 CFR §35.33, is being offered for public comment. The NRC proposed rule reflects the public comments on the AEC proposal.

One purpose of the misadministration reporting requirements is to allow NRC to investigate the incident; determine if there was a violation of NRC regulations; evaluate the corrective action taken by the licensee to minimize the chance of recurrence; and, if there is a possibility of other licensees making the same error, to allow NRC to begin generic corrective action which, as a minimum, would inform other licensees of the potential problem. Another purpose is to inform the patient or the patient's responsible relative so that corrective action can be taken. On this point, the Commission has expressed concern about the possibility of undue intrusion into the physician-patient relationship. Consequently, the Commission asks that commentors particularly focus on those portions of the proposed amendments which deal with the manner in which referring physicians and their patients are informed of misadministrations.

Specifically, NRC's proposed §35.33 would require licensees to maintain for inspection by the Commission, records of all misadministrations of radiopharmaceuticals or radiation from teletherapy and brachytherapy sources. Licensees would also be required to report promptly all misadministrations that involve a therapy procedure and those diagnostic misadministrations that could cause a clinically detectable adverse effect on the patient: (1) To the NRC, (2) to the patient's referring physician, and (3) to the patient or the patient's responsible relative, unless the referring physician personally informs the licensee that in his medical judgment telling the patient or the patient's responsible relative would be harmful to one or the other, respectively.

It is expected that the licensee would report to the patient's responsible relative rather than the patient when, for example, the referring physician tells the licensee that in his medical judgment informing the patient would be harmful to the patient; the patient is a minor; or the patient is unconscious and incapable of comprehending the information. The licensee would have the discretion or reporting either to the patient or to the patient's responsible relative. The record or report which would be supplied to NRC would contain a brief description of the event, the effect on the patient, and the action taken to prevent recurrence. The names of individuals would be maintained in the licensee's record but not reported to the NRC. A copy of the report to NRC would be furnished by the licensee to the patient or the patient's responsible relative if either had been notified previously.

An example of the follow-up action NRC might take upon receipt of a misadministration report was the NRC investigation of an incident were 400 patients treated for cancer with a cobalt-60 teletherapy unit received radiation doses that exceeded the prescribed doses by as much as 41 percent. This incident occurred because the radiation dose rate from the teletherapy unit had not been properly determined. Soon after its investigation, NRC acted to ensure that all teletherapy units licensed by it were properly calibrated. NRC also published in the FEDERAL REGISTER (42 FR 35743) a proposed amendment to §35.13 requiring teletherapy licensees routinely to calibrate and check their teletherapy devices. The teletherapy calibration proposal also included a specific misadministration reporting requirement that would be replaced by §35.33 (a more general proposal). Comments received in response to the earlier teletherapy misadministration reporting requirement will be considered in conjunction with the proposed rulemaking.

In this newly proposed rule, §35.33(f) (4) and (5) define misadministrations in part as administrations differing from the total prescribed dose or exposure by more than 10 percent for therapeutic procedures or 20 percent from diagnostic procedures. These limits should not be viewed as the normal calibration limits for these procedures but rather the points where an error obviously has occurred. The narrower tolerance for the therapeutic procedures recognizes the greater risk to the patient from therapeutic misadministrations.

Pursuant to 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 the 1973 AEC proposed rule (38 FR 6399) is withdrawn and adoption of the following new amendments to 10 CFR Part 35 is contemplated.

A new § 35.33 is added to 10 CFR Part 35 to read as follows:

§ 35.33 Records and reports of misadministrations.

(a) When a misadministration involves either a diagnostic procedure that could cause a clinically detectable adverse effect or therapy procedure, within 24 hours after the licensee's discovery that the misadministration is likely to have occurred, the licensee shall notify by telephone:

(1) The appropriate NRC Regional Office listed in appendix D of part 20 of this chapter;

(2) The patient's referring physician; and

(3) The patient or the patient's responsible relative, unless the referring physician personally informs the licensee that in his medical judgment telling the patient or the patient's responsible relative would be harmful to one or the other, respectively.

(b) If the referring physician, or the patient's responsible relative is unavailable within 24 hours, the licensee shall make the notification under paragraphs (a)(2) or (a)(3) of this section as soon as practicable after that person becomes available. Attempts to notify the referring physician or the patient's responsible relative shall not defer needed medical care for the patient.

(c) Within 15 days after the licensee's discovery that the misadministration is likely to have occurred, the licensee shall make a written report to the NRC Regional Office initially telephoned, and furnish a copy of the report to the patient or the patient's responsible relative if either has been proviously notified under paragraph (a)(3) of this section.

(d) The written report made under paragraph (c) of this section shall include the licensee's name; a brief description of the event; the effect on the patient; the action taken to prevent recurrence; and whether the licensee informed the patient or the patient's responsible relative, and if not, why not. However, the report should not include the names of others involved in the misadministration, such as the patient, physicians, and allied health personnel.

(e) Each licensee shall maintain for 5 years for Commission inspection records of all misadministrations of radiopharmaceuticals or radiation from teletherapy or brachytherapy sources. These records shall contain the names of everyone involved in the event (including the licensee, the authorized user(s), allied health personnel, the patient's referring physician, the patient, and, where appropriate, the patient's responsible relative); a brief description of the event; the effect on the patient; and the action taken to prevent recurrence.

(f) For this section, misadministration means the administration of:

(1) A radiopharmaceutical or radiation from a source other than the one intended;

(2) A radiopharmaceutical or radiation to the wrong patient;

(3) A radiopharmaceutical or radiation by a route of administration other than that intended by the prescribing physician;

(4) A diagnostic dose of a radiopharmaceutical differing from the prescribed dose by more than 20 percent; or

(5) A therapeutic dose of a radiopharmaceutical or exposure from a radiation source such that the total treatment dose or exposure differs from the prescribed dose or exposure by more than 10 percent.

(g) Aside from the notification requirement, nothing in this section shall affect any rights or duties of licensees and physicians in relation to each other, patients or responsible relatives.

(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 30th day of June 1978.

For The Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-18735 Filed 7-6-78; 8:45 am]

[6740-02]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[10 CFR Parts 210, 211, 212]

[Docket No. EA78-2]

EXEMPTION OF AVIATION GASOLINE AND KEROSENE-BASE JET FUEL FROM THE ALLOCATION AND PRICE REGULATIONS

Hearing and Opportunity for Public Comment

JULY 3, 1978.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Solicitation of public comment and notice of public hearing.

SUMMARY: The Federal Energy Regulatory Commission invites public comment on proposed amendments to exempt aviation gasoline and kerosene-base jet fuel from mandatory petroleum allocation and price regulations. The proposed amendments were issued by the Economic Regulatory Administration and were transmitted to the Commission for its consideration by the Secretary of the Department of Energy on June 22, 1978.

Recommendations of the Commission regarding the proposals will be published after all comments and statements are considered.

DATES: Comments: August 11, 1978. Public Hearings: Aviation gasoline, August 1, 1978; Kerosene-base jet fuel, August 3, 1978. Date for requests to participate in public hearings: July 27, 1978.

ADDRESSES:

PUBLIC HEARING

Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426.

COMMENTS

Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426.

REQUESTS TO SPEAK

Robert L. Baum, Deputy General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Robert L. Baum, Deputy General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426; 202-275-4333.

SUPPLEMENTARY INFORMATION: On October 1, 1977, the Department of Energy Organization Act, Pub. L. 95-91, (the DOE Act) became effective. That act established a Department of Energy within the executive branch. In addition to transferring the functions of the Administrator of the Federal Energy Administration to the Secretary of the Department of Energy, the DOE Act created within the Department an independent collegial body; viz, the Federal Energy Regulatory Commission (the Commission).

Included in the authority vested in the Commission by the DOE Act is the jurisdiction, in section 402(c)(1), to consider certain proposals by the Secretary to amend the regulation prescribed under section 4(a) of the Emergency Petroleum Allocation Act of 1973. This regulation provides for controlling the price and allocation of crude oil and petroleum products. Amendments which would exempt petroleum products from this regulation are required to be transmitted to and reviewed by each House of Congress.

The DOE Act provides that Commission consideration of these proposals be subject to procedures set forth in section 404 of the act. In accordance with those procedures, the Commission will, after receiving public comment and holding hearings on the proposals, consult with the Secretary, and

then publish its recommendations. The recommendations will be accompanied by a statement of the reasons for the recommendations, and an analysis of the major comments, criticisms and alternatives received during the comment period. The Commission may concur in the adoption of the proposed rules, recommend changes, or recommend that the rule not be adopted. Subsequent to the publication of the Commission's recommendations, the Secretary will take action in accordance with section 404(c). That action by the Secretary constitutes final agency action for purposes of judicial review.

On June 22, the Administrator of the Economic Regulatory Administration (the ERA) issued and Secretary of the Department of Energy transmitted to the Commission the proposed amendments set forth below. One proposal would exempt aviation gasoline from the mandatory petroleum allocation and price regulations. The second proposal would similarly exempt kerosene-base jet fuel from those regulations. These two proposals will be considered by the Commission in accordance with section 402(c)(1) of the DOE Act.

The proposals now before the Commission were the subject of advance notices of proposed rulemaking issued by the ERA on February 17, 1978 (43 FR 6959 and 6962). In that notice, the exemption procedure was described as follows:

Pursuant to section 455 of the EPCA, only one refined product category may be exempted from DOE regulations in the same proceeding, and an exemption is not limited to 90 days in length as was previously required. The ERA may propose to exempt an oil or refined product category from the regulations prescribed under section 4(a) of the EPAA if the DOE determines that the exemption is consistent with the attainment of the public policy objectives specified in section (4)(b)(1) of the EPAA. Those objectives are as follows:

A. Protection of public health (including the production of pharmaceuticals), safety and welfare (including maintenance of residential heating such as individual homes, apartments and similar occupied dwelling units), and the national defense;

B. Maintenance of all public services (including facilities and services provided by municipally, cooperatively, or investor owned utilities or by any State or local government or authority, and including transportation facilities and services which serve the public at large);

C. Maintenance of agricultural operations, including farming, ranching, dairy and fishing activities, and services directly related thereto;

D. Preservation of an economically sound and competitive petroleum industry; including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded independent marketers;

E. The allocation of suitable types, grades, and quality of crude oil to refineries in the United States to permit such refineries to operate at full capacity;

F. Equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, nonbranded independent marketers, branded independent marketers, and among all users;

G. Allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of, exploration for, and production or extraction of—

(i) Fuels, and

(ii) Minerals essential to the requirements of the United States, and for required transportation related thereto;

H. Economic efficiency; and

I. Minimization of economic distortion, inflexibility, and unnecessary interference with market mechanisms.

Pursuant to section 12 of the EPAA, an amendment exempting crude oil, residual fuel oil, or a refined petroleum product with respect to a class of persons or transactions, or with respect to any market level, must be submitted to the Congress as an energy action before it takes effect. The exemption will become effective if the amendment is not disapproved by either House of Congress within 15 days following its submission for congressional review under section 551 of the EPCA.

Section 12 of the EPAA further provides that any amendment submitted to Congress which proposes to exempt crude oil (if permissible under and consistent with the requirements and limitations of section 8 of the EPAA), residual fuel oil, or any refined petroleum product from DOE allocation regulations must be accompanied by findings that competition and market forces would provide adequate protection for the consumer, and that such amendment would not result in inequitable prices for any class of user. An exemption amendment submitted to the Congress must also be accompanied by a DOE analysis of the potential economic impact of such amendment.

Any oil or refined petroleum product which is exempted from the DOE regulation under section 4(a) of the EPAA is subject to the reimposition of the price and allocation controls if the DOE determines that reimposition is necessary for and consistent with the objectives specified in EPAA section 4(b)(1). Pursuant to section 12(f) of the EPAA, subsequent reexemption of that oil or refined petroleum product would not be subject to congressional review.

In addition, section 102 of the ECPA prohibits the Secretary of Energy from submitting to the Congress as one energy action an amendment proposing exemption of any oil, refined petroleum product, or refined product category from both the allocation and pricing regulations. However, the DOE may concurrently submit to the Congress an energy action relating to price together with an energy action relating to allocation of the same oil, refined petroleum product, or refined product category.

The comments and statements in response to the notices enabled the ERA to prepare documents in support of the proposals. The two supporting documents are entitled "Findings and Views Concerning the Exemption of Aviation Gasoline from the Mandatory Petroleum Allocation and Price Regulations" and "Findings and Views Concerning the Exemption of Kerojet Fuels from the Mandatory Petroleum Allocation and Price Regulations" (findings). It should be noted that these documents are revisions of documents containing the "Preliminary Findings" of the ERA. The "findings," together with the preamble to the proposals of the ERA, republished in this notice, constitute a statement of the research, analysis and available information concerning the proposals and their probable effect.

Interested persons may obtain copies of the "findings" relating to aviation gasoline and/or kerosene-base jet fuel from the Director, Office of Public Information, Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426. Written requests for copies should also be addressed to the Office of Public Information.

Interested persons are invited to submit written comments, data, views, or arguments with respect to the proposals as well as the "Findings and Views Concerning the Exemption of Aviation Gasoline from the Mandatory Petroleum Allocation and Price Regulations" and the "Findings and Views Concerning the Exemption of Kerojet Fuels from the Mandatory Petroleum Allocation and Price Regulations." An original and 14 copies should be filed with the Secretary of the Commission. All comments received prior to August 11, 1978, will be considered by the Commission prior to the publication of the Commission's recommendations. It should be noted that because of the previous proceedings before the ERA, no provision is made here for reply briefs or comments. Comments should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, and should reference Docket No. EA 78-2.

All written comments and statements provided to the ERA during its proceedings on these matters have been transmitted to the Commission and will be made a part of the record of this proceeding. All additional written submissions will also be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Washington, D.C., during regular business hours.

Although comments on all aspects of the proposals are solicited and will be considered, the Commission's deliberations will be materially aided if interested persons who have previously participated in the proceedings before the ERA, confine their presentations to responding to comments filed by other parties or to any changes in the

"findings." Any written or oral expression of views provided the ERA during the course of its proceedings will be considered by the Commission in the same manner as views expressed in this proceeding.

Any information or data submitted pursuant to the above procedures considered by the person furnishing it to be confidential, must be so identified and be submitted in one copy only. The Commission reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

A public hearing will be held in Washington, D.C. beginning at 9:30 a.m. on August 1, 1978, on the proposal to exempt aviation gasoline and a second hearing, with respect to the proposal to exempt kerosene-base jet fuel will be held in Washington at 9:30 a.m. on August 3, 1978. If necessary the hearings will be continued on subsequent days. Any person interested in this proceeding (or representing a group or class of persons interested in this proceeding) may make a presentation at such hearing provided a written request to participate is received by the presiding officer prior to 4:30 p.m., July 27, 1978.

Requests to appear at one or both of the hearings should include a reference to Docket No. EA 78-2 as well as a concise summary of the proposed oral presentation. Prior to the hearing each person filing a request to be heard will be contacted by the presiding officer or his designee for scheduling purposes. At least five copies of the statement for the aviation gasoline hearing shall be submitted to the presiding officer prior to 4:30 p.m., July 28, 1978. At least five copies of the statement for the kerosene-base jet fuel hearing shall be submitted to the presiding officer prior to 4:30 p.m., August 1, 1978. The presiding officer is authorized to limit oral presentations at the public hearing both as to length and as to substance. The hearing panel will consist of the presiding officer, Robert L. Baum, Deputy General Counsel, Federal Energy Regulatory Commission, and designated individuals from the Office of Opinions and Reviews and the Office of Policy Analysis. The hearing will not be a judicial or evidentiary-type hearing. There will be no cross-examination of persons presenting statements. However, the panel may question such persons and any interested person may submit questions to the presiding officer to be asked of persons making statements. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented. If time permits, at the conclusion of the initial oral statements, persons who have made oral statements will be given the opportunity to make a rebuttal statement. Any further procedural rules will be announced by the presiding officer at the hearing. A transcript of the hearing will be made and will be available at the Commission's Office of Public Information.

Following are the proposed amendments to 10 CFR Parts 210, 211, and 212 transmitted to the Commission by the Secretary of the Department of Energy.

SUPPLEMENTARY INFORMATION:

I. Background
II. Comments Received
III. Exemption Procedure
IV. Proposed Exemption

I. Background

On February 12, 1978, we issued an Advance Notice of Proposed Rulemaking and Public Hearing on Aviation Gasoline Decontrol ("Advance Notice," 43 FR 6962, February 17, 1978). We concurrently issued a document entitled "Preliminary Findings and Views Concerning the Exemption of Aviation Gasoline from the Mandatory Petroleum Allocation and Price Regulations" ("Preliminary Findings"), and made copies available to the public. The Advance Notice was issued to obtain public comment on the "Preliminary Findings" for the purpose of determining whether ERA should initiate a rulemaking proceeding proposing the exemption of aviation gasoline from the price and allocation regulations. Second, in the event we would propose to exempt aviation gasoline, a preliminary record would have been developed to assist the FERC in its consideration of the proposal.

We invited written comments on the Advance Notice through March 27, 1978 and held a public hearing in Washington, D.C., on March 22, 1978. The comments submitted in response to the Advance Notice generally supported our "Preliminary Findings." Therefore, by this Notice of Proposed Rulemaking, we are proposing the exemption of aviation gasoline from the price and allocation regulations.

Section 402(c)(1) of the Department of Energy Organization Act (DOE Act, Pub. L. 95-91), provides that the FERC shall have jurisdiction to consider any proposal by the Secretary to amend any regulation which is required to be issued under section 4(a) of the Emergency Petroleum Allocation Act of 1973, as amended (EPAA, Pub. L. 93-159), and which sections 8 or 12 of the EPA requires the President to transmit to each House of Congress for its review under section 551 of the Energy Policy and Conservation Act, as amended (EPCA, Pub. L. 94-163). In accordance with sections 402(c)(1) and 404(a) (which prescribe, *inter alia*, procedures for referral of such proposals by the Secretary to the FERC and set forth the scope of the FERC's authority over such proposals), the Secretary is today transmitting this notice to the FERC for its consideration.

Section 404(a) of the DOE Act further provides that the FERC shall provide an opportunity for public comment on the decontrol proposals. As the conference committee report which accompanied the DOE Act makes clear, the FERC is specifically required to hold any public hearings required by law on the proposal (S. Rept. No. 367, 95th Cong., 1st sess. 78 (1977)). At this time we are not soliciting public comment, because we already received public comment in connection with the Advance Notice and, pursuant to the above requirement, further comment opportunity should be provided by the FERC.

After receiving public comments on the aviation gasoline decontrol proposal, and after consultation with the Secretary or his designee, the FERC may, under section 404(b) of the DOE Act, concur in the adoption of the proposed exemptions, concur in the adoption only with such changes as it may recommend, or recommend that the exemptions not be adopted. Section 404(b) of the DOE Act requires the FERC to public its recommendations, along with an analysis of the major comments, criticisms, and alternatives it receives during the public comment period. Ultimately, if the FERC does concur, the Secretary of Energy may submit to Congress separate energy actions to exempt aviation gasoline from the allocation and price regulations, respectively. Such energy actions, if submitted, would have to include the changes, if any, recommended by the FERC.

II. Comments Received

Forty-six parties submitted oral and written comments in response to the February 17 Advance Notice. Those offering comments included major integrated refining companies, large and small independent refining companies, retailers, trade associations representing consumers; and governmental representatives.

All of those commenting recommended that the ERA propose the exemption of aviation gasoline from the allocation and price regulations. This recommendation was based generally upon agreement with our projections as to supply and demand, competition, and other findings and views set forth in the "Preliminary Findings." In particular, there was agreement that competition and market forces are adequate to protect consumers following the exemption of aviation gasoline from regulation. Many commenters expressed the opinion that decontrol would enhance competition in the aviation gasoline market.

In general, retailers concurred with the "Preliminary Findings" that there will be only minor pressure to increase prices as a result of decontrol. Retailers indicated, however, that fixed base operators in certain regions may increase prices to reflect localized increased nonproduct costs. We generally agree, as indicated in the "Findings," that regional price increases may occur as both refiner and retailer nonproduct cost increases are fully passed through on the volume of product on which they are incurred, but these regional increases should be offset in part by reductions in other regions. Refiners generally agreed with our projection as to price increases on a nationwide average basis after decontrol.

III. Exemption Procedure

A detailed discussion of the procedures under sections 12 of the EPAA, 455 and 551 of the EPCA and 102 of the Energy Conservation and Production Act, as amended (Pub. L. 94-385, ECPA), regarding exemption of refined petroleum products from the regulations prescribed under section 4(a) of the EPAA was provided in the February 17 Advance Notice. It is not necessary, therefore, to repeat that information here.

IV. Proposed Exemption

As section 12(c)(2) of the EPAA requires that an exemption amendment apply to only one refined petroleum product or one refined product category, we are proposing the exemption of aviation gasoline from DOE price and allocation regulations as a single product. We are proposing the exemption of aviation gasoline from both the mandatory petroleum allocation regulation and the mandatory petroleum price regulations because recent supplies and market conditions appear to justify an end to both types of controls.

For the purposes of this proposed exemption, aviation gasoline, as defined the DOE allocation regulations (10 CFR § 211.142), "means petroleum-based fuels designed for use in aircraft internal combustion engines, and complying with MIL-G-5572 specifications (ASTM—specification D-910-70)." The DOE price regulations (10 CFR § 212.31) use slightly different language to explain that aviation gasoline "means all of the various grades of aviation gasoline as defined in ASTM D-910-70." Current specifications for the various grades of this product are in ASTM D-910-75.

We have tentatively concluded in our "Findings" on the basis of currently available data that this exemption would be consistent with the objectives set forth in section 4(b)(1) of the EPAA, as amended by section 451 of the EPCA. The "Findings" update the overall supply/demand balance for petroleum products which, in the "Preliminary Findings," was based on the Data Resources Inc. (DRI) macroeconomic simulation CEASPIRIT that was derived from early 1977 Council of Economic Advisers (CEA) economic targets. The updated demand forecasts in the "Findings" are based on a more recent DRI simulation, OPTIM0325, the underlying assumptions of which more closely track 1978 CEA forecasts.

As noted in the "Findings," our "realistic worst case" aviation gasoline demand forecasts are based on the average of forecasts by the Federal Aviation Administration and the Department of Defense.

Our preliminary conclusion is that as long as supplies continue to be adequate, the continuation of allocation and price controls on aviation gasoline is unnecessary to protect the public health, safety and welfare, and the national defense (section 4(b)(1)(A)); the maintenance of all public services (section 4(b)(1)(B)); the maintenance of agricultural operations (section 4(b)(1)(C)); or the maintenance of exploration for and production or extraction of fuels and minerals (section 4(b)(1)(G)). Adequate supply and the positive effects of increased competition would also ensure that an exemption would be consistent with the preservation of an economically sound and competitive petroleum industry (section 4(b)(1)(D)); the equitable distribution of crude oil, residual fuel oil and refined petroleum products at equitable prices (section 4(b)1)(F)); Economic efficiency (section 4(b)(1)(H)); and minimization of economic distortion, inflexibility, and interference with market mechanisms (section 4(b)(1)(I)). An exemption should have no adverse effect on the allocation of suitable crude oil to domestic refineries (section 4(b)(1)(E)).

We emphasize that these conclusions are preliminary. As indicated above, the FERC is required to hold a public hearing and invite written comment on the proposed exemptions. Any further information received with respect to the compatibility of the exemption proposed herein with the objectives of the EPAA will be considered in formulating the final rule.

Tentative conclusions as set forth in the "Findings" include:

(1) Aviation gasoline is not in short supply.

(2) Exemption of aviation gasoline from the allocation and price regulations will not have an adverse impact on the supply of any other oil or refined petroleum product subject to the EPAA.

(3) Competition and market forces are adequate to protect consumers following exemption of aviation gasoline from regulation.

(4) Exemption of aviation gasoline from regulation will not result in inequitable prices for any class of user of aviation gasoline or other products.

The "Findings" also indicate our tentative views concerning the potential economic effects of exempting aviation gasoline from the Mandatory Petroleum Allocation and Price Regulations. As long as supplies remain adequate, we do not anticipate that there will be significant adverse state or regional effects resulting from an exemption. In particular, we expect no effect on any governmental units.

As noted in the "Findings", the price regulations afford refiners the opportunity to pass through a large "bank" of unrecovered increased costs. The fact that these costs have not been passed through to purchasers is some indication that at the wholesale level prices of aviation gasoline are not being constrained by DOE price regulations. Removal of controls should not result in disparate price increases for any region.

In addition, in a period of adequate supplies, we anticipate no adverse economic effects on the availability of consumer goods or services, the Gross National Product, competition, small business, or the supply and availability of energy resources as fuel or feedstock for industry. An exemption is likewise expected to have no adverse effect on employment or consumer prices. Our preliminary analysis concludes that, since supplies should remain adequate and the volumes of aviation gasoline produced represent such a small portion of total domestic petroleum product production, there will be no effect of an exemption on the rate of unemployment in the United States, on the Consumer Price Index, or on the implicit price deflator for the Gross National Product.

In connection with tentative conclusion (3) set forth above, it should be noted that we project that during a period of adequate supplies which is projected at least through 1979, price increases will not exceed 1½ cents per gallon solely as a result of aviation gasoline decontrol. If prices should reach what appear to be unjustified levels, we have standby authority under section 12(f) of the EPAA to reimpose controls (on a temporary or permanent basis) if necessary to attain the objectives set forth in section 4(b)(1) of the EPAA.

After conducting an environmental review of the proposed exemption, we have also determined that an exemption is not a major federal action that would significantly affect the quality of the environment. Therefore no environmental impact statement is required to be prepared under the National Environmental Policy Act, as amended, Pub. L. 91-190.

As required by section 7(c)(2) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, a

copy of this Notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of the proposed exemption on the quality of the environment. The Administrator had no comments on this proposal.

We have determined that this document contains a significant regulation under Executive Order 12044 (43 FR 12661, March 24, 1978). We have further determined that the "Findings" issued concurrently with this Notice satisfies the requirement for the preparation of a regulatory analysis for significant regulations which have major economic impact.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Energy Conservation and Production Act, Pub. L. 94-385, as amended, Pub. L. 95-70, Pub. L. 95-91; Department of Energy Organization Act, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, it is proposed to amend Parts 210, 211 and 212 of Chapter II, Title 10 of the Code of Federal Regulations, as set forth below.

1. Section 210.35 is amended by adding subparagraph (i) to read as follows:

§ 210.35 Exempted products.

* * * * *

(i)(1) Aviation gasoline as defined in § 211.142 of this chapter is exempt from the provisions of Part 211 of this chapter.

(2) Aviation gasoline as defined in § 212.31 of this chapter is exempt from the provisions of Part 212 of this chapter.

2. Section 211.1 is amended in paragraph (b) by adding new subparagraph (11) to read as follows:

§ 211.1 Scope.

* * * * *

(b) *Exclusions.* * * *

(11) Notwithstanding the other provision of this part, including Subpart H of this part, aviation gasoline is excluded from this part.

3. Section 212.31 is amended in the definition of "covered products" to read as follows:

§ 212.31 Definitions.

* * * * *

"Covered products" means butane, crude oil, natural gas liquids, natural gasoline, and propane. A blend of two or more particular covered products is considered to be that particular covered product constituting the major proportion of the blend.

* * * * *

4. Section 212.56 is amended to read as follows:

§ 212.56 General refinery products.

(a) The following general refinery products are exempt from the provisions of this part: aviation gasoline, benzene, gas oil, greases, hexane, kerosene, lubricant base oil stocks, lubricants, naphthas, No. 1 heating oil, No. 1-D diesel fuel, residual fuel oil, special naphthas (solvents), toluene, unfinished oils, xylene, and other finished products.

(b) The following general refinery products are not exempt from the provisions of this part: butane, natural gas liquids, natural gasoline, and propane.

SUPPLEMENTARY INFORMATION:

I. Background)
II. Comments Received
III. Exemption Procedure
IV. Proposed Exemption

I. Background

On February 12, 1978, we issued an Advanced Notice of Proposed Rulemaking and Public hearing on Kerosene-Base Jet Fuel Decontrol ("Advance Notice," 43 FR 6959, February 17, 1978). We concurrently issued a document entitled "Preliminary Findings and Views Concerning the Exemption of Kerojet Fuels from the Mandatory Petroleum Allocation and Price Regulations" ("Preliminary Findings"), and made copies available to the public. The Advance Notice was issued to obtain public comment on the "Preliminary Findings" for the purpose of determining whether ERA should initiate a rulemaking proceeding proposing the exemption of kerojet fuel from the price and allocation regulations. In the event we would propose to exempt kerojet fuel, a preliminary record would have been developed to assist the FERC in its consideration of the proposal.

We invited written comments on the Advance Notice through March 27, 1978 and held a public hearing in Washington, D.C. on March 23, 1978. The comments submitted in response to the Advance Notice generally supported our "Preliminary Findings". Therefore, by this Notice of Proposed Rulemaking, we are proposing the exemption of kerojet fuel from the price and allocation regulations.

Section 402(c)(1) of the Department of Energy Organization Act (DOE Act, Pub. L. 95-91), provides that the FERC shall have jurisdiction to consider any proposal by the Secretary to amend any regulation which is required to be issued under section 4(a) of the Emergency Petroleum Allocation Act of 1973, as amended (EPAA, Pub. L. 93-159), and which sections 8 or 12 of the EPAA requires the President to transmit to each House of Congress for its review under section 551 of the Energy Policy and Conservation Act, as amended (EPCA, Pub. L. 94-163). In accordance with sections 402(c)(1) and 404(a) (which prescribe, inter alia, procedures for referral of such proposals by the Secretary to the FERC and set forth the scope of the FERC's authority over such proposals), the Secretary is today transmitting this Notice to the FERC for its consideration.

Section 404(a) of the DOE Act further provides that the FERC shall provide an opportunity for public comment on the decontrol proposals. As the Conference Committee Report which accompanied the DOE Act makes clear, the FERC is specifically required to hold any public hearings required by law on the proposal. (Sen. Rep. No. 367, 95th Cong., 1st Sess. 78 (1977)). At this time we are not soliciting public comments because we already received public comment in connection with the Advance Notice and, pursuant to the above requirements, further opportunity for comment should be provided by the FERC.

After receiving public comments on the kerojet fuel decontrol proposal, and after consultation with the Secretary or his designee, the FERC may, under section 404(b) of the DOE Act, concur in the adoption of the proposed exemptions, concur in the adoption only with such changes as it may recommend, or recommend that the exemptions not be adopted. Section 404(b) of the DOE Act requires the FERC to publish its recommendations, along with an analysis of the major comments, criticisms, and alternatives it receives during the public comment period. Ultimately, if the FERC does concur, the Secretary of Energy may submit to Congress separate energy actions to exempt kerojet fuel from the allocation and price regulations, respectively. Such energy actions, if submitted, would have to include the changes, if any, recommended by the FERC.

II. Comments Received

Over sixty parties submitted oral and written comments in response to the February 17 Advance Notice. Those offering comments included major integrated refining companies, large and small independent refining companies, retailers, trade associations, air carriers, consumer groups and governmental representatives.

All of those commenting recommended that the ERA propose the exemption of kerojet fuel from the allo-

cation and price regulations. This recommendation was based generally upon agreement with our projections as to supply and demand, competition, and other findings and views set forth in the "Preliminary Findings." In particular, there was widespread agreement that competition and market forces are adequate to protect consumers following the exemption of kerojet fuel from regulation. Many commenters expressed the opinion that decontrol would enhance competition in all sectors of the kerojet fuel market.

Retailers indicated that there may be price increases in certain regions by fixed base operators to reflect increased non-product costs. We generally agree, as indicated in the "Preliminary Findings" and the "Findings," that regional price increases may occur as both refiner and retailer nonproduct cost increases are fully passed through on the volume of product on which they are incurred, but these regional increases should be offset in part by reductions in other regions. Refiners generally agreed with our projections as to price increases on a nationwide average basis after decontrol.

The airline industry and, in particular, the Air Transport Association, generally recommended the establishment of a mechanism, similar to the proposed Special Rule No. 4 for motor gasoline (see 42 FR 40915, August 12, 1977), to assure airlines a source of supply during the transition period following the exemptions. The airline industry also favored the establishment of a price monitoring system, without a pre-set index or "trigger," coupled with a formal procedure which would require the ERA to take action on an air carrier's complaint of discriminatory treatment with regard to pricing or supply of kerojet fuel. Other commenters were nearly unanimously opposed to both recommendations.

Since no information or data were presented which meaningfully altered the findings and views set forth in our "Preliminary Findings," we have decided not to propose the establishment of a transitional supply mechanism. In particular, we believe that the anticipated adequacy of supply and competition and the prevalance of long-term supply contracts in the industry should preclude the need for transitional supply protection. We also have decided not to propose the price monitoring system and the complaint procedure recommended by the airline industry. Under the EPAA, we have a continuing responsibility to analyze kerojet fuel prices after decontrol. A formal complaint mechanism is unnecessary since most airlines are capable of bringing to our attention instances of discriminatory treatment with respect to the pricing and supply of kerojet fuel. Moreover, the universe of suppliers and purchasers of kerojet fuel is relatively small, and it should therefore not require a detailed price monitoring or survey system to detect significant changes in market conditions.

III. Exemption Procedure

In the February 17 Advance Notice, you will find a detailed discussion of the procedures under sections 12 of the EPAA, 455 and 551 of the EPCA and 102 of the Energy Conservation and Production Act, as amended (ECPA, Pub. L. 94-385), regarding exemption of refined petroleum products from the regulations prescribed under section 4(a) of the EPAA. It is not necessary, therefore, to repeat that information here.

IV. Proposed Exemption

As section 12(c)(2) of the EPAA requires that an exemption amendment apply to only one refined petroleum product or one refined product category, we are proposing the exemption of kerojet fuel from DOE price and allocation regulations as a single product. We are proposing the exemption of kerojet fuel from both the Mandatory Petroleum Allocation Regulations and the Mandatory Petroleum Price Regulations because recent supplies and market conditions appear to justify an end to both types of controls.

For the purposes of this proposed exemption, kerojet fuel, as defined in DOE allocation regulations (10 CFR § 211.142), is an "aviation turbine fuel," which "means all refined petroleum fuel designed to operate aircraft turbine engines. The basic specification is ASTM D-1655. * * *" The DOE price regulations (10 CFR § 212.31) use slightly different language to explain that "aviation fuel (kerosene-type) means a relatively low-freezing-point distillate of the kerosene type and includes all kerosene products with an average gravity of 40.7° API and 10 percent to 90 percent distillation temperatures of 390° F. to 470° F. covered by ASTM D-1655 specifications, and including JP-5 and other fuels meeting military specifications (MIL-T-5624G Amend. 1)."

We have tentatively concluded in our "Findings," on the basis of currently available data, that this exemption would be consistent with the objectives set forth in section 4(b)(1) of the EPAA, as amended by section 451 of the EPCA. The "Findings" update the overall supply/demand balance for petroleum products in the "Preliminary Findings," which was based on the Data Resources Incorporated (DRI) macroeconomic simulation CEASPIRIT that was derived from early 1977 Council of Economic Advisers (CEA) economic targets. The updated demand forecasts in the "Findings" are based on a more recent DRI simulation, OPTIMO325, the underlying assumptions of which more closely track 1978 CEA forecasts.

As noted in the "Findings," our "realistic worst case" kerojet demand forecasts are based on the average of forecasts by the Federal Aviation Administration and the Air Transport Association of America. These projections are higher than those derived from DOE's short-term model which uses macroeconomic forecasts by DRI.

Our preliminary conclusion is that as long as supplies continue to be adequate, the continuation of allocation and price controls on kerojet fuel is unnecessary to protect the public health, safety and welfare, and the national defense (section 4(b)(1)(A)); the maintenance of all public services (section 4(b)(1)(B)); the maintenance of agricultural operations (section 4(b)(1)(C)); or the maintenance of exploration for and production or extraction of fuels and minerals (section 4(b)(1)(G)). Adequate supply and the positive effects of increased competition would also ensure that an exemption would be consistent with the preservation of an economically sound and competitive petroleum industry (section 4(b)(1)(D)); the equitable distribution of crude oil, residual fuel oil and refined petroleum products at equitable prices (section 4(b)(1)(F)); economic efficiency (section 4(b)(1)(H)); and minimization of economic distortion, inflexibility, and interference with market mechanisms (section 4(b)(1)(I)). An exemption should have no adverse effect on the allocation of suitable crude oil to domestic refineries (section 4(b)(1)(E)).

We emphasize that these conclusions are preliminary. As indicated above, the FERC is required to hold a public hearing and invite written comment on the proposed exemptions. When formulating the final rule, we will consider any further information the FERC receives with respect to the compatibility of these objectives with the exemption proposed herein.

The tentative conclusions we set forth in our "Findings" include:

(1) Kerojet fuel is not in short supply.

(2) Exemption of kerojet fuel from the allocation and price regulations will not have an adverse impact on the supply of any other oil or refined petroleum product subject to the EPAA.

(3) Competition and market forces are adequate to protect consumers following exemption of kerojet fuel from regulation.

(4) Exemption of kerojet fuel from rgulation will not result in inequitable prices for any class of user of kerojet fuel or other products.

The "Findings" also indicate our tentative views concerning the poten-

tial economic effects of exempting kerojet fuel from the Mandatory Petroleum Allocation and Price Regulations. Since we anticipate no changes in the supply or demand as a result of an exemption, and anticipate only a small increase in price, we foresee no adverse state or regional effects. In particular, we expect no effect on any governmental units.

In addition, in a period of adequate supplies, we anticipate no adverse economic effects on the availability of consumer goods or services, the Gross National Product, competition, small business, or the supply and availability of energy resources as fuel or feedstock for industry. An exemption is likewise expected to have no adverse effect on employment or consumer prices. Our preliminary analysis concludes that, since supplies should remain adequate, there will be no effect of an exemption on the rate of unemployment in the United States, on the Consumer Price Index, or on the implicit price deflator for the Gross National Product.

In connection with tentative conclusion (3) set forth above, we project that during a period of adequate supplies which is expected at least through 1979, price increases will not exceed 1 cent solely as a result of kerojet fuel decontrol. If prices should reach what appear to be unjustified levels, we have standby authority under section 12(f) of the EPAA to reimpose controls (on a temporary or permanent basis) if necessary to attain the objectives set forth in section 4(b)(1) of the EPAA.

After conducting an environmental review of the proposed exemption we have also determined that an exemption would not significantly affect the quality of the environment, and therefore no environmental impact statement is required under the National Environmental Policy Act, as amended, Pub. L. 91-190.

As required by section 7(c)(2) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, a copy of this Notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of the proposed exemption on the quality of the environment. The Administrator had no comments on the proposal.

We have determined that this document contains a significant regulation under Executive Order 12044 (43 FR 12661, March 24, 1977). We have further determined that the "Findings" issued concurrently with this Notice satisfies the requirement for the preparation of a regulatory analysis for significant regulations which have major economic impact.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974; Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Energy Conservation and Production Act, Pub. L. 94-385, as amended, Pub. L. 95-70, Pub. L. 95-91; Department of Energy Organization Act, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, it is proposed to amend Parts 210, 211 and 212 of Chapter II, Title 10 of the Code of Federal Regulations, as set forth below.

1. Section 210.35 is amended by adding subparagraph (j) to read as follows:

§ 210.35 Exempted products.

* * * * *

(j)(1) Aviation turbine fuel (kerosene base) as defined in § 211.142 of this chapter is exempt from the provisions of Part 211 of this chapter.

(2) Aviation fuel (kerosene-type) as defined in § 212.31 of this chapter is exempt from the provisions of Part 212 of this chapter.

2. Section 211.1 is amended in paragraph (b) by revising subparagraph (9) to read as follows:

§ 211.1 Scope.

* * * * *

(b) *Exclusions.*

* * * * *

(9) Notwithstanding the other provisions of this part, including Subpart H of this part, aviation turbine fuel (naphtha-base and kerosene-base) is excluded from this part.

* * * * *

3. Section 212.31 is amended in the definition of "covered products" to read as follows:

§ 212.31 Definitions.

* * * * *

"Covered products means butane, crude oil, natural gas liquids, natural gasoline, and propane. A blend of two or more particular covered products is considered to be that particular covered product constituting the major proportion of the blend.

4. Part 212 is amended by adding a new section 212.59 as follows:

§ 212.59 Aviation jet fuel.

The prices charged for aviation jet fuel are exempt from the provisions of this part.

* * * * *

The Secretary shall cause prompt publication of this Notice to be made in the FEDERAL REGISTER.

By direction of the Commission.

Issued in Washington, D.C., June 22, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-18905 Filed 7-6-78; 8:45 am]

[6750-01]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 722 3348]

KAUFMAN & BROAD, INC., ET AL.

Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require a Los Angeles, Calif., builder and seller of residential housing to cease misrepresentations of fact and using other unfair or deceptive practices in the advertising, sale, and construction of consumer homes. The order would require that prospective customers be furnished with disclosures regarding construction materials and components, as well as information relating to the land, taxes, and community facilities. Further, the company would be required to provide home purchasers with warranties patterned on the housing industry's home owners warranty program; and to employ the industry's standards in home construction and repair. Additionally, provisions in the order would entitle original owners of company homes purchased from January 1, 1972, to have specified defects repaired, and would require the firm to repurchase such homes at the original price should it fail to make proper repairs in a timely manner. The order would also provide that disputes concerning repairs may be settled through third-party arbitration.

DATE: Comments must be received on or before September 5, 1978.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Paul W. Turley, Director, Chicago Regional Office, 55 East Monroe Street, Suite 1437, Chicago, Ill. 60603, 312-353-4423.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record, together with material submitted to the Commission that is not exempt from public disclosure under the Freedom of Information Act, for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

Document Number: 76700004.

[File No. 722-3348]

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

In the matter of Kaufman & Broad, Inc., a corporation; Kaufman & Broad Homes, Inc., a corporation; and Kaufman & Broad Home Sales, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Kaufman & Broad, Inc., a corporation, Kaufman & Broad Homes, Inc., a corporation, and Kaufman & Broad Home Sales, Inc., a corporation, and it now appearing that said corporations, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Kaufman & Broad, Inc., Kaufman & Broad Homes, Inc., and Kaufman & Broad Home Sales, Inc., by their duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent Kaufman & Broad, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at 10801 National Boulevard, Los Angeles, Calif. Proposed respondent Kaufman & Broad Inc., has numerous subsidiaries in various states of the United States.

Proposed respondent Kaufman and Broad, Inc. uses the trade styles: Kaufman & Broad, Kaufman and Broad, Kaufman and Broad Homes in the course and conduct of its business.

Proposed respondent Kaufman and Broad Homes, Inc. is a wholly-owned subsidiary of respondent Kaufman and Broad, Inc., and is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 900 Jorie Boulevard, Oak Brook, Ill.

Proposed respondent Kaufman and Broad Home Sales Inc., is a wholly-owned subsidiary of respondent Kaufman and Broad Homes, Inc., an Illinois corporation, and is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 900 Jorie Boulevard, Oak Brook, Ill.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of section 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby, and they understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order, and that they may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

I

DEFINITIONS

"On-site residential housing" shall mean housing structures, including lots, consisting of single family dwelling units or housing structures consisting of multi-family dwelling units (including condominiums) represented and sold by respondents in the United States as completely constructed or partially constructed units.

An "express warranty" as used in this order shall mean any written affirmation of fact or written promise made or assigned by respondents to a purchaser as part of the transaction of the sale of a unit of on-site residential housing.

The "HOW warranty" as used in this order shall mean the warranty issued under the Home Owners Warranty Corporation's national home warranty program.

A "major construction defect" as used in this order shall mean a "major construction defect" as defined in the Home Owners Warranty Corporation Home Warranty Agreement attached hereto as appendix A.[1]

The term "approved standards" as used in this order shall mean "approved standards" as defined in the Home Owners Warranty Corporation Home Warranty Agreement attached hereto as appendix A.

A "legal holiday" as used in this order shall mean any one of the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Day.

"Closing costs" as used in this order shall mean all the charges and fees imposed directly or indirectly upon a purchaser incident to the sale of real property. Specifically excluded herefrom are escrow deposits and impounds.

"Past purchaser" as used in this order shall mean "past purchaser" as that term is defined in Part VII and Part VIII of this order.

"Repurchase price" as used in this order shall mean the price at which

[1] Copies of all appendices referenced herein filed with the original document.

the home was purchased by the original purchaser from respondents or from any of respondents' subsidiaries.

"Receipt" as used in this order in connection with the receipt by respondents of written requests for repairs from purchasers and past purchasers of respondents' housing shall mean three (3) days following the date postmarked on any letter sent through the United States mail, provided that the actual date of receipt of any written request may be established by other means regardless of the method of delivery that was, in fact, used.

II

It is ordered, That respondents Kaufman and Broad, Inc., a corporation, Kaufman and Broad Homes, Inc., a corporation, and Kaufman and Broad Home Sales, Inc., a corporation, their successors and assigns, and their officers, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the conduct and operation of their business in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act in the production, advertising, offering for sale or sale of a unit of on-site residential housing, do cease and desist from:

1. Selling and delivering any housing unit for use as on-site residential housing which is not built in accordance with the approved standards or which contains a major construction defect without taking the necessary action to repair, replace, or to pay the cost of repairing or replacing the defect in such housing unit in accordance with the provisions of respondents' express warranty required under Part III B of this order.

2. Failing, in connection with the express warranty required under Part III B of this order to:

(a) Make repairs in a workmanlike manner to a unit of on-site residential housing where such repairs are required under respondents' warranty.

(b) Make repairs with materials or components identical to, or of an equal or better grade or quality than, the materials or components used in the original construction of the particular unit of on-site residential housing where such repairs are required under respondents' warranty.

3. Failing to adhere to minimum property standards for the construction of on-site residential housing as required by the U.S. Department of Housing and Urban Development or the U.S. Veterans Administration where such standards are applicable.

4. Making variances, substitutions or omissions in the construction of on-site residential housing from the schedule of specifications made available for inspection purposes in accordance with the requirements of Part V 8 of this order that are not subject to approval by the U.S. Department of Housing and Urban Development or by the U.S. Veterans Administration and which would significantly reduce the quality of the material or component in which the variance, substitution or omission was made.

5. Making variances, substitutions or omissions in the construction of on-site residential housing where such variance, substitution or omission deviates from approved plans and specifications filed with the U.S. Department of Housing and Urban Development or the U.S. Veterans Administration and which have not been approved by such agencies with respect to such housing and which would significantly reduce the quality of the material or component in which the variance, substitution or omission was made.

6. Failing to repair, replace or to pay the cost of repairing or replacing any major construction defect or any other defect in accordance with the provisions of respondents' express warranty required under Part III B of this order or in the performance of respondents' obligations under Part VIII of this order within a reasonable time after receipt of written notice of such defect from the purchaser or past purchaser of respondents' on-site residential housing; provided, however, that:

(a) Where respondents for any reason are unable to complete such requested repairs within thirty (30) calendar days after receipt of written notice of such defect from the purchaser or past purchaser of respondents' on-site residential housing, respondents shall furnish to such purchaser or past purchaser (as defined in Part VIII) a written statement setting forth the reason or reasons why such requested repairs cannot be undertaken or completed within such thirty day period and a scheduled date on which the requested repairs are, in fact, to be completed within the next sixty (60) day period.

(b) Where respondents are or were prevented from completing repairs by the scheduled date referred to in subparagraph 6(a) above due to intervening circumstances beyond their control, such as labor strike, supplier or subcontractor failure to deliver materials or perform work, or unsuitable weather conditions, such repairs will be completed within a reasonable period of time not to exceed sixty (60) days from the date of the termination of the intervening circumstance.

(c) Where respondents for any reason elect not to honor such request for repairs, respondents shall, within twenty-one (21) calendar days of receiving such request for repairs, notify the purchaser or past purchasers in writing why respondents will not honor the request.

7. Failing to take reasonable steps to insure that all inspections required to be made of each unit of respondents' on-site residential housing by appropriate local and other governmental authorities are, in fact, made at the stage of construction at which such inspections are normally required to be made and retaining copies of such inspection reports for each particular unit of such residential housing and, upon request, making such reports available for inspection by purchasers promptly and without charge.

8. Representing through any means, directly or by implication, that the land upon which respondents' on-site residential housing is constructed is suitable for the construction of housing unless respondents have performed the necessary site preparation and construction techniques in a manner satisfactory to the U.S. Department of Housing and Urban Development or the U.S. Veterans Administration or to state and local planning and zoning authorities to render the land suitable for residential construction.

9. Representing through any means, directly or by implication, that any of respondents' housing is available for immediate use or occupany by purchasers or prospective purchasers unless such residential housing units are, in fact, available for immediate use or occupancy.

10. Representing through advertising, advertising depictions or similar means, directly or by implication, that the advertised price for respondents' housing includes as standard items certain features, equipment, architectural design, constrtuction or any other item or characteristic for which respondents in fact make an additional charge; provided, however, that nothing in this paragraph 10 shall prohibit respondents from picturing or depicting a housing unit complete with optional items or characteristics so long as there is a clear and conspicuous disclosure in immediate conjunction therewith that such items or characteristics are available for an additional charge.

11. Representing through any means, directly or by implication, that any room in respondents' housing is suitable for use as a habitable area where such room has not been properly insulated or constructed for such purpose.

12. Representing through the use of the words "for a limited time only" or through any other means or device, directly or by implication, that any change in the price of any of respondents' housing is imminent unless, at the same time and in conjunction therewith, respondents clearly and conspicuously disclose the date such limited time offer expires.

13. Representing through any means, directly or by implication, that sales of respondents' housing to pur-

chasers are free of "closing costs" when in fact such sales do include closing costs, as "closing costs" are hereinabove defined.

14. Representing through any means, directly or by implication, that public schools and housing offered for sale by respondents are or will be located in the same school district unless respondents advise purchasers of the title or office, address and telephone number of the responsible school district authority from whom respondents obtained such information.

15. Representing through any means, directly or by implication, that respondents' housing is planned, developed, constructed or located with regard to children's recreational needs without disclosing in immediate conjunction therewith the specific means provided or facilities which respondents have constructed to meet the recreational requirements of children.

16. Representing through any means, directly or by implication, the existence of or plans for any educational, recreational, transportation, medical or other facilities adjacent to or in the vicinity of communities in which respondents have built or propose to build their on-site residential housing unless such facility actually exists or, with regard to planned facilities, respondents advise purchasers of the title or office, address and telephone number of the appropriate authority or public official from whom respondents obtained such information.

17. Misrepresenting through any means, directly or by implication, the amount or quality of the topsoil to be furnished to the purchasers of respondents' on-site residential housing.

18. Representing through any means, directly or by implication, that the on-site residential housing purchased from respondents will be taxed at a rate that is lower than the most recent official tax estimate and rate obtained from the officially responsible tax assessing authority, or making any representation relating to the assessed valuation or tax rate of such housing without disclosing the identity or title, address and telephone number of the officially responsible tax assessing authority.

19. Misrepresenting through any means, directly or by implication, that any feature, item of equipment, architectural design, construction, appurtenance or characteristic present in model homes is a standard inclusion in such model or style that will be duplicated in residential housing sold and delivered by respondents to purchasers of such model or style at the advertised or offered price. Provided, however, the following will be deemed to be adequate notice to prospective purchasers that such items and features are not included as standard in respondents' on-site residential housing:

(a) A conspicuous sign or signs in or adjacent to the model homes listing items which are optional or unavailable; or

(b) Labels on specific optional and unavailable items; and

(c) Lists available to each prospective purchaser at the entrance of each model home complex which disclose optional and unavailable items; or

(d) Lists in the brochures which describe the particular model or models of respondents' on-site housing which disclose optional and unavailable items.

20. Using beds or mattresses of less than 74½ inches in length as display or decoration in rooms presented as bedrooms in respondents' model homes without conspicuously disclosing by means of a sign in such room (a) that the bed or mattress is shorter than standard size, or (b) the dimensions of the room.

III

A. *It is further ordered,* That respondents, in connection with the advertising, offering for sale or sale of on-site residential housing, shall cease and desist from representing through any means, directly or by implication, that respondents' residential housing is warranted by an express warranty without clearly and conspicuously disclosing:

(a) That the warranty is the standard warranty issued pursuant to the Home Owners Warranty Corporation's national home warranty program, or a warranty substantially identical to such warranty including the specific duration of the warranty;

(b) Or, the following:

(i) The nature and extent of the warranty including the disclosure of the parts of said housing that are warranted;

(ii) The specific conditions and limitations of such warranty;

(iii) The specific duration of the warranty;

(iv) The steps that anyone claiming under the warranty must take before respondents fulfill their obligations under the warranty; and

(v) The manner and time in which respondents will perform their obligations under the warranty.

B. *It is further ordered,* That respondents shall furnish purchasers of each unit of respondents' on-site residential housing with a warranty that is substantially identical to the insurer's and the warrantor's undertaking in the Home Owners Warranty Corporation's Home Warranty Agreement (hereafter referred to as the "HOW warranty") currently in use and attached hereto as appendix A and incorporated by reference in this order, including the procedures for the settlement of disputes, provided that respondents' undertaking for major construction defects shall be for a term of at least four years from the commencement date of each such warranty furnished, and provided further that nothing in this order shall relieve respondents from complying with the Magnuson-Moss Warranty Act, section 101 et seq. (15 U.S.C. 2301 et seq.), the rules promulgated thereunder, and interpretations issued by the Federal Trade Commission in respect thereto.

C. *It is further ordered,* That in the event disputes arise between respondents and purchasers relating to respondents' liability for defects under Part III B of this order, and such disputes cannot be settled on a mutually agreeable basis within a reasonable period of time not to exceed forty (40) days from the date such dispute arose, then respondents shall notify each such purchaser in writing and at the same time as respondents finally reject the purchaser's claim, that such dispute may be submitted to third-party dispute settlement under the procedures required in Part III B above, provided that purchasers shall not be precluded from exercising rights under the warranty required in Part III B above in respect to making a warranty or insurance claim or filing a demand for dispute settlement at any time prior to the expiration of such forty (40) day period; and, *Provided further,* That no later than ten (10) business days excluding Saturdays, Sundays and legal holidays from the receipt of a written request for dispute settlement from purchasers, respondents shall take action to initiate such dispute settlement proceedings.

D. *It is further ordered,* That respondents shall specifically perform in good faith and without unreasonable delay or make payments timely as determined under the dispute settlement procedures required in Part III B above in each instance where the use of such procedures results in a decision in favor of the purchaser subject, however, to such rights under law as either purchaser or respondents may have in connection with the dispute.

IV

It is further ordered, That respondents, directly or indirectly, in connection with the sale of any unit of on-site residential housing, shall not enter into any contracts or employ any other means which prohibit or prevent any purchaser from selecting, within a reasonable length of time, a lending institution of the purchaser's own choice, or that may otherwise have the effect of restricting where the purchaser may seek or secure credit; provided, however, nothing contained herein shall prohibit respondents, or any affiliate thereof, from entering into mortgage commitments,

mortgages or other similar financing agreements with their purchasers.

V

It is further ordered, That in connection with the advertising, offering for sale or sale of on-site residential housing, respondents shall make available to each and every prospective purchaser who visits respondents' sales offices or model homes a brochure or a written statement relating to such housing that will include the following disclosures in a clear, conspicuous and affirmative manner:

1. For on-site residential housing not covered by the National Flood Insurance Program administered by the U.S. Department of Housing and Urban Development, the identity, address and telephone number of the individual, business firm and government agency that conducted soil tests on land used in the construction of the residential housing offered for sale. In addition, respondents shall require their contractors to state in nontechnical language to each prospective purchaser who contacts such contractors whether the land tested is suitable for residential use;

2. The identity or title, address and telephone number of the responsible public school district authority who will furnish information relating to the identity and location of schools for the particular housing unit;

3. Each room or area of the particular housing unit to be purchased that is not insulated to retain the same degree of warmth as rooms designed for use as principal living areas;

4. Each room or area of the particular housing unit to be purchased that is constructed without waterproofing adequate to render such room or area suitable for use as a habitable living area;

5. The most recent official tax rate and estimate obtained from the officially responsible tax assessing authority and the identity or title, address and telephone number of such tax assessing authority;

6. A list containing each and every architectural design, construction feature, appurtenance, optional item or equipment or other characteristic or feature exhibited to the particular purchaser in connection with a model home sample of style offered for sale to such purchaser which characteristic or feature is not included in the model or style of respondents' housing unit offered for sale to such purchaser at the offered or advertised price;

7. A list containing each and every construction feature, appurtenance, optional item or equipment or other characteristic or feature exhibited to the particular purchaser in connection with a model home sample or style offered for sale to such purchaser which characteristic or feature cannot be included or duplicated in the particular housing unit offered for sale to such purchaser even upon the payment of an additional charge because of the style, size, location or any other reason associated with the land or the design of the particular housing unit offered;

8. A notice that plans and specifications for each home being offered for sale are available for inspection by prospective purchasers at respondents' sales offices during normal business hours; provided that such specifications shall include a full description of the materials and components used by respondents in the construction of their on-site residential housing; and provided further, that such description will be satisfied if it substantially includes the type of information contained in the "Description of Materials" disclosure statements required by the United States Federal Housing Administration (FHA Form 2005, as revised from time to time) or the United States Veterans Administration (VA Form 26-1852, as revised from time to time);

9. A notice that purchasers of respondents' housing may select any lending institution of their choice for the purpose of securing a mortgage and are not limited to the lending institution provided by respondents;

10. A statement setting forth respondents' arrangement for repairs and the satisfaction of warranties or in lieu thereof, a copy of the warranty required by Part III B of this order that will be furnished with the housing being offered for sale and a statement of the procedure for the settlement of disputes under such warranty.

VI

It is further ordered, That respondents shall secure a written acknowledgement from each purchaser of respondents' on-site residential housing which shall state the following information:

1. That the disclosures referred to in paragraph V of this order were received.

2. The date on which the disclosures referred to in paragraph V of this order were received.

VII

For the purpose of this part VII, "past purchaser" shall mean the original purchaser of the unit of respondents' on-site residential housing who purchased such unit as new from respondents or from any of respondents' subsidiaries during the period commencing January 1, 1972 and ending on the day immediately preceding the effective date of this order, and who has continued to retain title to such unit as of the effective date of this order.

A. *It is further ordered,* That respondents, in connection with on-site residential housing units sold to past purchasers shall repair, replace, or pay past purchasers the reasonable cost of repair or replacement of defects pursuant to all of the terms, conditions, definitions, approved standards, and exclusions contained in the Home Owners Warranty Corporation Limited Home Warranty Agreement (HOW warranty), which is attached hereto as Appendix A and incorporated by reference herein, when the following conditions exist:

1. In units where respondents transferred title to past purchasers on or after January 1, 1972:

Major construction defects;

2. In units where respondents transferred title to past purchasers within two (2) years prior to the effective date of this order (including the day immediately preceding the effective date of this order):

Major construction defects, or defects in the plumbing, electrical, heating, or cooling systems due to non-compliance with the approved standards, except defects in appliances, fixtures and items of equipment;

provided, that nothing in this Part VII A shall serve to limit or change respondents' undertaking for remedial action for on-site residential housing units sold and warranted by respondents prior to the effective date of this order with a Home Owners Warranty Corporation's Home Warranty Agreement.

B. *It is further ordered,* That respondents, in connection with the remedial action required by Part VII A of this order, shall:

1. Require all claims by past purchasers for remedial action to be made by affidavit and in the form attached hereto as Appendix C and Appendix D, as applicable and incorporated by reference in this order, and addressed to the office of respondents as designated in the letter of notification required by Part VII C;

2. Process all claims made by past purchasers in the priority in which received at respondents' designated office;

provided, that respondents shall not be required to honor any claim from a past purchaser for remedial action made pursuant to subparagraph 1 hereinabove that is postmarked later than fifty (50) days from the date the letter of notification required by Part VII C of this order is mailed by respondents.

C. *It is further ordered,* That respondents shall, within sixty (60) days from the effective date of this order, mail by United States first class mail to the address of each unit of on-site residential housing sold by respondents during the period January 1, 1972 to the day immediately preceding the effective date of this order, a noti-

fication informing past purchasers of respondents' obligations under Part VII of this order, and shall include with such notification affidavit forms for the use of past purchasers in submitting claims for repairs, provided that respondents shall not be required to mail such notification to the address of any unit of on-site residential housing where respondents: (1) Prior to the effective date of this order furnished the past purchaser a Home Owners Warranty Corporations' Home Warranty Agreement, or (2) within one year prior to the day immediately preceding the effective date of this order furnished the express warranty attached hereto as appendix B. Such notification shall also include a clear and conspicuous statement that: Claims from past purchasers for repairs must be postmarked within fifty (50) days from the date of such notification; and disputes concerning respondents' liability for defects may be settled at the past purchaser's option through the procedures described under Part IX 4 of this order. Respondents' notification to past purchasers shall be substantially identical in form and content to the letters of notification attached herewith as appendix E and appendix F which are incorporated by reference in this order.

D. *It is further ordered,* That respondents, in connection with claims for repairs received from past purchasers under Part VII A of this order, shall:

1. Respond in writing within forty-five (45) days from the receipt of each past purchaser's affidavit which asserts a claim for repairs. Such response shall include a scheduled date for the completion of the repairs which date shall not be unreasonably distant in the future; or, if any repair is not to be made, a full and complete explanation, including a technical explanation as applicable, of the reason or reasons why respondents will not make the requested repairs; and shall be signed by a responsible official of Kaufman and Broad, Inc.;

2. Complete all repairs which respondents agree to make no later than the scheduled date referred to in subparagraph D1 above provided, however, that in the event respondents are prevented from completing repairs by such date due to intervening circumstances beyond their control such as labor strike, supplier failure to deliver materials or unsuitable weather conditions, such repairs will be completed within a reasonable period of time not to exceed sixty (60) days from the date of the termination of the intervening circumstance and respondents shall notify each such past purchaser, in writing, of the reason or reasons for the delay.

E. *It is further ordered,* That respondents shall:

1. Within sixty (60) days from the effective date of this order, submit to the Chicago Regional Office of the Federal Trade Commission the affidavit of an officer of respondent Kaufman and Broad, Inc. which sets forth the date, manner and form by which past purchasers were notified by respondents as required under Part VII C of this order.

2. At six month intervals for a period of 2 years following the effective date of this order, submit the certified statement of an independent contractor who is acceptable to the Commission showing the specific manner and form in which respondents are complying and have complied with each provision of Part VII of this order.

VIII

For the purpose of this Part VIII, "past purchaser" shall mean the purchaser of a unit of respondents; on-site residential housing who, as of the effective date of this order, holds title to a unit covered by an unexpired term of respondents' 1 year express warranty, a copy of which is attached hereto as appendix B.

It is further ordered, That respondents, in connection with on-site residential housing units sold to past purchasers, shall repair, replace, or pay past purchasers the reasonable cost of repair or replacement of defects covered by respondents' express warranty or when the following conditions exist;

Major construction defects, defects in the plumbing, electrical, heating, or cooling systems due to non-compliance with the approved standards, other defects due to non-compliance with the approved standards, or defects in appliances, fixtures, and items of equipment due to non-compliance with the approved standards or for the term of the manufacturer's written warranty, if respondents' have assigned the manufacturer's warranty to past purchasers, but not to exceed 1 year.

IX

It is further ordered, That respondents, in connection with respondents' obligations under Part VII and Part VIII of this order to take remedial action for defects, shall:

1. Make repairs in accordance with the approved standards;

2. Make repairs in a workmanlike manner, and with materials or components identical to, or of an equal or better grade or quality than, the materials or components used in the original construction of the particular on-site residential housing unit;

3. Offer to purchase each past purchaser's unit at the repurchase price if the defects cannot be remedied within a reasonable time;

4. In each instance where a dispute arises between respondents and a past purchaser relating to respondents' obligations to take remedial action for defects, and such dispute cannot be settled on a mutually agreeable basis within a reasonable period of time not to exceed forty (40) days from the date such dispute arose, then respondents shall offer in writing to each such past purchaser and at the same time as respondents finally reject the past purchaser's claim, to submit such dispute to dispute settlement procedures which are substantially identical to the dispute settlement procedures described on page 6 of the "HOW warranty" attached hereto as appendix A and shall include with such offer a form such as the "Demand for Dispute Settlement" which appears as page 9 of such "HOW warranty"; provided, that no later than ten (10) business days excluding Saturdays, Sundays, and legal holidays from the receipt of such written request for dispute settlement from past purchasers, respondents shall take action to initiate such dispute settlement proceedings;

5. Specifically perform in good faith and without unreasonable delay or make payments timely in each instance where the use of the procedures described in subparagraph 4 hereinabove results in a decision in favor of the past purchaser, subject, however, to such rights under law as either purchaser or respondents may have in connection with the dispute; and

6. Preserve, for a period of no less than three (3) years from the effective date of this order the original document, or copies thereof as appropriate, and upon reasonable notice provide access to the Commission or its representatives for the purpose of inspection and copying, all documents, reports and records including all requests for repairs and correspondence relating to compliance with Part VII and Part VIII of this order.

X

It is further ordered, That respondents shall maintain and, upon reasonable notice, provide access to the Commission or its representatives for the purpose of inspection and copying, for a period of three (3) years from the date of transfer of title by respondents of each unit of on-site residential housing:

1. All inspection reports made by local and other governmental authorities during the construction of respondents on-site residential housing pursuant to paragraph II 7 of this order.

2. All complaints and requests for repairs made to respondents by purchasers of such on-site residential housing under the provisions of respondents' express warranties.

3. All correspondence and documents regarding complaints and requests for repairs made to respondents by purchasers of such on-site residential housing under the provisions of respondents' express warranties.

4. All written acknowledgements received from purchasers of respondents' on-site residential housing pursuant to paragraph VI of this order.

XI

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify, or exempt respondents from complying with agreements, orders, rules or building codes, or directives of any kind issued or required by any governmental agency, or any Federal, State or local laws, or act as a defense to actions instituted by municipal, State or Federal regulatory agencies; provided, that if Federal law hereafter enacted or Federal regulation hereafter promulgated requires respondents to furnish a warranty for onsite residential housing and such warranty is less restrictive than the corresponding provisions of the warranty required under Part III B of this order, and respondent files a motion with the Federal Trade Commission to modify this order to correspond to such less restrictive other warranty, the Federal Trade Commission shall rule upon respondents' motion within 120 days after such motion is filed or, if respondents' motion to modify is filed at least 60 days prior to the effective date of such law or regulation, then the Federal Trade Commission shall rule upon respondents' motion within 60 days after the effective date of such law or regulation and, provided further, that should the Federal Trade Commission fail to rule upon respondents' motion to modify within such time periods, then such law or regulation shall automatically be deemed to modify and replace the corresponding provision(s) of this order.

XII

It is further ordered, That respondents shall within thirty (30) days of the effective date of this order distribute a copy of this order to:

1. Each of respondents' operating divisions and subsidiaries in the United States.

2. All officers and employees of the respondent corporations and of the operating divisions and subsidiaries of all of respondents' corporations in the United States who are engaged or who may hereafter become engaged in the production, advertising, offering for sale or sale of respondents' on-site residential housing.

3. Each of the advertising agencies, interior designers, consulting firms or other independent contractors in the United States who are engaged or who may hereafter become engaged in the decorating of respondents' model home samples, or in the creation or placement of advertising in connection with the offering for sale of respondents' on-site residential housing.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

KAUFMAN AND BROAD, INC., ET AL

[File No. 722-3348]

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Kaufman and Broad, Inc. and its Illinois subsidiaries, Kaufman and Broad Homes, Inc. and Kaufman and Broad Home Sales, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed order covers the parent corporation Kaufman and Broad, Inc. and all of its subsidiary companies in the United States that are engaged in the construction, advertising, offering for sale, or sale of on-site residential housing. On-site residential housing is defined in the proposed order to mean single-family dwellings and multi-family dwellings (including condominiums) that are sold as a house and lot. Individual homes built by the company on a purchaser's own lot are not affected by the order.

The complaint charges the respondents with unfair and deceptive acts and practices relating to representations made in (1) advertising, (2) by salesmen, (3) through model homes and (4) in warranties furnished to purchasers in connection with the sale of residential housing to the public. Specific allegations of the complaint charge Kaufman and Broad, Inc. and its named subsidiaries with representing, contrary to fact, that the residential housing they offered or sold was on land free from severe limitations for use in home construction; of top quality workmanship; free from defects that could impair the homes for ordinary use; built in accordance with good construction practices in the housing industry; and built in accordance with the minimum property standards and the plans and specifications required and approved by the Department of Housing and Urban Development. The complaint also alleges that Kaufman and Broad, in many cases, did not honor the warranties they furnished to purchasers because they failed to make repairs or replacements as warranted. Further allegations relate to false representations concerning taxes, schools, community facilities, closing costs and limited time sales price offers, and in the use of model homes.

The proposed order prohibits the use of the above unfair and deceptive practices and requires the company to furnish a warranty with each new home it sells in the future. The warranty must be patterned after the warranty used in the housing industry's Home Owners Warranty ("HOW") program. The warranty Kaufman and Broad is required to furnish under the proposed order differs from the HOW warranty in several respects. The HOW warranty is a 10-year insured warranty. The warranty required by the proposed order must provide coverage for major construction defects for a minimum of 4 years and need not be insured. Kaufman and Broad, however, is not prohibited from electing to furnish the 10-year HOW warranty instead of its own 4-year warranty in those localities where the HOW warranty is available.

Generally stated, the warranty furnished by the company must provide coverage for 1 year against defects in materials and workmanship, and for defects in appliances, fixtures, and items of equipment (but not to exceed the term of the manufacturer's warranty); 2 years for defects in the plumbing, electrical, heating and cooling systems; and 4 years for major construction defects. A major construction defect is defined as "actual damage to the load-bearing portion of the home (including damage due to subsidence, expansion or lateral movement of soil from causes other than flood or earthquake) which affects its load-bearing function and which vitally affects (or is imminently likely to produce a vital effect on) the use of the home for residential purposes." This is the same definition that is used in the HOW warranty.

For all new homes it sells in the future, and for homes already covered under the 1-year warranty currently used by the company, Kaufman and Broad must use the same construction and repair standards that are used by the housing industry under its "HOW" warranty program. Repairs must be made promptly and in a workmanlike manner, and disputes con-

cerning repairs may be settled by arbitration.

Owners of homes that are still under Kaufman and Broad's existing 1-year warranty will be covered by warranty only for the remaining unexpired term of their 1-year warranty.

The order further requires that information must be made available to prospective purchasers concerning the land, taxes and schools; and that the plans and specifications, which disclose the materials and components to be used in the construction of the home, also must be made available. Further provisions of the order prohibit the respondents from selling or delivering housing that is not built in accordance with the housing industry standards, or which contains a major construction defect, without taking steps to repair, replace or pay the cost of repairing or replacing the defect as required by warranty; and, from making significant changes in specifications, including plans and specifications filed with Department of Housing and Urban Development or the Veternas Administration.

Other major provisions of the proposed order will entitle consumers who still own a Kaufman and Broad home that they purchased as new directly from any Kaufman and Broad company, in transactions dating back as far as January 1, 1972, to have major construction defects, as defined in the order, repaired. In addition, original owners who bought their homes within 2 years prior to the time the order would go into effect, will also be entitled to have certain defects in the plumbing, electrical, heating and cooling systems repaired.

Kaufman and Broad will send all such owners a letter with instructions for filing a claim for repairs, and also a detailed description of the industry's construction and repair standards. The company is required to use these standards in consideration of each claim. Owners will be required to file their claim on a form that will be included with the letter. The letters will be mailed to owners within sixty days after the proposed order goes into effect. All claims for repairs submitted to Kaufman and Broad must be postmarked within 50 days after the date of this letter. Kaufman and Broad is not required to honor any claims made for defects that show up after this 50-day period.

Owners of Kaufman and Broad homes that are already covered by the housing industry's "HOW" warranty, or by Kaufman and Broad's own 1 year warranty, will not receive a letter from the company.

The proposed order requires Kaufman and Broad to make repairs to these older homes, including homes still covered by the company's 1-year warranty, promptly and according to the industry standards. If the defects cannot be remedied within a reasonable time after a claim for repairs is made, then Kaufman and Broad is required to offer to buy back the house at the price originally paid to the company. Disputes concerning repairs to all these older homes, including homes still under the 1-year warranty, may be settled through third-party arbitration.

It is believed that the broad and comprehensive provisions of the proposed consent order agreement offer adequate assurance that the respondents will not engage in unfair and deceptive practices in the offering or sale of residential housing, and that the housing will be built in accordance with good construction practices. The proposed consent order agreement should also assure that prospective purchasers from the time of their initial visit to the building site will have disclosed, or otherwise made available to them, essential information concerning the housing and the community. It is believed that the proposed consent order offers equitable relief to consumers who purchased allegedly defective homes from Kaufman and Broad, and to consumers whose homes are still covered by a warranty.

The purpose of this analysis is to facilitate public comment on the proposed order and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-18427 filed 7-3-78; 8:45 am]

[4110-07]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration
Health Care Financing Administration
General Services Administration

[20 CFR Part 416]

[42 CFR Part 450]

[45 CFR Part 205]

SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED AND MEDICAL ASSISTANCE PROGRAM

Aid to Families with Department Children; Fiscal Disallowance for Erroneous Payments

AGENCY: Social Security Administration (SSA), HEW; Health Care Financing Administration (HCFA), HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations set forth provisions concerning the reduction of Federal financial participation (FFP) when States make erroneous expenditures with respect to the medicaid and aid to families with dependent children (AFDC) programs. Before a reduction is made in a State's FFP, the State would have an opportunity to show why the reduction should not be made. These proposed regulations also contain provisions governing Federal fiscal liability (FFL) for erroneous expenditures of State supplements in the supplemental security income (SSI) program.

DATES: Your comments will be considered if we receive them no later than August 21, 1978.

ADDRESS: Send your written comments on the AFDC and SSI provisions to: Social Security Administration, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203. Copies of all comments which the Social Security Administration receives can be seen at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201. Send your written comments on the medicaid provisions to: Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, P.O. Box 2366, Washington, D.C. 20013. Please refer to MMB-242-P. Agencies and organizations are asked to submit comments in duplicate. Beginning 2 weeks from today, the public may review the comments on Monday through Friday of each week from 8:30 a.m. to 5 p.m. at the Department's offices at 330 C Street SW., Room 5231, Washington, D.C., telephone 202-245-0950.

FOR FURTHER INFORMATION, CONTACT:

For AFDC—John X. Bowes, Division of Quality Control Management, 202-245-0688. For SSI—William J. McCarthy, Division of Standards and Operating Policies, 301-594-4594. For Medicaid—Victor Kugajevsky, 202-472-3846.

SUPPLEMENTARY INFORMATION: The Department of Health, Education, and Welfare, with the assistance of the States and other administering jurisdictions, operates quality control programs in its three major public assistance programs: AFDC, SSI, and medicaid. The primary purpose of these systems is to supply State and Federal administrators with information concerning the correctness of eligibility determinations and payment amounts. The quality control systems are designed to measure error rate levels and to provide information on the nature and causes of errors so that corrective actions and other administrative improvements may be undertaken.

The AFDC, SSI, and medicaid quality control systems are essential for

promoting the proper and correct expenditure of public assistance funds. Since the inception of the current quality control programs in AFDC and SSI, error rates have declined dramatically. AFDC payment error rates (payments to ineligibles and overpayments to eligibles) declined from 16 in 1973 to 8.6 in 1977. In SSI, errors dropped from 11.5 in 1975 to 5.2 in 1977. The level of erroneous expenditures in the medicaid program, however, remain substantially unchanged from their level in 1975, when medicaid quality control was introduced. Despite substantial improvement, error rates remain high and can be reduced further. The Secretary is committed to reducing erroneous expenditures in public assistance programs and restoring public confidence in these programs.

DISALLOWANCES OF FEDERAL MATCHING

A major issue throughout the recent history of quality control has been the Federal Government's ability and willingness to extend Federal financial participation (FFP) to erroneous expenditures, particularly in instances where the level of erroneous expenditures exceeds prescribed tolerance levels. Similarly, States want the Social Security Administration to be accountable for errors in federally administered SSI State supplements when the error rate exceeds negotiated tolerance levels.

Prior to 1973, the Department withheld FFP only for erroneous payments uncovered in the quality control sample itself. In 1973, the Department promulgated a regulation (38 FR 8743, April 6, 1973) which disallowed Federal financial participation for payments to ineligibles and overpayments to eligibles exceeding case error rate tolerance levels of 3 percent for ineligibility and 5 percent for overpayments.

On May 14, 1976, the U.S. District Court for the District of Columbia issued an opinion in the case of *State of Maryland* v. *Mathews* in which 14 States challenged the validity of the Secretary's disallowance regulation. The Court ruled as follows: (1) Upheld the Secretary's view that the Social Security Act does not require Federal financial participation in all erroneous payments; (2) upheld the Secretary's authority to promulgate a regulation providing for disallowance of Federal financial participation in some erroneous payments; (3) confirmed that the Secretary, under the efficient administration clauses of the various welfare titles of the Social Security Act, has the authority to set permissible error tolerance levels for erroneous payments; (4) rejected the then existing error tolerance levels of 3 percent and 5 percent on the ground that they had been inadequately justified by HEW. Based upon the evidence before it, the Court found the tolerance levels to be arbitrary and capricious and, accordingly, enjoined the Secretary from taking any disallowances based on these tolerance levels in the plaintiff States.

The Secretary decided not to appeal the *Maryland* decision. He also decided not to take disallowances in States which were not a party to the Maryland case but whose case error rates exceeded the 3-percent and 5-percent tolerance levels. Instead, the Department undertook to develop revisions to the quality control program through extensive discussions with representatives of a number of State and local governments represented through the New Coalition (the National Conference of State Legislators, the National Governors' Association, the National Association of Counties, the National Conference of Mayors, and the National League of Cities), the American Public Welfare Association, and others. To further demonstrate good faith in these negotiations, the Secretary rescinded the disallowance regulations (45 CFR 205.41) on March 16, 1977, and returned to the policy of disallowing FFP only for erroneous payments uncovered in the quality control sample itself.

In medicaid, the Department currently disallows FFP only for erroneous payments in the quality control sample. No broader disallowance provision for medicaid has been promulgated previously.

In SSI, the Department assumes Federal fiscal liability (FFL) for erroneous State supplement payments exceeding tolerance levels negotiated with the States and provided for in the contracts entered into with the States electing Federal administration of supplements. Since January 1977, these contracts have required FFL payments to States based on prescribed tolerances.

DISCUSSION WITH STATES

Since the District Court decision in *Maryland* v. *Mathews*, as mentioned above, HEW has conducted extensive discussions with representatives of a number of State and local governments. Originally, these discussions focused on improving the AFDC quality control program and on designing an appropriate fiscal disallowance provision for that program. More recently, the discussions were expanded to encompass medicaid and SSI quality control programs as well. The Department desired to develop jointly with State and local governments a set of quality control principles that could be implemented consistently, insofar as practicable, in each of the three programs. The principles reflected in the regulations proposed herein were extensively debated and have benefited greatly from this consultation.

PRINCIPLES EMBODIED IN THE REGULATIONS

The proposed quality control programs seek continued, reasonable progress in error reduction. Although technical assistance, training, and positive incentives will have the greatest role in achieving continued error reduction, an effective quality control policy also needs error standards and improvement targets, and appropriate fiscal disallowances when at least minimal progress is not achieved.

The Department's proposed fiscal disallowance policy in AFDC and medicaid will embody the following features (Based upon the extensive consultations with State and local governments, the Secretary decided to apply different, more stringent standards in SSI; these are discussed separately below):

1. The ultimate goal for the AFDC and medicaid payment error rates (payments to ineligibles and overpayments to eligibles) will be 4 percent. This corresponds to the error rate level which States currently must achieve in AFDC to qualify for the incentive payments recently authorized by the Congress (section 402 of Pub. L. 95-216). In discussions with the States, we have agreed to study the reasonableness of the 4-percent goal. The study will be undertaken and it is estimated that it will be completed within 18 months. Based on substantial findings, the Secretary will review a possible adjustment to either raise or lower the ultimate goal for AFDC and medicaid error rates.

2. While 4 percent is the goal that the Secretary believes all of the public assistance programs can ultimately achieve, and to which he will hold the HEW-administered SSI program accountable effective October 1, 1979, only a very few States today meet that standard in AFDC and medicaid. After careful examination of the various alternatives suggested, the Secretary proposes to establish a series of interim standards based on performance levels actually achieved by the States. He believes that actual performance best reflects States' administrative and managerial capacity to lower error levels and therefore proposes to use a national standard of the 50th percentile of the payment error rate achieved by all States, or the 4-percent ultimate goal, whichever is higher. The 50th percentile (i.e., national median) is a reasonable standard in that it assures that the standard will be the level which half of all States have achieved or bettered. The median also assures that no one State's error performance will unduly influence the national standard as would be the case with a national arithmetic mean or average. Separate median standards will be determined for AFDC and medicaid.

The 50th percentile of the payment error rates achieved by all States

during the April–September 1978 AFDC Quality Control review period and the July–December 1978 Medicaid Quality Control review period would become the initial national median error standards for AFDC and medicaid respectively. New national median payment standards would be established based on payment error rates achieved by the States in each subsequent April–September period for both AFDC and medicaid. Each new median standard would apply to the second and third following 6-month periods for determining State conformance with QC standards and any possible fiscal disallowance. For example, the median payment error rate standard established during the initial April–September 1978 base period (July–December 1978 in the case of medicaid) would apply to the April–September 1979 and October 1979–March 1980 6-month periods. Similarly, the AFDC and medicaid standards based on the April–September 1979 base period would apply to error rate levels prevailing in the April–September 1980 and October 1980–March 1981 periods.

3. Some States may have AFDC and medicaid payment error rates that are considerably above the respective national medians. It would be unrealistic to expect these States to reduce their erroneous payment error rates to the national median in the timeframe specified. To accommodate these States but still provide an incentive for error rate reduction and limit Federal financial participation in erroneous State expenditures, the Secretary will expect these States to lower their payment error rates in AFDC and medicaid by at least 18 percent per year. The 18 percent figure is the average annual rate of reduction actually achieved by all States in the AFDC program since the current AFDC Quality Control system established an initial rate in the April–September 1973 period. This historic error improvement rate (now 18 percent) will be updated based on State error rates in each new base period.

In summary, the proposed quality control disallowance provision would work as follows:

(i) Any State at or below the national median in the April–September 1978 base period (July–December 1978 for medicaid) or subsequent base periods, whose payment error rate exceeds that national median in either or both of the second or third subsequent 6-month periods to which that standard applies would be subject to a fiscal disallowance. The reduction in Federal financial participation would equal 100 percent of the Federal share of erroneous expenditures in excess of the median. For example, if the median standard was 7 percent and the State had achieved 6 percent in the base period but its error rate rose to 8 percent in one of the subsequent periods, then FFP would be reduced 1 percent for that period (8 percent actually obtained minus 7 percent median=1 percent reduction).

(ii) Any State exceeding the national median standard in the April–September 1978 (July–December 1978 for medicaid) or later base periods must either achieve the standard or reduce its payment error rate in the second and third subsequent 6-month periods to at least 18 percent (or subsequently adjusted percentage) below that particular State's last base period level. A State that fails to achieve the minimal prescribed reduction will be subject to a reduction in Federal financial participation equal to 100 percent of the Federal share of erroneous expenditures in excess of the median or the 18 percent (or subsequently adjusted percentage) reduction target if it is higher than the median.

For example, suppose that in a base period the median error rate is 7 percent, the historical rate of reduction is 18 percent, and a particular State's error rate is 15 percent. Then, that State would need to reduce its error rate to 12.3 percent, not 7 percent (the median standard). (12.3 equals 15 minus 2.7, which is 18 percent of 15.) HEW believes that the States can achieve these targets, since they are based on the actual average rate of error reduction and only assume continued improvement. Once a State reaches the median standard, staying below the standard—rather than continuing to reduce errors at the historical rate—constitutes minimal performance.

The median standard and/or a State's individual improvement target applicable to a particular period would in every case be determined by a base period occurring two or three sampling periods earlier. Thus, by the time the possibility of a fiscal disallowance arises, the State would have had 6 to 12 months to reduce errors to meet the target. The quality control program is designed in this manner so that States know the targets to be met and have an opportunity to implement management actions to meet them.

4. Since unusual and extraordinary circumstances could significantly affect a State's ability to meet error rate targets, the fiscal disallowance policy would allow appeals when extenuating circumstances intervene. The Secretary would notify each State if it is liable for a reduction of its FFP. Each State that is so notified would have 60 days from the date of the notice to present reasons why such a reduction should not be implemented. The Secretary would consider waiving a reduction under certain conditions when the State can demonstrate that its failure to reach the national median or the 18 percent (or subsequently adjusted percentage) reduction target was due to factors beyond its administrative control. The following conditions are illustrative, but not all inclusive:

(1) Disasters such as fire, flood, civil disorders, etc., which

(a) Require the diversion of significant personnel normally assigned to AFDC or Medicaid eligibility administration, or

(b) Destroyed or delayed access to significant records needed to make or maintain accurate eligibility determinations;

(2) Strikes of State staff or other government or private personnel necessary to the determination of eligibility of processing of case changes;

(3) Sudden and unanticipated workload changes which result from:

(a) Changes in Federal law and regulation, or

(b) Rapid, unpredictable caseload growth in excess of, for example, 15 percent for a 6-month period;

(4) State actions resulting from incorrect written policy interpretation to the State by a Federal official reasonably assumed to be in a position to provide such interpretation.

The failure of a State to act upon necessary legislative changes or to obtain budget authorization for needed resources would not constitute an acceptable excuse.

The Secretary believes that the fiscal disallowance policy contained herein is a necessary mechanism for achieving the goal of: (1) Providing a fiscal incentive to States to encourage them to control, reduce and prevent erroneous expenditures in the AFDC and Medicaid programs, and (2) upholding the Secretary's legal obligation to prevent the use of Federal financial assistance funds for erroneous and illegal payments. The proposed measure of acceptable improvement is eminently fair. It judges States against a realistic standard met by half of the States, gives a full year to improve, requires a degree of improvement that has historically been met by States, and provides exceptions in States that do not improve for reasons beyond their control.

State Failure To Complete Quality Control Reviews

Completion of a State's designated QC sample is vital to the effective operation of the Quality Control program in AFDC and Medicaid. In past years, some States have not completed their Medicaid QC samples. To discourage such failures to complete required QC sample reviews the Department is considering implementing additional penalties and/or remedies for States that fail to complete their designated QC sample reviews in AFDC or Medicaid. The Department would

like to receive suggestions for such a provision, which will be incorporated in the final promulgation of these regulations.

FUTURE PLANS FOR MEDICAID QUALITY CONTROL

The revised MQC system will measure erroneous payments resulting from three types of errors:

(1) Ineligibility errors;

(2)Unrecovered third party liability (TPL) errors; and

(3) Claims processing (CP) errors.

These errors are defined in 42 CFR 450.25.

This proposed regulation would apply a fiscal reduction provision only to erroneous payments resulting from ineligibility errors. We are considering three additional provisions for the future:

(1) Setting a separate error tolerance level and applying a fiscal reduction to erroneous payments resulting from third party liability and claims processing errors;

(2) Combining the three types of errors—ineligibility, third party liability and claims processing—into a single payment error tolerance; and

(3) Seeking legislation for a fiscal bonus provision to increase a State's FFP for administrative costs when its payment error rate is brought below the national error tolerance level.

We would like to receive comments on these proposed provisions.

Our preliminary views on these issues are as follows. With regard to the first provision, we believe that an error tolerance level and fiscal reduction policy is needed to provide an incentive to States to reduce erroneous Medicaid payments resulting from third party liability and claims processing errors. We are considering implementing such a policy in fiscal year 1980. Our preliminary view is that the error tolerance level for third party liability and claims processing errors should be the 25th percentile of the third party liability and claims processing error rate registered by all States for the two fiscal year 1979 MQC review periods (October 1978–March 1979 and April–September 1979). A lower error tolerance level is being considered for third party liability and claims processing errors than is being proposed for eligibility errors because we think third party liability and claims processing errors are more easily controlled with appropriate management and computer system techniques.

This 25th percentile formula would set the error tolerance for third party liability or claims processing payment errors. Any State whose third party liability or claims processing payment error rate for the April–September 1980 MQC review period was above the tolerance level would be liable for reduction of its FFP for that period in an amount equal to the tolerance level overrun. A State faced with an FFP reduction for exceeding the third party liability or claims processing error tolerance level would have the same appeal rights as set forth in the proposed rule. Lastly, the third party liability and claims processing tolerance level would be reset on the same time cycle as the ineligibility error tolerance level. The third party liability and claims processing level approach would be reexamined for appropriateness after 1982.

An alternative future provision would combine the three types of payment errors—ineligibility, third party liability and claims processing—into a single payment error. According to this approach a single payment error tolerance level would be set. A single error rate and tolerance level appears to be more sensible from a management point of view. In addition, States would have flexibility to focus their corrective action efforts on error types that could result in substantial improvement in the overall error rate.

A third possible future provision, which would require legislation, would provide a bonus to States whose error rates were below national tolerance levels.

FEDERAL FISCAL LIABILITY IN SSI

For the SSI program, the Supplemental Security Income Quality Assurance system will determine payment error rates for State supplements for those States that have both optional and mandatory supplements which are federally administered. There will be no fiscal liability to States with federally administered mandatory supplements only. Experience has shown that few cases are left in this category and the sampling, if continued, would not be cost effective.

Effective with October 1, 1979, the Federal Government will incur liability to States with both federally administered optional and mandatory supplements for which the payment error rate exceeds the established standard of 4 percent. An intermediate standard of 4.85 percent will be effective for the period October 1, 1978 through September 30, 1979. This is midway between the current rate of 5.7 percent and the 4-percent standard. The current rate was determined by multiplying the ratio of the payment error rate for the April 1977–September 1977 SSI Quality Assurance sampling period (5.46 percent) to the case error rate for the same period (7.60 percent), by 8-percent case error. The latter figure is derived from a combination of the present 5-percent tolerance for overpayments to eligibles and 3 percent for payments to ineligibles to which the States have agreed in their current agreements with HEW for Federal administration of their optional and mandatory supplements. The proposed regulation does not provide comparable conditions for Federal rebuttal under SSI, similar to those available to the States under AFDC and Medicaid.

The changes in the method of converting Federal fiscal liability from case error rates to payment error rates resulting from publication of final regulations will require a change in the current agreements for Federal administration of State supplements. There are presently 22 agreements. Under the terms of these agreements, the Secretary and the States have agreed to renegotiate the provisions for determining Federal fiscal liability for erroneous payments of State supplements in accordance with the final regulations. The resulting new provisions of the agreement are to be effective retroactively to the date of final publication of the regulations or the effective date of the regulations, whichever is later.

Dated: July 1, 1978.

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

SUPPLEMENTAL SECURITY INCOME (SSI)

Part 416 of title 20 of the Code of Federal Regulations is amended by adding a new § 416.2086 to read as follows:

§ 416.2086 Federal Liability for Erroneous Payment of State Supplementation.

(a) *Applicability.* The provisions of this section apply only to States which have entered into an administration agreement under § 416.2005(b) for Federal administration of both optional and mandatory supplements. These provisions are effective with the 6-month period beginning with October 1978 or, if a State not under a current agreement enters into an agreement, the first 6-month period beginning in October or in April throughout which an agreement is in effect. The provisions of this section do not apply to a State for any 6-month period for any part of which an agreement is no longer in effect.

(b) *Assumption of liability.* For each State to which paragraph (a) of this section applies and with respect to which the national standard (as defined in paragraph (c)(1) of this section) is exceeded for a specified 6-month period, the Secretary shall pay or credit to such State 100 percent of the dollar equivalent of the amount by which the national standard is exceeded, subject to recovery, adjustment and recoupment under the provisions of paragraph (e) of this section, as well as the exclusion specified in paragraph (f) of this section.

(c) *Definitions.* For purposes of this section, regardless of other regulations in this chapter:

(1) The *"national standard"* is the combined dollar error rate of overpayments (as defined in paragraph (c)(2) of this section) and payments to ineligible individuals (as defined in paragraph (c)(3) of this section) of 4.85 percent with respect to States which have entered into an administration agreement under § 416.2005(b) for the period October 1978 through September 1979, and 4 percent with respect to States which have entered into an administration agreement under § 416.2005(b) for periods effective October 1, 1979, and later.

(2) *"Overpayment"* is the amount by which a federally administered State supplementary payment to an eligible individual for a specified month exceeds the amount the individual should have received for the month. An overpayment must be $5 or more to be included in the payment error rate.

(3) *"Payment to an ineligible individual"* is any federally administered State supplementary payment to an individual for a specified month when the individual was ineligible to receive any amount of either a federally administered State supplementary payment or a Federal supplemental security income payment for the month.

(d) *Determination of liability.* For each 6-month period beginning in October and in April, the Social Security Administration shall select and review a statistically valid sample of recipients of federally administered State supplementary payments. A separate sample shall be selected for each State to which this section is applicable (as specified in paragraph (a) of this section) in the 6-month period. The dollar error rate of federally administered State supplementary payments shall be determined by the Social Security Administration for each State in accordance with the following procedure:

(1) Determine the sum of the federally administered State supplementary dollars erroneously paid as overpayments and payments to ineligible individuals for all sampled individuals in the State for the 6-month period.

(2) Divide the amount determined in paragraph (d)(1) of this section by the total number of dollars paid as federally administered State supplementary payments to all sampled individuals in the State for the 6-month period.

(3) If the quotient determined in paragraph (d)(2) of this section does not exceed 0.0485 (4.85 percent) for the 6-month periods beginning October 1978 and April 1979, and 0.04 (4 percent) thereafter, the national standard will not have been exceeded and the Secretary shall incur no liability to the State for erroneous expenditure of State supplementary payments for the 6-month period.

(4) If the quotient determined in paragraph (d)(2) of this section exceeds 0.0485 (4.85 percent) for the 6-month periods beginning October 1978 and April 1979, and 0.04 (4 percent) thereafter,

(i) Multiply the quotient so determined by the total number of dollars expended as federally administered State supplementary payments to all recipients in the State for the 6-month period;

(ii) Multiply the total number of dollars expended as federally administered State supplementary payments to all recipients in the State for the 6-month period by 0.0485 (4.85 percent) for the 6-month periods beginning October 1978 and April 1979, and 0.04 (4 percent) thereafter, and

(iii) Subtract the product obtained in clause (ii) from the product obtained in clause (i). The difference is the Federal liability to the State for erroneous expenditure of federally administered State supplementary payments for the 6-month period.

(e) *Recovery, Adjustment, and Recoupment.* The Secretary shall undertake recovery or adjustment or recoupment of overpayments and payments to ineligible individuals of federally administered State supplementary payments. The liability assumed by the Secretary to a State under paragraph (b) shall be adjusted to the extent that such recoveries, adjustments, and recoupments are effected with respect to recipients in the State.

(f) *Exclusion from liability.* The amount of payments to ineligible individuals or overpayments for which the Secretary is liable shall be excluded for purposes of applying the provisions of § 416.2080.

Aid to Families With Dependent Children (AFDC)

Part 205 of title 45 of the Code of Federal Regulations is amended by adding a new § 205.41 to read as follows:

§ 205.41 Federal Financial Participation in Relation to Erroneous State Payments.

(a) Effective with the April-September 1978 Quality Control sample period, a national payment error rate standard and a specific tolerance for each State is established for erroneous State payments. The national standard is the 50th percentile of the payment error rates achieved by all States; that is, the median payment error rate resulting from ranking the State base period payment error rates. The tolerance is the national standard or the States' base period payment error rate less the national improvement rate, whichever is higher. The national improvement rate is the percentage which represents the historic annual payment error rate reduction since the April to September 1973 period. The April 1978 national improvement rate is 18 percent; it will be recomputed for each following base period. A new standard shall be established based on each April-September sample period which follows. When the standard derived in this manner is less than 4 percent, 4 percent becomes the standard. Each payment error rate tolerance established shall be applied to the second and third following 6-month sample periods for purposes of federal financial participation.

(b) A State which exceeds the payment error rate national standard in the April-September 1978 period (or standards established for subsequent April-September periods) shall reduce its payment error rates to the States' tolerance level. This reduction shall be accomplished by the second subsequent 6-month period and be maintained for the following 6-month period.

(c) States at or below the national standard in April-September 1978 (or standards established in subsequent April-September periods) shall not exceed the standard in the second or third sampling periods after each April-September period. The national standard becomes the tolerance level for these States.

(d) Subject to paragraph (e), there shall be excluded from Federal financial participation (FFP) in payments as Aid to Families with Dependent Children a dollar amount equivalent to the difference between the payment error rate achieved by a State and the State's tolerance prescribed in paragraph (b) or (c) for the second and third 6-month periods after each base period in which the States' payment error rate exceeds the tolerance.

(e) Upon notification of the exclusion of FFP due to erroneous payment, a State shall have 60 days in which to show good cause why the exclusion should not be implemented. The Secretary shall consider, for any period that exclusion of FFP is applicable, waiving the exclusion in whole or in part where a State can demonstrate that failure to meet the tolerance prescribed in paragraph (b) or (c) was due to factors beyond its administrative control. Examples of such factors are:

(1) Disasters such as fire, flood, civil disorders, etc., which require the diversion of significant personnel normally assigned to AFDC eligibility administration, or destroyed or delayed access to significant records needed to make or maintain accurate eligibility determinations;

(2) Strikes of State staff or other government or private personnel necessary to the determination of eligibility or processing of case changes;

(3) Sudden and unanticipated workload changes which result from changes in Federal law and regulation, or rapid, unpredictable caseload growth in excess of, for example, 15 percent for a 6-month period;

(4) State actions resulting from incorrect written policy interpretation to the State by a Federal official reasonably assumed to be in a position to provide such interpretation.

The failure of a State to act upon necessary legislative changes or to obtain budget authorization for needed resources will not constitute a showing of good cause.

(f) The official State payment error rate shall be determined as prescribed by the Secretary from State quality control sample error findings and Federal quality control subsample data. The sample findings will be projected to the universe of payments to determine the Federal financial participation adjustments as a result of this section.

MEDICAID

42 CFR Part 450 is amended by adding a new § 450.26 to read as set forth below:

§450.26 Disallowance of Federal financial participation for erroneous State payments.

(a) *Purpose.* This section establishes rules and procedures for disallowing Federal financial participation (FFP) in medicaid payments made on behalf of ineligible persons, as detected through the Medicaid Quality Control (MQC) system required under § 450.25 of this part.

(b) *Setting the State's error rate.* An error rate for each State will be determined for each MQC review period, in accordance with instructions issued by HCFA, from State error findings under the MQC system. If the Social Security Administration (SSA) determines Medicaid eligibility for certain recipients on behalf of the State under section 1634 of the Social Security Act, erroneous eligibility determinations by SSA will not be included in determining the State's error rate.

(c) *Establishing the national tolerance level.* Each year, HCFA will establish a national tolerance level for erroneous medicaid payments made on behalf of ineligible persons. For the first year the national tolerance level will be equal to the median of the error rates for all States for the July through December period. For subsequent years the national tolerance level will be equal to the median of the error rates for all States for the April through September period or 4 percent if that is higher.

(d) *Period for corrective action.* Except for the first year, a State with an error rate in excess of the national tolerance level will have the period October through March immediately following the establishment of the national tolerance level to take corrective action to lower its error rate, without having its FFP reduced. In the first year the corrective action period will be from January through March 1978.

(e) *Reduction of FFP.* For the April through September period in the year following the establishment of a national tolerance level, and for the succeeding October through March period, a State with an error rate in excess of the national tolerance level shall have its FFP reduced by the smaller of—

(i) The percentage points by which its error rate exceeds the national tolerance level; or

(ii) The difference, in percentage points, between the State's error rate for the current period and a reduction of 18 percent of its error rate used in calculating the national tolerance level.

(f) *Procedures for reducing FFP.* Upon notification of the exclusion of FFP due to erroneous payment, a State shall have 60 days in which to show good cause why the exclusion should not be implemented. The Secretary shall consider, for any period that exclusion of FFP is applicable, waiving the exclusion in whole or in part where a State can demonstrate that failure to meet the tolerance prescribed in paragraph (c) was due to factors beyond its administrative control. Examples of such factors are:

(1) Disasters such as fire, flood, civil disorders, etc., which:

(i) require the diversion of significant personnel normally assigned to medicaid eligibility administration, or

(ii) destroyed or delayed access to significant records needed to make or maintain accurate eligibility determinations;

(2) Strikes of State staff or other government or private personnel necessary to the determination of eligibility or processing of case changes;

(3) Sudden and unanticipated workload changes which result from changes in Federal law and regulation, or rapid, unpredictable caseload growth in excess of, for example, 15 percent for a 6-month period;

(4) State actions resulting from incorrect written policy interpretation to the State by a Federal official reasonably assumed to be in a position to provide such interpretation.

The failure of a State to act upon necessary legislative changes or to obtain budget authorization for needed resources will not constitute a showing of good cause.

(Sec. 1102 of the Social Security Act; 42 U.S.C. 1302. (Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program).)

[FR Doc. 78-18799 Filed 7-6-78; 8:45 am]

[4110-03]

Food and Drug Administration

[21 CFR Parts 369, 505, 536, 539, 548]

[Docket No. 77N-0014]

BACITRACIN AND BACITRACIN-CONTAINING DRUGS

Updating and Technical Revisions; Correction

AGENCY: Food and Drug Administration.

ACTION: Correction.

SUMMARY: This document corrects a proposed rule published in the FEDERAL REGISTER of June 13, 1978. The original document proposed to amend the new animal drug regulations by updating certain obsolete sections and by making certain technical changes.

EFFECTIVE DATE: June 13, 1978.

FOR FURTHER INFORMATION CONTACT:

John A. Richards, Federal Register Writer (HFC-11), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In Doc. 78-16252 appearing at page 25444 in the FEDERAL REGISTER of Tuesday, June 13, 1978, the following corrections are made:

1. On page 25444 in the right column, the preamble is corrected in the third paragraph under the heading "Technical Changes" by deleting the last sentence which reads: "A copy of the Food and Drug Administration environmental impact assessment is on file with the Hearing Clerk (HFC-20), Food and Drug Administration."

2. On page 25448 in the left column, the final paragraph is corrected by deleting the last sentence which reads: "A copy of the economic impact assessment is on file with the Hearing Clerk, Food and Drug Administration."

Dated: June 27, 1978.

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

[FR Doc. 78-18621 Filed 7-6-78; 8:45 am]

[4310-02]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 161]

RIGHTS-OF-WAY OVER INDIAN LANDS

Proposed Revisions

JUNE 27, 1978.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Proposed revisions.

SUMMARY: The Bureau of Indian Affairs is proposing to make minor revisions to regulations dealing with the granting of rights-of-way over and across tribal land, individually owned Indian land, and Government-owned land under the jurisdiction of the Bureau of Indian Affairs. Inasmuch as the rights-of-way regulations underwent major revisions in 1968 and subsequently there has been no major legislation affecting rights-of-way over and across Indian lands, the revisions contained herein are considered necessary as they will clarify certain policies and procedures concerning the granting of rights-of-way.

DATES: Comments and suggestions on the proposed regulations should be submitted on or before August 7, 1978.

ADDRESSES: Comments and suggestions should be sent to the Director, Palm Springs Office, Bureau of Indian Affairs, 587 South Palm Canyon Drive, Palm Springs, Calif. 92262.

FOR FURTHER INFORMATION CONTACT:

Richard S. McDermott, Director, Palm Springs Office, Bureau of Indian Affairs, 587 South Palm Canyon Drive, Palm Springs, Calif. 92262, telephone 714-325-2163.

SUPPLEMENTARY INFORMATION: The primary author of this document is Richard S. McDermott, Director, Palm Springs Office, Bureau of Indian Affairs, 587 South Palm Canyon Drive, Palm Springs, Calif. 92262, telephone 714-325-2163. The proposed changes are the result of designation as one of the Bureau of Indian Affairs ten major management improvement projects. A sub-task force for revision of part 161 appointed by the Commissioner of Indian Affairs met in Denver, Colo., on August 25-26, 1976. This proposal would revise certain sections of the regulations which are considered minor in their context. Inasmuch as the rights-of-way regulations underwent major revisions in 1968 and subsequently there has been no major legislation affecting rights-of-way over and across Indian lands, the revisions contained herein are considered necessary as they will clarify certain policies and procedures concerning the granting of rights-of-way.

It is therefore proposed to amend 25 CFR Part 161 to read as follows:

PART 161—RIGHTS-OF-WAY OVER INDIAN LANDS

1. By revising the first sentence of § 161.3(c) to read as follows:

§ 161.3 Consent of landowners to grants of rights-of-way.

* * * * *

(c) The Secretary may issue permission to survey with respect to, and he may grant rights-of-way and service line agreements over and across individually owned lands without the consent of the individual Indian owner when (1) * * *

* * * * *

2. By revising the first sentence of § 161.5 to read as follows:

§ 161.5 Application for right-of-way.

Written application, in duplicate, for a right-of-way shall be filed with the Secretary which shall identify the specific use for which it is being sought. * * *

3. By adding the following sentence at the end of § 161.12 to read as follows:

§ 161.12 Consideration for right-of-way grants.

* * * The appraised fair market value of any or all rights granted or damages incurred as a result of the right-of-way granted or renewed shall be determined by Bureau appraisers and will be furnished to the landowners, prior to the issuance of consent forms to the applicants.

4. By revising the first sentence of § 161.20 to read as follows:

§ 161.20 Termination of right-of-way grants.

All rights-of-way granted under the regulations in this part may be terminable in whole or in part upon 30 days written notice from the Secretary mailed to the grantee at its latest address furnished in accordance with § 161.5(j), for any of the following causes: * * *

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821 and OMB Circular A-107.

RICK LAVIS,
Acting Assistant Secretary—Indian Affairs.

[FR Doc. 78-18804 Filed 7-6-78; 8:45 am]

[4830-01]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 1 and 55]

[LR-218-76]

INCOME TAX

Real Estate Investment Trusts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the taxation of real estate investment trusts. Changes to the applicable tax law were made by the Tax Reform Act of 1976 and by the act of January 3, 1975. All real estate investment trusts will be affected by the proposed regulations.

DATES: Written comments and requests for a public hearing must be delivered or mailed by September 5, 1978. In general, the changes made by the Tax Reform Act of 1976 relating to real estate investment trusts apply to taxable years beginning after October 4, 1976, or to certain court decisions or other determinations occuring after that date. Certain changes made by the Tax Reform Act of 1976, however, apply to taxable years ending after October 4, 1976. The changes made by the act of January 3, 1975, apply to certain property acquired after December 31, 1973.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (LR-218-76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Charles M. Whedbee of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3487, not a toll-free call).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 856, 857, 858, 859, and 860, of the Internal Revenue Code, which relate to real estate investment trusts. Proposed amendments that are generally in the nature of conforming amendments are also made to the relations under the following Code sections: 46, 50B, 164, 172, 275, 316, 381, 441, 442, and 512. This document also contains proposed procedural and administrative regulations relating to the excise tax im-

posed on certain real estate investment trusts by section 4981 of the Code. These amendments are proposed to conform the regulations to section 1402(b) and Title XVI of the Tax Reform Act of 1976 (Pub. L. 94-455; 90 Stat. 1731, 1742) and section 6 of Pub. L. 93-625 (88 Stat. 2112). This document also withdraws a notice of proposed ruemaking published in the FEDERAL REGISTER for December 7, 1972. Certain proposed rules contained in that document are reproposed with certain modifications. The amendments are to be issued under the authority contained in the following sections of the Internal Revenue Code of 1954: section 856(d)(4) (90 Stat. 1750, 26 U.S.C. 856(d)(4)); section 856(e)(5) (88 Stat. 2113; 26 U.S.C. 856(e)(5)); section 856(f)(2) (90 Stat. 1751; 26 U.S.C. 856(f)(2)); section 856(g)(2) (90 Stat. 1753; 26 U.S.C. 856(g)(2)); section 858(a) (74 Stat. 1008; 26 U.S.C. 858(a)); section 859(c) (90 Stat. 1743; 26 U.S.C. 859(c)); section 859(e) (90 Stat. 1744; 26 U.S.C. 859(e)); section 6001 (68A Stat. 731, 26 U.S.C. 6001); section 6011 (68A Stat. 732, 26 U.S.C. 6011); section 6071 (68A Stat. 749, 26 U.S.C. 6071); section 6091 (68A Stat. 752, 26 U.S.C. 6091); Section 7805 (68A Stat. 917, 26 U.S.C. 7805). The amendments are also issued under the authority contained in section 1608(d)(2) of the Tax Reform Act of 1976 (90 Stat. 1758).

TAX REFORM ACT OF 1976

The Tax Reform Act of 1976 (the act) made numerous changes in the law relating to the taxation of real estate investment trusts ("REITS"). The most significant changes are as follows:

Deficiency Dividends. Section 1601 of the act provides a method by which a REIT may be relieved from the payment of a deficiency in (or be allowed a credit or refund with respect to) the tax imposed by section 857(b) (1) or (3) of the Code, or, in the case of a REIT that fails the dividend distribution requirements of section 857(a)(1), the corporate income tax imposed by section 11(a) or 1201(a) of the Code. The method provided is to allow an additional deduction for a dividend distribution (which meets the requirements of section 859 of the Code) in computing the deduction for dividends paid for the taxable year for which the deficiency is determined. A REIT that pays a deficiency dividend will be subject to interest and penalties determined with respect to the amount of the deduction allowed. The proposed regulations provide rules for the application of the deficiency dividend procedure.

Source-of-Income Requirements. In order to be taxed as a REIT, a corporation, trust, or association must derive at least 75 percent of its gross income from certain passive real estate related sources. An additional 15 percent (20 percent for taxable years beginning after 1979) must be from these sources or certain other passive sources, such as interest or dividends. Section 1602 of the act provides that where the failure to meet these requirements is due to reasonable cause and not due to willful neglect the REIT will be deemed to have met these requirements. (The REIT also must meet two additional conditions: The REIT must set forth the nature and amount of its gross income qualifying for the percentage requirements in a schedule attached to its income tax return and the inclusion of any incorrect information in the schedule must not be due to fraud.) A REIT which receives the benefit of these provisions must pay a special tax, determined under a statutory formula, with respect to the greater of the amount by which it failed either the 75-percent or 90-percent source-of-income requirement. The proposed regulations provide rules relating to the determination of whether reasonable cause existed for the failure to meet the source-of-income requirements. Rules are also proposed relating to the contents of the schedule that must be attached to the income tax return and the computation of the special tax.

Property Held for Sale to Customers. Section 1603 of the Act repealed the prohibition against a REIT holding any property primarily for sale to customers in the ordinary course of its trade or business. Section 1603 of the Act also imposes a tax equal to 100 percent of the net gain from the sale or other disposition of property held primarily for sale to customers in the ordinary course of a trade or business. The proposed regulations provide rules for the determination of this 100 percent tax, as well as conforming the regulations to the repeal of the prohibition on holding property primarily for sale.

Changes Related to Qualified Income. The Act made several changes in the rules relating to the gross income that qualifies for the 90-percent and 75-percent source-of-income requirements. The definition of qualifying income is expanded to include rent attributable to incidental personal property, where the personal property is leased under, or in connection with, a lease of real property. Charges for certain services customarily furnished in connection with the rental of real property will qualify, whether or not a separate charge is made for the service. A certain portion of fixed and contingent rent which would have been disqualified under prior law because it is based on the income or profits of subtenants or concessionaires of the prime tenant of the REIT may now qualify. Also, commitment fees for agreements to make loans secured by real property (or interests in real property) or to purchase or lease real property (or interests in real property) may now qualify for the source-of-income requirements. On the other hand, the Act specifically disqualifies certain contingent interest based on the income or profits of any person. The proposed regulations prescribe rules for the application of these provisions.

Changes relating to distribution requirements. The Act increases the percentage of real estate investment trust taxable income (computed by excluding net capital gain) that must be distributed to shareholders. (This amendment is effective for taxable years beginning after 1979.) The Act also modifies rules under section 858 of the Code with respect to the election to treat a dividend paid after the close of the taxable year as having been paid during the taxable year for purposes of the dividends paid deduction. The Act also prohibits a REIT from changing to or adopting a taxable year other than the calendar year. The proposed regulations implement these changes in the Code.

Disqualification. The Act provides that a REIT which fails to qualify as a real estate investment trust will be ineligible to re-elect REIT status for four taxable years following the disqualification year. The same rule applies where the REIT revokes its election to be a real estate investment trust, which is now allowed pursuant to the Act. The ban on a new election also applies to a successor corporation. The four-year ban on a new election does not apply, however, if the failure to qualify as a REIT was due to reasonable cause (and not due to willful neglect) and if fraud is absent. The proposed amendments to the regulations provide rules for revoking an election to be a REIT, as well as rules relating to "reasonable cause" for failure to qualify and the definition of a successor corporation.

Excise Tax. The Act adds a new section 4981 to the Code, which imposes an excise tax (effective for taxable years beginning after 1979) on a REIT that fails to distribute a specified amount of its real estate investment trust taxable income during the taxable year. The proposed regulations include administrative and procedural rules relating to this excise tax.

Alternative Tax. The Act imposes an alternative tax with respect to undistributed net capital gain, in lieu of the flat 30 percent tax on the undistributed net capital gain of a REIT imposed by prior law. The principle effect of this amendment is to allow the REIT to offset ordinary losses against long-term capital gains. The proposed amendments conform the income tax regulations to these provisions.

Net Operating Losses. Section 1606 of the Act allows a REIT to take the net operating loss deduction under section 172 of the Code. However, special rules restrict the taxable years to which the net operating loss of a REIT may be carried, and prohibit a net operating loss from being carried back to a taxable year for which the taxpayer is taxed as a REIT. The proposed regulations conform the income tax regulations to these provisions. Section 1606 of the Act and the proposed regulations also provide rules relating to the amount of a net operating loss that is absorbed when the loss is carried to a taxable year of a qualified REIT.

Foreclosure Property

Section 6 of Pub. L. 93-625 amended section 856 of the Code to provide that a real estate investment trust may make an irrevocable election to treat as "foreclosure property" certain property that it acquires after December 31, 1973, as the result of having bid in such property at foreclosure, or having otherwise reduced the property to ownership or possession by agreement or process of law, after there was a default (or default was imminent) on a lease of the property or on an indebtedness which the property secured. As long as property retains its status as foreclosure property a trust is permitted to hold the property primarily for sale to customers in the ordinary course of a trade or business without incurring the 100 percent tax imposed by section 857(b)(6). Property generally retains its status as foreclosure property for 2 years after its acquisition, unless an extension of the 2-year period is granted. Foreclosure property status may be terminated before the expiration of the 2-year period as the result of a subsequent lease of the property which provides for (or results in the receipt or accrual of) certain "nonqualified" income, as a result of certain construction on the property, or as the result of certain uses of the property by the trust in a trade or business. The net income from foreclosure property is taxed at corporate rates, without regard to the surtax exemption. The trust is required to distribute at least 90 percent of the amount by which the net income from foreclosure property exceeds the tax imposed thereon.

The proposed amendments to the regulations describe property (both real and personal) that is eligible for the election to be treated as foreclosure property and prescribe rules for making the election. The proposed amendments also provide rules relating to an extension of the 2-year grace period, as well as rules regarding certain leases, construction activities, and business activities with respect to the property which can terminate its status as foreclosure property. The proposed amendments prescribe rules with respect to the computation of net income from foreclosure property and also provide that a net loss from foreclosure property is taken into account in computing real estate investment trust taxable income. In order to determine the amount of the dividends paid deduction to be taken into account in computing real estate investment trust taxable income, the proposed amendments also prescribe rules relating to the allocation of dividends between real estate investment trust taxable income and net income from foreclosure property.

Amendments Relating to the Notice of Proposed Rulemaking Published December 7, 1972

Certain amendments to the income tax regulations under sections 856 that were first proposed in a notice of proposed rulemaking published on December 7, 1972, are proposed, with certain modifications, in this document. These amendments primarily relate to the definition of interest for purposes of section 856(c)(2) and (3) of the Code, and contain rules for the allocation of interest between real property and other property where the indebtedness is secured by both real property and other property. The proposed regulations also provide that rent based on a fixed percentage or percentages of receipts or sales less an amount attributable to escalation receipts will quality as "rents from real property" under section 856(c)(2)(B) and (3)(B).

Withdrawal of Notice of Proposed Rulemaking

Because of the significant changes made by the Tax Reform Act of 1976 to the provisions of the Internal Revenue Code relating to real estate investment trusts, the notice of proposed rulemaking relating to real estate investment trusts published in the Federal Register (37 FR 26014) on December 7, 1972, is hereby withdrawn.

Comments and Requests for a Public Hearing

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

Drafting Information

The principal author of these proposed regulations was Charles M. Whedbee of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 and 26 CFR part 55 are as follows:

§ 1.46 [Deleted]

Paragraph 1. Section 1.46 is deleted.

Par. 2. Section 1.46-4(b)(2) is amended by striking out "857(b)(2)(C)" in subdivision (ii) and inserting in lieu thereof "857(b)(2)(B) (section 857(b)(2)(C), as then in effect, for taxable years ending before October 5, 1976)" and by adding three new sentences after the second sentence, to read as set forth below.

§ 1.46-4 Limitations with respect to certain persons.

* * * * *

(b) Regulated investment companies and real estate investment trusts. * * *

(2) * * * In the case of a taxable year ending after October 4, 1976, real estate investment trust taxable income, for purposes of section 46(e) and this paragraph, is determined by excluding any net capital gain, and by computing the deduction for dividends paid without regard to capital gains dividends (as defined in section 857(b)(3)(C)). In the case of a real estate investment trust, the amount of the deduction for dividends paid includes the amount of deficiency dividends (other than capital gains deficiency dividends) taken into account in computing real estate investment trust taxable income for the taxable year. See section 859(d) for the definition of deficiency dividends. * * *

* * * * *

Par. 3. Section 1.50B-5(b)(2) is amended by striking out "857(b)(2)(C)" in subdivision (ii) and inserting in lieu thereof "857(b)(2)(B) (section 857(b)(2)(C), as then in effect, for taxable years ending before October 5, 1976)" and by adding three new sentences after the second sentence, to read as set forth below.

§ 1.50B-5 Limitations with respect to certain persons.

* * * * *

(b) Regulated investment companies and real estate investment trusts. * * *

(2) * * * In the case of a taxable year ending after October 4, 1976, real

estate investment trust taxable income, for purposes of this paragraph, is determined by excluding any net capital gain, and by computing the deduction for dividends paid without regard to capital gains dividends (as defined in section 857(b)(3)(C)). In the case of a real estate investment trust, the amount of the deduction for dividends paid includes the amount of deficiency dividends (other than capital gains deficiency dividends) taken into account in computing real estate investment trust taxable income for the taxable year. See section 859(d) for the definition of deficiency dividends.

* * * * *

§ 1.116-1 [Amended]

PAR. 4. Section 1.116-1(d)(2)(iv) is amended by striking out "1.857-4" and inserting in lieu thereof "1.857-6".

PAR. 5. Section 1.164-2 is amended by striking out "or (c) of this section" in paragraph (f) and inserting in lieu thereof "(c), or (h) of this section", and by adding a new paragraph (h) at the end thereof to read as set forth below.

§ 1.164-2 Deduction denied in case of certain taxes.

* * * * *

(h) *Excise tax on real estate investment trusts.* The excise tax imposed on certain real estate investment trusts by section 4981.

§ 1.172 [Deleted]

PAR. 6. Section 1.172 is deleted.

PAR. 7. A new paragraph (e) is added at the end of § 1.172-2 to read as set forth below.

§ 1.172-2 Net operating loss in case of a corporation.

* * * * *

(e) *Qualified real estate investment trusts.* For taxable years ending after October 4, 1976, the net operating loss of a qualified real estate investment trust (as defined in § 1.172-12(b)) is computed by taking into account the adjustments described in section 857(b)(2) (other than the deduction for dividends paid, as defined in section 561), as well as the modifications required by paragraph (a)(1) of this section. Thus, for example, the special deductions for dividends received, etc., provided in part VIII of subchapter B (other than section 248), as well as the net operating loss deduction under section 172, are not allowed in computing the net operating loss of a qualified real estate investment trust.

§ 1.172-4 [Amended]

PAR. 8. Section 1.172-4 is amended as follows:

1. Paragraph (a)(1)(ii) is amended by inserting "§ 1.172-12(a)," immediately after "of this subparagraph,".

2. Paragraph (a)(1)(iii) is amended by striking out "and § 1.172-9" and inserting in lieu thereof ", §1.172-9, and the exception in § 1.172-12(a)".

3. Paragraph (a)(1)(iv) is amended by inserting "and § 1.172-12(a)(2)" after "Except as provided in subdivision (v) of this subparagraph".

4. Paragraphs (a)(1)(viii) and (a)(1)(ix) are each amended by inserting "(except as provided in § 1.172-12(a)(2))" after "be carried back".

PAR. 9. Paragraph (a) of § 1.172-5 is amended by adding a new subparagraph (5) at the end thereof, to read as set forth below.

§ 1.172-5 Taxable income which is subtracted from net operating loss to determine carryback or carryover.

(a) *Taxable year subject to the Internal Revenue Code of 1954.* * * *

(5) *Qualified real estate investment trust.* Where a net operating loss is carried over to a qualified taxable year (as defined in § 1.172-12(b)) ending after October 4, 1976, the real estate investment trust taxable income (as defined in section 857(b)(2)) shall be used as the "taxable income" for that taxable year to determine, under section 172(b)(2), the balance of the net operating loss available as a carryover to a subsequent taxable year. The real estate investment trust taxable income, however, is computed by applying the rules applicable to corporations in paragraph (a)(3) of this section. Thus, in computing real estate investment trust taxable income for purposes of section 172(b)(2), the net operating loss deduction for the taxable year shall be computed in accordance with paragraph (a)(3)(i) of ths section. The principles of this subparagraph may be illustrated by the following example:

Example. Corporation X, a calendar year taxpayer, is formed on January 1, 1977. X incurs a net operating loss of $100,000 for its taxable year 1977, which under section 172(b)(2), is a carryover to 1978. For 1978 X is a qualified real estate investment trust (as defined in § 1.172-12(b)) and has real estate investment trust taxable income (determined without regard to the deduction for dividends paid or the net operating loss deduction) of $150,000. X pays dividends in 1978 totaling $120,000 that qualify for the deduction for dividends paid under section 857(b)(2)(B). The portion of the 1977 net operating loss available as a carryover to 1979 and subsequent years is $70,000 (i.e., the excess of the amount of the net operating loss ($100,000) over the amount of the real estate investment trust taxable income for 1978 ($30,000), determined by taking into account the deduction for dividends paid allowable under section 857(b)(2)(B) and without taking into account the net operating loss for 1977).

* * * * *

PAR. 10. A new § 1.172-12 is added after § 1.172-11 to read as follows:

§ 1.172-12 Net operating losses of real estate investment trusts.

(a) *Taxable years to which a loss may be carried.* (1) A net operating loss sustained in a qualified taxable year (as defined in paragraph (b)(2) of this section) ending after October 4, 1976, shall not be carried back to a preceding taxable year and shall be carried over to the 8 succeeding taxable years.

(2) A net operating loss sustained in a taxable year for which the taxpayer is not a qualified real estate investment trust (as defined in paragraph (b)(1) of this section) shall not be carried back to a qualified taxable year ending after October 4, 1976.

(3) A net operating loss sustained in a qualified taxable year ending after December 31, 1975, and before October 5, 1976, shall be carried back to the 3 preceding taxable years and carried over to the 8 succeeding taxable years.

(4) A net operating loss sustained in a qualified taxable year ending before January 1, 1976, shall be carried back to the 3 preceding taxable years and carried over to the 8 succeeding taxable years, except that a net operating loss may be carried to the sixth, seventh, or eighth succeeding taxable years only if (i) such year ends after October 4, 1976, and (ii) the taxpayer is a qualified real estate investment trust for such year and for all intervening taxable years following the taxable year in which the loss is sustained. For example, if the taxpayer is not a qualified real estate investment trust for the fifth taxable year following the taxable year in which the net operating loss is sustained, the loss may not be carried to the sixth, seventh, or eighth succeeding taxable year.

(5) A qualified taxable year is a taxable year preceding or following the taxable year of the net operating loss, for purposes of section 172(b)(1), even though the loss may not be carried to, or allowed as a deduction in, such qualified taxable year. Thus, a qualified taxable year ending before October 5, 1976 (for which no net operating loss deduction is allowable) is nevertheless a preceding or following taxable year for purposes of section 172(b)(1). Moreover, a qualified taxable year ending after October 4, 1976 (to which a net operating loss cannot be carried back because of the last sentence of section 172(b)(1)(E)) is nevertheless a preceding taxable year for purposes of section 172(b)(1). For purposes of determining, under section 172(b)(2), the balance of the loss available as a carryback or carryover to other taxable years, however, the net operating loss is not reduced on ac-

count of such qualified taxable year being a preceding or following taxable year.

(b) *Definitions.* For purposes of this section and §§ 1.172-2 and 1.172-5—

(1) The term "qualified real estate investment trust" means, with respect to any taxable year, a real estate investment trust within the meaning of part II of subchapter M which is taxable for such year under that part as a real estate investment trust, and

(2) The term "qualified taxable year" means a taxable year for which the taxpayer is a qualified real estate investment trust.

(c) *Certain acquisitions to which section 381 applies.* The net operating loss of a qualified real estate investment trust for a taxable year ending before January 1, 1976, that may otherwise be carried over to a sixth, seventh, or eighth taxable year under paragraph (a)(4) of this section may be carried over to such taxable year by an acquiring corporation which succeeds to the net operating loss carryover under section 381(a):

Provided, That the following two conditions are met. First, the acquiring corporation is a qualified real estate investment trust for the taxable year to which the loss is carried. Second, neither the acquiring corporation nor the distributor or transferor corporation has carried the loss over to any taxable year which is not a qualified taxable year and which preceded the sixth, seventh, or eighth taxable year (as the case may be) to which the loss otherwise would be carried. Thus, in order for the net operating loss of the distributor or transferor corporation to be carried over to the sixth, seventh, or eighth succeeding taxable year by the acquiring corporation, it is not required that the acquiring corporation be a qualified real estate investment trust for any taxable year prior to the first taxable year of the acquiring corporation to which the loss is carried.

(d) *Cross references.* See §§ 1.172-2(e) and 1.172-5(a)(5) for the computation of the net operating loss of a qualified real estate investment trust for a taxable year ending after October 4, 1976, and the amount of a net operating loss which is absorbed when carried over to a qualified taxable year ending after October 4, 1976.

§ 1.243-2 [Amended]

PAR. 11. Section 1.243-2(c) is amended by striking out "1.857-4" and inserting in lieu thereof "1.857-6".

§ 1.246-1 [Amended]

PAR. 12. Section 1.246-1(d) is amended by striking out "1.857-4" and inserting in lieu thereof "1.857-6".

§ 1.275 [Deleted]

PAR. 13. Section 1.275 is deleted.

§ 1.275-1 [Amended]

PAR. 14. Section 1.275-1 is amended by striking out "and (e)" and inserting in lieu thereof "(e), and (h)".

§ 1.316 [Deleted]

PAR. 15. Section 1.316 is deleted.

PAR. 16. Section 1.316-1 is amended as follows:

1. Paragraph (d) of § 1.316-1 is redesignated as paragraph (e) and a new paragraph (d) is inserted immediately after paragraph (c), to read as set forth below.

2. A new example (7) is added at the end of paragraph (e) (as redesignated), to read as set forth below.

§ 1.316-1 Dividends.

* * * * *

(d) In the case of a corporation which, under the law applicable to the taxable year in respect of which a distribution is made under section 859 (relating to deficiency dividends), was a real estate investment trust (within the meaning of section 856), the term "dividend", in addition to the meaning set forth in paragraphs (a) and (b) of section 316, means a distribution of property to its shareholders which constitutes a "deficiency dividend" as defined in section 859(d).

(e) * * *

Example (7). In 1979, a deficiency of $48,000 in the tax on real estate investment trust taxable income is established against corporation R for the taxable year 1977, based on an increase in real estate investment trust taxable income of $100,000. Corporation R complied with the provisions of section 859 and in December 1979 distributed to its stockholders $100,000, which qualified as "deficiency dividends" under section 859(d). The distribution of $100,000 is a taxable dividend. It is immaterial whether corporation R is a real estate investment trust for the taxable year 1979 or whether it had accumulated or current earnings and profits in 1979.

§ 1.381(c)(17)-(1) [amended]

PAR. 17. The example in § 1.381(c)(17)-(1)(f) is amended by striking out "paragraph (d) of § 1.316-1" in the sixth sentence and inserting in lieu thereof "paragraph (e) of § 1.316-1".

PAR. 18. A new § 1.381(c)(25)-1 is added after § 1.381(c)(24)-1, to read as follows:

§ 1.381(c)(25)-1 Deficiency dividend of real estate investment trust.

(a) *Carryover requirement.* If a distributor or transferor corporation in a transaction to which section 381(a) applies—

(1) Was a real estate investment trust (within the meaning of section 856, as in effect for the applicable taxable year) for any taxable year ending on or before the date of distribution or transfer, and

(2) A determination (as defined in section 859(c)) establishes that the transferor or distributor corporation is liable for the tax imposed by section 11(a), 56(a), 857(b), or 1201(a) for such taxable year,

then in determining the liability for such tax the deduction described in section 859 shall be allowed pursuant to section 381(c)(25) to such corporation for the amount of deficiency dividends paid by the acquiring corporation with respect to the distributor or transferor corporation. Except as otherwise provided in this section, the provisions of section 859 and the regulations thereunder apply with respect to a deficiency dividend deduction allowable pursuant to section 381(c)(25).

(b) *Deficiency dividends paid by the acquiring corporation with respect to the distributor or transferor corporation.* A deficiency dividend paid by the acquiring corporation with respect to the distributor or transferor corporation must be a distribution that would satisfy the definition of a deficiency dividend under section 859(d) if paid by the distributor or transferor corporation to its own shareholders. The distributor, however, shall be paid by the acquiring corporation to its own shareholders. The distribution also shall be paid after the date of distribution or transfer and on, or within 90 days after, the date of the determination but before the acquiring corporation files a claim under paragraph (c) of this section.

(c) *Claim for deduction.* A claim for deduction under this section shall be made by the acquiring corporation on form 976, in duplicate, and shall be filed within 120 days after the date of the determination. The form shall contain, or be accompanied by, the information required under paragraph (b)(2) of § 1.859-2 in sufficient detail to properly identify the facts with respect to the distributor or transferor corporation and the acquiring corporation. The required certified copy of the resolution authorizing the payment of the dividend shall be that of the trustees, board of directors, or other authority, of the acquiring corporation. Necessary changes may be made in form 976 in order to carry out the provisions of this paragraph. The claim shall be filed with the district director, or director of the internal revenue service center, with whom the return of the distributor or transferor corporation to which the claim relates was filed.

(d) *Effect on dividends paid deduction.* A deficiency dividend paid by the acquiring corporation that is allowable as a deduction to a distributor or transferor corporation pursuant to section 381(c)(25) shall not become a part of the dividends paid deduction of the acquiring corporation under section 561 for any taxable year.

(e) *Successive transactions to which section 381(a) applies.* The provisions

of this section shall apply in the case of successive transactions to which section 381(a) applies. Thus, if X corporation transfers its assets to Y corporation in a transaction to which section 381(a) applies and if Y corporation transfers its assets to Z corporation in a subsequent transaction to which section 381(a) applies, then, subject to the provisions of this section, X corporation may take a deficiency dividend deduction for the amount of deficiency dividends paid by Z corporation with respect to X corporation.

PAR. 19. Section 1.441-1(b)(3) is amended by adding a new sentence at the end thereof, to read as set forth below.

§ 1.441-1 Period for computation of taxable income.

* * * * *

(b) *Taxable year.* * * *

(3) * * * For rules applicable to the adoption of a taxable year by a real estate investment trust, see section 860 and § 1.860-1.

* * * * *

PAR. 20. Section 1.442-1 is amended by adding a new sentence at the end of paragraph (a)(1), to read as set forth below, and by striking out "A corporation (other than a corporation to which subparagraphs (4) or (5) of this paragraph applies" in the first sentence of paragraph (c)(1) and inserting in lieu thereof "Except as otherwise provided in paragraph (c)(4) and (5) of this section and § 1.860-1, a corporation".

§ 1.442-1 Change of annual accounting period.

(a) *Manner of effecting such change.*—(1) *In general.* * * * For special rules relating to real estate investment trusts, see section 860 and § 1.860-1.

* * * * *

§ 1.443-1 [Amended]

PAR. 21. Section 1.443-1(d)(5) is amended by striking out "857(b)(2)(D)" and inserting in lieu thereof "857(b)(2)(C)".

§ 1.512(b)-1 [Amended]

PAR. 22. Section 1.512(b)-1(c)(2)(iii)(*b*) is amended by striking out "paragraph (b)(1)" and inserting in lieu thereof "Paragraph (B) (3) and (6) (other than paragraph (b)(6)(ii))".

§ 1.562-1 [Amended]

PAR. 23. The example in § 1.562-1(b)(2)(iii) is amended by striking out "paragraph (d)" in the last sentence and inserting in lieu thereof "paragraph (e)".

§ 1.856 [Deleted]

PAR. 24. Section 1.856 is deleted.

PAR. 25. Section 1.856-1 is amended as follows:

1. Paragraph (a) is amended by striking out "The term 'real estate investment trust' means an unincorporated trust or unincorporated association" and inserting in lieu thereof "The term 'real estate investment trust' means a corporation, trust, or association".

2. Paragraph (a) is further amended by adding a new sentence at the end thereof, to read as set forth below.

3. So much of paragraph (b) as precedes subparagraph (1) is amended by striking out "unincorporated".

4. Paragraph (b)(1) is amended by inserting "or directors" before the comma at the end thereof.

5. Paragraph (b)(4) is amended by inserting ", in the case of a taxable year beginning before October 5, 1976," after "Which" and by inserting "(other than foreclosure property)" after "property".

6. Paragraph (b) is amended by redesignating subparagraphs (5) and (6) as (6) and (7), respectively, and inserting a new subparagraph (5) to read as set forth below.

7. Paragraph (c) is amended by striking out "(4)" in the first sentence and inserting in lieu thereof "(5)", and by striking out "(5)" in the first and third sentences and inserting in lieu thereof "(6)".

8. So much of paragraph (d) as precedes paragraph (1) is amended by striking out "unincorporated".

9. The second sentence of paragraph (d)(2) is amended by striking out "trust instrument" and inserting in lieu thereof "trust instrument or corporate charter or bylaws", by striking out "trustee" each place it appears and inserting in lieu thereof "trustee or directors", and by striking out "believes" and inserting "believe" in lieu thereof.

10. The last sentence of paragraph (d)(2) is amended by striking out "investment trust and" and inserting in lieu thereof "investment trust," and by striking out the period at the end thereof and inserting in lieu thereof ", and the term 'shares' includes shares of stock."

11. The first sentence of paragraph (d)(4) is amended by striking out "A real" and inserting in lieu thereof "In the case of a taxable year beginning before October 5, 1976, a real" and by inserting "(other than foreclosure property)" after "property".

12. Paragraph (d)(5) is amended by striking out "An unincorporated organization" in the first sentence and inserting in lieu thereof "A corporation, trust, or association", and by stiking out" § 1.857-6" in the last sentence and inserting in lieu thereof "§ 1.857-8".

13. Paragraph (e) is amended by striking out "unincorporated trust" and inserting in lieu thereof "organization".

14. A new paragraph (f) is added to read as set forth below.

§ 1.856-1 Definition of real estate investment trust.

(a) *In general.* * * * (See, however, paragraph (f) of this section, relating to the requirement that, for taxable years beginning before October 5, 1976, a real estate investment trust must be an unincorporated trust or unincorporated association.)

(b) *Qualifying conditions.* * * *

(5) Which is neither (i) a financial institution to which section 585, 586, or 593 applies, nor (ii) an insurance company to which subchapter L applies,

* * * * *

(f) *Unincorporated status required for certain taxable years.* In the case of a taxable year beginning before October 5, 1976, a real estate investment trust must be an unincorporated trust or unincorporated association. Accordingly, in applying the regulations under part II of subchapter M of the Code with respect to such a taxable year, the term "an unincorporated trust or unincorporated association" is to be substituted for the term "a corporation, trust, or association" each place it appears, and the references to "directors" and "corporate charter or bylaws" are to be disregarded.

PAR. 26. Section 1.856-2 is amended as follows:

1. Paragraph (b) is amended by striking out "which began after December 31, 1960" and inserting in lieu thereof "which has not been terminated or revoked under section 856(g)(1) or (2)", and by striking out the last sentence and inserting three new sentences in lieu thereof, to read as set forth below.

2. Paragraph (c) is revised to read as set forth below.

§ 1.856-2 Limitations.

* * * * *

(b) *Election.* * * * An election cannot be revoked with respect to a taxable year beginning before October 5, 1976. Thus, the failure of an organization to be a qualified real estate investment trust for a taxable year beginning before October 5, 1976, does not have the effect of revoking a prior election by the organization to be a real estate investment trust, even though the organization is not taxable under part II of subchapter M for such taxable year. See section 856(g) and § 1.856-8 for rules under which an election may be revoked with respect to taxable years beginning after October 4, 1976.

(c) *Gross income requirements.* Section 856(c) (2), (3), and (4), provides that a corporation, trust, or association is not a "real estate investment trust" for a taxable year unless it meets certain requirements with respect to the sources of its gross income for the taxable year. In determining whether the gross income of a real estate investment trust satisfies the percentage requirements of section 856(c) (2), (3), and (4), the following rules shall apply:

(1) *Gross income.* For purposes of both the numerator and denominator in the computation of the specified percentages, the term "gross income" has the same meaning as that term has under section 61 and the regulations thereunder. Thus, in determining the gross income requirements under section 856(c) (2), (3), and (4), a loss from the sale or other disposition of stock, securities, real property, etc. does not enter into the computation.

(2) *Lapse of options.* Under section 85(c)(6)(C), the term "interests in real property" includes options to acquire land or improvements thereon, and options to acquire leaseholds of land and improvements thereon. However, where a corporation, trust, or association writes an option giving the holder the right to acquire land or improvements thereon, or writes an option giving the holder the right to acquire a leasehold of land or improvements thereon, any income that the corporation, trust, or association recognizes because the option expires unexercised is not considered to be gain from the sale or other disposition of real property (including interests in real property) for purposes of section 856(c) (2)(D) and (3)(C). The rule in the preceding sentence also applies for purposes of section 856(c)(4)(C) in determining gain from the sale or other disposition of real property for the 30-percent-of-gross-income limitation.

(3) *Commitment fees.* For purposes of section 856(c) (2)(G) and (3)(G), if consideration is received or accrued for an agreement to make a loan secured by a mortgage covering both real property and other property, or for an agreement to purchase or lease both real property and other property, an apportionment of the consideration is required. The apportionment of consideration received or accrued for an agreement to make a loan secured by a mortgage covering both real property and other property shall be made under the principles of § 1.856-5(c), relating to the apportionment of interest income.

(4) *Holding period of property.* For purposes of the 30-percent limitation of section 856(c)(4), the determination of the period for which property described in such section has been held is governed by the provisions of section 1223 and the regulations thereunder.

(5) *Rents from real property and interest.* See §§ 1.856-4 and 1.856-5 for rules relating to rents from real property and interest.

* * * * *

PAR. 27. Section 1.856-3 is amended by adding a new sentence at the end of paragraph (c) and by adding a new paragraph (h) at the end thereof, to read as set forth below.

§ 1.856-3 Definitions.

* * * * *

(c) *Interests in real property.* * * * The term "interests in real property" also includes options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon.

* * * * *

(h) *Net capital gain.* The term "net capital gain" means the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for the taxable year.

PAR. 28. Section 1.856-4 is amended as follows:

1. Paragraph (a) is amended by deleting the last two sentences and by striking out "limitations" in the first sentence and inserting in lieu thereof "exceptions".

2. Paragraphs (b) (1), (2), (3), and (4) are redesignated as paragraphs (b) (3), (4), (5), and (7), respectively, and so much of paragraph (b) as precedes paragraph (b)(3), as redesignated, is revised to read as set forth below.

3. Paragraph (b)(3), as redesignated, is revised to read as set forth below.

4. The title and first sentence of paragraph (b)(4), as redesignated, are revised to read as set forth below.

5. Paragraph (b)(5), as redesignated, is amended by redesignating subdivisions (ii) and (iii) as subdivisions (iii) and (iv), respectively.

6. So much of paragraph (b)(5), as redesignated, as precedes subdivision (iii) thereof, as redesignated, is revised to read as set forth below.

7. A new paragraph (6) is added to read as set forth below.

§ 1.856-4 Rents from real property.

* * * * *

(b) *Amounts specifically included or excluded—*(1) *Charges for customary services.* For taxable years beginning after October 4, 1976, the term "rents from real property", for purposes of paragraphs (2) and (3) of section 856(c), includes charges for services customarily furnished or rendered in connection with the rental of real property, whether or not the charges are separately stated. Services furnished to the tenants of a particular building will be considered as customary if, in the geographic market in which the building is located, tenants in buildings which are of a similar class (such as luxury apartment buildings) are customarily provided with the service. The furnishing of water, heat, light, and air-conditioning, the cleaning of windows, public entrances, exits, and lobbies, the performance of general maintenance and janitorial services, the collection of trash, and the furnishing of elevator services, telephone answering services, incidental storage space, laundry equipment, watchman or guard services, parking facilities, and swimming pool facilities are examples of services which are customarily furnished to the tenants of a particular class of buildings in many geographic marketing areas. Where it is customary, in a particular geographic marketing area, to furnish electricity to tenants in buildings of a particular class, the submetering of electricity to tenants in such buildings will be considered a customary service. To qualify as a service customarily furnished, the service must be furnished or rendered to the tenants of the real estate investment trust or to the guests, customers, or subtenants of the tenant primarily for the convenience or benefit of the tenant. The service must be furnished through an independent contractor from whom the trust does not derive or receive any income. See paragraph (b)(5) of this section. For taxable years beginning before October 5, 1976, the rules in paragraph (b)(3) of 26 CFR 1.856-4 (revised as of April 1, 1977), relating to the furnishing of services, shall continue to apply.

(2) *Amounts received with respect to certain personal property.*—(i) *In general.* In the case of taxable years beginning after October 4, 1976, rent attributable to personal property that is leased under, or in connection with, the lease of real property is treated under section 856(d)(1)(C) as "rents from real property" (and thus qualified for purposes of the income source requirements) if the rent attributable to the personal property is not more than 15 percent of the total rent received or accrued under the lease for the taxable year. If, however, the rent attributable to personal property is greater than 15 percent of the total rent received or accrued under the lease for the taxable year, then the portion of the rent from the lease that is attributable to personal property will not qualify as "rents from real property".

(ii) *Application.* In general, the 15-percent test in section 856(d)(1)(C) is applied separately to each lease of real property. However, where the real estate investment trust rents all (or a portion of all) the units in a multiple unit project under substantially simi-

lar leases (such as the leasing of apartments in an apartment building or complex to individual tenants), the 15-percent test may be applied with respect to the aggregate rent received or accrued for the taxable year under the similar leases of the property, by using the average of the trust's aggregate adjusted bases of all of the personal property subject to such leases, and the average of the trust's aggregate adjusted bases of all real and personal property subject to such leases. A lease of a furnished apartment is not considered to be substantially similar to a lease of an unfurnished apartment (including an apartment where the trust provides only personal property, such as major appliances, that is commonly provided by a landlord in connection with the rental of unfurnished living quarters).

(iii) *Taxable years beginning before October 5, 1976.* In the case of taxable years beginning before October 5, 1976, any amount of rent that is attributable to personal property does not qualify as rent from real property.

(3) *Disqualification of rent which depends on income or profits of any person.* Except as provided in paragraph (b)(6)(ii) of this section, no amount received or accrued, directly or indirectly, with respect to any real property (or personal property leased under, or in connection with, real property) qualifies as "rents from real property" where the determination of the amount depends in whole or in part on the income or profits derived by any person from the property. However, any amount so accrued or received shall not be excluded from the term "rents from real property" solely by reason of being based on a fixed percentage or percentages of receipts or sales (whether or not receipts or sales are adjusted for returned merchandise, or Federal, State, or local sales taxes). Thus, for example, "rents from real property" would include rents where the lease provides for differing percentages of receipts or sales from different departments or from separate floors of a retail store so long as each percentage is fixed at the time of entering into the lease and a change in such percentage is not renegotiated during the term of the lease (including any renewal periods of the lease). See paragraph (b)(6) of this section for rules relating to certain amounts received or accrued by a trust which are considered to be based on the income or profits of a subleasee of the prime tenant. The amount received or accrued as rent for the taxable year which is based on a fixed percentage or percentages of the lessee's receipts or sales reduced by escalation receipts (including those determined under a formula clause) will qualify as "rents from real property". Escalation receipts include amounts received by a prime tenant from subtenants by reason of an agreement that rent shall be increased to reflect all or a portion of an increase in real estate taxes, property insurance, operating costs of the prime tenant, or similar items customarily included in lease escalation clauses. Where in accordance with the terms of an agreement an amount received or accrued as rent for the taxable year includes both a fixed rental and a percentage of all or a portion of the lessee's income or profits, neither the fixed rental nor the additional amount will qualify as "rents from real property". However, where the amount received or accrued for the taxable year under such an agreement includes only the fixed rental, the determination of which does not depend in whole or in part on the income or profits derived by the lessee, such amount may qualify as "rents from real property". An amount received or accrued as rent for the taxable year which consists, in whole or in part, of a percentage of the lessee's receipts or sales in excess of a dollar amount fixed at the time the lease is entered into may qualify as "rents from real property". In any event, an amount will not qualify as "rents from real property" if, considering the lease and all the surrounding circumstances, the arrangement does not conform with normal business practice but is in reality used as a means of basing the rent on income or profits. The provisions of this subparagraph may be illustrated by the following example:

Example. A real estate investment trust owns land underlying an office building. On January 1, 1975, the trust leases the land for 50 years to a prime tenant for an annual rental of $100x plus 20 percent of the prime tenant's annual gross receipts from the office building in excess of a fixed base amount of $5,000x. For this purpose the lease defines gross receipts as all amounts received by the prime tenant from occupancy tenants pursuant to leases of space in the office building reduced by the amount by which real estate taxes, property insurance, and operating costs related to the office building for a particular year exceed the amount of such items for 1974. The exclusion from gross receipts of increases since 1974 in real estate taxes, property insurance, and other expenses relating to the office building reflects the fact that the prime tenant passes on to occupancy tenants by way of a customary lease escalation provision the risk that such expenses might increase during the term of an occupancy lease. The exclusion from gross receipts of these expense escalation items will not cause the rental received by the real estate investment trust from the prime tenant to fail to qualify as "rents from real property" for purposes of section 856(c).

(4) *Disqualification of amounts received from persons owned in whole or in part by the trust.* "rents from real property" does not include any amount received or accrued, directly or indirectly, from any person in which the real estate investment trust owns, at any time during the taxable year, the specified percentage or number of shares of stock (or interest in the assets or net profits) of that person. * * *

(5) *Furnishing of services or management of property must be through an independent contractor—(i) In general.* No amount received or accrued, directly or indirectly, with respect to any real property (or any personal property leased under, or in connection with, the real property) qualifies as "rents from real property" if the real estate investment trust furnishes or renders services to the tenants of the property or manages or operates the property, other than through an independent contractor from whom the trust itself does not derive or receive any income. The prohibition against the trust deriving or receiving any income from the independent contractor applies regardless of the source from which the income was derived by the independent contractor. Thus, for example, the trust may not receive any dividends from the independent contractor. The requirement that the trust not receive any income from an independent contractor requires that the relationship between the two be an arm's-length relationship. The independent contractor must be adequately compensated for any services which are performed for the trust. Compensation to an independent contractor determined by reference to an unadjusted percentage of gross rents will generally be considered to be adequate where the percentage is reasonable taking into account the going rate of compensation for managing similar property in the same locality, the services rendered, and other relevant factors. The independent contractor must not be an employee of the trust (i.e., the manner in which he carries out his duties as independent contractor must not be subject to the control of the trust). Although the cost of services which are customarily rendered or furnished in connection with the rental of real property may be borne by the trust, the services must be furnished or rendered through an independent contractor. Furthermore, the facilities through which the services are furnished must be maintained and operated by an independent contractor. For example, if a heating plant is located in the building, it must be maintained and operated by an independent contractor. To the extent that services (other than those customarily furnished or rendered in connection with the rental of real property) are rendered to the tenants of the property by the independent contractor, the cost of the services must be borne by the independent contractor, a separate charge must be made for the services, the amount of the separate charge

must be received and retained by the independent contractor, and the independent contractor must be adequately compensated for the services.

(ii) *Trustee functions.* The trustees or directors of the real estate investment trust are not required to delegate or contract out their fiduciary duty to manage the trust itself, as distinguished from rendering or furnishing services to the tenants of its property or managing or operating the property. Thus, the trustees or directors may do all those things necessary, in their fiduciary capacities, to manage and conduct the affairs of the trust itself. For example, the trustees or directors may establish rental terms, choose tenants, enter into and renew leases, and deal with taxes, interest, and insurance, relating to the trust's property. The trustees or directors may also make capital expenditures with respect to the trust's property (as defined in section 263) and may make decisions as to repairs of the trust's property (of the type which would be deductible under section 162), the cost of which may be borne by the trust.

* * * * *

(6) *Amounts based on income or profits of subtenants.* (i) Except as provided in paragraph (b)(6)(ii) of this section, if a trust leases real property to a tenant under terms other than solely on a fixed sum rental (for example, a percentage of the tenant's gross receipts), and the tenant subleases all or a part of such property under an agreement which provides for a rental based in whole or in part on the income or profits of the sublessee, the entire amount of the rent received by the trust from the prime tenant with respect to such property is disqualified as "rents from real property".

(ii) *Exception.* For taxable years beginning after October 4, 1976, section 856(d)(4) provides an exception to the general rule that amounts received or accrued, directly or indirectly, by a real estate investment trust do not qualify as rents from real property if the determination of the amount depends in whole or in part on the income or profits derived by any person from the property. This exception applies where the trust rents property to a tenant (the prime tenant) for a rental which is based, in whole or in part, on a fixed percentage or percentages of the receipts or sales of the prime tenant, and the rent which the trust receives or accrues from the prime tenant pursuant to the lease would not qualify as "rents from real property" solely because the prime tenant receives or accrues from subtenants (including concessionaires) rents or other amounts based on the income or profits derived by a person from the property. Under the exception, only a proportionate part of the rent received or accrued by the trust does not qualify as "rents from real property". The proportionate part of the rent received or accrued by the trust which is non-qualified is the lesser of the following two amounts:

(A) The rent received or accrued by the trust from the prime tenant pursuant to the lease, that is based on a fixed percentage or percentages of receipts or sales, or

(B) The product determined by multiplying the total rent which the trust receives or accrues from the prime tenant pursuant to the lease by a fraction, the numerator of which is the rent or other amount received by the prime tenant that is based, in whole or in part, on the income or profits derived by any person from the property, and the denominator of which is the total rent or other amount received by the prime tenant from the property.

For example, assume that a real estate investment trust owns land underlying a shopping center. The trust rents the land to the owner of the shopping center for an annual rent of $10x plus 2 percent of the gross receipts which the prime tenant receives from subtenants who lease space in the shopping center. Assume further that, for the year in question, the prime tenant derives total rent from the shopping center of $100x and, of that amount, $25x is received from subtenants whose rent is based, in whole or in part, on the income or profits derived from the property. Accordingly, the trust will receive a total rent of $12x, of which $2x is based on a percentage of the gross receipts of the prime tenant. The portion of the rent which is disqualified is the lesser of $2x (the rent received by the trust which is based on a percentage of gross receipts), or $3x, ($12 multiplied by $25x/$100x). Accordingly, $10x of the rent received by the trust qualifies as "rents from real property" and $2x does not qualify.

* * * * *

PAR. 29. New §§ 1.856-5, 1.856-6, 1.856-7, 1.856-8, and 1.856-9, as set forth below, are added after section 1.856-4.

§ 1.856-5 Interest.

(a) *In general.* In computing the percentage requirements in section 856(c)(2)(B) and (3)(B), the term "interest" includes only an amount which constitutes compensation for the use or forbearance of money. For example, a fee received or accrued by a lender which is in fact a charge for services performed for a borrower rather than a charge for the use of borrowed money is not includable as interest.

(b) *Where amount depends on income or profits of any person.* Except as provided in paragraph (d) of this section, any amount received or accrued, directly or indirectly, with respect to an obligation is not includable as interest for purposes of section 856(c)(2)(B) and (3)(B) if, under the principles set forth in paragraph (b)(3) and (6)(i) of § 1.856-4, the determination of the amount depends in whole or in part on the income or profits of any person (whether or not derived from property secured by the obligation). Thus, for example, if in accordance with a loan agreement an amount is received or accrued by the trust with respect to an obligation which includes both a fixed amount of interest and a percentage of the borrower's income or profits, neither the fixed interest nor the amount based upon the percentage will qualify as interest for purposes of section 856(c)(2)(B) and (3)(B). This paragraph and paragraph (d) of this section apply only to amounts received or accrued in taxable years beginning after October 4, 1976, pursuant to loans made after May 27, 1976. For purposes of the preceding sentence, a loan is considered to be made before May 28, 1976, if it is made pursuant to a binding commitment entered into before May 28, 1976.

(c) *Apportionment of interest.* Where a mortgage covers both real property and other property an apportionment of the interest income must be made for purposes of the 75-percent requirement of section 856(c)(3). For purposes of the 75-percent requirement the apportionment shall be made as follows:

(1) If the loan value of the real property is equal to or exceeds the amount of the loan, then the entire interest income shall be apportioned to the real property.

(2) If the amount of the loan exceeds the loan value of the real property, then the interest income apportioned to the real property is an amount equal to the interest income multiplied by a fraction, the numerator of which is the loan value of the real property, and the denominator of which is the amount of the loan. The interest income apportioned to the other property is an amount equal to the excess of the total interest income over the interest income apportioned to the real property.

For purposes of this paragraph, the loan value of the real property is the fair market value of the property, determined as of the date on which the commitment by the trust to make the loan becomes binding on the trust. In the case of a loan purchased by the trust, the loan value of the real property is the fair market value of the property, determined as of the date on which the commitment by the trust to purchase the loan becomes binding on the trust. However, in the case of a construction loan or other loan made

for purposes of improving or developing real property, the loan value of the real property is the fair market value of the land plus the reasonably estimated cost of the improvements or developments which will secure the loan and which are to be constructed from the proceeds of the loan. The fair market value of the land and the reasonably estimated cost of improvements or developments shall be determined as of the date on which a commitment to make the loan becomes binding on the trust. For purposes of this paragraph, the amount of the loan means the highest principal amount of the loan outstanding during the taxable year.

(d) *Exception.* Section 856(f)(2) provides an exception to the general rule that amounts received, directly or indirectly, with respect to an obligation do not qualify as "interest" where the determination of the amounts depends in whole or in part on the income or profits of any person. The exception applies where the trust receives or accrues, with respect to the obligation of its debtor, an amount that is based in whole or in part on a fixed percentage or percentages of receipts or sales of the debtor, and the amount would not qualify as interest solely because the debtor has receipts or sale proceeds that are based on the income or profits of any person. Under this exception only a proportionate part of the amount received or accrued by the trust fails to qualify as interest for purposes of the percentage-of-income requirements of section 856(c) (2) and (3). The proportionate part of the amount received or accrued by the trust that is non-qualified is the lesser of the following two amounts:

(1) The amount received or accrued by the trust from the debtor with respect to the obligation that is based on a fixed percentage or percentages of receipts or sales, or

(2) The product determined by multiplying by a fraction the total amount received or accrued by the trust from the debtor with respect to the obligation. The numerator of the fraction is the amount of receipts or sales of the debtor that is based, in whole or in part, on the income or profits of any person and the denominator is the total amount of the receipts or sales of the debtor. For purposes of the preceding sentence, the only receipts or sales to be taken into account are those taken into account in determining the payment to the trust pursuant to the loan agreement.

§ 1.856-6 Foreclosure property.

(a) *In general.* Under section 856(e) a real estate investment trust may make an irrevocable election to treat as "foreclosure property" certain real property (including interests in real property), and any personal property incident to the real property, acquired by the trust after December 31, 1973. This section prescribes rules relating to the election, including rules relating to property eligible for the election. This section also prescribes rules relating to extensions of the general two-year period (hereinafter the "grace period") during which property retains its status as foreclosure property, as well as rules relating to early termination of the grace period under section 856(e)(4). The election to treat property as foreclosure property does not alter the character of the income derived therefrom (other than for purposes of section 856(c) (2)(F) and (3)(F)). For example, if foreclosure property is sold, the determination of whether it is property described in section 1221(1) will not be affected by the fact that it is foreclosure property.

(b) *Property eligible for the election—(1) Rules relating to acquisitions.* In general, the trust must acquire the property after December 31, 1973, as the result of having bid in the property at foreclosure, or having otherwise reduced the property to ownership or possession by agreement or process of law, after there was default (or default was imminent) on a lease of the property (where the trust was the lessor) or on an indebtedness owed to the trust which the property secured. Foreclosure property which secured an indebtedness owed to the trust is acquired for purposes of section 856(e) on the date on which the trust acquires ownership of the property for Federal income tax purposes. Foreclosure property which a trust owned and leased to another is acquired for purposes of section 856(e) on the date on which the trust acquires possession of the property from its lessee. A trust will not be considered to have acquired ownership of property for purposes of section 856(e) where it takes control of the property as a mortgagee-in-possession and cannot receive any profit or sustain any loss with respect to the property except as a creditor of the mortgagor. A trust may be considered to have acquired ownership of property for purposes of section 856(e) even through legal title to the property is held by another person. For example, where, upon foreclosure of a mortgage held by the trust, legal title to the property is acquired in the name of a nominee for the exclusive benefit of the trust and the trust is the equitable owner of the property, the trust will be considered to have acquired ownership of the property for purposes of section 856(e). Generally, the fact that under local law the mortgagor has a right of redemption after foreclosure is not relevant in determining whether the trust has acquired ownership of the property for purposes of section 856(e). Property is not ineligible for the election solely because the property, in addition to securing an indebtedness owed to the trust, also secures debts owed to other creditors. Property eligible for the election includes a building or other improvement which has been constructed on land owned by the trust and which is acquired by the trust upon default of a lease of the land.

(2) *Personal property.* Personal property (including personal property not subject to a mortgage or lease of the real property) will be considered incident to a particular item of real property if the use of the personal property is an ordinary and necessary corollary of the use to which the real property is put. In the case of a hotel, such items as furniture, appliances, linens, china, food, etc. would be examples of incidental personal property. Personal property eligible for the election includes personal property acquired after the acquisition of the real property if the personal property is incident to the real property. Personal property used in a trade or business conducted on the property will be considered property eligible for the election. Also, personal property which is incident to the real property and which is placed in the building or other improvement in the course of the completion of construction is eligible for the election.

(3) *Property with respect to which default is anticipated.* Property is not eligible for the election to be treated as foreclosure property if the loan or lease with respect to which the default occurs (or is imminent) was made or entered into (or the lease or indebtedness was acquired) by the trust with an intent to evict or foreclose, or when the trust knew or had reason to know that default would occur. For purposes of the preceding sentence, a trust will not be considered to have known or have had reason to know that default would occur with respect to a particular lease or loan, if the lease or loan was made pursuant to a binding commitment entered into by the trust at a time when it did not know (or have reason to know) that default would occur.

(c) *Election—(1) In general.* The election to treat property as foreclosure property shall be made on a property-by-property basis. For this purpose an election must include all of the eligible real property acquired by the trust upon the default (or as a result of the imminence of default) on a particular lease (where the trust is the lessor) or on a particular indebtedness owed to the trust. For example, if a loan made by a trust is secured by two separate tracts of land located in different cities, and the trust acquires both tracts on foreclosure upon the default (or imminence of default) of the loan, both tracts constitute the

foreclosure property, and the trust must include both tracts in the election. All of the eligible personal property incident to the real property must also be included in the election.

(2) *Time for making election.* The election to treat property as foreclosure property must be made on or before the due date (including extensions of time) for filing the trust's income tax return for the taxable year in which the trust acquires the property with respect to which the election is being made, or April 3, 1975, whichever is later.

(3) *Manner of making the election.* An election made after [the date this notice of proposed rulemaking is adopted as a Treasury Decision] shall be made by a statement attached to the income tax return for the taxable year in which the trust acquired the property with respect to which the election is being made. The statement shall indicate that the election is made under section 856(e) and shall identify the property to which the election applies. The statement shall also set forth—

(i) The name, address, and taxpayer identification number of the trust,

(ii) The date the property was acquired by the trust, and

(iii) A brief description of how the real property was acquired, including the name of the person or persons from whom the real property was acquired and a description of the lease or indebtedness with respect to which default occurred or was imminent.

An election made on or before [the date this notice of proposed rulemaking is adopted as a Treasury decision] shall be filed in the manner prescribed in 26 CFR 10.1(f) (revised as of April 1, 1977) (temporary regulations relating to the election to treat property as foreclosure property) as in effect when the election is made.

(4) *Status of taxpayer.* In general, a taxpayer may make an election with respect to an acquisition of property only if the taxpayer is a qualified real estate investment trust for the taxable year in which the acquisition occurs. If, however, the taxpayer establishes, to the satisfaction of the district director for the internal revenue district in which the taxpayer maintains its principal place of business or principal office or agency, that its failure to be a qualified real estate investment trust for a taxable year was due to reasonable cause and not due to willful neglect, the taxpayer may make the election with respect to property acquired in such taxable year. The principles of §§ 1.856-7(c) and 1.856-8(d) (including the principles relating to advice of counsel) will apply in determining whether, for purposes of this subparagraph, the failure of the taxpayer to be a qualified real estate investment trust for the taxable year in which the property is acquired was due to reasonable cause and not due to willful neglect. The rules relating to the termination of foreclosure property status in section 856(e)(4) (but not the tax on income from foreclosure property imposed by section 857(b)(4)) apply even though the taxpayer is not a qualified real estate investment trust.

(d) *Termination of 2-year grace period; subsequent leases*—(1) *In general.* Under section 856(e)(4)(A), all of the real property which is acquired pursuant to the default (or imminence of default) of a particular lease or particular indebtedness (and any personal property incident to the real property) shall cease to be foreclosure property on the first day (occurring on or after the day on which the trust acquired the property) on which the trust either—

(i) Enters into a lease with respect to any of the property which, by its terms, will give rise to income of the trust which is not described in section 856(c)(3) (other than section 856(c)(3)(F)), or

(ii) Receives or accrues, directly or indirectly, any amount which is not described in section 856(c)(3) (other than section 856(c)(3)(F)) pursuant to a lease with respect to any of the real property entered into by the trust on or after the day the trust acquired the property.

For example, assume the trust acquires a shopping center upon the default of an indebtedness owed to the trust. Also assume that the trust subsequently enters into a lease with respect to one of several stores in the shopping center that requires the leasee to pay rent to the trust which is not income described in section 856(c)(3) (other than section 856(c)(3)(F)). In such case, the entire shopping center will cease to be foreclosure property on the day the trust enters into the lease.

(2) *Extensions or renewals of leases.* Generally, the extension or renewal of a lease of foreclosure property will be treated as the entering into of a new lease only if the trust has a right to renegotiate the terms of the lease. If, however, by operation of law or by contract, the acquisition of the foreclosure property by the trust terminates a preexisting lease of the property, or gives the trust a right to terminate the lease, then for purposes of section 856(e)(4)(A), a trust, in such circumstances, will not be considered to have entered into a lease with respect to the property solely because the terms of the preexisting lease are continued in effect after foreclosure without substantial modification. The letting of rooms in a hotel or motel does not constitute the entering into a lease for purposes of section 856(e)(4)(A).

(3) *Rent attributable to personal property.* Solely for the purposes of section 856(e)(4)(A), if a trust enters into a lease with respect to real property on or after the day upon which the trust acquires such real property by foreclosure, and a portion of the rent from such lease is attrbutable to personal property which is forclosure property incident to such real property, such rent attributable to the incidental personal property will not be considered to terminate the status of such real property (or such incidental personal property) as foreclosure property.

(e) *Termination of 2-year grace period; completion of construction*—(1) *In general.* Under section 856(e)(4)(B) property ceases to be foreclosure property on the first day (occurring on or after the day on which the trust acquired the property) on which any construction takes place on the property, other than completion of a building (or completion of any other improvement) where more than 10 percent of the construction of the building (or other improvement) was completed before default became imminent. If more than one default occurred with respect to an indebtedness or lease in respect of which there is an acquisition, the more-than-10-percent test (including the rules prescribed in this paragraph relating to the test) will not be applied at the time a particular default became imminent if it is clear that the acquisition did not occur as the result of such default. For example, if the debtor fails to make four consecutive payments of principal and interest on the due dates, and the trust takes action to acquire the property securing the debt only after the fourth default becomes imminent, the 10-percent test is applied at the time the fourth default became imminent (even though the trust would not have foreclosed on the property had not all four defaults occurred).

(2) *Determination of percentage of completion.* The determination of whether the construction of a building or other improvement was more than 10 percent complete when default became imminent shall be made by comparing the total direct costs of construction incurred with respect to the building or other improvement as of the date default became imminent with the estimated total direct costs of construction as of such date. If the building or other improvement qualifies as more than 10 percent complete under this method, the building or other improvement shall be considered to be more than 10 percent complete. For purposes of this subparagraph, direct costs of construction include the cost of labor and materials which are directly connected with the construction of the building or improvement.

Thus, for example, direct costs of construction incurred as of the date default became imminent would include amounts paid, or for which liability has ben incurred, for labor which has been performed as of such date that is directly connnected with the construction of the building or other improvement and for building materials and supplies used or consumed in connection with the construction as of such date. For purposes of applying the 10-percent test the trust may also take into account the cost of building materials and supplies which have been delivered to the construction site as of the date default became imminent and which are to be used or consumed in connection with the construction. On the other hand, architect's fees, administrative costs of the developer or builder, lawyers' fees, and expenses incurred in connection with obtaining zoning approval or building permits are not considered to be direct costs of construction. Any construction by the trust as mortgagee-in-possession is considered to have taken place after default resulting in acquisition of the property became imminent. Generally, the trust's estimate of the total direct costs of completing construction as of the date the default became imminent will be accepted, provided that the estimate is reasonable, in good faith, and is based on all of the data reasonably available to the trust when the trust undertakes completion of construction of the building or other improvement. Appropriate documentation which shows that construction was more than 10 percent complete when default became imminent must be available at the principal place of business of the trust for inspection in connection with an examination of the income tax return. Construction includes the renovation of a building, such as the remodeling of apartments, or the renovation of an apartment building to convert rental units to a condominium. The renovation must be more than 10 percent complete (determined by comparing the total direct cost of the physical renovation which has been incurred when default became imminent with the estimated total direct cost of renovation as of such date) when default became imminent in order for the property not to lose its status as foreclosure property if the trust undertakes the renovation.

(3) *Modification of a building or improvement.* Generally, the terms "building" and "improvement" in section 856(e)(4)(B) mean the building or improvement (including any integral part thereof) as planned by the mortgagor or lessee (or other person in possession of the property, if appropriate) as of the date default became imminent. The trust, however, may estimate the total direct costs of construction and complete the construction of the building or other improvement by modifying the building or other improvement as planned as of the date default became imminent so as to reduce the estimated direct cost of construction of the building or improvement. If the trust does so modify the planned construction of the building or improvement, the 10-percent test is to be applied by comparing the direct costs of construction incurred as of the date default became imminent that are attributable to the building or improvement as modified, with the estimated total direct costs (as of such date) of construction of the building or other improvement as modified. The trust, in order to meet the 10-percent test, may not, however, modify the planned building or improvement by reducing the estimated direct cost of construction to such an extent that the building or improvement is not functional.

Also, the trust may make subsequent modifications which increase the direct cost of construction of the building or improvement if such modifications—

(i) Are required by a Federal, State, or local agency, or

(ii) Are alterations that are either required by a prospective lessee or purchaser as a condition of leasing or buying the property or are necessary for the property to be used for the purpose planned at the time default became imminent.

The preceding sentence applies, however, only if the building or improvement, as modified, was more than 10 percent complete when default became imminent. A building completed by the trust will not cease to be foreclosure property solely because the building is used in a manner other than that planned by the defaulting mortgagor or lessee. Thus, for example, assume a trust acquired on foreclosure a planned apartment building which was 2 percent complete when default became imminent and that the trust completes the building without modifications which increase the direct cost of construction. The property will not cease to be foreclosure property by reason of section 856(e)(4)(B) solely because the trust sells the dewelling units in the building as condominium units, rather than holding them for rent as planned by the defaulting mortgagor. (See, however, section 856(e)(4)(C) and paragraph (f)(2) of this section for rules relating to the requirement that where foreclosure property is used in a trade or business (including a trade or business of selling the foreclosure property), the trade or business must be conducted through an independent contractor after 90 days after the property is acquired.)

(4) *Application on building-by-building basis.* Generally the more than 10 percent test is to be applied on a building-by-building basis. Thus, for example, if a trust has foreclosed on land held by a developer building a housing subdivision, the trust may complete construction of the houses which were more than 10 percent complete when default became imminent. The trust, however, may not complete construction of houses which were only 10 percent (or less) complete, nor may the trust begin construction of other houses planned for the subdivision on which construction has not begun. The trust, however, may construct an additional building or improvement (whether or not the construction thereof has begun) which is an integral part of another building or other improvement that was more than 10 percent complete when default became imminent if the additional building or improvement and the other building or improvement, taken together as a unit, meet the more than 10 percent test. For purposes of this paragraph, an additional building or other improvement will be considered to be an integral part of another building or improvement if—

(i) It is ancillary to the other building or improvement and its principal intended use is to furnish services or facilities which either supplement the use of such other building or improvement of are necessary for such other building or improvement to be utilized in the manner or for the purpose for which it is intended, or

(ii) The buildings or improvements are intended to comprise constituent parts of an interdependent group of buildings or other improvements.

However, a building or other improvement will not be considered to be an integral part of another building or improvement unless the buildings or improvements were planned as part of the same overall construction plan or project before default became imminent. An additional building or other improvement (such as, for example, an outdoor swimming pool or a parking garage) may be considered to be an integral part of another building or improvement, even though the additional building or improvement was also intended to be used to provide facilities or services for use in connection with several other buildings or improvements which will not be completed. If the trust chooses not to undertake the construction of an additional building or other improvement which qualifies as an integral part of another building or improvement, so much of the costs of construction (including both the direct costs of construction incurred before the default became imminent and the estimated costs of completion) as are attributable to that "integral part" shall not be taken into account in determining whether any other building or improvement was

more than 10 percent complete when default became imminent. For example, assume the trust acquires on foreclosure a property on which the defaulting mortgagor had begun construction of a motel. The motel, as planned by the mortgagor, was to consist of a two-story building containing 30 units, and two detached one-story wings, each of which was to contain 20 units. At the time default became imminent, the defaulting mortgagor had completed more than 10 percent of the construction of the two-story structure but the two wings, an access road, a parking lot, and an outdoor swimming pool planned for the motel were each less than 10 percent complete. The trust may construct the two wings of the motel, the access road, the parking lot, and the swimming pool: *Provided,* That the motel and the other improvements which the trust undertakes to construct, taken together as a unit, were more than 10 percent complete when default became imminent. If, however, the trust chooses not to undertake construction of the swimming pool, the costs of construction attributable to the swimming pool, whether incurred before default became imminent or estimated as the cost of completion, shall not be taken into account in determining whether the trust can complete construction of the other buildings and improvements. For another example, assume that the trust acquires a planned shopping center on foreclosure. At the time default became imminent several large buildings intended to house shops and stores in the shopping center were more than 10 percent complete. Less than 10 percent of the construction, however, had been completed on a separate structure intended to house a bank. The bank was planned as a component of the shopping center in order to provide, in conjunction with the other shops and stores, a specific range and variety of goods and services with which to attract customers to the shopping center. The trust may complete construction of the bank: *Provided,* That the bank and the other buildings and improvements which the trust undertakes to complete, taken together as a unit, were more than 10 percent complete when default became imminent. If the trust chooses not to construct the bank, no actual or estimated construction costs attributable to the bank are to be taken into account in applying the 10-percent test with respect to the other buildings and improvements in the shopping center. For a third example, assume that a defaulting mortgagor had planned to construct two identical apartment buildings, A and B, on the same tract of land, that neither building is to provide substantial facilities or services to be used in connection with the other, and that only building A was more than 10 percent complete when default became imminent. The trust, in this case, may not complete building B. On the other hand, if the facts are the same except that pursuant to the plans of the defaulting mortgagor, one of the buildings is to contain the furnace and central air conditioning machinery for both buildings A and B, the trust may complete both buildings A and B: *Provided,* That, taken together as a unit, the two buildings meet the more-than-10-percent test.

(5) *Repair and maintenance.* The repair or maintenance of a building or other improvement on the foreclosure property (including the replacement of worn or obsolete furniture and appliances) is not considered to be construction. See however, paragraph (e)(2) of this section for rules which treat the renovation of a building as construction.

(6) *Independent contractor required.* If any construction takes place on the foreclosure property more than 90 days after the day on which such property was acquired by the trust, such construction must be performed by an independent contractor (as defined in section 856(d)(3) and § 1.856-4(b)(5)(iii)) from whom the trust does not derive or receive any income. Otherwise, the property will cease to be foreclosure property.

(7) *Failure to complete construction.* Property will not cease to be foreclosure property solely because a trust which undertakes the completion of construction of a building or other improvement on the property that was more than 10 percent complete when default became imminent does not complete the construction. Thus, for example, if a trust continues construction of a building that was 20 percent complete when default became imminent, and the trust constructs an additional 40 percent of the building and then sells the property, the property will not lose its status as foreclosure property solely because the trust fails to complete construction of the building.

(f) *Termination of 2-year grace period; use of foreclosure property in a trade or business*—(1) *In general.* Under section 856(e)(4)(C), property ceases to be foreclosure property on the first day (occurring more than 90 days after the day on which the trust acquired the property) on which the property is used in a trade or business conducted by the trust, other than a trade or business conducted by the trust through an independent contractor from whom the trust itself does not derive or receive any income. (See section 856(d)(3) for the definition of independent contractor.)

(2) *Property held primarily for sale to customers.* For the purposes of section 856(e)(4)(C), foreclosure property held by the trust primarily for sale to customers in the ordinary course of a trade or business is considered to be property used in a trade or business conducted by the trust. Thus, if a trust holds foreclosure property (whether real property or personal property incident to real property) for sale to customers in the ordinary course of a trade or business more than 90 days after the day on which the trust acquired the real property, the trade or business of selling the property must be conducted by the trust through an independent contractor from whom the trust does not derive or receive any income. Otherwise, after such 90th day the property will cease to be foreclosure property.

(3) *Change in use.* Foreclosure property will not cease to be foreclosure property solely because the use of the property in a trade or business by the trust differs from the use to which the property was put by the person from whom it was acquired. Thus, for example, if a trust acquires a rental apartment building on foreclosure, the property will not cease to be foreclosure property solely because the trust converts the building to a condominium apartment building and, through an independent contractor from whom the trust derives no income, engages in the trade or business of selling the individual condominium units.

(g) *Extension of 2-year grace period*—(1) *In general.* A real estate investment trust may apply to the district director of the internal revenue district in which is located the principal place of business (or principal office or agency) of the trust for an extension of the 2-year grace period. If the trust establishes to the satisfaction of the district director that an extension of the grace period is necessary for the orderly liquidation of the trust's interest in foreclosure property, or for an orderly renegotiation of a lease or leases of the property, the district director may extend the 2-year grace period. An extension shall be for a period of not more than 1 year, and not more than two extensions may be granted with respect to any property. An extension of the grace period may be granted by the district director either before or after the date on which the grace period, but for the extension, would expire. The extension shall be effective as of the date on which the grace period, but for the extension, would expire.

(2) *Showing required.* Generally, in order to establish the necessity of an extension, the trust must demonstrate that it has made good faith efforts to renegotiate leases with respect to, or dispose of, the foreclosure property. In certain cases, however, the trust may establish the necessity of an extension even though it has not made such efforts. For example, if the trust demon-

strates that, for valid business reasons, construction of the foreclosures property could not be completed before the expiration of the grace period, the necessity of the extension could be established even though the trust had made no effort to sell the property. For another example, if the trust demonstrates that due to a depressed real estate market, it could not sell the foreclosure property before the expiration of the grace period except at a distress price, the necessity of an extension could be established even though the trust had made no effort to sell the property. The fact that property was acquired as foreclosure property prior to January 3, 1975 (the date of enactment of section 856(e)), generally will be considered as a factor (but not a controlling factor) which tends to establish that an extension of the grace period is necessary.

(3) *Time for requesting an extension of the grace period.* A request for an extension of the grace period must be filed with the appropriate district director more than 60 days before the day on which the grace period would otherwise expire. In the case of a grace period which would otherwise expire before August 6, 1976, a request for an extension will be considered to be timely filed if filed on or before June 7, 1976.

(4) *Information required.* The request for an extension of the grace period shall identify the property with respect to which the request is being made and shall also include the following information.

(i) The name, address, and taxpayer identification number of the trust,

(ii) the date the property was acquired as foreclosure property by the trust,

(iii) The taxable year of the trust in which the property was acquired,

(iv) If the trust has been previously granted an extension of the grace period with respect to the property, a statement to that effect (which shall include the date on which the grace period, as extended, expires) and a copy of the information which accompanied the request for the previous extension,

(v) A statement of the reasons why the grace period should be extended,

(vi) A description of any efforts made by the trust after the acquisition of the property to dispose of the property or to renegotiate any lease with respect to the property, and

(vii) A description of any other factors which tend to establish that an extension of the grace period is necessary for the orderly liquidation of the trust's interest in the property, or for an orderly renegotiation of a lease or leases of the property.

The trust shall also furnish any additional information requested by the district director after the request for extension is filed.

(5) *Automatic extension.* If a real estate investment trust files a request for an extension with the extension with the district director more than 60 days before the expiration of the grace period, the grace period shall be considered to be extended until the end of the 30th day after the date on which the district director notifies the trust by certified mail sent to its last known address that the period of extension requested by the trust is not granted. In no event, however, shall the rule in the preceding sentence extend the grace period beyond the expiration of (i) the period of extension requested by the trust, or (ii) the 1-year period following the date that the grace period (but for the automatic extension) would expire. The date of the postmark on the sender's receipt is considered to be the date of the certified mail for purposes of this subparagraph. The subparagraph does not apply, however, if the trust previously has been granted two extensions with respect to the property, or if the date of the notification by certified mail described in the first sentence is more than 30 days before the date that the grace period (determined without regard to this subparagraph) expires.

(6) *Extension of time for filing.* If a real estate investment trust fails to to file the request for an extension of the grace period within the time provided in paragraph (g)(3) of this section, then the district director shall grant a reasonable extension of time for filing such request, provided (i) it is established to the satisfaction of the district director that there was reasonable cause for failure to file the request within the prescribed time and (ii) a request for such extension is filed within such time as the district director considers reasonable under the circumstances.

§ 1.856-7 Certain corporations, etc., that are considered to meet the gross income requirements.

(a) *In general.* A corporation, trust, or association which fails to meet the requirements of paragraph (2) or (3) of section 856 (c), or of both such paragraphs, for any taxable year nevertheless is considered to have satisfied these requirements if the corporation, trust, or association meets the requirements of subparagraphs (A), (B), and (C) of section 856 (c)(7) (relating to a schedule attached to the return, the absence of fraud, and reasonable cause).

(b) *Contents of the schedule.* The schedule required by subparagraph (A) of section 856 (c)(7) must contain a breakdown, or listing, of the total amount of gross income falling under each of the separate subparagraphs of section 856(c) (2) and (3). Thus, for example, the real estate investment trust, for purposes of listing its income from the sources described in section 856(c)(2), would list separately the total amount of dividends, the total amount of interest, the total amount of rents from real property, etc. The listing is not required to be on a lease-by-lease, loan-by-loan, or project-by-project basis, but the real estate investment trust must maintain adequate records on such a basis with which to substantiate each total amount listed in the schedule.

(c) *Reasonable cause*—(1) *In general.* The failure to meet the requirements of paragraph (2) or (3) of section 856(c) (or of both paragraphs) will be considered due to reasonable cause and not due to willful neglect if the real estate investment trust exercised ordinary business care and prudence in attempting to satisfy the requirements. Such care and prudence must be exercised at the time each transaction is entered into by the trust. However, even if the trust exercised ordinary business care and prudence in entering into a transaction, if the trust later determines that the transaction results in the receipt or accrual of nonqualified income and that the amounts of such nonqualified income, in the context of the trust's overall portfolio, reasonably can be expected to cause a source-of-income requirement to be failed, the trust must use ordinary business care and prudence in an effort to renegotiate the terms of the transaction, dispose of property acquired or leased in the transaction, or alter other elements of its portfolio. In any case, failure to meet an income source requirement will be considered due to willful neglect and not due to reasonable cause if the failure is willful and the trust could have avoided such failure by taking actions not inconsistent with ordinary business care and prudence. For example, if the trust enters into a lease knowing that it will produce nonqualified income which reasonably can be expected to cause a source-of-income requirement to be failed, the failure is due to willful neglect even if the trust has a legitimate business purpose for entering into the lease.

(2) *Advice of counsel.* The good faith reliance on a reasoned, written opinion of legal counsel (including house counsel) as to the characterization for purposes of section 856 of gross income to be derived (or being derived) from a particular transaction (or series of transactions) generally will constitute "reasonable cause" in a case where the trust fails to meet the requirements of paragraph (2) or (3) of section 856(c) (or of both paragraphs) and income from the transaction contributes to the failure. Good faith reliance exists where the trust has no reason to believe that the opinion of counsel is incorrect and where the trust has con-

cluded that the income from the transaction, in the context of the trust's overall portfolio, reasonably cannot be expected to cause a source-of-income requirement to be failed. For purposes of this paragraph, a written legal opinion will be considered "reasoned" even if it reaches a conclusion which is subsequently determined to be incorrect, so long as the opinion is based on a full disclosure of the factual situation by the real estate investment trust and is addressed to the facts and law which counsel believes to be applicable. However, a legal opinion will not be considered "reasoned" if it does nothing more than recite the facts and express a conclusion. The absence of advice of counsel, however, with respect to a transaction, shall not, by itself, give rise to any inference that the failure of a real estate investment trust to meet the requirements of paragraphs (2) or (3) of section 857(c) (or of both paragraphs) was without reasonable cause.

(d) *Application of section 856(c)(7) to taxable years beginning before October 5, 1976.* Pursuant to section 1608(b) of the Tax Reform Act of 1976, paragraph (7) of section 856(c) and this section apply to a taxable year of a real estate investment trust which begins before October 5, 1976, only if as the result of a determination (as defined in section 859(c)) occurring after October 4, 1976, the trust does not meet the requirements of paragraph (2) or (3) of section 856(c), or both paragraphs, as in effect for the taxable year. The requirement that the schedule described in subparagraph (A) of section 856(c)(7) be attached to the income tax return of a real estate investment trust in order for section 856(c)(7) to apply is not applicable to taxable years beginning before October 5, 1976. For purposes of section 1608(b) of the Tax Reform Act of 1976 and this paragraph, the rules relating to determinations prescribed in § 1.859-2(b)(1) (other than the second sentence and the last sentence of § 859-2(b)(1)(iv)) shall apply. However, a determination consisting of an agreement between the taxpayer and the district director (or other official to whom authority to sign the agreement is delegated) shall set forth the amount of gross income for the taxable year to which the determination applies, the amount of the 90 percent and 75 percent source-of-income requirements for the taxable year to which the determination applies, and the amount by which the real estate investment trust failed to meet either or both of the requirements. The agreement shall also set forth the amount of tax for which the trust is liable pursuant to section 857(b)(5). The agreement shall also contain a finding as to whether the failure to meet the requirements of paragraph (2) or (3) of section 856(c) (or of both paragraphs) was due to reasonable cause and not due to willful neglect.

§ 1.856-8 Revocation or termination of election.

(a) *Revocation of an election to be a real estate investment trust.* A corporation, trust, or association that has made an election under section 856(c)(1) to be a real estate investment trust may revoke the election for any taxable year after the first taxable year for which the election is effective. The revocation must be made by filing a statement with the district director for the internal revenue district in which the taxpayer maintains its principal place of business or principal office or agency. The statement must be filed on or before the 90th day after the first day of the first taxable year for which the revocation is to be effective. The statement must be signed by an official authorized to sign the income tax return of the taxpayer and must—

(1) Contain the name, address, and taxpayer identification number of the taxpayer,

(2) Specify the taxable year for which the election was made, and

(3) Include a statement that the taxpayer, pursuant to section 856(g)(2), revokes its election under section 856(c)(1) to be a real estate investment trust.

The revocation may be made only with respect to a taxable year beginning after October 4, 1976, and is effective for the taxable year in which made and for all succeeding taxable years. A revocation with respect to a taxable year beginning after October 4, 1976, that is filed before [the date this notice of proposed rulemaking is adopted as a Treasury decision] in the time and manner prescribed in § 7.856(g)-1 of this chapter (as in effect when the revocation was filed) is considered to meet the requirements of this paragraph.

(b) *Termination of election to be a real estate investment trust.* An election of a corporation, trust, or association under section 856(c)(1) to be a real estate investment trust shall terminate if the corporation, trust, or association is not a qualified real estate investment trust for any taxable year (including the taxable year with respect to which the election is made) beginning after October 4, 1976. The term "taxable year" includes a taxable year of less than 12 months for which a return is made under section 443. The termination of the election is effective for the first taxable year beginning after October 4, 1976, for which the corporation, trust, or association is not a qualified real estate investment trust and for all succeeding taxable years.

(c) *Restrictions on election after termination or revocation.*—(1) *General rule.* Except as provided in paragraph (d) of this section, if a corporation, trust, or association has made an election under section 856(c)(1) to be a real estate investment trust and the election has been terminated or revoked under section 856(g)(1) or (2), the corporation, trust, or association (and any successor corporation, trust, or association) is not eligible to make a new election under section 856(c)(1) for any taxable year prior to the fifth taxable year which begins after the first taxable year for which the termination or revocation is effective.

(2) *Successor corporation.* The term "successor corporation, trust, or association", as used in section 856(g)(3), means a corporation, trust, or association which meets both a continuity of ownership requirement and a continuity of assets requirement with respect to the corporation, trust, or association whose election has been terminated under section 886(g)(1) or revoked under section 856(g)(2). A corporation, trust, or association meets the continuity of ownership requirement only if at any time during the taxable year the persons who own directly or indirectly, 50 percent or more of its shares owned, at any time during the first taxable year for which the termination or revocation was effective, 50 percent or more of the shares of the corporation, trust, or association whose election has been terminated or revoked. A corporation, trust, or association meets the continuity of assets requirement only if either (i) a substantial portion of its assets were assets of the corporation, trust, or association whose election has been revoked or terminated, or (ii) it acquires a substantial portion of the assets of the corporation, trust, or association whose election has been terminated or revoked.

(3) *Effective date.* Section 856(g)(3) does not apply to the termination of an election that was made by a taxpayer pursuant to section 856(c)(1) on or before October 4, 1976, unless the taxpayer is a qualified real estate investment trust for a taxable year ending after October 4, 1976, for which the pre-October 5, 1976, election is in effect. For example, assume that Trust X, a calendar year taxpayer, files a timely election under section 856(c)(1) with respect to its taxable year 1974, and is a qualified real estate investment trust for calendar years 1974 and 1975. Assume further that Trust X is not a qualified real estate investment trust for 1976 and 1977 because it willfully fails to meet the asset diversification requirements of section 856(c)(5) for both years. The failure (whether or not willful) to meet these requirements in 1977 terminates the election to be a real estate investment trust made with respect to 1974. (See paragraph (b) of this sec-

tion.) The termination is effective for 1977 and all succeeding taxable years. However, under section 1608(d)(3) of the Tax Reform Act of 1976, Trust X is not prohibited by section 856(g)(3) from making a new election under section 856(c)(1) with respect to 1978.

(d) *Exception*—Section 856(g)(4) provides an exception to the general rule of section 856(g)(3) that the termination of an election to be a real estate investment trust disqualifies the corporation, trust, or association from making a new election for the 4 taxable years following the first taxable year for which the termination is effective. This exception applies where the corporation, trust, or association meets the requirements of section 856(g)(4)(A), (B) and (C) (relating to the timely filing of a return, the absence of fraud, and reasonable cause, respectively) for the taxable year with respect to which the termination of election occurs. In order to meet the requirements of section 856(g)(4)(C), the corporation, trust, or association must establish, to the satisfaction of the district director for the internal revenue district in which the corporation, trust, or association maintains its principal place of business or principal office or agency, that its failure to be a qualified real estate investment trust for the taxable year in question was due to reasonable cause and not due to willful neglect. The principles of § 1.856-7(c) (including the principles relating to advice of counsel) will apply in determining whether, for purposes of section 856(g)(4), the failure of a corporation, trust, or association to be a qualified real estate investment trust for a taxable year was due to reasonable cause and not due to willful neglect. Thus, for example, the corporation, trust, or association must exercise ordinary business care and prudence in attempting to meet the status conditions of section 856(a) and the distribution and recordkeeping requirements of section 857(a), as well as the gross income requirements of section 856(c). The provisions of section 856(g)(4) do not apply to a taxable year in which the corporation, trust, or association makes a valid revocation, under section 856(g)(2), of an election to be a real estate investment trust.

§ 1.856-9 Election with respect to property held for sale in a taxable year beginning before October 5, 1976.

(a) *In general.* Section 856(a)(4), as in effect with respect to taxable years beginning before October 5, 1976; *Provided,* That a real estate investment trust could not hold any property (other than foreclosure property) primarily for sale to customers in the ordinary course of its trade or business. Section 1603 of the Tax Reform Act of 1976 (the act) repealed the prohibition on holding property primarily for sale to customers, effective for taxable years beginning after October 4, 1976, and imposed the tax on net income from prohibited transactions under section 857(b)(6). Section 1608(d)(2) of the Act provides that if as a result of a determination (as defined in section 859(c)) occurring after October 4, 1976, a real estate investment trust does not meet the requirement of section 856(a)(4) (as in effect before amendment by the act) for any taxable year beginning before October 5, 1976, the trust may elect to have the provisions of section 1603 (other than paragraphs (1), (2), (3), and (4) of section 1603(c)) of the act apply with respect to the taxable year.

(b) *Election.* The election provided by section 1608(d)(2) of the Act shall be made by filing a statement with the district director for the internal revenue district director for the internal revenue district in which the taxpayer maintains its principal place of business or principal office or agency. The statement shall be signed by the taxpayer and shall include the following information:

(1) The name, address, and taxpayer identification number of the taxpayer;

(2) The taxable year (or years) to which the election applies;

(3) A statement that the taxpayer, pursuant to section 1608(d)(2) of the Tax Reform Act of 1976, elects to have the provisions of section 1603 (other than paragraphs (1), (2), (3), and (4) of section 1603(c)) of the act apply to such taxable year (or years); and

(4) A description of the determination and the date upon which the determination became final.

A copy of the closing agreement, the Tax Court decision, the judgement, decree, or other order, or the agreement with the district director (of other official) which constitutes the determination shall be attached to the statement.

(c) *Time for filing the election.* The election must be filed within 60 days after the date of the determination. The date of a determination described in section 859(c) (1) or (2) shall be determined in accordance with section 859(c) and subdivision (i), (ii), or (iii) of § 1.859-2(b)(1). The date of a determination which is an agreement with the district director (or other official) under section 859(c)(3) shall be determined in accordance with paragraph (e) of this section.

(d) *Revocation*—(1) *In general.* An election made by a taxpayer pursuant to section 1608(d)(2) of the Tax Reform Act of 1976 after (the date this notice of proposed rulemaking is adopted as a Treasury decision) is irrevocable.

(2) *Elections made under temporary regulations.* A taxpayer who has made an election under section 1608(d)(2) of the act on or before (the date this notice of proposed rulemaking is adopted as a Treasury decision) in accordance with § 7.0(c)(1) of this chapter may apply to the Commissioner for consent to revoke the election. The application for consent must be filed with the Commissioner after (the date this notice of proposed rulemaking is adopted as a Treasury decision) and before (91 days after the date this notice of proposed rulemaking is adopted as a Treasury decision).

(e) *Determination.* For purposes of section 1608(d)(2) of the Tax Reform Act of 1976, a determination under section 859(c)(3) may be made by an agreement signed by the district director or such other official to whom authority to sign the agreement is delegated, and by or on behalf of the taxpayer. The agreement shall identify the taxable year (or years) to which it applies and shall state that the taxpayer, during such taxable year (or years), held property (other than foreclosure property) primarily for sale to customers in the ordinary course of its trade or business, within the meaning of section 856(c)(4), as in effect before amendment by the act. The agreement further shall set forth, for each taxable year to which it applies, the amount, if any, of the net income (or net loss) from prohibited transactions, and the amount, if any, of the tax imposed by paragraph (6) of section 857(b). An agreement under this subparagraph shall be sent to the taxpayer at its last known address by either registered or certified mail. If registered mail is used, the date of registration shall be treated as the date of determination. If certified mail is used, the date of the postmark on the sender's receipt shall be treated as the date of determination. However, if the statement described in paragraph (b) of this section is filed by the taxpayer before the registration or postmark date but on or after the date the agreement is signed by the district director (or the other official to whom authority to sign the agreement is delegated), the date of determination shall be the date of signing.

(f) *Rules relating to refunds, credits, assessment, and collection.* In a case where an election to have section 1603 of the act apply results in an overpayment of tax, the taxpayer, in order to secure credit or refund of the overpayment, must file a claim on form 1120X. See section 1608(d)(2) of the act for special rules relating to the period of limitations on filing the claim and to assessment and collection of any deficiency established by the determination.

§ 1.857 [Deleted]

PAR. 30. Section 1.857 is deleted.

PAR. 31. Section 1.857-1 is amended as follows:

1. So much of paragraph (a) as precedes subparagraph (1) is amended by deleting "than section" and by inserting "than sections 856(g), relating to the revocation or termination of an election, and" in lieu thereof.

2. Paragraph (a)(1) is amended to read as set forth below.

3. Paragraph (a)(2) is amended by striking out "§ 1.857-6" and inserting in lieu thereof "§ 1.857-8".

4. Paragraph (b) is amended by striking out "section 857(d)" and inserting in lieu thereof "sections 856(g) and 857(d)" and by striking out "§ 1.857-5" and inserting in lieu thereof "§ 1.857-7".

§ 1.857-1 Taxation of real estate investment trusts.

(a) *Requirements applicable thereto.* * * *

(1) The deduction for dividends paid for the taxable year as defined in section 561 (computed without regard to capital gain dividends) equals or exceeds the amount specified in section 857(a)(1), as in effect for the taxable year; and * * *

* * * * *

§ 1.857-2 [Deleted]

PAR. 32. Section 1.857-2 is deleted.

PAR. 33. Section 1.857-3 is redesignated as § 1.857-2 and is revised to read as follows:

§ 1.857-2 Real estate investment trust taxable income and net capital gain.

(a) *Real estate investment trust taxable income.* Section 857(b)(1) imposes a normal tax and surtax, computed at the rates and in the manner prescribed in section 11, on the "real estate investment trust taxable income", as defined in section 857(b)(2). Section 857(b)(2) requires certain adjustments to be made to convert taxable income of the real estate investment trust to "real estate investment taxable income". The adjustments are as follows:

(1) *Net capital gain.* In the case of taxable years ending before October 5, 1976, the net capital gain, if any, is excluded.

(2) *Special deductions disallowed.* The special deductions provided in part VIII, subchapter B, chapter 1 of the Code (except the deduction under section 248) are now allowed.

(3) *Deduction for dividends paid*—(i) *General rule.* The deduction for dividends paid (as defined in section 561) is allowed. In the case of taxable years ending before October 5, 1976, the deduction for dividends paid is computed without regard to capital gains dividends.

(ii) *Deduction for dividends paid if there is net income from foreclosure property.* If for any taxable year the trust has net income from foreclosure property (as defined in section 857(b)(4)(B) and § 1.857-3), the deduction for dividends paid is an amount equal to the amount which bears the same proportion to the total dividends paid or considered as paid during the taxable year that otherwise meet the requirements for the deduction for dividends paid (as defined in section 561) as the real estate investment trust taxable income (determined without regard to the deduction for dividends paid) bears to the sum of—

(A) The real estate investment trust taxable income (determined without regard to the deduction for dividends paid), and

(B) The amount by which the net income from foreclosure property exceeds the tax imposed on such income by section 857(b)(4)(A).

For purposes of the preceding sentence, the term "total dividends paid or considered as paid during the taxable year" includes deficiency dividends paid with respect to the taxable year that are not otherwise excluded under this subdivision or section 857(b)(3)(A). The term, however, does not include either deficiency dividends paid during the taxable year with respect to a preceding taxable year or, in the case of taxable years ending before October 5, 1976, capital gains dividends.

(iii) *Deduction for dividends paid for purposes of the alternative tax.* The rules in section 857(b)(3)(A) apply in determining the amount of the deduction for dividends paid that is taken into account in computing the alternative tax. Thus, for example, if a real estate investment trust has net income from foreclosure property for a taxable year ending after October 4, 1976, then for purposes of determining the partial tax described in section 857(b)(3)(A)(i), the amount of the deduction for dividends paid is computed pursuant to paragraph (a)(3)(ii) of this section, except that capital gains dividends are excluded from the dividends paid or considered as paid during the taxable year, and the net capital gain is excluded in computing real estate investment trust taxable income.

(4) *Section 443(b) disregarded.* The taxable income is computed without regard to section 443(b). Thus, the taxable income for a period of less than 12 months is not placed on an annual basis even though the short taxable year results from a change of accounting period.

(5) *Net operating loss deduction.* In the case of a taxable year ending before October 5, 1976, the net operating loss deduction provided in section 172 is not allowed.

(6) *Net income from foreclosure property.* An amount equal to the net income from foreclosure property (as defined in section 857(b)(4)(B) and paragraph (a) of § 1.857-3), if any, is excluded.

(7) *Tax imposed by section 857(b)(5).* An amount equal to the tax (if any) imposed on the trust by section 857(b)(5) for the taxable year is excluded.

(8) *Net income or loss from prohibited transactions.* An amount equal to the amount of any net income derived from prohibited transactions (as defined in section 857(b)(6)(B)(i)) is excluded. On the other hand, an amount equal to the amount of any net loss derived from prohibited transactions (as defined in section 857(b)(6)(B)(ii)) is included. Because the amount of the net loss derived from prohibited transactions is taken into acount in computing taxable income before the adjusts required by section 857(b)(2) and this section are made, the effect of including an amount equal to the amount of the loss is to disallow a deduction for the loss.

(b) *Net capital gain in taxable years ending before October 5, 1976.* The rules relating to the taxation of capital gains in 26 CFR 1.857-2(b) (revised as of April 1, 1977) apply to taxable years ending before October 5, 1976.

PAR. 34. Sections 1.857-4, 1.857-5, 1.857-6, 1.857-7, and 1.857-8 are redesignated as §§ 1.857-6, 1.857-7, 1.857-8, 1.857-9, and 1.857-10, respectively, and new §§ 1.857-3, 1.857-4, and 1.857-5 are inserted immediately after § 1.857-2 (as redesignated by par. 29 of this document), to read as follows:

§ 1.857—3 Net income from foreclosure property.

(a) *In general.* For purposes of section 857(b)(4)(B), net income from foreclosure property means the aggregate of—

(1) All gains and losses from sales or other dispositions of foreclosure property described in section 1221 (1), and

(2) The difference (hereinafter called "net gain or loss from operations") between (i) the gross income derived from foreclosure property (as defined in section 856(e)) to the extent such gross income is not described in subparagraph (A), (B), (C), (D), (E), or (G) of section 856(c)(3), and (ii) the deductions allowed by chapter 1 of the Code which are directly connected with the production of such gross income.

Thus, the sum of the gains and losses from sales or other dispositions of foreclosure property described in section 1221(1) is aggregated with the net gain or loss from operations in arriving at net income from foreclosure property. For example, if for a taxable year a real estate investment trust has gain of $100 from the sale of an item of foreclosure property described in section 1221(1), a loss of $50 from the sale of an item of foreclosure property described in section 1221(1), gross income of $25 from the rental of fore-

closure property that is not gross income described in subparagraph (A), (B), (C), (D), or (G) of section 856(c)(3), and deductions of $35 allowed by chapter 1 of the Code which are directly connected with the production of the rental income, the net income from foreclosure property for the taxable years is $40(($100-$50)+($25-$35)).

(b) *Directly connected deductions.* A deduction which is otherwise allowed by chapter 1 of the Code is "directly connected" with the production of gross income from foreclosure property if it has a proximate and primary relationship to the earning of the income. Thus, in the case of gross income from real property that is foreclosure property, "directly connected" deductions would include depreciation on the property, interest paid or accrued on the indebtedness of the trust (whether or not secured by the property) to the extent attributable to the carrying of the property, real estate taxes, and fees paid to an independent contractor hired to manage the property. On the other hand, general overhead and administrative expenses of the trust are not "directly connected" deductions. Thus, salaries of officers and other administrative employees of the trust are not "directly connected" deductions. The net operating loss deduction provided by section 172 is not allowed in computing net income from foreclosure property.

(c) *Net loss from foreclosure property.* The tax imposed by section 857(b)(4) applies only if there is net income from foreclosure property. If there is a net loss from foreclosure property (that is, if the aggregate computed under paragraph (a) of this section results in a negative amount) the loss is taken into account in computing real estate investment trust taxable income under section 857(b)(2)

§ 1.857-4 Tax imposed by reason of the failure to meet certain source-of-income reuirements.

Section 857(b)(5) imposes a tax on a real estate investment trust that is considered, by reason of section 856(b)(7), as meeting the source-of-income requirements of paragraph (2) or (3) of section 856(c) (or both such paragraphs). The amount of the tax is determined in the manner prescribed in section 857(b)(5).

§ 1.857-5 Net income and loss from prohibited transactions.

(a) *In general.* Section 857(b)(6) imposes, for each taxable year, a tax equal to 100 percent of the net income derived from prohibited transactions. A prohibited transaction is a sale or other disposition of property described in section 1221(1), that is not foreclosure property. The 100- percent tax is imposed to preclude a real estate investment trust from retaining any profit from ordinary retailing activities such as sales to customers of condominium units or subdivided lots in a development tract. In order to prevent a trust from receiving any tax benefit from such activities, a net loss from prohibited transactions effectively is disallowed in computing real estate investment trust taxable income. See § 857-2(a)(8). Such loss, however, does reduce the amount which a trust is required to destribute as dividends. For purposes of applying the provisions of the Code, other than those provisions of part II of subchapter M which relate to prohibited transactions, no inference is to be drawn from the fact that a type of transaction does not constitute a prohibited transaction.

(b) *Special rules.* In determining whether a particular transaction constitutes a prohibited transaction, the activities of a real estate investment trust with respect to foreclosure property and its sales of such property should be disregarded. Also, if a real estate investment trust enters into a purchase and leaseback of real property with an option in the seller-lessee to repurchase the property at the end of the lease period, and the seller exercises the option pursuant to its terms, income from the sale generally will not be considered to be income from a prohibited transaction solely because the purchase and leaseback was entered into with an option in the seller to repurchase and because the option was exercised pursuant to its terms. Other facts and circumstances, however, may require a conclusion that the property is held primarily for sale to customers in the ordinary course of a trade or business. Gain from the sale or other disposition of property described in section 1221(1) (other than foreclosure property) that is included in gross income for a taxable year of a qualified real estate investment trust constitutes income from a prohibited transaction, even though the sale or other disposition from which the gain is derived occurred in a prior taxable year. For example, if a corporation that is a qualified real estate investment trust for the current taxable year elected to report the income from the sale of an item of section 1221(1) property (other than foreclosure property) on the installment method of reporting income, the gain from the sale that is taken into income by the real estate investment trust for the current taxable year is income from a prohibited transaction. This result follows even though the sale occurred in a prior taxable year for which the corporation did not qualify as a real estate investment trust. On the other hand, if the gain is taken into income in a taxable year for which the taxpayer is not a qualified real estate investment trust, the 100-percent tax does not apply.

(c) *Net income or loss from prohibited transactions.* Net income or net loss from prohibited transactions is determined by aggregating all gains from the sale or other disposition of property (other than foreclosure property) described in section 1221(1) with all losses from the sale or other disposition of such property. Thus, for example, if a real estate investment trust sells two items of property described in section 1221(1) (other than foreclosure property) and recognizes a gain of $100 on the sale of one item and a loss of $40 on the sale of the second item, the net income from prohibited transactions will be $60.

PAR. 35. Section 1.857-6, as redesignated by paragraph 34 of this document, is amended as follows:

1. The first sentence of paragraph (b) is amended by striking out "an investment trust for" and inserting in lieu thereof "a corporation, trust, or association for" and by striking out "6 months" and inserting in lieu thereof "one year (6 months for taxable years beginning before 1977; 9 months for taxable years beginning in 1977)".

2. Paragraph (c)(1) is amended by striking out "six months" each place it appears and inserting in lieu thereof "one year (6 months for taxable years beginning before 1977; 9 months for taxable years beginning in 1977)", and by striking out "857(b)(4)" and inserting in lieu thereof "857(b)(7)".

3. Paragraphs (c) (2) and (3) are amended by striking out "857(b)(4)" and inserting in lieu thereof "857(b)(7)".

4. The first sentence of paragraph (e)(1) is amended by striking out "not later than 30 days after the close of its taxable year" and inserting in lieu thereof "within the period specified in section 857(b)(3)(C) and paragraph (f) of this section".

5. Paragraph (e)(1) is amended by striking out "excess of the net long-term capital gain over the net short-term capital loss" each place it appears and inserting in lieu thereof "net capital gain".

6. The fourth sentence of paragraph (e)(1) is amended by striking out "that such excess was" and inserting in lieu thereof "the net capital gain was".

7. A new sentence is added at the end of paragraph (e)(1) to read as set forth below.

8. A new paragraph (f) is added, to read as set forth below.

§ 1.857-6 Method of taxation of shareholders of real estate investment trusts.

* * * * *

(e) *Definition of capital gain dividend.* (1) * * * For purposes of section 857(b)(3)(C) and this paragraph, the net capital gain for a taxable year ending after October 4, 1976, shall be

deemed not to exceed the real estate investment trust taxable income (determined without regard to the deduction for dividends paid) for the taxable year.

* * * * *

(f) *Mailing of written notice to shareholders*—(1) *General rule.* Except as provided in paragraph (f)(2) of this section, the written notice designating a dividend or part thereof as a capital gain dividend must be mailed to the shareholders not later than 30 days after the close of the taxable year of the real estate investment trust.

(2) *Net capital gain resulting from a determination.* If, as a result of a determination (as defined in section 859(c)), occuring after October 4, 1976, there is an increase in the amount by which the net capital gain exceeds the deduction for dividends paid (determined with reference to capital gains dividends only) for the taxable year, then a real estate investment trust may designate a dividend (or part thereof) as a capital gain dividend in a written notice mailed to its shareholders at any time during the 120-day period immediately following the date of the determination. The designation may be made with respect to a dividend (or part thereof) paid during the taxable year to which the determination applies (including a dividend considered as paid during the taxable year pursuant to section 858). A deficiency dividend (as defined in section 859(d)), or a part therof, that is paid with respect to the taxable year also may be designated as a capital gain dividend by the real estate investment trust (or by the acquiring corporation to which section 381(c)(25) applies) before the expiration of the 120 day period immediately following the determination. However, the aggregate amount of the dividends (or parts thereof) that may be designated as capital gain dividends after the date of the determination shall not exceed the amount of the increase in the excess of the net capital gain over the deduction for dividends paid (determined with reference to capital gains dividends only) that results from the determination. The date of a determination shall be established in accordance with § 1.859-2(b)(1).

PAR. 36. Section 1.857-7(b), as redesignated by paragraph 34 of this document, is amended by adding two new sentences at the end thereof, to read as follows:

§ 1.857-7 Earnings and profits of a real estate investment trust.

* * * * *

(b) * * * For purposes of section 857(d) and this section, if an amount equal to any net loss derived from prohibited transactions is included in real estate investment trust taxable income pursuant to section 857(b)(2)(F), that amount shall be considered to be an amount which is not allowable as a deduction in computing taxable income for the taxable year. The earnings and profits for the taxable year (but not the accumulated earnings and profits) shall not be considered to be less than (i) in the case of a taxable year ending before October 5, 1976, the amount (if any) of the net capital gain for the taxable year, or (ii) in the case of a taxable year ending after December 31, 1973, the amount (if any) of the excess of the net income from foreclosure property for the taxable year over the tax imposed thereon by section 857(b)(4)(A).

§ 1.857-8 [Amended]

PAR. 37. Paragraph (e) of § 1.857-8 (as redesignated by paragraph 34 of this document) is amended by deleting "§ 1.857-7" from the second sentence and inserting in lieu thereof "§ 1.857-9".

§ 1.857-9 [Amended]

PAR. 38. Paragraph (a) of § 1.857-9 (as redesignated by paragraph 34 of this document) is amended by deleting "§ 1.857-6" and inserting in lieu thereof "§ 1.857-8".

§ 1.857-10 [Amended]

PAR. 39. Section 1.857-10 (as redesignated by paragraph 34 of this document) is amended by deleting "§§ 1.857-6 and 1.857-7" and inserting in lieu thereof "§§ 1.857-8 and 1.857-9".

§ 1.858 [Deleted.]

PAR. 40. Section 1.858 is deleted.

PAR. 41. Section 1.858-1 is amended as follows:

1. Paragraphs (a) and (b) are revised to read as set forth below.

2. Paragraph (d) is amended by adding a new example (3) at the end thereof, to read as set forth below.

3. Paragraph (e) is amended by deleting "paragraph (e) of § 1.857-4" each place it appears and inserting in lieu thereof "paragraph (f) of § 1.857-6".

4. The next to the last sentence of paragraph (e) is amended to areas as set forth below.

§ 1.858-1 Dividends paid by a real estate investment trust after close of taxable year.

(a) *General rule.* Under section 858, a real estate investment trust may elect to treat certain dividends that are distributed within a specified period after the close of a taxable year as having been paid during the taxable year. The dividend is taken into account in determining the deduction for dividends paid for the taxable year in which it is treated as paid. The dividend may be an ordinary dividend or, subject to the requirements of sections 857(b)(3)(C) and 858(c), a capital gain dividend. The trust may make the dividend declaration required by section 858(a)(1) either before or after the close of the taxable year as long as the declaration is made before the time prescribed by law for filing its return for the taxable year (including the period of any extension of time granted for filing the return).

(b) *Election*—(1) *Method of making election.* The election must be made in the return filed by the trust for the taxable year. The election shall be made by treating the dividend (or portion thereof) to which the election applies as a dividend paid during the taxable year of the trust in computing it real estate investment trust taxable income and, if applicable, the alternative tax imposed by section 857(b)(3)(A). (In the case of an election with respect to a taxable year ending before October 5, 1976, if the dividend (or portion thereof) to which the election is to apply is a capital gain dividend, the trust shall treat the dividend as paid during such taxable year in computing the amount of capital gains dividends paid during the taxable year.) In the case of an election with respect to a taxable year beginning after October 4, 1976, the trust must also specify in its return (or in a statement attached to its return) the exact dollar amount that is to be treated as having been paid during the taxable year.

(2) *Limitation based on earnings and profits.* The election provided in section 858(a) may be made only to the extent that the earnings and profits of the taxable year (computed with the application of sections 857(d) and 1.857-7) exceed the total amount of distributions out of such earnings and profits actually made during the taxable year. For purposes of the preceding sentence, deficiency dividends and distributions with respect to which an election has been made for a prior year under section 858(a) are disregarded in determining the total amount of distributions out of earnings and profits actually made during the taxable year. The dividend or portion thereof, with respect to which the real estate investment trust has made a valid election under section 858(a), shall be considered as paid out of the earnings and profits of the taxable year for which such election is made, and not out of the earnings and profits of the taxable year in which the distribution is actually made.

(3) *Additional limitation based on amount specified.* The amount treated under section 858(a) as having been paid in a taxable year beginning after October 4, 1976, cannot exceed the

lesser of (i) the dollar amount specified by the trust in its return (or a statement attached thereto) in making the election or (ii) the amount allowable under the limitation prescribed in paragraph (b)(2) of this section.

(4) *Irrevocability of the election.* After the expiration of the time for filing the return for the taxable year for which an election is made under section 858(a), such election shall be irrevocable with respect to the dividend or portion thereof to which it applies.

* * * * *

(d) *Illustrations.* * * *

Example (3). Assume the facts are the same as in example (2), except that the taxable years involved are calendar years 1977 and 1978, and Y Trust specified in its Federal income tax return for 1977 that the dollar amount of $40,000 of the $65,000 distribution payable to shareholders on March 31, 1978, is to be treated as having been paid in 1977. The result will be the same as in example (2), since the amount of the undistributed earnings and profits for 1977 is less than the $40,000 amount specified by Y Trust in making its election. Accordingly, the election is valid only to the extent of $15,000. Y Trust will treat the amount of $15,000 as a distribution, in 1977, of earnings and profits of the trust for the taxable year 1977 and the remaining $50,000 as a distribution, in 1978, of the earnings and profits for 1978.

(e) *Notice to shareholders.* * * * If the notice under section 858(c) relates to an election with respect to any capital gains dividends, such capital gains dividends shall be aggregated by the real estate investment trust with the designated capital gains dividends actually paid during the taxable year to which the election applies (not including deficiency dividends or dividends with respect to which an election has been made for a prior taxable year under section 858) to determine whether the aggregate of the designated capital gains dividends with respect to such taxable year exceeds the net capital gain of the trust. * * *

PAR. 42. New sections 1.859-1, 1.859-2, 1.859-3, 1.859-4, and 1.860-1 are added after section 1.858-1, to read as follows:

§ 1.859-1 Deficiency dividends.

Section 859 provides a method by which a real estate investment trust may be relieved from the payment of a deficiency in (or be allowed a credit or refund with respect to) the tax imposed by section 857(b) (1) or (3), the minimum tax on tax preferences imposed by section 56, or, in the case of a real estate investment trust that fails the distribution requirements of section 857(a)(1), the corporate income tax imposed by section 11(a) or 1201(a). The method provided by section 859 is to allow an additional deduction for a dividend distribution (which meets the requirements of sections 859 and 1.859-2) in computing the deduction for dividends paid for the taxable year for which the deficiency is determined. A deficiency dividend may be an ordinary dividend, or, subject to the limitations of sections 857(b)(3)(C) and 859(d)(2)(B), may be a capital gain dividend.

§ 1.859-2 Requirements for deficiency dividends.

(a) *In general.* A real estate investment trust is allowed a deduction for a deficiency dividend only if there is a determination (as defined in section 859(c) and paragraph (b)(1) of this section) occurring after October 4, 1976, that results in an adjustment (as defined in section 859(b)(1)) for the taxable year with respect to which the deficiency dividend is paid. The deficiency dividend must be paid on, or within 90 days after, the date of the determination and before the filing of a claim under section 859(e) and paragraph (b)(2) of this section. This claim must be filed within 120 days after the date of the determination. The deficiency dividend must be a distribution of property (including money) that would have been properly taken into account in the computation of the deduction for dividends paid under section 561 for the taxable year with respect to which the liability for tax resulting from the determination exists, if the money or other property had been distributed during that taxable year. Thus, for purposes of section 859(d), where the distribution would have been a dividend within the meaning of sections 316(a) and 1.316-1, if it had been made during the taxable year with respect to which the determination applies, the distribution will meet the requirements of section 562(a) (relating to rules applicable in determining dividends eligible for the deduction for dividends paid), even though the distributing corporation, trust, or association has no current or accumulated earnings and profits for the taxable year in which the distibution is actually made. The amount of the distribution shall be determined under section 301 as of the date of the distribution. The amount of the deduction is subject to the limitations set forth in sections 562 and 859(d)(2) and the regulations thereunder. Thus, in the case of a distribution to an individual shareholder of property (other than money) which has a fair market value in excess of the adjusted basis of the property in the hands of the distributing corporation, trust, or association at the time of the distribution, the amount of the deficiency dividend, for purposes of section 316(b)(3), shall be the amount which would have been a dividend if the property (taking into account its fair market value as of the date of the distribution) had been distributed during the taxable year with respect to which the determination applies, even though the deduction for dividends paid is limited, under § 1.562-1(a), to the adjusted basis of the property. The corporation, trust, or association that pays the deficiency dividends does not have to be a qualified real estate investment trust at the time of payment.

(b) *Determination and claim for deduction—(1) Determination.* For purposes of applying section 859(c) and this section, the following rules shall apply:

(i) The date of determination by a decision of the United States Tax Court is the date upon which the decision becomes final, as prescribed in section 7481.

(ii) The date upon which a judgment of a court becomes final, which is the date of the determination in such cases, must be determined upon the basis of the facts in the particular case. Ordinarily, a judgment of a United States district court becomes final upon the expiration of the time allowed for taking an appeal, if no appeal is duly taken within that time. A judgment of the United States Court of Claims becomes final upon the expiration of the time allowed for filing a petition for certiorari if no petition is duly filed within that time.

(iii) The date of determination by a closing agreement, made under section 7121, is the date the agreement is approved by the Commissioner.

(iv) A determination under section 859(c)(3) may be made by an agreement signed by the district director or another official to whom authority to sign the agreement is delegated, and by or on behalf of the taxpayer. The agreement shall set forth the amount, if any, of each adjustment described in subparagraphs (A), (B), and (C) of section 859(b)(1) for the taxable year, the amount of the liability for any tax imposed by section 11(a), 56(a), 857(b)(1), 857(b)(3)(A) or 1201(a) for the taxable year, and the amount of the limitation (determined under section 859(d)(2)) on the amount of deficiency dividends that can qualify as capital gain dividends and ordinary dividends, respectively, for the taxable year. An agreement under this subdivision which is signed by the district director (or other delegate) shall be sent to the taxpayer at its last known address by either registered or certified mail. If registered mail is used, the date of registration shall be treated as the date of determination. If certified mail is used, the date of the postmark on the sender's receipt shall be treated as the date of determination. However, if a dividend is paid by the taxpayer before the registration or postmark date, but on or after the date the agreement is signed by the district di-

rector (or other delegate), the date of determination shall be the date of signing.

(2) *Claim for deduction.* A claim for deduction for a deficiency dividend shall be made, with the requisite declaration, on form 976 and shall contain the following information:

(i) The name, address, and taxpayer identification number of the corporation, trust, or association;

(ii) The amount of the deficiency and the taxable year or years involved;

(iii) The amount of the unpaid deficiency or, if the deficiency has been paid in whole or in part, the date of payment and the amount thereof;

(iv) A statement as to how the deficiency was established (i.e., by an agreement under section 859(c)(3), by a closing agreement under section 7121, or by a decision of the Tax Court or court judgment);

(v) Any date or other information with respect to the determination that is required by form 976;

(vi) The amount and date of payment of the dividend with respect to which the claim for the deduction for deficiency dividends is filed;

(vii) The amount claimed as a deduction for deficiency dividends;

(viii) If the amount claimed as a deduction for deficiency dividends includes any amount designated (or to be designated) as capital gain dividends, the amount of capital gain dividends for which a deficiency dividend deduction is claimed; and

(ix) Any other information required by the claim form.

A certified copy of the resolution of the trustees, directors, or other authority, authorizing the payment of the dividend with respect to which the claim is filed must accompany the claim. Also, any copy of a court decision, judgment, agreement, or other document required by form 976 must accompany the claim. The claim, together with the accompanying documents, shall be filed with the district director, or director of the internal revenue service center, with whom the income tax return for the taxable year with respect to which the determination applies was filed. In the event that the determination is an agreement with the district director (or his delegate) described in section 859(c)(3) and paragraph (b)(1)(iv) of this section, the claim may be filed with the district director with whom (or pursuant to whose delegation) the agreement was made.

§ 1.859-3 Interest and additions to tax.

(a) *In general.* If a real estate investment trust is allowed a deduction for deficiency dividends, under section 859(b)(2) the tax imposed on the trust by chapter 1 of the Code (computed by taking into account the deduction) for the taxable year with respect to which the deduction is allowed is deemed to be increased by an amount equal to the amount of the deduction. This deemed increase in tax, however, applies solely for purposes of determining the liability of the trust for interest under subchapter A of chapter 67 of the Code and for additions to tax and additional amounts under chapter 68 of the Code. For purposes of applying subchapter A of chapter 67 and chapter 68, the last date prescribed for payment of the deemed increase in tax shall be considered to be the last date prescribed for the payment of tax (determined in the manner provided in section 6601(b)) for the taxable year for which the deduction for deficiency dividends is allowed. The deemed increase in tax shall be considered to be paid as of the date that the claim for the deficiency dividend deduction described in section 859(e) and § 1.859-2(b)(2) is filed.

(b) *Overpayments of tax.* If a real estate investment trust is entitled to a credit or refund of an overpayment of the tax imposed by chapter 1 of the Code for the taxable year for which the deficiency dividend deduction is allowed, then, for purposes of computing interest, additions to tax, and additional amounts, the payment (or payments) that result in the overpayment and that precede the filing of the claim described in section 859(e) will be applied against and reduce the increase in tax that is deemed to occur under section 859(b)(2).

(c) *Example.* This section may be illustrated by the following examples:

Example (1). Corporation X is a real estate investment trust that files its income tax return on a calendar year basis. For its taxable year 1977, corporation X receives an extension of time until June 15, 1978, to file its income tax return. Corporation X does not elect to pay any tax due in installments. On its 1977 income tax return, filed on May 15, 1978, corporation X reports real estate investment trust taxable income (computed without regard to the dividends paid deduction) of $100, a dividends paid deduction of $100, and no tax liability. Following an examination of corporation X's 1977 return, the district director and corporation X enter into an agreement which constitutes a determination under section 859(c)(3). Under the determination (which is dated November 1, 1979), the real estate investment trust taxable income of corporation X is increased by $20 to $120. Thus, taking into account the $100 of dividends paid in 1977, corporation X has undistributed real estate investment trust taxable income of $20 as a result of the determination. Corporation X pays a dividend of $20 on November 10, 1979, files a claim for a deficiency dividend deduction of $20 pursuant to section 859(e) with respect to such dividend on November 15, 1979, and is allowed a deficiency dividend deduction of $20 with respect to its taxable year 1977. Corporation X, after taking into account the deduction for deficiency dividends, has no real estate investment trust taxable income and has met the distribution requirements of section 857(a)(1). However, for purposes of section 6601 (relating to interest on underpayment of tax) the tax imposed by chapter 1 of the Code on corporation X for the taxable year 1977 is deemed to be increased by $20 (the amount of the deficiency dividend deduction allowed with respect to the taxable year 1977), and the last date prescribed for payment of the tax is March 15, 1978 (the due date of the return determined without regard to any extension of time). The tax of $20 is deemed to be paid on November 15, 1979, the date the claim for the deficiency dividend deduction is filed pursuant to section 859(e). Thus, corporation X is liable for interest on $20, at the rate established under section 6621, for the period from March 15, 1978, to November 15, 1979. Also for purposes of determining whether corporation X is liable for any addition to tax or additional amount imposed by chapter 68 of the Code (including the penalty prescribed by section 6697) the amount of tax imposed on corporation X by chapter 1 of the Code is deemed to be increased by $20 (the amount of the deficiency dividend deduction allowed), the last date prescribed for payment of such tax is March 15, 1978, and the tax of $20 is deemed to be paid on November 15, 1979. Corporation X, however, is not subject to interest and penalties with respect to the amount of any tax for which it would have been liable under section 11(a), 56(a), 1201(a), or 857(b) had it not been allowed the $20 deduction for deficiency dividends.

Example (2). Assume the facts are the same as in example (1) except that the district director, upon examination of corporation X's income tax return, asserts a deficiency in income tax of $4, based on an asserted increase of $10 in real estate investment trust taxable income, and no agreement is entered into between the parties. Corporation X pays the $4 on June 1, 1979, and files suit for refund in the United States District Court. The District Court, in a decision which becomes final on November 1, 1980, holds that corporation X did fail to report $10 of real estate investment trust taxable income and is not entitled to any refund. (No other item of income or deduction is in issue.) Corporation X pays a dividend of $10 on November 10, 1980, files a claim for a deficiency dividend deduction of $10 with respect to such dividend on November 15, 1980, and is allowed a deficiency dividend deduction of $10 for 1977. Assume further that $4 is refunded to corporation X on December 31, 1980, as the result of the $10 deficiency dividend deduction being allowed. Also assume that any assessable penalties, additional amounts, and additions to tax (including the penalty imposed by section 6697) for which corporation X is liable are paid within 10 days of notice and demand, so that no interest is imposed on such penalties, etc. The liability of corporation X for interest for the period March 15, 1978, to June 1, 1979, will be determined with respect to $10 (the amount of the deficiency dividend deduction allowed). The liability of corporation X for interest for the period June 1, 1979, to November 15, 1980, will be determined with respect to $6 ($10 minus the $4 payment). Corporation X will be entitled to interest on the $4 overpayment for the period described in section 6611(b)(2), beginning on November 15, 1980.

§ 1.859-4 Claim for credit or refund.

In a case where the allowance of a deduction for a deficiency dividend results in an overpayment of tax, the

taxpayer, in order to secure credit or refund of the overpayment, must file a claim on form 1120X in addition to the claim for the deduction required under section 859(e). The credit or refund will be allowed as if on the date of the determination two years remained before the expiration of the period of limitations on the filing of claim for refund for the taxable year to which the overpayment relates.

§ 1.860-1 Adoption of or change in annual accounting period.

Under section 860, a real estate investment trust may not change to or adopt any taxable year beginning after October 4, 1976, other than the calendar year.

PAR. 43. Subparts A and B are added to part 55, to read as follows:

Subpart A—Tax on Certain Real Estate Investment Trust Taxable Income Not Distributed During the Taxable Year

§ 55.4981-1 Imposition of excise tax on certain real estate investment trust taxable income not distributed during the taxable year.

Section 4981 imposes an excise tax on a real estate investment trust if the deduction for dividends paid for the taxable year does not equal at least 75 percent of its real estate investment trust taxable income (computed as provided in section 4981) for the taxable year. For purposes of section 4981, the deduction for dividends paid is computed without regard to capital gains dividends (as defined in section 857(b)(3)(C)) and without regard to any dividends actually paid after the close of the taxable year. Thus, dividends considered as paid during the taxable year under section 858 are disregarded. Deficiency dividends (as defined in section 859(d)) paid with respect to the taxable year are also disregarded. The return referred to in the last sentence of section 4981 is the income tax return. Section 4981 applies only to taxable years beginning after December 31, 1979, for which the taxpayer is taxable under Part II of subchapter M of chapter 1 of subtitle A as a real estate investment trust.

Subpart B—Procedure and Administration

§ 55.6001-1 Notice or regulations requiring records, statements, and special returns.

(a) *In general.* Any person subject to tax under chapter 44 of the Code shall keep such complete and detailed records as are sufficient to enable the district director to determine accurately the amount of liability under chapter 44.

(b) *Notice by district director requiring returns, statements, or the keeping of records.* The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for tax under chapter 44.

(c) *Retention of records.* The records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

§ 55.6011-1 General requirement of return, statement, or list

Every person liable for tax under section 4981 shall file an annual return with respect to the tax on the form prescribed by the Internal Revenue Service for such purpose and shall include therein the information required by the form and the instructions issued with respect thereto.

§ 55.6061-1 Signing of returns and other documents.

Any return required to be made by a real estate investment trust with respect to the tax imposed by chapter 44 shall be signed by a person authorized by section 6062 of the Code to sign the income tax return of the real estate investment trust. Any statement or other document required to be made with respect to the tax imposed by chapter 44 shall be signed by the person required or duly authorized to sign in accordance with the regulations, forms, or instructions prescribed with respect to such statement or document. An individual's signature on a return, statement, or other document made by or for the real estate investment trust shall be prima facie evidence that the individual is authorized to sign the return, statement, or other document.

§ 55.6065-1 Verification of returns.

If a return, statement, or other document made under the provisions of chapter 44 or subtitle F of the Code or the regulations thereunder with respect to any tax imposed by chapter 44 of the Code, or the form and instructions issued with respect to such return, statement, or other document, requires that it shall contain or be verified by a written declaration that it is made under the penalties of perjury, it must be so verified by the person or persons required to sign such return, statement, or other document. In addition, any other statement or document submitted under any provision of chapter 44 or subtitle F of the Code or regulations thereunder with respect to any tax imposed by chapter 44 of the Code may be required to contain or be verified by a written declaration that it is made under the penalties of perjury.

§ 55.6071-1 Time for filing returns.

A return required by § 55.6011-1 shall be filed at the time (including any extension of time granted or allowed under section 6081) that the real estate investment trust is required to file its income tax return under section 6012 for the taxable year for which the tax under section 4981 is imposed.

§ 55.6081-1 Extension of time for filing the return.

District directors and directors of service centers are authorized to grant a reasonable extension of time for filing any return, statement, or other document which relates to any tax imposed by chapter 44 and which is required under the provisions of chapter 44 or the regulations thereunder. Extensions of time shall not be granted for more than 6 months. An extension of time for filing a return shall not operate to extend the time for the payment of the tax or any part thereof unless specified to the contrary in the extension. The rules relating to an application for extension in § 53.6081-1(b) of this chapter (relating to foundation excise taxes) shall apply to an application for an extension of time for filing the return of tax imposed by chapter 44. If an extension of time for filing the return is granted, a return shall be filed before the expiration of the period of extension.

§ 55.6091-1 Place for filing chapter 44 tax returns.

Except as provided in § 55.6091-2 (relating to exceptional cases)—

(a) *In general.* Chapter 44 tax returns shall be filed with the district director for the internal revenue district in which is located the principal place of business or principal office or agency of the real estate investment trust.

(b) *Returns filed with service centers or by hand carrying.* Notwithstanding paragraph (a) of this section, unless a return is filed by hand carrying, whenever instructions applicable to chapter 44 tax returns provide that the returns be filed with a service center, the returns must be so filed in accordance with the instructions. Returns which are filed by hand carrying shall be filed with the district director (or with any person assigned the administrative supervision of an area, zone, or local office constituting a permanent post of duty within an internal revenue district of such director) in accordance with paragraph (a) of this section.

§ 55.6091-2 Exceptional cases.

Notwithstanding the provisions of § 55.6091-1, the Commissioner may permit the filing of any chapter 44 tax return in any internal revenue district.

§ 55.6161-1 Extension of time for paying tax or deficiency.

(a) *In general*—(1) *Tax shown or required to be shown on return.* A reasonable extension of the time for payment of the amount of any tax imposed by chapter 44 and shown or required to be shown on any return, may be granted by the district directors at the request of the taxpayer. The period of such extension shall not be in excess of 6 months from the date fixed for payment of such tax.

(2) *Deficiency.* The time for payment of any amount determined as a deficiency in respect of tax imposed by chapter 44 may, at the request of the taxpayer, be extended by the internal revenue officer to whom the tax is required to be paid. The extension may be for a period not to exceed 18 months from the date fixed for payment of the deficiency, as shown on the notice and demand. In exceptional cases, a further extension for a period not in excess of 12 months may be granted. No extension of time for payment of a deficiency shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(3) *Extension of time for filing distinguished.* The granting of an extension of time for filing a return does not operate to extend the time for the payment of the tax or any part thereof unless so specified in the extension.

(b) *Certain rules relating to extension of time for paying income tax to apply.* The provisions of § 1.6161-1 (b), and (c), and (d) of this chapter (relating to a requirement for undue hardship, the application for extension, and payment pursuant to an extension) shall apply to extensions of time for payment of the tax imposed by chapter 44.

§ 55.6165-1 Bonds where time to pay tax or deficiency has been extended.

If an extension of time for payment of tax or deficiency is granted under section 6161, the district director or the director of the service center may, if he deems it necessary, require a bond for the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension. However, the bond shall not exceed double the amount with respect to which the extension is granted. For provisions relating to form of bonds, see the regulations under section 7101 contained in part 301 of this chapter (Regulations on Procedure and Administration).

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 78-18613 Filed 7-6-78; 8:45 am]

[4510-43]

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[30 CFR Parts 11, 70, 71, 75, and 90]

RESPIRABLE DUST

Additional Public Hearings

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Notice of additional public hearings.

SUMMARY: Public hearings will be conducted in Charleston, W. Va. and Lexington, Ky., in addition to those previously announced in the FEDERAL REGISTER (43 FR 26454), concerning proposed amendments to the Department of Labor's regulations governing sampling of respirable dust in underground coal mines.

DATES: Requests to make oral statements for the record at these hearings should be submitted in writing by July 21 1978. Additional hearings will be held on July 25-26, 1978 in Charleston, W. Va. and on July 27-28, 1978 in Lexington, Ky.

ADDRESSES: Send requests to make oral statements to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 831, 4015 Wilson Boulevard, Arlington, Va. 22203.

1. The Charleston hearing will be held at the Charleston Civic Center, Little Theater, Reynolds Street, Charleston, W. Va. 25301. 2. The Lexington hearing will be held at the College of Law Building, Room 102, University of Kentucky, South Limestone Street, Lexington, Ky. 40506.

FOR FURTHER INFORMATION CONTACT:

Frank A. White, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 831, 4015 Wilson Boulevard, Arlington, Va. 22203, 703-235-1910.

SUPPLEMENTARY INFORMATION: The issues to be covered at the hearings scheduled by this notice will be only those issues raised concerning the proposed amendments to the respirable dust regulations. These issues are listed in the notice of public hearing published in the FEDERAL REGISTER on June 20, 1978 (43 FR 26454). Separate hearings will be held on the issues raised by comments and objections received concerning the proposed amendments to standards for airborne contaminants. Both proposals were published on November 16, 1977 at 42 FR 59294-59300.

The proposed amendments to the respirable dust regulations would revise sampling methods and procedures, the definition of respirable dust and the respirable dust standard when free silica is present. The proposed changes would also provide increased training in the maintenance and calibration of sampling instruments.

The Mine Safety and Health Administration determined, after discussions with interested persons and organizations, that additional hearings in Charleston, W. Va., and Lexington, Ky., are warranted to ensure maximum participation by those most affected by the regulations.

Dated: June 28, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-18613 Filed 7-6-78; 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.

[3410-02]

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

GRAIN STANDARDS

Delegation of Authority to the State of Washington

Statement of considerations. Under the provisions of sections 7 and 7A of the U.S. Grain Standards Act, as amended (7 U.S.C. 71 et seq.) (hereinafter the "act"), the Administrator of the Federal Grain Inspection Service (FGIS), may delegate authority to a State agency to perform all or specified functions involved in official inspection and official weighing at export port locations within the State, provided the State agency was performing official export inspection services on July 1, 1976 (7 U.S.C. 79, 79a). The act requires that prior to delegating such authority to a State agency the Adminstrator shall conduct an investigation to determine whether the agency is qualified and meets the criteria for delegation as provided in section 7 of the act.

The Department of Agriculture of the State of Washington made application for delegation of authority to perform official inspection and official weighing functions for grain at the export port locations within the State of Washington.

FGIS has conducted the required investigation of the State of Washington which included onsite reviews of all their inspection sites and a determination of the nature of any proscribed conflicts of interest that might have existed with individual employees and licensees of the State of Washington. All investigations showed that the inspection and weighing operations of the State are in compliance with the act and that any conflicts of interest situations that may have existed have been resolved.

As a result, the State of Washington was declared eligible for delegation to perform the functions of official inspection and official weighing at export port locations within the boundaries of the State. The export elevators where the State has been performing official inspection service and will perform official inspection and official weighing services under the new official delegation are: North Pacific Grain Growers, Kalama, Wash.; Continental Grain Co., Longview, Wash.; Continental Grain Co., and United Grain Corp., Tacoma, Wash.; United Grain Corp., Vancouver, Wash.; and Cargill, Inc., and Fisher Mills Inc., Seattle, Wash. The delegation provides for the automatic inclusion of export elevators at export port locations which may be established in the future and will remain in effect until canceled by mutual agreement of FGIS and the State or until revoked by FGIS.

A document delegating this authority to the State was signed by the Administrator of FGIS and the Director of Agriculture of the State of Washington, effective May 12, 1978.

Done in Washington, D.C., on June 30, 1978.

L. E. BARTELT,
Administrator.

[FR Doc. 78-18718 Filed 7-6-78; 8:45 am]

[3410-16]

Soil Conservation Service

AUTHORIZATION FOR WATERSHED PLANNING

Concerned State conservationists of the Soil Conservation Service have been authorized to provide planning assistance to local organizations for the indicated watersheds. The State conservationists may proceed with investigations and surveys as necessary to develop watershed plans under authority of the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and in accordance with requirements of the National Environmental Policy Act of 1969, Pub. L. 91-190.

Persons interested in these projects may contact the State conservationist, listed below:

Deer Creek Watershed, Allen and Anderson Counties, Kans.; State conservationist; Robert K. Griffin, Soil Conservation Service, 760 South Broadway, P.O. Box 600, Salina, Kans. 67401; 913-825-9535.

Wilkerson Creek Watershed, Coffee, Dale, and Geneva Counties, Ala.; State conservationist; William B. Lingle, Soil Conservation Service, Wright Building, 138 South Gay Street, P.O. Box 311, Auburn, Ala. 36830; 205-821-8070.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program.)

Date: June 29, 1978.

R. M. DAVIS,
Administrator.

[FR Doc. 78-18741 Filed 7-6-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Order 78-6-206; Docket 22388]

REA EXPRESS, INC.

Application for Interstate Air Freight Forwarder Operating Authority; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 29th day of June, 1978.

By Order 73-12-36, dated December 7, 1973, the Board terminated REA Express Inc.'s exemption authority to conduct air express service. At the same time, the Board awarded REA interstate operating authority as an air freight forwarder, subject to the completion and update of its forwarder application in accordance with the procedures set forth in section 296.43 of the Board's Economic Regulations. However, REA made no effort to complete its underlying application or otherwise to provide certain information which the Board required. On November 7, 1975, a Federal court adjudged REA bankrupt and ordered the liquidation of the its property. In light of this, by Order 76-12-23, dated December 6, 1976, the Board directed all interested persons to show cause why the application should not be dismissed.

An objection to this order was filed by the Brotherhood of Railway, Airline, Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC) on behalf of REA's employees. BRAC maintained that it was the uncertainty surrounding the outcome of REA's bankruptcy proceeding that prevented REA from completing its operating authority application; that serious efforts had commenced to preserve its operating authority; that the ability of REA (or its successor) to proceed with its forwarder application was dependent upon these efforts; that the termination of REA's forwarder authority would adversely affect its resuscitation and its employees; and that in all these circumstances, the Board should hold this proceeding in abeyance pending the resolution of the litigation involving REA's future.[1]

[1] BRAC stated that after the Federal court adjudged REA backrupt and ordered the liquidation of the carrier's property, it approved a plan for reorganizing REA, submitted by Alltrans Express, U.S.A. Inc., and

Footnotes continued on next page

On the basis of this objection, the Board, by Order 77-3-160, dated March 29, 1977, deferred action on the application for a period of one year. That one-year period has now passed and REA has taken no further steps to complete its application, nor has any party requested the Board to move forward with the authorization.

Therefore, we tentatively find and conclude that REA's application for interstate air freight forwarder authority in Docket 22388 should be dismissed. In order to afford all interested parties an opportunity to comment on the Board's proposed course of action, we are issuing this order to show cause why our tentative findings and conclusions should not be made final.

Accordingly, *it is ordered*, That: 1. All interested persons are directed to show cause why the Board should not issue an order making final its tentative findings and conclusions that REA's application for interstate air freight forwarder operating authority should be dismissed and this proceeding terminated;

2. Any interested persons having objection to the issuance of an order making final the proposed findings and conclusions shall, within 30 days following the service date of this order, file with the Board and serve upon all parties to this proceeding a statement of objections together with such evidence expected to be relied upon in support of the stated objections;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board; and

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the application will be submitted to the Board for final action.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board: [2]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-18748 Filed 7-6-78; 8:45 am]

Footnotes continued from last page
dismissed another, filed by a group of REA's employees. BRAC also stated that both actions were appealed to higher courts.

[2]All Members concurred.

[6320-01]

[Order 78-6-202; Docket 32651]

COMPAGNIE NATIONALE AIR FRANCE (AIR FRANCE) UNION de TRANSPORT AERIENS (U.T.A.)

Order Amending Order and Approving Additional Schedules

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 29th day of June 1978.

By Order 78-6-82, June 12, 1978, the Board, following Presidential review under Part 213 procedures, directed that Air France not perform scheduled passenger services other than the frequencies and services between France and the United States set forth in the Order. The effect of the Order was to disapprove three weekly B-747 frequencies between Los Angeles and Paris.

The order focused on the transatlantic schedules of Air France and did not mention its polar service to Japan via Alaska or the Miami-Point-A-Pitre local services. Because of Air France's delay in complying with the order to file schedules, information about the Pacific and Caribbean services was not available to the staff for inclusion in Order 78-6-82.

By omission from the Order the Alaska and Miami scheduled passenger frequencies would appear to have been disapproved. The Board did not intend this. Therefore we are approving the Miami and Alaska Schedules in accordance with paragraph 213.3(e) of the Board's regulations.

It is therefore ordered, That: 1. Paragraph 1 of Order 78-6-82 is amended to approve the Miami and Alaska stopover services, and to include those services within the list of services authorized; and 2. Paragraph 1 of Order 78-6-82 as amended shall read as follows:

1. Within 30 days after service of this Order [Order 78-6-82, served June 12, 1978], Air France shall not operate, nor hold out to the public in any manner that it does operate, scheduled passenger-service frequencies (including extra sections) between the United States and France or French territories in excess of: (a) Seven weekly Concorde services and fourteen weekly Boeing 747 services between New York and Paris; (b) Six weekly Boeing 747 services between Paris and Houston (also serving Mexico City beyond Houston); (c) Five weekly Boeing 747 services between Paris and Chicago (two flights serving Montreal as an intermediate); (d) Three weekly Concorde services between Paris and Washington; (e) Four weekly Boeing 747 services between Paris, Anchorage and Tokyo; and (f) Nine Boeing 737 services between Miami and Point-A-Pitre (seven flights serve Port-au-Prince, San Juan, Saint Martin as intermediates; two flights serve only Port-Au-Prince as an intermediate).

3. This Order shall be served on Air France and the Ambassador of France in Washington, D.C.

This Order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[1]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-18749 Filed 7-6-78; 8:45 am]

[6320-01]

[Order 78-6-215; Docket 32952]

EMERGENCY TRANSPORTATION REQUIREMENTS

Order Granting Blanket Waiver and Exemption

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 30th day of June 1978.

At midnight on June 30, 1978, the International Longshoremen's and Warehousemen's Union (independent) contract with its employers on the west coast expires. In the event a new agreement is not reached on or before that date, and a work stoppage occurs, the adverse effect on shippers and receivers of cargo in the west coast, Hawaii, and Alaska will be substantial, since shipments normally moving over water must be diverted to air carriage if they are to move at all. Because of the potential emergency air transportation needs of these shippers, we believe that circumstances warrant an expansion of existing air cargo authority. Consequently, we have decided to (1) grant a blanket waiver of Parts 207, 208, and 212 of the Economic Regulations to permit all U.S. certificated air carriers and all foreign air carriers with 402 permits authorizing the carriage of individually ticketed and/or waybilled service to operate split all-cargo charters and split passenger-cargo charters in those markets that would be affected by a work stoppage,[1] (2) waive the provisions of sections 207.5, 207.6, and 207.7a of the Economic Regulations to permit U.S. route carriers to operate cargo charter services in affected markets without regard to their frequency or volume; and (3) exempt Evergreen, Rich, Southern, and Zantop from sections 401 and 403 of the act to the extent that they would be prevented from engaging in cargo charter services in those transpacific markets affected by the work stoppage. We are acting now, without awaiting the outcome of contract negotiations, in order to allow shippers and carriers time to make contingent plans. This authority is effective, however, only if an actual work stoppage occurs, and only for the duration of such work stoppage.

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[1]All Members concurred.

[1]We are not granting a waiver of Part 214 of the Economic Regulations because that part provides rules only for passenger charters conducted by foreign air carriers operating under permits authorizing charter service exclusively.

Our current cargo charter rules provide that the entire capacity of an aircraft must be chartered by one person (including an air freight forwarder or cooperative shippers association as defined in Part 296) in order to ship air freight.[2] In addition, our rules limit the off-route cargo charter operations of U.S. route carriers in terms of their volume and frequency.[3] Apart from whether these restrictions present significant problems to the shipping public in normal times, should a west coast maritime work stoppage occur, the reduction in available surface transportation could significantly disrupt the movement of needed cargo goods and impose hardships on shippers and the public generally. We anticipate, as a result, that the demand for cargo air service will rise markedly, as surface shippers seek alternative modes to transport cargo. This is particularly the case for those goods, such as perishable food stuffs, with time-sensitive delivery dates. At a time when large amounts of excess cargo air capacity are not available, we believe that it is in the public interest to maximize the cargo air lift available to shippers.[4] The waivers and exemptions we are granting here will help to serve this objective by enabling shippers of less than planeload movements to contract for any cargo charter space that is available; by enabling U.S. route carriers to meet the needs of these shippers unconstrained by volume and frequency restrictions; and by providing shippers in the transpacific a larger pool of carriers from which to seek air cargo capacity.

Accordingly, the Board finds that the possibility of a West Coast maritime work stoppage constitutes special and unusual circumstances warranting grant of the emergency waivers, and that they are required in the public interest. We also find that enforcement of the provisions of sections 401 and 403 of the act, to the extent that they would prevent Evergreen, Rich, Southern, and Zantop from engaging in foreign charter air transportation in those transpacific markets affected by a work stoppage would not be in the public interest. It is clear that enforcement of the act would be an undue burden on these carriers because of the limited extent of the operations authorized and the special and unusual circumstances affecting them. Indeed, enforcement of the certification requirements would, as a practical matter prevent them from conducting these operations and as such, would be contrary to the needs and convenience of the public.[5]

We emphasize that it is not our intention in a labor controversy or to favor one side against the other. Our sole purpose is to alleviate, to the extent possible, the public hardships that inevitably result from work stoppages. We believe that this waiver will have a negligible effect, if any at all, upon the economic forces normally in play between management and labor.

Accordingly, *it is ordered*, That:

1. The provisions of Parts 207, 208, and 212 be waived to the extent necessary to permit all U.S. certificated air carriers and foreign air carriers with 402 permits authorizing the carriage of individually ticketed or waybilled service, (a) to operate charter flights of property where more than one person charters the capacity of an aircraft for air freight, and (b) to charter the excess freight capacity on charter flights of persons and their accompanying baggage for the carriage of air freight to one or more persons, in those markets affected by a West Coast maritime work stoppage;

2. The provisions of sections 207.5, 207.6, and 207.7a be waived in order to allow all U.S. certificated route carriers to operate off-route cargo charter sevices, including those described in 1, without regard to their frequency or volume in those markets affected by a west coast maritime work stoppage:

3. Evergreen, Rich, Southern, and Zantop be exempted from sections 401 and 403 of the Act to the extent that they would be prevented from operating cargo charter air transportation, including that described in 1, in transpacific markets affected by the work stoppage;

4. The authority granted by paragraphs 1, 2, and 3 shall become effective only upon the occurrence of a west coast maritime work stoppage, and shall terminate 5 days after the end of any such work stoppage;

5. This order may be amended or revoked at any time at the discretion of the Board; and

6. This order shall be served on all certificated air carriers, foreign air carriers, and the Federal Aviation Administration.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board: [6]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-18746 Filed 7-6-78; 8:45 am]

[2] In EDR-351, we have proposed to liberalize these rules to permit so called "split charters," where more than one person could charter capacity of an aircraft for air freight. We also proposed to allow the excess freight capacity on a passenger charter to be chartered for the carriage of property. Comments on this notice were due June 15, and reply comments are due July 5. The desirability of amending the cargo charter rules in this manner will be considered fully in this case. Our decision here does not pass on the merits of such a rule change, nor is it intended to prejudge any issues in that case.

[3] Section 207.5 limits the volume of combination carriers' off-route charter operations in any one year to 5 percent of the first 50 million base revenue plane miles flown the previous year and 2.5 percent of the remainder. All-cargo carriers are limited to 10 percent of such mileage flown the previous year (section 207.6). Section 207.7a limits, with certain exceptions, the frequency of all route carriers' off-route charter activities to 8 flights in any one market during any four week period.

[4] The space problem is exacerbated by the pilots' strike against Northwest Airlines, which has eliminated that carrier's services.

[5] Since the authority granted here is limited in scope and duration and will not result in substantially greater service in any one market, we find that our action is not a major Federal action within the meaning of the National Environmental Policy Act of 1969. Nor is it meant to be an endorsement by the Board that these operations qualify any carrier for additional fuel allocation under the Mandatory Aviation Fuel Allocation Program administered by the Department of Energy.

[6] All Members concurred.

[6320-01]

[Order 78-6-216; Docket 32953]

FOREIGN AIR CARRIERS

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 30th day of June, 1978.

At midnight June 30, 1978, the International Longshoremen's and Warehousemen's Union's (independent) contract with its employers on the west coast expires. In the event a new agreement is not reached on or before that date, and a work stoppage occurs, the adverse effect on shippers and receivers of cargo goods in the west coast, Hawaii, and Alaska will be substantial, since shipments normally moving over water must be diverted to air carriage if they are to move at all. Because of the potential emergency air transportation needs of these shippers, we believe that circumstances warrant expansion of existing air cargo authority. Consequently, we have tentatively decided to amend the permits of all foreign air carriers holding authority under section 402 of the Act to engage in charter air transportation only, to allow them: (1) to operate split all-cargo charters and split passenger-cargo charters;[1] (2) to operate such split charters and other planeload cargo charters in foreign air transportation without numerical or geographical limitations;[2] and (3) to

[1] By Order 78-6-215, issued contemporaneously with this order, we have granted, among other things, a blanket waiver to all U.S. certificated carriers and all foreign air carriers with 402 permits authorizing individually ticketed or waybilled service, permitting them to perform the same split charter service.

[2] For the duration of the work stoppage, cargo charters (or split cargo or passenger/

Footnotes continued on next page

perform charters on behalf of authorized air freight forwarders, on a temporary basis in those markets affected by a work stoppage. The foreign air carrier recipients of this authority are listed in the attachment to this order. All interested persons are offered the opportunity to show cause why our tentative findings and conclusions should not be made final and the foreign air carrier permits of the listed carriers be amended as proposed.

We tentatively find and conclude that the public interest requires these temporary permit amendments. Split cargo charters are not now an authorized charter form. Rather, these foreign carriers' permits, and, our cargo charter rules in Parts 207, 208, and 212, provide that the entire capacity of an aircraft must be chartered by one person in order to ship air freight.[3] In addition, with certain exceptions, foreign charter carriers under the terms of their permits are limited in terms of the number of cargo charters they may perform each year and the markets they may serve, and are prohibited from chartering to air freight forwarders. Should a west coast maritime work stoppage occur, the reduction in available surface transportation could significantly disrupt the movement of needed cargo goods and impose hardships on shippers and the public generally. We anticipate, as a result, that the demand for cargo air service will rise markedly, as surface shippers seek alternative modes to transport cargo. This is particularly the case for those goods, such as perishable foodstuffs, with time sensitive delivery dates. At a time when large amounts of excess cargo air capacity are not available, we believe that it is in the public interest to maximize the available cargo air lift.[4] The amendments proposed will help to serve this objective, by (1) enabling shippers of less than planeload movements to contract for any cargo space available with foreign charter air carriers, (2) eliminating the volume and market limitations now imposed on certain of the foreign charter air carriers, and (3) providing air freight forwarders with a larger pool of carriers from which to seek charter capacity. These amendments would be effective only upon an actual work stoppage, and would terminate 5 days after the end of any such stoppage.

For the above stated reasons, we tentatively find and conclude that the potential disruption of cargo shipping resulting from a west coast maritime work stoppage warrants the temporary permit amendments proposed here, and that such amendments are in the public interest.[5]

We emphasize that it is not our intention to intervene in a labor controversy, or to favor one side against the other. Our sole purpose is to alleviate, to the extent possible, the public hardships that inevitably result from work stoppages. We believe that these temporary permit amendments will have only a negligible effect, if any at all, upon the economic forces normally in play between management and labor.

Accordingly, *it is ordered*, That:

1. All interested persons be directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated above, which would, subject to the approval of the President, amend on a temporary basis the foreign air carrier permits held by the carriers listed in the attachment, by adding the following paragraph:

"Effective upon the occurrence of a 1978 west coast maritime work stoppage and continuing until 5 days after the end of such stoppage, no term, restriction, or condition of this permit shall preclude the holder from (1) operating charter flights of property where more than one person charters the capacity of an aircraft for air freight; (2) chartering excess freight capacity on charter flights of persons and their accompanying baggage for the carriage of air freight to one or more persons; (3) operating charters on behalf of authorized air freight forwarders as defined in part 296 of the economic regulations; and (4) operating an unlimited number of planeload cargo charter flights and charter flights described in (1)-(3) above; *Provided*, That this paragraph shall be effective only for operations in markets affected by the work stoppage where one point is within the United States or its territories and the other point is outside of the United States or its territories."

2. Any interested person may file with the Board, within 15 days of the date of this order, a statement, supported by evidence, in opposition to or in support of the action proposed;[6]

3. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Board may proceed to enter an order in accordance with the stated tentative findings and conclusions;

4. If timely and properly supported objections are filed, full consideration will be given the matters and issues raised by the objections before further action is taken by the Board; *Provided*, That the Board may proceed to enter an order in accordance with the tentative findings and conclusions if it determines that there are no factual issues presented which warrant the holding of an evidentiary hearing; and

5. This order shall be served upon all U.S. certificated air carriers, all holders of 402 permits authorizing direct foreign air transportation, and the Federal Aviation Administration.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:[7]

PHYLLIS T. KAYLOR,
Secretary.

BELGIUM

Pomair N.V.

CANADA

Adastra Aviation Ltd.
Aero Trades (Western) Ltd.
Aeroplane Rental Services Ltd.
Aircadia Ltd.
Air Canada
Air Caravene Inc.
Air-Dale Ltd.
Air Halifax Ltd.
Air Niagara Ltd.
Airspan Flight Charter Ltd.
AirWest Airlines Ltd.
Air Windsor Ltd.
Angus Aviation Ltd.
Arrow Aviation Ltd.
Atlantic Central Airlines Ltd.
Austin Airways Ltd.
Bradley Air Services Ltd.
Business Air Services Ltd.
Business Flights Ltd.
Canadian Pacific Air Lines, Ltd.
Canadian Voyageur Airlines Ltd.
Central B.C. Air Services Ltd.
Collingwood Air Services Ltd.
Condor Aviation Services Ltd.
Cornwall Aviation Ltd.
Cross Canada Flights Ltd.
Drumheller Air Services Ltd.
Eastern Provincial Airways (1963) Ltd.
Execaire Aviation Ltd.
Flightexec Ltd.
Gateway Aviation Ltd.
Gravenhurst Aviation Ltd.
Great Lakes Airlines Ltd.
Guelph Air Services Ltd.
Harrison Airways Ltd.
Hicks & Laurence Ltd.
Huron Aviation Inc.
Ignace Airways Ltd.

Footnotes continued from last page

cargo charters) would not be counted against the numerical cargo charter limitation contained in certain foreign charter carriers' permits. The permit amendments proposed here do not permit cabotage.

[3] In EDR-351, we have proposed to amend Parts 207, 208, and 212 to permit U.S. certificated carriers and foreign air carriers with permits authorizing the carriage of individually ticketed or waybilled traffic to operate so-called "split charters"; that is, where more than one person would charter capacity of an aircraft for air freight. We also proposed to allow the excess freight capacity on passenger charters to be chartered for the carriage of property. The cargo charter authority of all-charter foreign air carriers, however, would not be affected by these rule changes since such authority is conferred directly in their permits.

[4] The space problem is exacerbated by the pilots' strike against Northwest Airlines, which has eliminated that carrier's services.

[5] Since the permit amendments we propose here are limited in duration and scope and will not result in substantially greater service in any market, we tentatively find and conclude, that our action is not a major Federal action within the meaning of the National Environmental Policy Act of 1969.

[6] Since provision is made for response to this order, petitions for reconsideration will not be entertained.

[7] All members concurred.

International Jet Air Ltd.
Island Airlines, Ltd.
J.V. Aviation Ltd.
Kingston Air Services, Ltd.
Kingston Flying Club
Lac La Croix Quetico Air Services Ltd.
Laurentian Air Services Ltd./Services Aeriens Laurentien Ltd.
Laurentide Aviation Ltd.
Leavens Air Charter Ltd.
Leavens Bros. Ltd.
Loyal-Air Ltd.
Mackenzie Air Ltd.
McCully Aviation Ltd.
Metroair Ltd. c.o.b. Metro Air Taxi
Midwest Airlines Ltd.
Millardair Ltd.
National Aviation Consultants Ltd.
Nordair Ltee—Nordair Ltd.
North Canada Air Ltd. c.o.b. NORCANAIR
Northward Airlines Ltd.
Northwest Territorial Airways, Ltd.
Omega Airways, Ltd.
Ontario Central Airlines Ltd.
Orillia Air Services Ltd.
Pacific Coastal Airlines Ltd.
Pacific Western Airlines, Ltd.
Parsons Airways Ltd.
Parsons Airways Ltd.
Pem-Air Ltd.
Peninsula Air Service Ltd.
Perimeter Aviation Ltd.
Precision Holdings Ltd.
Province of Saskatchewan, Central Vehicle Agency
Quebecair
Reiseburo Schwaben Int'l d.b.a. Schwaben Charters, Inc.
St. Catharines Flying Club
Seneca Air Services Ltd.
Skycharter (Malton) Ltd.
Skycraft Air Transport Inc.
Starline Aviation Ltd.
Superior Airways Ltd.
Survair Ltd.
Toronto Airways Ltd.
Tradewinds Aviation Ltd.
TransAir Ltd.
Trans North Turbo Air Ltd.
Trans-Provincial Airlines Ltd.
Wagner Aviation Ltd.
Wardair Canada (1975), Ltd.
Waterloo-Wellington Flying Club
West Coast Air Services Ltd.
White River Air Services Ltd.
Won-Del Aviation Ltd.
Wong Aviation c.o.b. Central Airways
Worldways Airlines Ltd.

DENMARK

Maersk Air I/S

FINLAND

Finnair oy
Kar-Air oy

GERMANY

Condor Flugdienst G.m.b.H.
Lufttransport-Unternehmen GmbH. Co. KG (LTU)

ICELAND

Iscargo, HF

INDONESIA

P.N. Merpati Nusantara Airlines

JORDAN

Alia—The Royal Jordanian Airlines Corp.

NETHERLANDS

Martin's Luchtvervoer Maatschappij N.V. (Martin's Air Charter Co.)
Transavia, N.V.
Windward Islands Airways International N.V.

PHILLIPPINES

Air Manila, Inc.

SPAIN

Aviacion Y Comercio, S.A.
Spantax, S.A.

SWITZERLAND

Societe Anonyme de Transport Aerien (SATA)
Balair AG

UNITED KINGDOM

Britannia Airways Ltd.
British Airtours Ltd.
British Midland Airways Ltd.
Dan-Air Services Ltd.
Transmeridian Air Cargo Ltd.

YUGOSLAVIA

Jugoslovenski Aerotransport

[FR Doc. 78-18747 Filed 7-6-78; 8:45 am]

[1505-01]

[Docket Nos. 31951, etc.; Order 78-6-59]

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

Order Regarding Suspension Authority

Correction

In FR Doc. 78-16468, appearing at page 25706 in the issue of Wednesday, June 14, 1978, the docket number in the last line of footnote 9 at the end of column three on page 25707 should read, "Docket 29789".

[3510-25]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

[Order No. 47-1 (Amdt. 10)]

BUREAU OF INTERNATIONAL ECONOMIC POLICY AND RESEARCH

Organization and Function Order

Effective date: June 12, 1978.

DOD Reference 10-3, 40-1.

This order amends ITA Organization and Function Order 47-1 of December 4, 1977 (43 FR 12056) as follows:

1. Section 5. *Office of International Economic Research,* is revised to read:

SECTION 5. OFFICE OF INTERNATIONAL ECONOMIC RESEARCH.

.01 The *Office of the Director* includes the *Director,* who shall conduct the Department's program of quantitative research and analysis of trade and international economic policy issues; conduct research on the U.S. international economic and competitive positions and on their domestic economic impact; produce trade and international economic forecasts and simulations; provide secretarial officials with economic background and policy recommendations based on analyses and simulations; publish interpretive data and analyses; undertake a program of research to improve the accuracy of international economic methodologies; and service requests for trade and international economic information. The Office shall consist of the following organizational components:

.02 The *Applied Reserch Division* shall conduct research and analyses on global trade flows and the U.S. competitive position; evaluate policy alternatives; undertake a program of applied research aimed at improving analytic methodologies used in trade and international economic analysis; and serve as liaison with Government research and intelligence agencies as well as with private research groups. The Division shall perform its functions through the following subordinate elements:

a. The *Structural Analysis Branch* shall conduct research and analyses on the competitive position of U.S. industry and of individual industries; analyze shifts in global trade structure; produce analyses of exchange rate changes and their relationship to trade structures; initiate research into micro-economic issues affecting U.S. trade and investment; and conduct special economic studies to evaluate policy alternatives.

b. The *World Trade Branch* shall produce interpretive statistical reports on comparative trade performance in world markets; identify shifts in world markets; maintain large scale matrices of global trade behavior; produce descriptive reports on global trade shifts; prepare trade share reports; and maintain foreign trade reference facilities.

.03 The *International Economics Division* shall analyze international economic factors affecting U.S. trade and investment interests abroad undertake special studies of foreign economic and inter-relationships; utilize econometric models concerned with forecasting and simulating the international economy; prepare analyses and recommendations based on simulations of the international economy; and alert policy officials to significant international economic developments.

.04 The *Statistical Analysis Division* shall develop analytical statistics on current U.S. foreign trade and on foreign economies and shall produce a series of statistical reports. The Division shall perform its functions through the following subordinate elements:

a. The *Foreign Statistics Branch* shall produce foreign economic data in formats needed by the Office and ITA;

perform seasonal adjustment and other statistical manipulations to maximize the analytic utility of data; develop technical and interpretive studies related to the use of foreign data; publish special statistical reports on foreign data; and respond to specific requests for data.

b. The *U.S. Trade Statistics Branch* shall maintain data on U.S trade; produce specially-formated U.S. trade data for the Office and ITA; maintain automated data bases of U.S. trade statistics; publish a series of reports on recent U.S. trade statistics; respond to specific data inquiries; and maintain U.S. trade data reference facilities.

.05 The *Trade Research Division* shall conduct policy-oriented research and analyses of U.S. foreign trade and shall be responsible for the forecasting of U.S. trade. The Division shall perform its functions through the following subordinte elements:

a. The *Quantitative Research Branch* shall conduct quantitative research into the short- and long-term factors affecting U.S. trade; develop and utilize a variety of econometric models for forecasting and simulating U.S. trade, including specific product and geographic groups; prepare forecasts and simulations of short- and long-term U.S. trade, including specialized forecasts and policy simulations for other parts of the Department; utilize quantitative techniques to estimate the impact of policy or economic variables on trade; and prepare reports and policy analyses/recommendations based on the above.

b. The *Analytic Studies Branch* shall analyze trends and current developments in U.S. foreign trade; conduct special studies on specific developments in U.S. trade; analyze historical trade data for changes in patterns, including specific regions or products; develop a system of monitoring current trade developments to alert policy officials; produce reports interpreting U.S. trade trends and developments; and maintain timely data packages and presentation for policy officials.

.06 The *Trade Impact Division* shall conduct research and analyses of the impact of world trade on the U.S. economy; undertake analyses of the effects of trade policy changes and international developments on specific sectors and on the economy as a whole; utilize macroeconomic and input-output models of the U.S. economy to stimulate the domestic economic impact of trade developments; and conduct analyses of the income, employment, and welfare effects of trade.

2. The organization chart attached to this amendment supercedes the organization chart dated December 1977.

FRANK A. WEIL,
Assistant Secretary for Industry and Trade.

FOREST E. ABBUHL,
Acting Deputy Assistant Secretary for International Economic Policy and Research.

[FR Doc. 78-18740 Filed 7-6-78; 8:45 am]

[3510-25]

[Order No. 45-1 (Admt. 2)]

BUREAU OF TRADE REGULATION

Organization and Function Order

Effective date: June 7, 1978.

D.O.O. Reference 10-3, 40-1.

This order amends ITA Organization and Function Order 45-1 of December 4, 1977, as amended, (42 FR 64716), as follows:

1. *Section 3. Delegation of Authority.* Subsection 3.01r is added to read:

r. The Nuclear Non-Proliferation Act of 1978 (Pub. L. 95-242; 92 Stat. 120) and Executive Order 12058 of May 11, 1978.

2. The current subsection 3.01r is renumbered 3.01s.

STANLEY J. MARCUSS,
Acting Assistant Secretary for Industry and Trade.

[FR Doc. 78-18739 Filed 7-6-78; 8:45 am]

[3510-13]

National Bureau of Standards

NATIONAL BUREAU OF STANDARDS' VISITING COMMITTEE

Change in Meeting Date

This notice is given to advise of a rescheduling of the meeting of the National Bureau of Standards' Visiting Committee. The meeting was originally scheduled for June 28, 1978, at 9 a.m. and will now meet on July 13, 1978, at 8 a.m. in room 5851 at the Department of Commerce, Washington, D.C. A notice of meeting was previously published in the May 22, 1978, issue of the FEDERAL REGISTER (43 FR 21925).

Dated: July 6, 1978.

ERNEST AMBLER,
Director.

[FR Doc. 78-19033 Filed 7-6-78; 12:15 pm]

[3510-13]

SIMPLIFIED PRACTICE RECOMMENDATION

Intent To Withdraw

In accordance with section 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10), notice is hereby given of the intent to withdraw Simplified Practice Recommendation R 78-50, "Iron and Steel Roofing, Siding, and Ridge Roll."

It has been tentatively determined that this standard is technically inadequate, and in view of the existence of an up-to-date American Iron and Steel Institute's Steel Products Manual which adequately covers R 78-50, revision of this Simplified Practice Recommendation would serve no useful purpose.

Any comments or objections concerning this intended withdrawal of this standard should be made in writing to Standards Development Services, National Bureau of Standards, Washington, D.C. 20234, within 30 days after publication of this notice. The effective date of withdrawal will not be less than 60 days after the final notice of withdrawal. Withdrawal action terminates the authority to refer to a published standard as a voluntary standard developed under the Department of Commerce procedures from the effective date of withdrawal.

Dated: July 3, 1978.

ERNEST AMBLER,
Director.

[FR Doc. 78-18730 Filed 7-6-78; 8:45 am]

[3510-04]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications can be purchased from the National Technical Information Service (NTIS), Springfield, Va. 22161 for $4 ($8 outside North American Continent). Requests for copies of patent applications must include the Pat-Appl number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be di-

rected to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, 1900 Half Street SW., Washington, D.C. 20324

Patent 4,070,661: Photo Electronic Direction of Motion Indicator; filed February 10, 1976, patented January 24, 1978; not available NTIS.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545

Patent application 745,942: Magneto hydrodynamic Electrode; filed November 29, 1976.

Patent 4,057,678: Molten Salt Battery Having Inorganic Paper Separator; filed March 16, 1977, patented November 8, 1977; not available NTIS.

U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md. 20014

Patent application 850,810: Dual Circuit, Woven Artificial Capillary Bundle for Cell Culture; filed November 11, 1977.

Patent 4,006,413: Field Instrument for Measurement of AC Voltage Fluctuations; filed December 19, 1974, patented February 1, 1977; not available NTIS.

Patent 4,050,533: Powered Wheel Chair; filed June 22, 1976, patented September 27, 1977; not available NTIS.

Patent 4,053,952: Magnetic Fluid Actuated Control Valve, Relief Valve and Pump; filed April 8, 1977, patented October 18, 1977; not available NTIS.

Patent 4,073,194: Noise Chrono-Dosimeter System; filed October 8, 1976, patented February 14, 1978; not available NTIS.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets NW., Washington, D.C. 20240

Patent application 870,162: Ventilation System for Continuous Mining Machines; filed January 17, 1978.

Patent 4,053,575: Sulfur Recovery from H2S and SO2—Containing Gases; filed March 15, 1976, patented October 11, 1977; not available NTIS.

[3510-04]

U.S. DEPARTMENT OF THE NAVY, ASSISTANT CHIEF FOR PATENTS, OFFICE OF NAVAL RESEARCH, CODE 302, ARLINGTON, VA. 22217.

Patent application 846 091: Method and Means for Defocusing Engine Cavity Reflected Energy; filed October 27, 1977.

Patent application 851 243: Hydrogen-Oxygen Mixer; filed November 14, 1977.

Patent application 853 656: Single-Fiber Duplex Coupler; filed November 21, 1977.

Patent application 855 035: Supercorroding Alloys for Generation of Heat and Gas; filed November 25, 1977.

Patent application 855 633: Expanding Stabilizing Fin Cup; filed November 28, 1977.

Patent application 867 631: High Lateral Load Capacity, Free-Fall Deadweight Anchor; filed January 9, 1978.

Patent application 870 048: Constant Illumination Control System; filed January 16, 1978.

Patent application 870 387: Grinding and Polishing Tool; filed January 18, 1978.

Patent application 871 265: Laser Marksmanship Target; filed January 23, 1978.

Patent application 871 313: Image Stabilizer System for Stop-Action Playback; filed January 23, 1978.

Patent application 874 093: Passive High-Speed Automatic Shutter for Imaging Devices; filed January 31, 1978.

Patent application 876 297: Photochemical Separation of Metals in Solution by Precipitation Following Reduction or Oxidation; filed February 9, 1978.

Patent application 876 373: Laser Safety Goggles; filed February 9, 1978.

Patent application 876 447: Spiral-Passage-Honeycomb Chemical Converter-Heat Exchanger; filed February 9, 1978.

Patent 3 934 259: All-Sky Camera Apparatus for Time-Resolved Lightning Photography; filed December 9, 1974, patented January 20, 1976; not available NTIS.

Patent 4 011 418: Vibration Responsive Switch; filed October 18, 1963, patented March 8, 1977; not available NTIS.

Patent 4 012 321: Oxidation of Refractory Organics in Aqueous Waste Streams by Hydrogen Peroxide and Ultraviolet Light; filed March 25, 1975, patented March 15, 1977; not available NTIS.

Patent 4 012 613: Inertial Switch; filed October 18, 1963, patented March 15, 1977; not available NTIS.

Patent 4 025 848: Waveform Comparing Phasemeter; filed September 11, 1975, patented May 24, 1977; not available NTIS.

Patent 4 029 529: Crosslinked Carboxyl Containing Polymer and Nitrocellulose as Solid Propellant Binder; filed July 12, 1967, patented June 14, 1977; not available NTIS.

Patent 4 037 517: Fuze Activation Device; filed September 24, 1976, patented July 26, 1977; not available NTIS.

Patent 4 051 390: Parallel/Time-Shared Variable Time Delay Generator with Common Timing Control and Fast Recovery; filed June 18, 1976, patented September 27, 1977; not available NTIS.

Patent 4 051 437: Method and Apparatus for Semiconductor Profiling Using an Optical Probe; filed April 2, 1976, patented September 27, 1977; not available NTIS.

Patent 4 062 605: Portable Seating Apparatus; filed October 4, 1976, patented December 13, 1977; not available NTIS.

Patent 4 063 186: Broadband Millimeter Wave Amplifier; filed October 10, 1975, patented December 13, 1977; not available NTIS.

Patent 4 063 291: Apparatus and Method for Encoding and Decoding Digital Information; filed October 15, 1976, patented December 13, 1977; not available NTIS.

Patent 4 064 360: High Speed Digital Switch; filed July 6, 1976, patented December 20, 1977; not available NTIS.

Patent 4 066 234: Universal Shock and Vibration Mounts; filed January 23, 1974, patented January 3, 1978; not available NTIS.

Patent 4 066 878: Time-Domain Filter for Recursive Type Signals; filed March 29, 1976, patented January 3, 1978; not available NTIS.

Patent 4 067 392: Toxic Gas Control for RF Absorber Fires; filed May 24, 1976, patented January 10, 1978; not available NTIS.

Patent 4 067 860: N,N'-bis(3,4-dicyanophenyl) alkanediamide, Polyphthalocyanines, and Preparation Thereof; filed July 23, 1976, patented January 10, 1978; not available NTIS.

Patent 4 069 059: Silicon Nitride-Zirconium Silicate Ceramics; filed June 11, 1976, patented January 17, 1978; not available NTIS.

Patent 4 070 092: Active Waveguide Branch with Variable Synchronism; filed September 22, 1976, patented January 24, 1978; not available NTIS.

Patent 4 070 211: Technique for Threshold Control over Edges of Devices on Silicon-on-Sapphire; filed April 4, 1977, patented January 24, 1978; not available NTIS.

Patent 4 070 412: Method for Production of Acetylene by Lasar Irradiation; filed September 8, 1976, patented January 24, 1978; not available NTIS.

Patent 4 070 463: Antimotion Sickness Remedy; filed March 3, 1976, patented January 24, 1978; not available NTIS.

Patent 4 071 194: Means for Cooling Exhaust Nozzle Sidewalls; filed October 28, 1976, patented January 31, 1978; not available NTIS.

Patent 4 071 907: Radar Signal Processor Utilizing a Multi-Channel Optical Correlator; filed October 12, 1976, patented January 31, 1978; not available NTIS.

Patent 4 072 949: Range Gate Walk-Off of Compressive Radar; filed March 17, 1970, patented February 7, 1978; not available NTIS.

[FR Doc. 78-18742 Filed 7-6-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

SOLAR ENERGY POLICY

International Forum

AGENCY: U,S. Department of Energy (DOE).

ACTION: Notice of Public Meeting on Solar Energy Policy.

SUMMARY: DOE will hold a public meeting in Washington, D.C., on the international aspects of solar energy in response to the President's Order of a Domestic Policy Review on National Solar Strategy.

FOR FURTHER INFORMATION CONTACT:

Dr. Diane Gulbinowicz, DOE, Room A-138, Forrestal Building Washington, D.C. 20585, 202-252-5966 or 202-632-6570.

SUPPLEMENTARY INFORMATION: The President has ordered Cabinet departments and agencies to begin work on a Solar Policy Review in the Development of a National Solar Strategy. This review will be headed by the Secretary of Energy. The Solar Energy Domestic Policy Review is being performed by several interagency panels, each of which have responsibility for dealing with a specific area of United States solar policy. Among these, the International Panel will examine the potential for and the impacts of using solar technology abroad. The final report of the Panel will be incorporat-

ed into the response memorandum submitted by the Solar Policy Coordinating Committee in mid-August and will lead to policy options and recommendations for consideration by the President.

Specifically, the International Panel of the Solar Energy Policy Committee is to provide the President with:

(1) A sound analysis of the contribution which solar energy can make to U.S. and international energy demand, both in the short and in the longer term;

(2) A thorough review of the current Federal solar programs to determine whether they, taken as a whole, represent an optimal program for bringing solar technologies into widespread commercial use on an accelerated timetable;

(3) Recommendations for an overall solar strategy to pull together Federal, State and private efforts to accelerate the use of solar technologies.

In particular, the International Panel will address a range of issues concerning the global use of solar energy as related to a national strategy for accelerating the use of solar technologies. These will include:

(1) An evaluation of the prospects for commercialization of solar equipment and technology abroad;

(2) An evaluation of the financial demand for and constraints on international solar development;

(3) An evaluation of the benefits of existing and potential bilateral and multilateral solar R. & D. projects;

(4) An analysis of the effects of the U.S. solar market expansion overseas on both the U.S. balance of trade and our own domestic market development;

(5) A study of the foreign policy implications, including economic, social, political, environmental, and developmental aspects of global solar use, with particular emphasis on reducing world demand for other energy sources.

All interested persons are invited to present their views in writing or in person on the issues listed above. These views will be reported promptly to the Solar energy Policy Committee, a specially constituted Cabinet-level committee responsible for conducting the solar policy review. Each person participating will receive a summary of the opinions expressed at the meeting.

The meeting will be held on Monday, July 10, 1978, at the Department of Commerce Auditorium in Washington, D.C., located on 14th Street between Constitution and E Streets NW. The meeting will last from 9 a.m. to 9 p.m. Attendees should registered between 8:30-9 a.m. Those planning to attend should confirm their attendance prior to the day of the meeting by contacting Diane Gulbinowicz of the Franklin Institute at 202-252-5966.

AGENDA

9-9:20 a.m.—Opening remarks. Officials of the U.S. Department of Energy and the U.S. Department of State.
9:20-9:30—Seminar objectives and procedure.

I. GLOBAL PROSPECTS FOR SOLAR ENERGY

9:30-10:30—Panel presentations.
10:30-11—Audience response.

II. TECHNICAL COOPERATION—INTERNATIONAL R. & D.

11-12 noon—Panel presentations.
12-12:30—Audience response.
12:30-1:30—Lunch break.

III. INTERNATIONAL COMMERCIALIZATION/MARKETING

1:30-2:30—Panel presentations.
2:30-3—Audience response.

IV. DEMANDS OF INTERNATIONAL FINANCIAL RESOURCES

3-4—Panel presentations.
4-4:30—Audience response.

V. GLOBAL FOREIGN POLICY IMPLICATIONS

4:30-5:30—Panel presentations.
5:30-6—Audience response.
6-7:30—Dinner break.
7:30-9 p.m.—General discussion.

WRITTEN COMMENT PROCEDURES

Interested persons are invited to participate in the public meetings by submitting, to the address above, data, views, or arguments with respect to the subjects set forth in this notice.

Comments should be identified on the outside of the envelope and on documents submitted to DOE with the designation "Solar Policy Review."

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

PUBLIC MEETINGS

Any person who has an interest in this proceeding, or who is a representative of a group of persons having an interest, may make a telephone request for an opportunity to make an oral presentation. Such requests should be made by calling Diane Gulbinowicz at 202-252-5966.

The person making the request should briefly describe the interest concerned; if appropriate, state why she or he is a proper representative of the group that has such an interest; and give a phone number where she or he may be contacted.

DOE reserves the right to select the persons to be heard at these meetings, to schedule their respective presentations and to establish the procedures governing the conduct of the meetings. The length of each presentation may be limited, due to the number of persons requesting to be heard.

A DOE official will be designated to preside at the meetings. These will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the hearings, except during those periods when comments are requested from the floor. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she desires, to make a supplemental statement, which will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person attending the meeting who wishes to ask a question at the meeting may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for an answer.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

Transcripts of the meetings will be made and the entire record of the meetings, including the transcript, will be retained by DOE and made available for inspection at the Freedom of Information Office, Room 3116, 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. Any person may purchase a copy of the transcript from the transcribing reporter.

Issued in Washington, D.C., on June 30, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 78-18704 Filed 7-6-78; 8:45 am]

[3128-01]

SOLAR ENERGY POLICY

National Forum

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of a public meeting on solar energy policy.

SUMMARY: DOE has held a series of public meetings across the Nation in response to the President's order of a domestic policy review on national solar strategy. The final meeting of this series will be held in Washington, D.C., on July 13 at the GSA Auditorium, 1800 F Street NW.

FOR FURTHER INFORMATION OR REQUESTS CONTACT:

Mary Liebert, Office of Consumer Affairs, DOE, Room 4312, Federal

Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9021.

SUPPLEMENTARY INFORMATION: The President has ordered Cabinet departments and agencies to begin work on a solar policy review in development of a national solar strategy. This review will be headed by the Secretary of Energy.

The overall purpose of the solar policy review is to provide:

(1) A sound analysis of the contribution which solar energy can make to United States and international energy demands, both in the short and in the longer term;

(2) A thorough review of the current Federal solar programs to determine whether they, taken as a whole, represent an optimal program for bringing solar technologies into widespread commercial use on an accelerated timetable; and

(3) Recommendations for an overall solar strategy to pull together Federal, State, and private efforts to accelerate the use of solar technologies.

The specific areas to be included in the solar policy review are:

(1) An examination of each of the major areas of solar energy use (industry, building, agriculture, and transportation) and each solar technology (heating and cooling, thermal electric, intermediate temperature-systems, photovoltaics, biomass, wind, hydropower and ocean thermal) to determine technical or scientific needs relating to their commercial use, both short and long term;

(2) A review of current Federal research, development, and demonstration programs for solar technologies to determine whether they are structured appropriately to address the priorities and needs identified in area (1);

Identification of the institutional, economic, and environmental factors relating to the introduction and use of solar technologies and development of Federal policy options and strategies for dealing with barriers or problems identified;

(4) An evaluation of the appropriate Federal role in the commercialization of solar energy, including the particular contributions which the various Federal agencies can make to the commercialization process;

(5) An examination of the potential for the impacts of using solar technologies abroad; and

(6) A review of issues relating to—

(i) The regional diversity of solar resources,

(ii) The matching of solar equipment to end use requirements, and

(iii) The integrating of solar technology with the existing energy supply system.

To insure that the domestic policy review is responsive to the growing national interest in solar energy, the Department of Energy has sponsored a series of ten public meetings in June to receive comment from a broad spectrum of citizens, ranging from solar energy equipment manufacturers to State and local government officials to energy consumers. All interested persons are invited to present their views in writing and/or in person at the final July 13 public meeting on the issues listed above. These views will be reported promptly to the Solar Energy Policy Committee, a specially constituted Cabinet-level committee, which is responsible for conducting the solar policy review. Each person participating will receive a summary of the opinions expressed at the regional meetings.

PROPOSED AGENDA

8-9 a.m.—Registration (briefing for Federal panel members).
9-9:15—Opening remarks—Secretary, DOE.
9:15-10:45—Solar impact panel.
10:45-12 noon—Financing panel.
12-12:30—Student panel.
12:30-1:30—Break.
1:30-3—Regulations and incentives panel.
3-4:30—R. & D. evaluation panel.
4:30-6—Federal operations panel.
6-7:30—Break.
7:30-10 p.m.—Individual testimony.

WRITTEN COMMENT PROCEDURES

Interested persons are invited to participate in the public meeting by submitting data, views, or arguments with respect to the subjects set forth in this notice to the address above.

Comments should be identified on the outside of the envelope and on documents submitted with the designation "Solar Policy Review." If possible, 15 copies should be submitted by close of business on the day following the meeting. Written comments should be sent to: Department of Energy, Office of Consumer Affairs, Forrestal Building, Room 8G082, Washington, D.C. 20585.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

ORAL PRESENTATIONS; CONDUCT OF MEETING

Any person who has an interest in this proceeding or who is a representative of a group of persons that has an interest may make a telephone request for an opportunity to make an oral presentation. Such a request should be made by calling Mary Liebert at 202-566-9021.

The person making the request should briefly describe the interest concerned; if appropropriate, state why she or he is a proper representative of the group of persons that has such an interest; and give a phone number where she or he may be contacted.

DOE reserves the right to select the persons to be heard at the meeting to schedule their respective presentations and to establish the procedures governing the conduct of the meeting. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the meeting. This will not be judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing except during those periods when comments are requested from the floor. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she desires, to make a supplemental statement which will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person attending the meeting who wishes to ask a question at the meeting may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

Transcripts of the meeting will be made and the entire record of the meeting, including the transcript, will be retained by DOE and made available for inspection at the Freedom of Information Office, Room 3116, 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. Any person may purchase a copy of the transcript from the transcribing reporter.

Issued in Washington, D.C., on June 30, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 78-18703 Filed 7-6-78; 8:45 am]

[3128-01]

Economic Regulatory Administration

[Docket Nos. 78-002NG, 78-003NG]

NORTHERN NATURAL GAS CO. AND GREAT LAKES GAS TRANSMISSION CO.

Order on Consolidation and Acceptance of Interveners

These proceedings involve two applications to import natural gas pursuant to section 3 of the Natural Gas Act. Northern Natural Gas Co. (Northern) seeks authority to import synthetic

natural gas (SNG), by displacement, from Canada (ERA Docket No. 78-002NG); Great Lakes Gas Transmission Co. (Great Lakes) (ERA Docket No. 78-003NG), seeks authority to transport and deliver to Northern up to 75,000 Mcf per day of displaced natural gas, in concert with Northern's requirements, during the period November 1 through March 31 (winter period) each year for a period of 5 years beginning November 1978, but not to exceed 10 Bcf of 1,000 British thermal unit (Btu) equivalent annually. Northern states that it has contracted with Union Gas Limited of Chatham, Ontario, Canada (Union), to purchase a volume of gas which will equate to the aggregate Btu content of the SNG Union has contracted for and will receive from Petrosar Limited (Petrosar) of Corunna, Ontario, Canada. Northern would accept delivery of the gas by displacement in Minnesota from Great Lakes. Delivery by Great Lakes to Northern would be made on an Mcf for Mcf basis and accomplished by reducing deliveries that Great Lakes makes to Union's supplier, TransCanada Pipe Line Limited (TransCanada) at the United States-Canadian Boundary near St. Clair, Michigan. Great Lakes currently transports up to 815,000 Mcf per day for TransCanada.

In response to the Notice of Receipt of Application to Import Synthetic Natural Gas into the United States from Canada by Northern Natural Gas Co. and Invitation to Submit Petitions to Intervene (78-002NG) published in the FEDERAL REGISTER on April 18, 1978 (43 FR 16380), five (5) companies petitioned to intervene. Four (4) companies, Minnesota Gas Co., St. Croix Valley Natural Gas Co., Inc., Iowa Illinois Gas & Electric Co., and Northern Illinois Gas Co., filed timely petitions to intervene (by May 10, 1978). North Central Public Service Co. filed one day out of time on May 11, 1978.

Northern Illinois Gas Co., was the only entity to respond to the Notice of Receipt of Petition to Amend its Authorizations to Transport and Deliver Canadian Natural Gas by Displacement by Great Lakes Gas Trasmission Co. and Invitation to Submit Petitions to Intervene (78-003NG) published in the FEDERAL REGISTER on May 19, 1978 (43 FR 21715).

ERA has concluded that it would not be consistent with a thorough review of the applications, nor would it serve any useful purpose, to exclude North Central Public Service Co. from participating in these proceedings only because its motion for intervention was filed one (1) day after May 10, 1978.

All petitions requesting intervention in the instant Dockets have provided adequate justification for granting such status.

Therefore, all petitions for intervention that have heretofore been filed are hereby granted.

In order that the instant dockets may be processed as expeditiously as possible and insofar as these are common issues and elements of interest in the above-stated proceedings, the ERA hereby consolidates the applications of Northern and Great Lakes in a single proceeding, under consolidated ERA Docket No. 78-002NG, et al., Northern Natural Gas Co./Great Lakes Gas Transmission Co. As a result of this action both dockets may be acted on simultaneously and we hereby permit any intervener in ERA Docket No. 78-002NG or ERA Docket No. 78-003NG to intervene in the consolidated proceeding and to have all the rights of a party in the consolidated proceeding.

Any intervener who wishes to comment on this Order may do so by filing comments with the Economic Regulatory Administration, Room 6318, 2000 M Street NW., Washington, D.C. 20461, in accordance with the Rules of Practice and Procedure (18 CFR 1.8) and the Regulations under the Natural Gas Act (18 CFR 157.10). Comments will be accepted for consideration if filed no later than 4:30 p.m., July 14, 1978.

Issued in Washington, D.C., on June 29, 1978.

DAVID J. BARDIN,
Administrator,
Economic Regulatory Administration.

[FR Doc. 78-18745 Filed 7-6-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket Nos. RI77-109, RI77-110, etc.]

TEXAS ENERGIES, INC. (OPERATOR), ET AL.

Order Granting Special Relief and Amending Certificate to Delete Acreage

JUNE 27, 1978.

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 (FPC) 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 12, 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.

On June 29, 1977, Texas Energies, Inc. (Operator), et al. (Texas Energies) filed in Docket No. RI77-109 a petition for special relief pursuant to § 2.76 of the Commission's general policy and interpretations (18 CFR 2.76) with respect to a sale of natural gas to Colorado Interstate Gas Co. (CIG) from the Adams 1-E well located in Meade County, Kans.

On July 12, 1977, Texas Energies filed in docket No. RI77-110 a petition for special relief pursuant to § 2.76 with respect to a sale of natural gas to CIG from the Adams 1-29 well located in Meade County, Kans.

Texas Energies, Inc. was issued a small producer certificate in docket No. CS72-428 on February 3, 1972. Texas Energies, Inc. is the operator of the two wells, and filed the petitions for special relief on behalf of itself and the other working interest owners who comprise the 100-percent working interest ownership in the two wells.

Effective January 1, 1976, Texas Energies acquired its interest in the two wells from Glenn F. Thomas, d.b.a. Thomas Petroleum (Thomas). Thomas had been making sales of gas from the two wells to CIG pursuant to a base contract dated March 6, 1959. Certificate authorization for those sales was granted in Docket No. G-18513. On May 9, 1975, Thomas filed an application for a small producer certificate, and by letter order dated July 15, 1975, Thomas was issued a temporary small producer certificate in docket No. CS75-478.

The Adams 1-E well is currently shut-in. In order to restore the well to production, Texas Energies proposes to rework the well and to install artificial lift equipment and equipment to maintain continuous compression. Texas Energies requests authorization to collect a rate of 97 cents per Mcf for the sales to CIG from the Adams 1-E well to compensate for the proposed

work. With respect to the Adams 1-29 well, Texas Energies states that the well is producing large quantities of water, and will have to be abandoned unless mechanical means are provided for raising and disposing of the water. Texas Energies proposes to rework the well and to install artificial lift equipment. In order to compensate for the proposed work, Texas Energies requests authorization to collect a rate of 70 cents per Mcf for the sales to CIG from the Adams 1-29 well. On June 15, 1977, Texas Energies and CIG executed an amendment to the March 6, 1959, contract by which CIG agreed to pay the requested rates for the sales from the two wells in return for Texas Energies' performance of the proposed work.

Notices of Texas Energies' petitions for special relief were issued on July 22, 1977, and appeared in the FEDERAL REGISTER on July 29, 1977, at 42 FR 38639. No protests or petitions to intervene have been filed.

Texas Energies proposes to invest a total of $75,354 to perform the operations necessary to restore the Adams 1-E well to production. Based on data submitted by Texas Energies, staff has determined that Texas Energies' remaining net book investment in the well as of June 1, 1977, was $28,608. Staff estimates that production expenses over the next 9 years will total $132,770, based on current estimated annual operating expenses of $11,016 escalated by an inflation factor of 5 percent for the first 5 years, and including $17,340 for ad valorem taxes and a $500 compressor overhaul every 3 years. Staff also estimates that a total of 346,800 Mcf of gas reserves remain to be produced from the subject well over the next 9 years. Using the above costs and reserves in a traditional cost study,[1] Staff has determined that Texas Energies' requested rate of 97 cents per Mcf for sales of gas from the Adams 1-E well is cost-supported.

Texas Energies proposes to invest a total of $25,800 to perform the proposed operations on the Adams 1-29 well. Based on data submitted by Texas Energies, staff has determined that Texas Energies' remaining net book investment in the well as of June 1, 1977, was $22,727. Staff estimates that production expenses over the next 9 years will total $140,912, based on current estimated annual operating expenses of $12,000 escalated by an inflation factor of 5 percent for the first 5 years, and including $16,260 for ad valorem taxes. Staff also estimates that a total of 325,200 Mcf of gas reserves remain to be produced from the subject well over the next 9 years. Using the above costs and reserves in a traditional cost study,[2] staff has determined that Texas Energies' requested rate of 70 cents per Mcf for sales of gas from the Adams 1-29 well is cost-supported.

Upon consideration of the data submitted and staff's analysis thereof, we conclude that it is in the public interest to grant Texas Energies' petitions for special relief.

Since Thomas' rate schedules have not been canceled and its original certificates have not been terminated, we will herein delete from dedication under the certificate issued in Docket No. G-18513 the acreage comprising the Adams 1-E and Adams 1-29 leases which Texas Energies has acquired.

The Commission orders: (A) The petition for special relief filed by Texas Energies in Docket No. RI77-109 on June 29, 1977, is hereby granted.

(B) The petition for special relief filed by Texas Energies in Docket No. RI77-110 on July 1, 1977, is hereby granted.

(C) Texas Energies is authorized to collect a total rate of 97 cents per Mcf at 14.65 psia for the sale of natural gas to CIG from the Adams 1-E well, located in Meade County, Kans., effective as of the date of issuance of this order or the date of completion of the proposed work and the installation of compression facilities as more fully described herein and in Texas Energies' petition, whichever is later, subject to the following conditions:

(1) Within 30 days of the effective date of the rate authorized herein for sales of gas from the Adams 1-E well, Texas Energies shall file a statement signed by CIG that the proposed work and the installation of compression facilities have been completed to CIG's satisfaction;

(2) Within 30 days of the date of issuance of this order, Texas Energies shall file in Docket No. RI77-109 an appropriate notice of rate change in accordance with section 154.94 of the Commission's regulations under the Natural Gas Act (18 CFR 154.94) reflecting the rate authorized herein for sales of gas from the Adams 1-E well.

(D) Texas Energies authorized to collect a total rate of 70 cents per Mcf at 14.65 psia for the sale of natural gas to CIG from the Adam 1-29 well, located in Meade County, Kans., effective as of the date of issuance of this order or the date of completion of the proposed work as more fully described herein and in Texas Energies' petition, whichever is later, subject to the following conditions:

(1) Within 30 days of the effective date of the rate authorized herein for sales of gas from the Adams 1-29 well, Texas Energies shall file a statement signed by CIG that the proposed work has been completed to CIG's satisfaction;

(2) Within 30 days of the date of issuance of this order, Texas Energies shall file in Docket No. RI77-110 an appropriate notice of rate change in accordance with § 154.94 of the Commission's regulations reflecting the rate authorized herein for sales of gas from the Adams 1-29 well.

(E) The acreage comprising the Adams 1-E lease (all of section 10, township 35 south, range 30 west, in Meade County, Kans.) and the Adams 1-29 lease (the west half of section 29 and the north half of section 32, township 34 south, range 29 west, in Meade County, Kans.) is hereby deleted from dedication under the certificate issued in Docket No. G-18513.

By the Commission.

KENNETH F. PLUMB,
Secretary.

APPENDIX A—

Texas Energies Inc., Docket No. RI77-109, Adams 1-E lease, Meade County, Kans.

[Unit cost of gas]

Line No. and item (a)	Amount (b)
1. Net working interest volumes:	
2. Gas—Mcf at 14.65 psia[1]	260,100
3. Liquids	0
4. Cost of production:	
5. Return on rate base at 15 pct[2]	$65,649
6. DDA[3]	103,962
7. Production expense[4]	132,770
8. Subtotal	302,381
9. Regulatory expense[5]	260
10. Total cost of production	302,641
11. Unit cost of gas (¢/Mcf):	
12. Cost of production[6]	1.16
13. Production tax[6]	0
14. Total unit cost	1.16

[1] 346,800 Mcf times 0.75 net working interest.
[2] Line 15 of sheet 3 times 0.15 times 9 year production life.
[3] From line 7, sheet 2.
[4] Includes estimated total operating expense of $114,430, ad valorem tax of $17,340 and compressor overhaul expense of $500 every 3 years.
[5] Line 2 times 0.1 cent per M cf per opinion No. 749.
[6] Line 10 divided by line 2.

NOTE.—The above cost is based on representations of the applicant contained in his filings. The volumes are based on staff's recoverable reserves of 346,800 Mcf of gas. The production curve on sheet 3 is expected.

Texas Energies Inc., Docket No. RI77-109, Adams 1-E lease, Meade County, Kans.

[Investment]

Line No. and item (a)	Amount (b)
1. Investment:	
2. Remaining net book value June 1, 1977	$28,608
3. Compressor installation	51,329
4. Rework well	24,025
5. Total investment	103,962
6. Less salvage value	0
7. Depreciable investment	103,962
8. Depreciation per unit of production [1]	0.399700

[1] Line 7 divided by 260,100 Mcf.

[1] See appendix A attached hereto.
[2] See appendix B attached hereto.

Texas Energies Inc., Docket No. RI77-109, Adams 1-E lease, Meade County, Kans.

[Average investment and annual rate base]

Line No. and year (a)		Annual N.W.I. production (Mcf) (b)	Beginning of year investment (c)	Depreciation [1] (d)	End of year investment (e)	Average investment [2] (f)
	Average investment:					
1.	1	37,350	$103,962	$14,929	$89,033	$96,498
2.	2	35,100	89,033	14,029	75,004	82,018
3.	3	32,400	75,004	12,950	62,054	68,529
4.	4	30,600	62,054	12,231	49,823	55,939
5.	5	28,350	49,823	11,331	38,492	44,158
6.	6	26,550	38,492	10,612	27,880	33,186
7.	7	24,750	27,880	9,893	17,987	22,934
8.	8	22,950	17,987	9,173	8,814	13,401
9.	9	22,050	8,814	8,814	0	4,407
10.	Total	260,100		103,962		421,070
11.	Average annual investment [3]					46,785
12.	Annual rate base:					
13.	Average annual investment					46,785
14.	Average annual working capital allowance [4]					1,844
15.	Total annual rate base					48,629

[1] Column (b) times line 8 of sheet 2.
[2] Column (c) plus column (e) divided by 2.
[3] Column (f) of line 10 divided by 9-year production life.
[4] 0.125 times line 7 of sheet 1 divided by 9-year production life.

APPENDIX B

Texas Energies Inc., Docket No. RI77-110, Adams 1-29 lease, Meade County, Kans.

[Unit cost of gas]

Line No. and item (a)	Amount (b)
1. Net working interest volumes:	
2. Gas Mcf at 14.65 p.s.i.a. [1]	249,490
3. Liquids	0
4. Cost of production:	
5. Return on rate base at 15 pct. [2]	$30,752
6. DD&A [3]	48,527
7. Production expense [4]	140,912
8. Regulatory expense [5]	249
9. Total	220,440
10. Unit cost of gas (¢/Mcf):	
11. Cost of production [6]	88.36
12. Production tax	0
13. Total unit cost	88.36

[1] 325,200 Mcf times 0.7671875 net working interest.
[2] Line 15 of sheet 3 times 0.15 times 9 year production life.
[3] From line 7 sheet 2.
[4] Includes estimated operating expense of $12,000 escalated 5 pct. for the first 5 years plus ad valorem taxes of $16,260.
[5] Line 2 times 0.1¢/Mcf per opinion No. 749.
[6] Line 9 divided by line 2.

NOTE.—The above cost is based on representations of the applicant contained in his filings. The volumes are based on staff's recoverable reserves of 325,200 Mcf of gas. The production shown on sheet 3 is expected.

Texas Energies Inc., Docket No. RI77-110, Adams 1-29 lease, Meade County, Kans.

[Investment]

Line No. and item (a)	Amount (b)
1. Investment:	
2. Remaining net book value June 1, 1977	$22,727
3. Compressor installation	0
4. Rework well	25,800
5. Total investment	48,527
6. Less salvage value	0
7. Depreciable investment	48,527
8. Depreciation per unit of production [1]	0.194505

[1] Line 7 divided by 249,490 Mcf.

Texas Energies Inc., Docket No. RI77-110, Adams 1-29 lease, Meade County, Kans.

[Average investment and annual rate base]

Line No. and year No. (a)		Annual N.W.I. production (Mcf) (b)	Beginning of year investment (c)	Depreciation [1] (d)	End of year investment (e)	Average investment [2] (f)
	Average investment:					
1.	1	39,587	$48,527	$7,699	$40,828	$44,678
2.	2	35,904	40,828	6,984	33,844	37,336
3.	3	33,143	33,844	6,446	27,398	30,621
4.	4	29,460	27,398	5,730	21,668	24,533
5.	5	26,698	21,668	5,193	16,475	19,072
6.	6	23,936	16,475	4,656	11,819	14,147
7.	7	22,095	11,819	4,298	7,521	9,670
8.	8	20,254	7,521	3,940	3,581	5,551
9.	9	18,413	3,581	3,581	0	1,791
10.	Total	249,490		48,527		187,399
11.	Average annual investment [3]					20,822
12.	Annual rate base:					
13.	Average annual investment					20,822
14.	Average annual working capital allowance [4]					1,957
15.	Total annual rate base					22,779

[1] Column (b) times line 8 of sheet 2.
[2] Column (c) plus column (e) divided by 2.
[3] Column (f) of line 10 divided by 9-year production life.
[4] 0.125 times line 7 of sheet 1 divided by 9-year production life.

[FR Doc. 78-18556 Filed 7-6-78; 8:45 am]

[6740-02]

[Docket Nos. CI77-534, etc.]

UNION OIL COMPANY OF CALIFORNIA, ET AL.

Findings and Order After Statutory Hearing Issuing Certificates of Public Convenience and Necessity

JUNE 27, 1978.

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.

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.

Each applicant listed on the tabulation attached hereto requests a certificate to make sales of gas at the national rate from various blocks in the Offshore Louisiana Federal Domain, all as more fully set forth herein and in each application.

Kerr-McGee Corp. (K-M) proposes sales to Natural Gas Pipeline Co. of America (Natural) from block 34, East Cameron area, in docket No. CI78-48 and General American Oil Co. of Texas proposes sales to Columbia Gas Transmission Corp. (Columbia Gas) from the same block in docket No. CI78-317.

Union Oil Co. of California (Union) and Texas Eastern Exploration Co. (Exploration) propose sales to Texas Eastern Transmission Corp. (Texas Eastern) from Vermilion block 64 in Docket Nos. CI77-534 and CI78-103, respectively. Exploration also proposes sales to Texas Eastern from Vermilion block 60 in Docket No. CI78-104.

K-M's contract provides that Natural will compress the oil well gas and, when the natural pressures of the gas wells decline, Natural will lower its line pressure, install compression or release the gas. General American's contract provides that Columbia Gas will purchase and install compression when necessary and will reimburse General American for operating and maintaining such facilities. Additionally, both of the contracts provide that the buyer will dehydrate the gas. Natural will be reimbursed by K-M for the separation of K-M's liquids.

The contracts submitted by Union and Exploration provide that the buyer will lower its line pressure or install compression when natural well pressures decline.

Additionally, all of the contracts generally require the buyer to transport the producers' liquids at no charge unless the FERC establishes a charge for such service or unless the FERC requires the buyer to bear costs associated with the transportation of the producers' liquids.

The Commission notes its concern with these contractual provisions which appear to be a developing trend for producers to attemp to shift an increasing amount of production related expenses to the pipeline purchasers. This is being done without a concurrent reduction in the rate charged by the producers for the gas. In effect, the producers may be attempting to increase their allowed rate of return received for each Mcf of gas sold above that rate which was found just and reasonable in opinion No. 770-A. In that price determination, the FPC took into account an allowance for production expenses, including those associated with processing and conditioning the gas. To permit these costs to be borne by the gas purchaser would be contrary to the justification for the just and reasonable rate as determined in opinion No. 770-A. The Commission cannot find that such a shift of production costs to the purchaser can be permitted under Section 4 of the Natural Gas Act, in the absence of a showing, supported by record evidence, that these additional costs should be carried by the gas purchaser and that to do so would not be in contravention of the price established in opinion No. 770-A. Alternatively, an application for special relief would have to be pursued to permit the producer to recover these costs in excess of the determined national rate.

Accordingly, we will issue certificates at the applicable national rate subject to opinion No. 770, as amended, and any further orders issued thereunder. However, applicants and the purchasers are advised that issuance of the certificates and acceptance of the related rate schedules do not constitute approval of such contractual provisions. In the event the purchaser incurs costs associated with processing, dehydration, compression or other conditioning of the subject gas and seeks to include these costs in its rates, the purchaser will be required to prove that these costs have not been compensated for in the applicable national ceiling rate. Applications for rehearing have been filed in connection with the imposition of a similar condition in "Phillips Petroleum Co.", Docket No. CI77-412, "United Gas Pipe Line Co.", Docket No. CP77-558, and "Michigan Wisconsin Pipe Line Co.", Docket No. CP77-577. The attachment of this condition here is subject to whatever action is taken by the Commission in those cases. In each case, the Commission has granted rehearing solely for the purpose of further consideration.

Further, since the purchaser's customers do not recieve any benefits from the transportation of the producers' liquids, there is no justification to make them bear the entire cost of the purchaser's transmission facilities. Therefore, the purchaser is advised that when the cost of its transmission facilities are included in its rates, the purchaser will be required to allocate the cost of such facilities between the transportation of gas and the transportation of liquids and demonstrate that such costs have been properly allocated.

The furnishing of separation facilities for the producers' liquids by the pipeline presents an entirely different issue because the production expense allowance included in the national rate is intended to compensate for producer facilities located on the lease and associated with gas production. The benefits of any separation facilities are derived solely by the producers and not by the pipeline's customers. Therefore, we believe there is no justification to require the costs of such facilities to be borne by the pipeline's natural gas customers. Accordingly, each purchaser is further advised that the costs of separation facilities for the producers' liquids cannot be included in its rates in any manner.

Each related contract contains impermissible pricing provisions. Accordingly, section 154.93 of the Commission's regulations will be waived to the extent necessary to permit the filing of each proposed rate schedule.

K-M's contract permits it to withdraw up to 25 percent of the gas for its own use; Union's contract reserves and excepts up to 20 percent of the gas for its own use. This Commission is required, prior to the transportation of any reserved gas, to issue a certificate of public convenience and necessity authorizing that transportation. In Opinion No. 10, "Tenneco Oil Co., et al.", Docket No. CI75-45, et al., issued March 20, 1978, this Commission stated that it would no longer consider applications for authorization to transport reserved interest gas. The policy set out in that opinion will be applicable to the reservation clause contained in K-M's and Union's contracts.

K-M's interest in block 34 is committed to an advance payment agreement

dated July 3, 1975. Order No. 529 issued on June 17, 1975, requires advance payment agreements executed after June 17, 1975, to provide that the pipeline will have first call on the gas under a long-term contract which is for a minimum initial term of 15 years or the life of the reserves, whichever is lesser, in order for advances to receive rate base treatment. The contract submitted as K-M's proposed rate schedule provides for a primary term of only 10 years. Accordingly, K-M will be required to amend the contract so that the term will be consistent with order No. 529.

Further, the contract submitted by K-M requires the buyer to take, or pay for if not taken, a volume of gas well gas equal to a percentage of the maximum volume available. During the first 2 years, the percentage in the contract is 100 percent. Although the contract seems to comply with section 154.103 of the regulations since the buyer has 5 years to make up any deficiencies, we believe that when the 5 year make-up period is considered with the provisions establishing the take-or pay volumes for the first 2 years, the contract violates § 154.103 because the buyer is unable to make up any deficiencies which occur in the first 2 years. Accordingly, K-M will be required to amend its contract to that the contracts complies with § 154.103 of the regulations.

General American's contract provides that seller may use the gas in cycling, repressuring or related operations and that the term will be extended until buyer has received the volumes deferred due to the use of gas in seller's operations. However, the term will not be extended more than 5 years. The contracts submitted by Union and Exploration permit the seller to use gas for gas lift operations, repressuring, pressure maintenance or cycling operations and provide that the term of the contract will be extended for a period of time sufficient to enable buyer to receive the deferred volumes but in no event will the time be extended in excess of 50 percent of the time the gas was being used by seller. Consistent with our order issued on November 29, 1977 in docket Nos. CI77-490, et al., General American, Union and Exploration will be required to eliminate such restrictions from their contracts.

The gas involved in docket Nos. CI77-534, CI78-48 and CI78-103 is subject to advance payment agreements. To date, none of the pipelines has made an advance payment after November 5, 1976, which has received rate base treatment. However, to assure that the carrying charge credit will be promptly imposed in the event any advance payments are made and included in the buyer's rates in the future, each buyer will be required to advise the Commission in writing in the event it makes any advances to the subject producers after November 5, 1976.

K-M did not file the waiver of refund credits and contingent escalations required by § 2.56a(i) of the rules. Accordingly, K-M will be required to submit such waiver.

After due notice by publication in the FEDERAL REGISTER, no protests or petitions to intervene have been filed.

At a hearing, held on June 21, 1978, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and petitions and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds. (1) Each applicant herein is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission or will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and will, therefore, be a "natural-gas company" within the meaning of the Natural Gas Act upon the commencement of service under the authorization hereinafter granted.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications in this proceeding, will be made in interstate commerce subject to the jurisdiction of the Commission; and such sale by applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

(3) Each applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission.

(4) The sales of natural gas by applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity; and certificates therefor should be issued as herinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the FERC gas rate schedules related to the authorizations hereinafter granted should be accepted for filing to be effective on the date of initial delivery.

The Commission orders. (A) Certificates of public convenience and necessity are issued in docket Nos. CI77-534, CI78-48, CI78-103, CI78-104 and CI78-317 subject to opinion No. 770, as amended, and any further orders issued thereunder and conditioned to the lesser of the contract rate or the national rate applicable to the commencement date of each well involved.

(B) The grant of the certificates issued in ordering paragraph (A) above shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's regulations thereunder and is without prejudice to any findings or orders which have been or which may hereafter be made by the Commission in any proceedings now pending or hereafter instituted by or against applicants. Further, our actions in this proceeding shall not foreclose or prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. The grant of the certificates aforesaid for service to the particular customers involved does not imply approval of all of the terms of the contracts, particularly as to the cessation of the service upon termination of said contracts, as provided by section 7(b) of the Natural Gas Act. The grant of the certificates aforesaid shall not be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(C) Section 154.93 of the regulations is hereby waived to the extent necessary to permit the filing of the proposed rate schedules. Each applicant is advised that the granting of such waiver does not constitute approval of such provisions and any rate increase based thereon to the extent it is inconsistent with the provisions of § 154.93 of the regulations is subject to rejection.

(D) The related rate filings as designated on the tabulation are accepted to be effective as of the date of initial delivery and each applicant is required to advise the Commission in writing of such date within 10 days thereof.

(E) Each applicant is required to submit a revised billing statement for each rate schedule, within 30 days from the date of initial delivery thereunder, which clearly reflects the components of the authorized rate in the event the previously filed billing statement does not reflect the national rate in effect when deliveries commence.

(F) Each applicant is advised that the authorized rate cannot be changed without an appropriate filing under § 154.94 of the Commission's regulations.

(G) Issuance of the certificates and acceptance of the related schedules do not constitute approval of the provisions discussed herein. In the event the purchaser incurs costs associated with processing, dehydration, com-

pression or other conditioning of the subject gas and seeks to include these costs in its rates, the purchaser will be required to prove that these costs have not been compensated for in the applicable national ceiling rate. This condition is subject to whatever action is taken by the Commission on rehearing in docket Nos. CI77-412, CP77-558 and CP77-577.

(H) Each purchaser is advised that the costs associated with facilities constructed and utilized to transport the producer's liquids must be allocated to the transportation of liquids and natural gas consumers must not be required to bear such costs.

(I) Each purchaser is advised that the cost of separation facilities for the producers' condensate may not be included in its rates in any manner.

(J) Pursuant to order No. 539-B, "Order Clarifying Prior Orders And Amending Section 157 of the Commission's Regulations Under the Natural Gas Act," docket No. RM76-8 (issued July 30, 1976), the Commission's regulations were amended to include new section 157.41, which requires the following language be inserted as a condition in all certificates of public convenience and necessity issued on or after July 30, 1976:

All persons making jurisdictional sales pursuant to the authority granted by this certificate are hereby given notice that the contractual obligations between the buyer and the seller are incorporated into certificate obligations, and that the certificate is further conditioned to require that the seller shall observe the standard of a prudent operator to develop and maintain deliverability from reserves dedicated hereunder.

This provision is void unless the decision of the United States Court of Appeals for the Fifth Circuit in *"Shell Oil Company, et al.* v. *F.E.R.C."*, Nos. 76-3066, *et al.*, decided January 20, 1978, which reversed in Commission's order No. 539-B, is vacated upon further judicial review.

(K) In the event the purchaser makes advance payments to the subject producers after November 5, 1976, the purchaser shall notify the Commission in writing of such advance within 10 days thereof.

(L) Applicant in docket No. CI78-48 shall submit the written waiver required by § 2.56a(i) of the rules within 30 days from the date of initial delivery.

(M) K-M and Union are advised that issuance of certificates and acceptance of the rate schedules does not constitute approval of the reservation of gas. K-M and Union are also advised that if a pipeline is authorized to transport and/or exchange their reserved gas, a concomitant filing under section 7(b) of the Natural Gas Act will not be required with regard to such volumes of reserved gas which the pipeline is authorized to transport and/or exchange. In the event a pipeline company is not authorized to transport or exchange any reserved gas, sales must continue until the producer applies for and obtains Section 7(b) abandonment authorization.

(N) K-M shall submit, within 45 days from the date of the order, three copies of a contract amendment so that the take-or pay provisions comply with the spirit and intent of § 154.103 of the regulations.

(O) Exploration, Union and General American shall submit, within 45 days from the date of the order, three copies of a contract amendment which eliminates the contractual provision limiting the period in which buyer may receive volumes of gas deferred due to seller's operations.

(P) The certificates issued herein will not be effective until certificates have been issued authorizing the transportation and/or exchange to enable the buyer to receive the gas.

(Q) K-M shall submit a contract amendment, within 45 days from the date of the order, which amends the term so that it complies with the minimum term required by Order No. 529.

By the Commission.

KENNETH F. PLUMB,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	FPC gas rate schedule: Description and date of document	Number	Supp.
CI77-534, A, June 2, 1977	Union Oil Co. of California.	Texas Eastern Transmission Corp., block 64 field, Vermilion area, offshore Louisiana.	Contract May 9, 1977 (1 2)	242	
CI78-48, A, Oct. 14, 1977 [6]	Kerr-McGee Corp	Natural Gas Pipeline Co. of America, block 34, East Cameron area, offshore Louisiana.	Contract Sept. 20, 1977 (1 3)	150	
CI78-103, A, Nov. 2, 1977 [7]	Texas Eastern Exploration Co.	Texas Eastern Transmission Corp., block 64 field, Vermilion area, offshore Louisiana.	Contract June 15, 1977 (1 2)	15	
CI78-104, A, Nov. 2, 1977 [7]	....do	Texas Eastern Transmission Corp., block 60 field, Vermilion area, offshore Louisiana.	Contract Aug. 8, 1977 (1 4)	16	
CI78-317, A, Jan. 19, 1978.	General American Oil Co. of Texas.	Columbia Gas Transmission Corp., block 34, East Cameron area, offshore Louisiana.	Contract Dec. 29, 1977 (1 5)	109	

[1] Date of initial delivery.
[2] Provides that term will be 20 years; commits down to reservoir from 9,134 to 9,175 feet.
[3] Provides that term will be 10 years; limits commitment to specified wells.
[4] Provides that term will be 20 years; commits down to 9,418 feet.
[5] Provides that primary term will be 10 years; commits specific reservoirs.
[6] Supplemented on Oct. 19, 1977.
[7] Buyer and seller are affiliated.

A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total succession. F—Partial succession.

[FR Doc. 78-18557 Filed 7-6-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

APPLICATIONS FOR EXCEPTION FILED BY CRUDE OIL PRODUCERS

Pre-Hearing Conference

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of public prehearing conference.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy (DOE) hereby gives notice of a prehearing conference to be held to discuss the procedures that will apply and the type of information that should be prepared in connection with two public hearings that will be held in Washington, D.C. and Houston, Tex. The public hearings are designed to provide the DOE with suggested modifications with respect to the analysis of exception applications filed (i)

by crude oil producers to recover increased operating costs and (ii) by crude oil producers contemplating certain investment projects.

DATE: Conference: July 12, 1978, Washington, D.C., 10:00 a.m.

ADDRESS: Conference location: Department of Energy, Office of Hearings and Appeals, 2000 M Street NW., Room 2105, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Debra Kidwell, Office of Public Hearing Management, 2000 M Street NW., Room 2313, Washington, D.C. 20461, 202-254-8846.

Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 2000 M Street NW., Room 8014, Washington, D.C. 20461, 202-254-9681.

SUPPLEMENTARY INFORMATION: On June 19, 1978, the Office of Hearings and Appeals of the Department of Energy issued a notice of public hearing and solicitation of written comments in connection with a review of the standards which the DOE presently applies in granting exception relief (i) to crude oil producers that seek to recover increased operating costs and (ii) to producers who are contemplating certain crude oil investment projects. As the June 19 notice indicated, the Office of Hearings and Appeals has scheduled public hearings on August 10, 1978 in Houston, Tex. and on August 16, 1978 in Washington, D.C., to receive comments on the standards which should govern the analysis of exception applications filed by crude oil producers in the two situations described above.

Following the publication of the June 19 notice, the Office of Hearings and Appeals received requests for guidance as to the type of presentation and data that would be most useful for the agency to receive at the Houston and Washington, D.C. public hearings. In order to provide interested persons with that type of guidance, the Office of Hearings and Appeals has scheduled a prehearing conference to be held at 10 a.m., July 12, 1978, at 2000 M Street NW., Room 2105, Washington, D.C. 20461. The conference will be informal in nature and will be open to the public. For further information regarding the July 12 conference, contact Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, at the address listed at the beginning of this notice.

Issued in Washington, D.C., June 30, 1978.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

[FR Doc. 78-18724 Filed 7-6-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 922-7]

DATA COLLECTION

Schedule of anticipated data collection activities to be initiated during the period of June 30, 1978 through December 31, 1978.

The purpose of this notice is to identify the several data collection surveys to be undertaken by the Agency during the next 6 months for specific industrial categories. This will enable affected industries to become aware of potential questionnaires during this period and provide for their participation in the rulemaking process. Notification is also a prerequisite to OMB concurrence under the Federal Reports Act (144 U.S.C. 3501 et seq.). The following list identifies the category and type of data to be collected, under the authority of section 308 of the Clean Water Act of 1977, in support of developing effluent limitation guidelines under sections 301, 304, 306, and 307 of the act. Included for each category is the name and organizational location of the principal point of contact for this activity. These activities will be conducted, subject to Office of Management and Budget concurrences, under OMB Clearance No. 158-R-0160.

Survey of publicly owned sewage treatment plants (technical).
Number of plants in sample: 1,500.
Reporting hour burden: 10 man-hours per plant.
Point of contact: Maurice E. B. Owens (WH-586), Office of Analysis and Evaluation, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-755-1331.

Survey of mechanical and electrical products (technical).
Number of plants in sample: 5,000.
Reporting hour burden: 8 man-hours performed.
Point of contact: Walter J. Hunt (WH-552), Effluent Guidelines Division, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2724.

Survey of explosive and phosphates plants (technical).
Number of plants in sample: 60 (explosive), 10 (phosphates).
Reporting hour burden: 8 man-hours performed.
Point of contact: Walter J. Hunt (WH-552), Inorganic Chemicals and Services Branch, Effluent Guidelines Division, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2724.

Survey of rubber plants (economic).
Number of plants in sample: 600.
Reporting hour burden: 32 man-hours per plant.
Point of contact: Dale Ruhter (WH-586), Office of Analysis and Evaluation, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2617.

Survey of pulp and paper mills (economic).
Number of mills in sample: 700.
Reporting hour burden: 80 man-hours per plant.
Point of contact: Dale Ruhter (WH-586), Office of Analysis and Evaluation, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2617.

Survey of auto and other laundries plants (economic).
Number of plants in sample: 1,000.
Reporting hour burden: 24 man-hours per plant.
Point of contact: Dale Ruhter (WH-586), Office of Analysis and Evaluation, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2617.

Survey of hydraulic barking operations (technical).
Number of plants in sample: 25.
Reporting hour burden: 6 man-hours per plant.
Point of contact: Richard E. Williams (WH-552), Wood Products and Fibers Branch, Effluent Guidelines Division, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2554.

Survey of gravure industry (technical).
Number of plants in sample: 500.
Reporting hour burden: 3 man-hours per plant.
Point of contact: David R. Alexander (WH-552), Wood Products and Fibers Branch, Effluent Guidelines Division, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2554.

Survey of chemical supplies to printing and publishing (technical).
Number of plants in sample: 83.
Reporting hour burden: 6 man-hours per plant.
Point of contact: David R. Alexander (WH-552), Wood Products and Fibers

Branch, Effluent Guidelines Division, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2554.

Survey of seafood facilities in Alaska (technical).
Number of plants in sample: 140.
Reporting hour burden: 6 man-hours per plant.
Point of contact: Calvin J. Dysinger (WH-552), Food Industry Branch, Effluent Guidelines Division, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2707.

Survey of leather industries (technical).
Number of plants in sample: 140.
Reporting hour burden: 3 man-hours per plant.
Point of contact: Don F. Anderson (WH-552), Food Industry Branch, Effluent Guidelines Division, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2554.

Survey of gravure plants (economic).
Number of plants in sample: 120.
Reporting hour burden: 40 man-hours per plant.
Point of contact: William Webster (WH-586), Office of Analysis and Evaluation, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2617.

Survey of copper fabricating plants (economic).
Number of plants in sample: 100.
Reporting hour burden: 40 man-hours per plant.
Point of contact: William Webster (WH-586), Office of Analysis and Evaluation, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2617.

Survey of electroplating plants (economic).
Number of plants in sample: 100.
Reporting hour burden: 40 man-hours per plant.
Point of contact: William Webster (WH-586), Office of Analysis and Evaluation, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2617.

Survey of gum and wood chemicals plants (economic).
Number of plants in sample: 50.
Reporting hour burden: 40 man-hours per plant.
Point of contact: William Webster (WH-586), Office of Analysis and Evaluation, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2617.

Survey of photographic supplies and processing plants (economic).
Number of plants in sample: 50.
Reporting hour burden: 40 man-hours per plant.
Point of contact: William Webster (WH-586), Office of Analysis and Evaluation, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2617.

Survey of battery manufacturing plants (economic).
Number of plants in sample: 100.
Reporting hour burden: 40 man-hours per plant.
Point of contact: William Webster (WH-586), Office of Analysis and Evaluation, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2617.

Survey of nonferrous metal plants (technical).
Number of plants in sample: 125.
Reporting hour burden: 1 man-hour per plant.
Point of contact: Patricia E. Williams (WH-552), Project Officer, Metals & Machinery Branch, Effluent Guidelines Division, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2586.

Survey of aluminum forming plants (technical).
Number of plants in sample: 388.
Reporting hour burden: 8 man-hours per plant.
Point of contact: Patricia E. Williams (WH-552), Project Officer, Metals & Machinery Branch, Effluent Guidelines Division, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2586.

Survey of iron and steel plants (technical).
Number of plants in sample: 100.
Reporting hour burden: 50 man-hours per plant.
Point of contact: Ernst P. Hall (WH-552), Metals & Machinery Branch, Effluent Guidelines Division, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20406, telephone 202-426-2576.

Survey of red meat processing plants (technical).
Number of plants in sample: 56.
Reporting hour burden: 20 man-hours per plant.
Point of contact: Elwood H. Forsht (WH-552), Food Industry Branch, Effluent Guidelines Division, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2707.

Survey of pesticide manufacturers (technical).
Number of plants in sample: 150.
Reporting hour burden: 80 man-hours per plant.
Point of contact: George M. Jett (WH-552), Organic Chemical Branch, Effluent Guidelines Division, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2497.

Survey of organic chemicals plants (analytical sampling).
Number of plants in sample: 100.
Reporting hour burden: 200.
Point of contact: Paul Fahrenthold (WH-552), Effluent Guidelines Division, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-2497.

Dated: June 27, 1978.

THOMAS C. JORLING,
Assistant Administrator for Water and Hazardous Materials, WH-556.

[FR Doc. 78-18707 Filed 7-6-78; 8:45 am]

[6560-01]

[FRL 923-3; OPP-180195]

STATE OF LOUISIANA

Specific Exemption To Use Avitrol To Control Blackbird Depredation of Rice Crop

The Environmental Protection Agency (EPA) has granted a specific exemption to the State of Louisiana (hereafter referred to as the "applicant") to use a maximum of 15,000 pounds of an Avitrol product to control blackbird depredation on 5,000 acres of newly seeded rice fields in 22 parishes of Louisiana. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

According to the applicant, blackbird depredation of small grains is a recurring problem in Louisiana. Although the problem is usually associated with maturing grain, in the case of rice, blackbirds consume the newly planted rice seeds and seedlings. Significant yield losses result from the activity of large flocks of blackbirds which roost in these areas or stop to feed as they migrate northward.

Aerial broadcast seeding, a common agricultural practice in this State, has contributed to the problem. The exposed seed grain is vulnerable to blackbird attack from seed stage until such time as the seedlings become established. There is a 6-8-week critical period, depending on moisture conditions.

The applicant reported that, due to blackbird damage, not only was there a significant reduction of yield at harvest, but also over 50 percent of the rice planted before April 5, 1977, had to be reseeded in that State at a cost of $30 per acre. Reseeding costs of an estimated 75,000 acres came to approximately $2,250,000, applicant claimed.

Prior to the suspension of most aldrin/dieldrin uses, seed rice was treated with aldrin, primarily against rice weevil larvae. According to the applicant, aldrin also served as a bird repellent. In 1976, with aldrin-treated seed no longer available, blackbird depredation of rice fields became a serious problem. There are no available pesticides registered for bird damage control in rice. Alternatives to chemical control include noise devices, late planting, and drill seeding. The applicant claimed that noise devices become ineffective with their continued use as the birds become accustomed to them, reduced yields and frost damage may result from late planting, and drill seeding is not an acceptable alternative due to soil conditions at time of planting since rice fields are flooded until seeding. In addition, blackbirds attack seedlings as they break through the surface of the ground.

The applicant proposed to use Avitrol Corn Chops-99 which is composed of a choice bird food impregnated with 4-aminopyridine. Avitrol is an acute poison that is highly toxic to both avian and mammalian species. Birds ingesting Avitrol react with distress symptoms and calls. By limiting the amount of bait available to relatively few birds (only 1 in 100 kernels is treated with the toxic chemical), the remainder of the flock can be frightened away from feeding sites with a minimum of mortality. Avitrol Corn Chops is registered for blackbird damage control in corn.

The greatest hazard associated with the use of Avitrol is to nontarget avian species (migratory and native waterfowl, upland game birds, shorebirds, and songbirds). Numerous waterfowl species utilize rice fields as well as adjacent areas during the early spring. Although many of these birds are beginning to migrate north by mid-March, birds that wintered farther south are continually using rice fields as stopover sites on their journey northward. Certain species of waterfowl may be found in these areas by late May. The greatest hazard is to the smaller avian species; however, treated corn kernels may contain more toxic chemical than is required to kill the target species and, therefore, can kill a bird larger than a blackbird.

The Fish and Wildlife Services, U.S. Department of the Interior (USDI), reviewed the proposed use of Avitrol and stated that although there are potential hazards to nontarget avian species in treated areas, an adequate monitoring program will reduce damage of nontarget species populations.

A tolerance of 0.1 ppm has been established for negligible residues of the bird repellent 4-aminopyridine in or on the raw agricultural commodities corn grain, forage and fodder, and sunflower seeds. EPA has reviewed the data submitted for this use of Avitrol and has determined that residues in or on rice grain or straw would not be expected to exceed 0.1 ppm under this use.

After reviewing the application and other available information, EPA has determined that: (a) Bird depredation of seed rice in Louisiana is likely to occur; (b) there is no pesticide presently registered and available for use to control bird damage to rice crops; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if birds are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the applicant has been granted a specific exemption to use the pesticide noted above until June 30, 1978, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The EPA-registered product, Avitrol Corn Chop-99 (EPA Reg. No. 11649-12), will be applied at a maximum rate of 3 pounds of product per acre of treated swaths. Avitrol will be applied in 60-foot swaths with a 120-foot swath between treated areas;

2. A maximum of three applications will be made. The second and third applications, if necessary, will be made to untreated swaths to prevent double treatment of the same land;

3. A maximum of 15,000 pounds of Avitrol may be applied to 5,000 acres in the counties of Acadia, Allen, Avoyelles, Beauregard, Calcasieu, Cameron, East Carroll, Evangeline, Franklin, Iberia, Jefferson Davis, Lafayette, Madison, Morehouse, Pointe Coupee, Rapides, Richland, St. Landry, St. Martin, St. Mary, Vermillion, and West Carroll;

4. This product is extremely toxic to wildlife. Care must be taken to keep it out of lakes, streams, or ponds and to prevent contamination of water by cleaning of equipment or disposal of waste;

5. All applicable directions, restrictions, and precautions on the EPA-approved label will be observed;

6. A residue level not to exceed 0.1 ppm 4-aminopyridine in or on rice grain or straw has been deemed adequate to protect the public health, The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

7. Written details of the monitoring and surveillance plans must be submitted to the EPA regional office for approval prior to the application of Avitrol. The plan must be adequate to ensure that the following requirements and restrictions are observed;

8. Applicators must report the time and place of application at least 24 hours prior to such application. Accurate records of these requests must be maintained and this information must be made available to those responsible for supervising applications of Avitrol;

9. A sufficient number of qualified personnel from the Louisiana Department of Agriculture, Extension Service, State Fish and Game Agencies, and the Fish and Wildlife Service, USDI, must be made available to conduct surveillance required under this exemption;

10. These personnel will be responsible for both pre- and post-treatment surveillance of all applications of Avitrol;

11. The purpose of pretreatment surveillance will be determine that serious crop damage is resulting from blackbird depredation, prohibit the application of Avitrol in areas where high population of migratory birds (other than those specified on the label) are found, and to confirm that treatment was made according to the label requirements and to the specific exemption restrictions;

12. The purpose of post-treatment surveillance will be to determine the effectiveness of the treatment in controlling blackbird damage of newly seeded rice, determine by observation and through search of the treated fields and adjacent areas whether nontarget species have been affected, and to collect water, soil, and rice plant and grain samples from representative fields for residue analysis;

13. The EPA will be immediately informed of any adverse effects resulting from the use of Avitrol in connection with this exemption; and

14. A full report must be submitted to EPA by December 1, 1978.

Authority: Sec. 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).

Dated: June 29, 1978.

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

[FR Doc. 78-18699 Filed 7-6-78; 8:45 am]

[6560-01]

[FRL 923-2; OPP-180202]

WASHINGTON STATE DEPARTMENT OF AGRICULTURE

Specific Exemption To Use Carzol To Control Two-spotted Spider Mites on Hop Crop

The Environmental Protection Agency (EPA) has granted a specific exemption to the Washington State Department of Agriculture (hereafter referred to as the "Applicant") to use Carzol SP (containing the active ingredient formetanate hydrochloride) to control two-spotted spider mites which are threatening the commercial hop crop in Yakima and Benton Counties in Washington. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WN-567), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

According to the applicant, the two-spotted spider mite (*Tetranychus urticae Koch*) is normally present in Washington hop yards. In 1975 and 1976, specific exemptions were issued to the applicant to use TEPP for this purpose, but that pesticide is no longer being manufactured; in addition, the applicant alleged that mites have developed resistance to TEPP. The applicant also stated that other registered miticides are unacceptable either because of development of resistance to those miticides or the postharvest interval was too long and therefore, could not be used if a heavy mite infestation occurred close to harvest. Even though Carzol SP has a preharvest interval of 14 days, this pesticide is reported to have sufficient residual activity to protect the hop crops up to harvest.

The applicant requested permission to treat up to 20,000 acres of commercial hop crop, with a maximum of three applications limited to Yakima and Benton Counties. The pesticide will be applied by State-licensed commercial applicators and commercial growers using ground equipment. The State of Washington produces about 71 percent of the national hop crop; the applicant stated that the potential economic loss from a major outbreak of the two-spotted spider mite could reach $15,000,000.

Carzol SP (formetanate hydrochloride), when used at the proposed rates, is not expected to present any acute or chronic effects to wildlife. Because formetanate is strongly bound to soil, has limited leaching activity, and has low persistence, it does not appear to pose a threat to the aquatic environment. Although it is moderately toxic to bees and predaceous insects, bees do not work hop fields and any adverse effects to predaceous insect populations would be temporary. There are no endangered species in the treatment area, according to the Office of Endangered Species, U.S. Department of the Interior.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of two-spotted spider mites has occurred or is about to occur; (b) there is no pesticide presently registered and available for use to control the two-spotted spider mite in Washington State; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the two-spotted spider mites are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until September 30, 1978, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. Three applications of Carzol SP (active ingredient formetanate hydrochloride) are authorized. The first application shall be made at a dosage rate of 1.0 pound product (0.92 lb. a.i./acre). The second and third applications are to be made at three week intervals and at a dosage rate of 1.5 lb. product (1.38 lb. a.i./acre);

2. Applications are authorized only when Washington State Extension Agents or licensed private consultants determine that two-spotted spider mite populations are reaching levels requiring treatment;

3. Applications are to be made with ground equipment of the airblast type. Either commercial growers or State-licensed commercial applicators may apply Carzol SP;

4. The Applicant must insure that residue studies on hops are continued in order that a permanent tolerance for formetanate hydrochloride on hops may be obtained. Commercial growers, brewers, and the manufacturer of Carzol SP should participate in these residue studies. The results of residue studies undertaken toward the establishment of a permanent tolerance will determine if future specific exemptions for the use of this pesticide will be granted;

5. There is to be a preharvest interval of 14 days;

6. Hops refuse must not be fed to livestock;

7. Residue levels of 150 ppm of formetanate hydrochloride on dried hops and 0.5 ppm in beer have been determined to be adequate to protect the public health. Dried hops and beer with residues not exceeding these levels may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

8. A full report of the results of this program must be submitted to EPA by the end of February 1979;

9. The EPA shall be immediately informed of any adverse effects resulting from the use of Carzol SP in connection with this exemption;

10. In order to minimize adverse effects to natural predators, precautions must be taken to avoid drift to nontarget areas; and

11. All applicable label use directions, precautions, and restrictions must be followed.

AUTHORITY: Sec. 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136 et seq.).

Dated: June 29, 1978.

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

[FR Doc. 78-18700 Filed 7-6-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

CANADIAN STANDARD BROADCAST STATIONS

Notification List

List of new stations, proposed changes in existing stations, deletions, and corrections in assignments of Canadian standard broadcast stations modifying the assignments of Canadian broadcast stations contained in the appendix to the recommendations of the North American Regional Broadcasting Agreement Engineering Meeting, January 30, 1941.

JUNE 5, 1978.

CANADIAN LIST NO. 374

Call letters	Location	Power kW	Antenna	Schedule	Class	Antenna height (feet)	Ground system: No. of radials	Ground system: Length (feet)	Proposed date of commencement of operation
CFOS	Owen Sound, Ontario, N. 44°32'40", W. 80°54'08" (PO *2.5 kWD*/1N) (2.5 kW day power increase in operation).	5D/1N	DA-2	*560 kHz* U	III				E.I.O., Nov. 9, 1978.
CHNL	Kamloops, British Columbia, N. 50°38'50", W. 120°16'15", (PO 10D/1N, DA-N) (previously notified 50 kWD proposal withdrawn).	*25D*/5N	DA-2	*610 kHz* U	III				E.I.O., *June 5, 1979.*
CJNR	Blind River, Ontario, N. 46°10'37", W. 82°*59'03*" (correction of geographical coordinates).	1	DA-N, ND-D-180.	*730 kHz* U	II				
CKNS	Espanola, Ontario, N. 46°14'29", W. 81°46'36" (now in operation).	10	DA-N-ND-D-186.5.	*930 kHz* U	III				
CKCH	Hull, Quebec, N. 45°22'59", W. 75°48'47" (PO 5 kW, DA-1) (previously notified 50 kWD/10 kWN proposal at new site withdrawn).	*10D*/5N	*DA-2*	*970 kHz* U	III				E.I.O., June 5, 1979.
CKST	St. Albert, Alberta, N. 53°25'40", W. 113°35'14" (assignment of call letters).	10	DA-1	*1070 kHz* U	II				E.I.O., *June 5, 1979.*
CKEC	New Glasgow, Nova Scotia, N. 45°36'*03*", W. 62°36'38" (correction of geographical coordinates).	5	DA-N, ND-D-186.	*1320 kHz* U	III				
CJMH	Medicine Hat, Alberta, N. 49°58'35", 110°36'45" (assignment of call letters).	10	DA-N, ND-D-195.	*1460 kHz* U	III				Do.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau,
Federal Communications Commission.

[FR Doc. 78-18672 Filed 7-6-78; 8:45 am]

[4110-03]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 75N-0140]

GOOD MANUFACTURING PRACTICES FOR MEDICAL DEVICES

Availability of the Economic Impact Assessment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the availability of the economic impact assessment of the final regulation governing good manufacturing practices for medical devices. Based on the available information, the agency concludes that no major economic impact will result.

FOR FURTHER INFORMATION CONTACT:

Edward J. McDonnell, Bureau of Medical Devices (HFK-310), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Avenue, Silver Spring, Md. 20910, 301-427-8120.

SUPPLEMENTARY INFORMATION: In the preamble to the proposed good manufacturing practice regulation for medical devices, published in the FEDERAL REGISTER of March 1, 1977 (42 FR 11998), the Commissioner of Food and Drugs advised that the agency did not have sufficient information on which to base a sound economic assessment of the proposed regulation, as required by Executive Order No. 11821 (amended by Executive Order 11949). Accordingly, the Food and Drug Administration (FDA) requested the submission of cost and related economic data which could be used to prepare a sound economic assessment. Because FDA still lacked reliable quantitative data on expected economic impact of the regulation, the agency sought estimates from four consultants in the field of quality assurance and considered the findings of 509 FDA inspections of device manufacturing establishments on the extent to which those establishments would comply with the regulation.

The resultant economic impact assessment is available for review between 9 a.m. and 4 p.m., Monday

through Friday, in the office of the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

Dated: June 26, 1978.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc. 78-18333 Filed 7-6-78; 8:45 am]

[4110-03]

PANEL ON REVIEW OF ANTIMICROBIAL AGENTS

Notice of Re-Establishment

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 re-establishment of the Panel on Review of Antimicrobial Agents by the Secretary, Department of Health, Education, and Welfare.

DATE: Authority for this committee will expire on June 16, 1980, 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: June 29, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-18560 Filed 7-6-78; 8:45 am]

[4110-84]

Health Services Administration

ADVISORY COMMITTEE

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of July 1978:

PHS HOSPITALS AD HOC ADVISORY COMMITTEE

Date and Time: July 7 and 8, 1978, 8:30 a.m.
Place: 607 G1, Hubert Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.
Open for entire meeting.
Purpose: The Committee will conduct an in-depth examination of each PHS hospital in relation to its principal beneficiaries and the community in which it is located; its health needs and delivery system; and the cost of operation and achievements. It will assist in developing options and recommendations concerning the present and future role of the hospitals in the continuation and improvement of health care delivery.
Agenda: To review, discuss and modify the draft of the report.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Mr. Jordan Popkin, Office of the Administrator, Health Services Administration, Parklawn Building, Room 14-15, 5600 Fishers Lane, Rockville, Md. 20857, telephone 301-443-2245.

Agenda items are subject to change as priorities dictate.

Dated: June 29, 1978.

WILLIAM H. ASPDEN, Jr.,
Associate Administrator for Management.

NOTE.—The meeting will be held provided the Charter is amended by the close of business June 30, 1978.

NOTE.—Earlier notice of this meeting was not feasible due to the late date for extending the Committee.

NOTE.—This document originally appeared in the FEDERAL REGISTER for Monday, July 3, 1978. It is reprinted in this issue to meet requirements for publication on an assigned day of the week. (See OFR notice 41 FR 32914, August 6, 1976.)

[FR Doc. 78-18434 Filed 6-30-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ANCSA PROGRAM MANAGEMENT OFFICE, ALASKA STATE OFFICE

Delegation of Authority

1. Pursuant to the authority contained in part I, section 1.1(a) of Bureau Order No. 701 of July 23, 1964, as amended, and implementation of the Alaska Native Claims Settlement Act (ANCSA) organization in the Alaska State Office, the following authority is hereby delegated to the Assistant to the State Director for ANCSA Program Management; Chief, Division of ANCSA Operations; and Chief, Branch of Adjudication to take action on the following matters listed in part II:

Sections 2.2. (c) and (k); 2.5 (b) and (c); 2.6 (a), (b), (k), and (n); 2.9 (b), (c), (d), (i), (m), (n), (p), (t)(7), and (y).

2. The Assistant to the State director for ANCSA Program Management; Chief, Division of ANCSA Operation; and Chief, Branch of Adjudication may, in their discretion, personally exercise any authority hereby delegated.

3. The Assistant to the State Director for ANCSA Program Management, may, by written order, designate any qualified employee to perform the functions of his position in his absence. Such order will be approved by the State Director. Each employee who serves in such capacity shall prepare a memorandum showing the date and hour of the commencement and termination of each period of service in that capacity.

4. The Chief, Division of ANCSA Operations, may, by written order, designate any qualified employee of the Division of ANCSA Operations to perform the functions of his position in his absence. Such order will be approved by the Assistant to the State Director for ANCSA Program Management. Each employee who serves in such capacity shall prepare a memorandum showing the date and hour of the commencement and termination of each period of service in that capacity.

5. The Chief, Branch of Adjudication, may, by written order, designate any qualified employee of the Branch of Adjudication, Division of ANCSA Operations, to perform the functions of his position in his absence. Such order will be approved by the Chief, Division of ANCSA Operations. Each employee who serves in such capacity shall prepare a memorandum showing the date and hour of the commencement and termination of each period of service in that capacity.

6. Effective Date: This delegation of authority will become effective July 7, 1978.

CURTIS V. MCVEE,
State director.

Approved: July 3, 1978.

ARNOLD E. PETTY,
Director.

[FR Doc. 78-18723 Filed 7-6-78; 8:45 am]

[Serial Nos. I-6336, I-7318, I-14354, I-14355, I-14356, I-14357]

IDAHO

Classification Decision

JUNE 29, 1978.

The following described lands, located in Adams, Boise, Bonner, Boundary, Idaho, Shoshone and Valley Counties, Idaho, have been examined and found suitable for transfer to the State of Idaho as partial satisfaction of its state land grant.

These lands are hereby classified for disposal through State Indemnity Lieu Selection (43 CFR 2620). The classification is made pursuant to section 7 of the Taylor Grazing Act of 1934, as amended (43 USC 315(f)) and section 102(a)(1) of the Federal Land Policy and Management Act of 1976.

BOISE MERIDIAN, IDAHO

GRANDMOTHER MOUNTAIN I-14357

T. 42 N., R. 1E.,
Sec. 14, SW¼SW¼.

T. 42 N., R. 2 E.,
Sec. 1, E½SE¼, S½SW¼;
Sec. 3, lots 1, 2, SW¼NE¼;
Sec. 4, lots 2, 3;
Sec. 11, E½NW¼, W½NE¼;
Sec. 12, SW¼NE¼, SE¼SE¼.
T. 43 N., R. 1 E.,
Sec. 12, S½;
Sec. 14, NE¼NE¼.
T. 43 N., R. 2 E.,
Sec. 10, NE¼NE¼;
Sec. 12, S½SE¼, SW¼SW¼
Sec. 13, N½N½, SE¼NE¼;
Sec. 14, N½NE¼;
Sec. 15, SE¼SW¼, SW¼SE¼;
Sec. 18, lot 1, E½;
Sec. 20, NW¼NW¼;
Sec. 25, NE¼NE¼, W½SE¼;
Sec. 28, S½NW¼NW¼SW¼;
Sec. 33, E½SW¼, W½SE¼, NW¼NW¼;
Sec. 34, S½NE¼, NW¼NE¼, SE¼NW¼, E½SE¼;
Sec. 35, S½NE¼, SW¼NW¼, S½.
T. 43 N., R. 3 E.,
Sec. 19, E½SE¼;
Sec. 20, S½;
Sec. 28, W½E½, NE¼NW¼, S½SW¼;
Sec. 29, NW¼NE¼, S½S½;
Sec. 30, S½SE¼;
Sec. 31, E½, SE¼SW¼;
Sec. 32, W½, W½NE¼, S½SE¼;
Sec. 33, N½N½, SW¼NE¼, S½SW¼, W½SE¼;
Sec. 34, NW¼NE¼, N½NW¼, SE¼NW¼.

Containing 5,377.73 acres.

HOODOO I-7318, I-6336

T. 55 N., R. 5W.,
Sec. 1, lots 1, 2, 5, 6, 7, SW¼NE¼, SW¼, W½SE¼;
Sec. 2, All;
Sec. 10, N½NE¼, SE¼NE¼;
Sec. 11, N½;
Sec. 12, lots 1, 2, 3, W½NE¼, NW¼, N½SW¼, SW¼SW¼, NW¼SE¼;
Sec. 13, SE¼NW¼, W½SE¼;
Sec. 14, NE¼NE¼, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 15, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼, SW¼SE¼;
Sec. 35, SE¼SE¼.
T. 56 N., R. 4 W.,
Sec. 10, lots 3, 4, W½SE¼, E½SW¼;
Sec. 20, N½NE¼.
T. 56 N., R. 5 W.,
Sec. 3, S½SW¼;
Sec. 4, SW¼SW¼, SE¼SE¼;
Sec. 5, All;
Sec. 8, N½NE¼;
Sec. 9, N½NE¼, NW¼, N½SW¼;
Sec. 10, NW¼,NE¼, N½NW¼, SW¼NW¼;
Sec. 15, SW¼NW¼;
Sec. 35, SE¼SE¼.
T. 60 N., R. 1 E.,
Sec. 8, SW¼SW¼;
Sec. 18, NE¼NE¼.
T. 61 N., R. 1 E.,
Sec. 27, S½;
Sec. 28, E½SE¼.

Containing 5,019.15 acres.

LITTLE SALMON I-14354

T. 22, N., R. 1 E.,
Sec. 1, lots 1, 2, 3, 4, SW¼NE¼, S½NW¼;
Sec. 2, lots 1, 2, 3, 4, SE¼NE¼, S½NW¼, N½SW¼;
Sec. 3, lots 1, 2, N½SE¼, SW¼SE¼;
Sec. 13, NE¼SW¼, S½S½;
Sec. 14, SE¼SE¼;
Sec. 23, NE¼NE¼, NE¼SE¼;
Sec. 24, N½, N½S½, S½SE¼;
Sec. 25, E½, SE¼NW¼, SW¼;
Sec. 35, E½SE¼.
T. 23, N., R. 1 E.,
Sec. 1, lots 1, 2, 3, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 3, lots 1, 2, 3, S½NE¼;
Sec. 10, SW¼, S½SE¼;
Sec. 11, NE¼SW¼, S½SW¼;
Sec. 14, All;
Sec. 15, E½, E½NW¼;
Sec. 22, N½NE¼, E½SE¼;
Sec. 23, NE¼SE¼, S½S½;
Sec. 26, N½, SW¼, W½SE¼;
Sec. 27, E½, E½NW¼, NW¼NW¼, NE¼SW¼;
Sec. 34, SW¼SE¼;
Sec. 35, W½NE¼, NW¼, S½.

Containing 6,398.47 acres.

PAYETTE LAKES I-14355

T. 17, N., R. 2 E.,
Sec. 22, N½SW¼, SW¼SW¼.
T. 17 N., R. 4 E.,
Sec. 17, E½;
Sec. 21, S½NW¼, E½SW¼, S½SE¼;
Sec. 22, SE¼NE¼, SW¼SW¼, E½SE¼;
Sec. 33, NE¼, E½SW¼, W½SE¼;
Sec. 34, SE¼NE¼, S½;
Sec. 35, NE¼, E½NW¼, SW¼, W½SE¼, NE¼SE¼.
T. 18 N., R. 4 E.,
Sec. 6, lot 1;
Sec. 9, S½;
Sec. 17, SE¼NE¼;
Sec. 19, E½E½;
Sec. 20, W½W½.

Containing 2,759.93 acres.

SOUTHWEST IDAHO I-14356

T. 8 N., R. 3 E.,
Sec. 3, SW¼SE¼, S½NW¼, N½SW¼;
Sec. 10, NW¼NE¼.
T. 9 N., R. 3 E.,
Sec. 3, lots 3, 4, N½SW¼, NW¼SE¼;
Sec. 11, S½NW¼, N½SW¼;
Sec. 35, All.
T. 9 N., R. 4 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, S½;
Sec. 2, lot 1, SE¼NE¼, N½SE¼, SE¼SE¼;
Sec. 5, S½;
Sec. 6, All;
Sec. 11, NE¼NE¼, S½NE¼, N½SE¼;
Sec. 12, All;
Sec. 13, lot 4, N½, N½S½.
T. 10 N., R. 3 E.,
Sec. 23, S½SW¼;
Sec. 26, W½;
Sec. 27, N½NW¼, SE¼SW¼, S½SE¼;
Sec. 33, NE¼NE¼;
Sec. 34, NW¼NW¼.

Containing 4,888.99.

The area described contains 24,444.27 acres of public land.

These lands meet the classification criteria in 43 CFR 2430.4(a) as lands valuable for the public purpose of transfer to the State in partial satisfaction of a State land grant. The lands are properly classified for this purpose, consistent with 43 CFR 2430.4(b). Disposal of the subject lands is consistent with the criteria in 43 CFR 2410.1 as follows:

1. The lands are physically suitable or adaptable to the uses or purposes for which they are classified (43 CFR 2410.1(a)).

2. All present and potential uses and users of the lands have been taken into consideration; other things being equal, disposal of these lands should achieve maximum future uses and minimum disturbance to, or dislocation of, existing users (43 CFR 2410.1(b)). Public comment on this proposed action revealed some concern over the inclusion of land with apparent wilderness characteristics. As a result of this concern the State has deleted certain lands from their applications including land in the Little Salmon and McCall areas; no change was made in the application involving the Grandmother Mountain area since it was concluded that the area does not have wilderness characteristics because of intermixed private land and the lack of opportunity for solitude and primitive recreation.

3. Disposal of these lands is consistent with State and local government programs, plans, zoning, and regulations applicable to the area in which the lands are located (43 CFR 2410.1(c)).

4. Disposal of these lands is consistent with Federal programs and policies which affect the use or disposal of public lands (43 CFR 2410.1(d)).

The following petitions for classification by the State of Idaho are hereby approved: I-7318, I-14354, I-14355, I-14356, I-14357, and I-6336.

Type of Petition: State Indemnity Lieu Selections.

Pursuant to Section 402(g) of the Federal Land Policy and Management Act of October 21, 1976, the grazing permittees involved are hereby notified that grazing use of the lands described in this decision will be terminated in the event these lands are transferred out of Federal ownership. Those grazing permittees involved in this transaction have waived the 2-year notification required by section 402(g) supra.

Reservations for existing Forest Service roads will be made, to protect the Government's interest, across lands in the applications.

Comments on this classification decision should be sent to the Secretary of the Interior, LLM 320, Washington, D.C. 20240 by August 7, 1978.

WM. L. MATHEWS,
State Director.

[FR Doc. 78-18738 Filed 7-6-78; 8:45 am]

[7020-02]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-45]

CERTAIN COMBINATION LOCKS

Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference will be held in connection with the above styled investi-

gation at 10 a.m. on July 18, 1978, in the hearing room of the Administrative Law Judge, room 610 Bicentennial Building, 600 E Street NW., Washington, D.C. No discovery will be obtained subsequent to July 3, 1978. On or before July 10, 1978, the complainant will have completed service of its prehearing conference statements on the parties, and the respondent and Commission investigative attorney will have completed service of theirs on or before July 13, 1978. The contents of these statements will be the subject of a subsequent order. The purpose of this prehearing conference is to review such statement, complete the exchange of exhibits, and resolve any other necessary matters in preparation for the hearing.

Notice is also given that the hearing in this proceeding will commence at 10 a.m. on July 25, 1978, in the hearing room of the Administrative Law Judge, room 610 Bicentennial Building, 600 E Street, NW., Washington, D.C., or at 10 a.m. on a date as soon after as practicable, and will continue daily until completed. Counsel shall be ready to proceed on July 25, 1978, subject to at least 48-hour advance oral notifications of the hearing's commencement.

The Secretary shall serve a copy of this notice upon all parties of record, and shall publish this notice in the FEDERAL REGISTER.

Issued: June 30, 1978.

JUDGE DONALD K. DUVALL,
Presiding Officer.

[FR Doc. 78-18806 Filed 7-6-78; 8:45 am]

[7020-02]

[Investigation No. 337-TA-50]

CERTAIN SYNTHETIC GEMSTONES

Prehearing Conference and Hearing

Notice is hereby given that a Prehearing Conference will be held in connection with the above styled investigation at 10 a.m. on September 26, 1978, in the Hearing Room of the Administrative Law Judge, Room 610 Bicentennial Building, 600 E Street NW., Washington, D.C. No discovery will be obtained subsequent to September 1, 1978. On or before September 14, 1978, Complainant will have completed service of its Prehearing Conference Statement on the other parties, and Respondents and Commission Investigative Attorney will have completed service of their Prehearing Conference Statements on or before September 21, 1978. The contents of these statements will be the subject of a subsequent order. The purpose of this Prehearing Conference is to review such statements, complete the exchange of exhibits, and resolve any other necessary matters in preparation for the hearing.

Notice is also given that the Hearing in this proceeding will commence at 10 a.m. on October 3, 1978, in the Hearing Room of the Administrative Law Judge, Room 610 Bicentennial Building, 600 E Street NW., Washington, D.C., or at 10 a.m. on a date as soon after as practicable, and will continue daily until completed. Counsel shall be ready to proceed on October 3, 1978, subject to at least 48 hours advance oral notification of the hearing's commencement.

The Secretary shall serve a copy of this Notice upon all parties of record, and shall publish this Notice in the FEDERAL REGISTER.

Issued: June 30, 1978.

JUDGE DONALD K. DUVALL,
Presiding Officer.

[FR Doc. 78-18805 Filed 7-6-78; 8:45 am]

[4510-30]

DEPARTMENT OF LABOR

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Notice of Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated 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 comptetition 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 Street NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 3d day of July 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

APPLICATIONS RECEIVED DURING THE WEEK ENDING JUNE 30, 1978

NAME OF APPLICANT, LOCATION OF ENTERPRISE, AND PRINCIPAL PRODUCT OR ACTIVITY

Isaacson Structural Steel, Inc., Berlin, N.H., structural steel fabricating and warehousing.
Spin Optic, Inc., Steuben County, N.Y., manufacture of optical instruments.
Richardson Corp., Macedon, manufacture of fountain syrups, bases, and toppings.
Legge & Associates, Inc., New Richard and Cleves, Ohio, installation, maintenance, and repair of boilers and construction of precipatators.
Dynamic Industries, Inc., Barnesville, Minn., manufacture of small articulated loaders and lift trucks.
Norland Corp., Fort Atkinson, Wis., manufacture of scientific and medical instruments.
Ohlen W. Hippler Nursing Services, Inc., Republic, Ohio, nursing home.
Sunset Industries, Inc., Rayne, La., manufacture of plastic pots.
Adamar Inns, Inc., Mount Pleasant, Tex., motel.
Medigroup, Inc., Osage Beach, Mo., patient care.
Livestock Service Co., Ryan, Iowa, custom feeding of cattle.
Kennedy Houseboat Manufacturing Co., Miller, S. Dak., manufacture and distribution of houseboats, pontoon boats, and houseboat trailers.

L. A. Zollinger & Sons, Inc., Logan, Utah, construction.
Bob Verchota's Railroad Pass Casino & Supper Club, hotel.
Golden West Airlines, Palomar, Calif., air freight and passenger transportation.
B. McIntosh Co., Soledad, Calif., solar hot water systems.

[4510-30]

FEDERAL-STATE EXTENDED BENEFITS

Ending of Extended Benefit Period in the State of Michigan

This notice announces the ending of the extended benefit period in the State of Michigan, effective on July 1, 1978.

BACKGROUND

The Federal-State Extended Unemployment Compensation Act of 1970 (title II of Pub. L. 91-373; 84 Stat. 695, 708; 26 U.S.C. 3304 note) created a program of extended unemployment benefits (referred to as extended benefits) as a permanent part of the Federal-State unemployment compensation program, for unemployed individuals who have exhausted their rights to regular unemployment benefits under State and Federal unemployment compansation laws. The act is implemented by regulations of the Department of Labor at part 615 of title 20 of the Code of Federal Regulations, 20 CFR Part 615 (43 FR 13818, March 31, 1978), and in the unemployment compensation laws of the several States.

Extended benefits are payable in a State during an extended benefit period, which is triggered on when unemployment in the State or in all States collectively raches the high levels set in the act. During an extended benefit period eligible individuals are entitled to extended benefits for up to 13 weeks, but the total of extended benefits and regular benefits together may not exceed 39 weeks. An extended benefit period commenced in the State of Michigan on March 24, 1974.

The act and the Michigan unemployment compensation law also provide that an extended benefit period in a State will trigger off when unemployment in the State is no longer at the high levels set in the act. A benefit period actually terminates at the end of the third week after the week for which there is an "off" indicator. The extended benefit period in Michigan has now triggered off.

DETERMINATION OF "OFF" INDICATOR

The head of employment security agency of the State of Michigan has determined, in accordance with the State law and 20 CFR § 615.12(e), that the average rate of insured unemployment in the State for the period consisting of the week ending on June 10, 1978, and the immediately preceding 12 weeks, has decreased so that for that week there was an "off" indicator in that State. Therefore, the extended benefit period in that State terminated with the week ending on July 1, 1978.

INFORMATION FOR CLAIMANTS

Persons who wish information about their rights to extended benefits in the State of Michigan should contact the nearest branch office of the Michigan Employment Security Commission in their locality.

Signed at Washington, D.C., on July 3, 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

[FR Doc. 78-18750 Filed 7-6-78; 8:45 am]

[4510-30]

FEDERAL-STATE EXTENDED BENEFITS

Ending of Extended Benefit Period in the State of Pennsylvania

This notice announces the ending of the extended benefit period in the State of Pennsylvania, effective on July 8, 1978.

BACKGROUND

The Federal-State Extended Unemployment Compensation Act of 1970 (title II of Public Law 91-373; 84 Stat. 695, 708; 26 U.S.C. 3304 note) created a program of extended unemployment benefits (referred to as extended benefits) as a permanent part of the Federal-State unemployment compensation program, for unemployed individuals who have exhausted their rights to regular unemployment benefits under State and Federal unemployment compensation laws. The act is implemented by regulations of the Department of Labor at part 615 of title 20 of the Code of Federal Regulations, 20 CFR Part 615 (43 FR 13818, March 31, 1978), and in the unemployment compensation laws of the several States.

Extended benefits are payable in a State during an extended benefit period, which is triggered on when unemployment in the State or in all States collectively reaches the high levels set in the act. During an extended benefit period the maximum amount of extended benefits which is payable to eligible individuals is up to 13 weeks, but the total of extended benefits and regular benefits together may not exceed 39 weeks. An extended benefit period commenced in the State of Pennsylvania on February 23, 1975.

The act and the Pennsylvania unemployment compensation law also provide that an extended benefit period in a State will trigger off when unemployment in the State is no longer at the high levels set in the act. A benefit period actually terminates at the end of the third week after the week for which there is an "off" indicator. The extended benefit period in Pennsylvania has now triggered off.

DETERMINATION OF "OFF" INDICATOR

The head of employment security agency of the State of Pennsylvania has determined, in accordance with the State law and 20 CFR § 615.12(e), that the average rate of insured unemployment in the State for the period consisting of the week ending on June 17, 1978, and the immediately preceding twelve weeks, has decreased so that for that week there was an "off" indicator in that State. Therefore, the extended benefit period in that State terminates with the week ending July 8, 1978.

INFORMATION FOR CLAIMANTS

Persons who wish information about their rights to extended benefits in the State of Pennsylvania should contact the nearest State Employment Office of the Pennsylvania Department of Labor and Industry in their locality.

Signed at Washington, D.C., on June 30, 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

[FR Doc. 78-18751 Filed 7-6-78; 8:45 am]

[4510-26]

Occupational Safety and Health Administration

STANDARDS ADVISORY COMMITTEE ON CUTANEOUS HAZARDS

Meetings

Notice is hereby given that the Standards Advisory Committee on Cutaneous Hazards will meet on July 26 and 27, 1978, in Room N-4437 of the Department of Labor Building, Third Street and Constitution Avenue NW., Washington, D.C. and on August 21 and 22 and September 13 and 14 in Room N-3437 of the same building.

The Standards Advisory Committee on Cutaneous Hazards was established under section 7(b) of the Occupational Safety and Health Act of 1970 (Pub. L. 91-596) to assist the Secretary of Labor in his standards-setting function.

Plans for the Committee's report to OSHA will be discussed at the meetings. Consultants will be heard from industries concerned with skin and eye hazards. The meetings will begin at 9 a.m. The public is invited to attend.

For additional information contact: Mr. John M. Couric, Division of Consumer Affairs, Occupational Safety

and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N-3635, Washington, D.C. 20210, telephone 202-523-8024.

Written data or views concerning these agenda items may be submitted to the Division of Consumer Affairs. Such documents which are received before the scheduled meeting dates, preferably with 20 copies, will be presented to the committee and included in the official record of the proceedings.

Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the chairman of the committee, to the extent which time permits.

Official records of the meetings will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, D.C. the 28th day of June 1978.

EULA BINGHAM,
Assistant Secretary,
Occupational Safety and Health.

[FR Doc. 78-18752 Filed 7-6-78; 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 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 is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 17, 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 July 17, 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 27th day of June 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
Communication Co. (workers)	Coral Gables, Fla	June 26, 1978	June 20, 1978	TA-W-3,913	Land mobile radio equipment.
Florsheim Shoe Co. (workers)	Chicago, Ill	.....do.....	June 13, 1978	TA-W-3,914	Men's shoes.
Hecla Mining Co. (workers)	Wallace, Idaho	June 23, 1978	June 20, 1978	TA-W-3,915	Corporate office of Hecla Mining Co.
Hudson Wire Co. (UAW)	Winsted, Conn	June 26, 1978	June 22, 1978	TA-W-3,916	Magnet wire for motor winding, electrical appliances, aerospace, automotive, etc.
Steven Knitting Mills (workers)	New York, N.Y	.....do.....	June 21, 1978	TA-W-3,917	Knit fabrics.
Victory Optical Manufacturing (Teamsters).	Newark, N.J	June 27, 1978	.....do.....	TA-W-3,918	Eyeglass frames.

[FR Doc. 78-18753 Filed 7-6-78; 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") 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 be actual or threatened total or partial separation of a significant number of 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 is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 17, 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 July 17, 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 26th day of June 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
Edmos Corp. (ILGWU)	Glen Cove, N.Y	June 22, 1978	June 15, 1978	TA-W-3,907	Manufacture double knit fabrics.
E. I. du Pont de Nemours & Co., Inc., Carney's Point Works (United Chemical Workers).	Carney's Point, N.J	June 26, 1978	June 6, 1978	TA-W-3,908	Nitrocellulose and smokeless power.
Viscount Knit Mills (workers)	Ridgefield, N.J	June 22, 1978	June 20, 1978	TA-W-3,909	Knit fabrics.
VRN St. Petersburg (company)	St. Petersburg, Fla	June 23, 1978	do	TA-W-3,910	Electronic components-potentiometers.
Wheeling Pittsburg Steel Corp. (company).	Wheeling, W. VA	June 26, 1978	do	TA-W-3,911	Administrative office.
Do	Pittsburgh, Pa	do	do	TA-W-3,912	Executive office.

[FR Doc. 78-18754 Filed 7-6-78; 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 is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 17, 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 July 17, 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 22d day of June 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
Andrew Worsted Mills, Inc. (workers)	Pascoag, R.I	June 22, 1978	June 15, 1978	TA-W-3,885	Women's and childrens' sportswear and coats.
Birk Transfer, Inc. (workers)	Conogaugh, Pa	April 25, 1978	April 14, 1978	TA-W-3,886	Transporting materials at the Johnstown, Pa., plant of Bethlehem Steel Corp.
Crown Zellerbach Corp. (United Paper Workers International Union).	Bogalusa, La	June 21, 1978	June 20, 1978	TA-W-3,887	Corrugated boxes, multiwall bags, and grocery bags.
DataFlo of New Jersey, Inc. (company).	Vineland, N.J	do	June 19, 1978	TA-W-3,888	Computer services such as payroll, accounts receivable, accounts payable, etc. were provided to companies.
Dix Mills, Inc. (workers)	Pascoag, R.I	June 22, 1978	June 15, 1978	TA-W-3,889	The selling of women's and children's sportswear and coats produced by Andrew Worsted Mills, Inc.
Granite Worsted Mills, Inc. (workers)	do	do	do	TA-W-3,890	Produces and sells materials to the apparel industry.
International Paper Co. (U.P.I.U.)	Springhill, La	June 21, 1978	June 20, 1978	TA-W-3,891	Cup stock (stock for paper cups) and polycoating.
Rochester Button Corp. (company)	Akron, N.Y	June 22, 1978	June 15, 1978	TA-W-3,892	Button plugs.
Do	Wellsville, N.Y	do	do	TA-W-3,893	Do.
Do	South Boston, Mass	do	do	TA-W-3,894	Do.
Do	McKenney, Va	do	do	TA-W-3,895	Finished buttons.
Do	Kenbridge, Va	do	do	TA-W-3,896	Do.
Do	New York, N.Y	do	do	TA-W-3,897	Sales office—sells finished buttons to the apparel industry and carders.
Do	do	do	do	TA-W-3,898	Do.
Do	Atlanta, Ga	do	do	TA-W-3,899	Do.
Do	Pikesville, Md	do	do	TA-W-3,900	Do.
Do	Charlotte, N.C	do	do	TA-W-3,901	Do.
Do	Wheaton, Ill	do	do	TA-W-3,902	Do.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Rochester Button Corp. (company)	Los Angeles, Calif	June 22, 1978	June 15, 1978	TA-W-3,903	Sales office—sells finished buttons to the apparel industry and carders.
Do	Bala-Cynwyd, Pa	do	do	TA-W-3,904	Do.
S. J. Knits, Inc. (Distributive Workers of America).	Ridgefield, N.J	do	do	TA-W-3,905	Ladies' knit suits and dresses and knit fabrics.
Warren Young (workers)	Johnstown, Pa	April 25, 1978	April 16, 1978	TA-W-3,906	Leases their trucks and trailers to Birk Transfer, Inc., for contract work for Bethlehem Steel, Johnstown, Pa. plant.

[FR Doc. 78-18755 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3431]

ALTA PRODUCTS CORP., WILKES BARRE, 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-3431: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 28, 1978, in response to a worker petition received on March 17, 1978, which was filed by the United Textile Workers of America on behalf of all workers producing casual footwear and slippers at Alta Products Corp., Wilkes Barre, Pa.

The notice of investigation was published in the FEDERAL REGISTER on April 11, 1978 (43 FR 15205). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Alta Products Corp., 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 sales or production, or both, of such firm or subdivision have decreased absolutely.

Sales and production increased absolutely in quantity in 1977 compared to 1976 and in the first quarter of 1978 compared to the first quarter of 1977.

CONCLUSION

After careful review I determine that all workers of the Alta Products Corp., Wilkes Barre, Pa., 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 30th day of June 1978.

HARRY J. GILMAN,
Acting Director,
Office of Foreign Economic Research.

[FR Doc. 78-18756 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-1930]

AMERICAN MOTORS CORP., KENOSHA, WIS.

Revised Determinations on Reconsideration Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 222 of the Trade Act of 1974 and in accordance with section 223(a) of such act, the Department of Labor issued on September 28, 1977, a notice of determination regarding eligibility to apply for adjustment assistance that applied to workers and former workers engaged in employment related to the production of engines, axles and gears, stampings and forgings, and Pacer cars at the Kenosha, Wis., plant of the American Motors Corp.

Pursuant to that notice, workers at the Kenosh, Wis., plant were denied eligibility to apply for trade adjustment assistance. The notice of determination was published in the FEDERAL REGISTER on November 14, 1977 (42 FR 55293).

Officials of the International Union, United Automobile Aerospace & Agricultural Implement Workers of America (UAW) requsted administrative reconsideration of TA-W-1930. The Department denied reconsideration. The notice of negative determination regarding application for reconsideration was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1548).

Subsequent to the publication of the negative determination regarding application for reconsideration, the Office of Trade Adjustment Assistance, on its own motion and in the light of additional information, reopened the investigation into the following petition of the American Motors Corp.: the Kenosha, Wis., plant (TA-W-1930). In the original determination issued on September 28, 1977, all workers engaged in employment related to the production of AMC Pacer cars and components for AMC cars at the Kenosha plant were denied eligibility for trade adjustment assistance for the following two reasons: (1) With the AMC Pacer car being reclassified as a compact-size car and with aggregate U.S. imports of compact cars decreasing both absolutely and relatively during model year (MY)[1] 1976 compared to MY 1975, imports did not contribute importantly to separations of workers producing AMC Pacer cars; and (2) with domestic facilities supplying 100 percent of the component requirements for the Canadian assembly plant of AMC, increased imports of Canadian-assembled AMC cars (the subcompact Gremlin and the compact Hornet) did not contribute importantly to separations of workers at the Kenosha plant.

In other determinations relating to the Kenosha plant, the following groups of workers had been certified for benefits: workers in final assembly and body assembly, except for Pacer cars (TA-W-999, issued on October 28, 1976, for final assembly and on November 17, 1976, for body assembly). These certifications were based on two factors: (1) Increased imports of Canadian-assembled Gremlin subcompact and Hornet compact cars were matched by a decline in production of domestically assembled Gremlins and Hornets during the first three quarters of MY 1976 compared to the same period in MY 1975; and (2) aggregate U.S. imports of intermediate-size cars increased absolutely in the first three quarters of MY 1976 compared to the same period in MY 1975. These certifications are in effect until October 28, 1978, for final assembly workers and until Novmber 17, 1978, for the body assembly workers.

[1] Model year (MY) runs from October 1 through September 30 of a given year.

A further investigation of TA-W-1930 reveals that the focus of this investigation was directed toward those workers who produce the AMC Pacer car (reclassified as a compact car) and its component parts. This restriction of the investigation to the compact car class does not measure the full import impact on component workers of the Kenosha plant, workers on whose behalf the petition was filed. It should be noted that both the support and component workers at these facilities produce components for all models of AMC passenger cars (the subcompact Gremlin and the intermediate Matador cars as well as the compact Pacer and Hornet cars). An appropriate gage of the import impact on these workers would entail an anlysis of aggregate U.S. imports of each of these three car classes, not just a consideration of the compact Pacer.

In reviewing the import data that were available for the investigation of TA-W-1930, aggregate U.S. imports of subcompact cars increased from 301,300 units in the first quarter of MY 1976 to 350,500 units in the first quarter of MY 1977, an increase of 16.3 percent. The ratio of imports to domestic production of subcompact cars increased from 101.4 percent in the first quarter of MY 1976 to 260.8 percent in the first quarter of MY 1977. (More recent data indicate increased import penetration of subcompacts for the full MY 1977. Subcompact imports rose to 1,813,000 units equivalent to 294 percent of U.S. production in that year.) Imports of intermediate cars increased absolutely in MY 1976 compared to MY 1975. Aggregate U.S. imports of compact cars, however, decreased both absolutely and relatively in MY 1976 compared to MY 1975 and in the first quarter of MY 1977 compared to the first quarter of MY 1976. The original investigation only concluded that increased imports did not contribute importantly to separations of workers producing the Pacer car or components therefor. In fact, however, the above data indicate increased aggregate imports of subcompact and intermediate cars. Such increases contributed importantly to declines in production of AMC subcompact and intermediate cars.

To establish an import impact on component workers at the Kenosha plant, the proportion of these workers' output of components that is used in the subcompact Gremlin and the intermediate Matador cars must be significant. The data from the original investigation of TA-W-1930 indicate the average (based on an average from MY 1974 through MY 1976) share of output of workers producing engines and axles/gears which was used in subcompact and intermediate cars was significant while workers producing stampings/forgings contributed an insignificant portion of their output to these cars.

Conclusion

Based on additional evidence, a review of the entire record and in accordance with the provisions of the act, I make the following revised determination;

All workers engaged in employment related to the production of engines, and axles, and gears at the Kenosha, Wis., plant of the American Motors Corp. who became totally or partially separated from employment on or after October 1, 1976, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

It is further concluded that workers engaged in employment related to the production of stampings and forgings and Pacer cars at the Kenosha, Wis., plant of the American Motors Corp. be denied eligibility to apply for trade adjustment assistance.

Signed at Washington, D.C., this 27th day of June 1978.

James F. Taylor,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-18757 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-2748]

BALLET MAKERS, INC., NEW YORK, 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-2748: 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 8, 1977, in response to a worker petition received on November 29, 1977, which was filed on behalf of workers and former workers producing ballet shoes and other theatrical shoes at the New York, N.Y., plant of Ballet Makers, Inc.

The notice of investigation was published in the Federal Register on December 30, 1977 (42 FR 65307). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Ballet Makers, 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. Without regard to whether any of the other criteria have been met, the following criterion has not been met with respect to workers producing soft ballet shoes:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Company sales of soft ballet shoes increased 21.7 percent in quantity from 1975 to 1976 and 9.9 percent from 1976 to 1977. Production of soft ballet shoes increaed 43.0 percent in quantity from 1975 to 1976 and 4.8 percent from 1976 to 1977.

Without regard to whether any of the other criteria have been met, the following criterion has not been met with respect to workers producing hard-toe ballet shoes and theatrical shoes:

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.

A Department survey conducted with Ballet Makers' customers who purchase hard-toe ballet shoes indicated that the majority of those customers that increased purchases of imported hard toe ballet shoes also increased purchases from Ballet Makers.

A Department survey conducted with Ballet Makers' customers who purchase theatrical shoes showed that the majority of customers did not import theatrical shoes during the years 1975 to 1977. Those customers who did import constituted an insignificant proportion of Ballet Makers' total sales.

Conclusion

After careful review I determine that all workers at Ballet Makers, Inc., New York, N.Y., 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 28th day of June 1978.

Harry J. Gilman,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18758 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-2940, TA-W-2949-A, TA-W-2940-B]

BLOOMSBURG MILLS, INC., LOCK HAVEN, PA. PLANT, BLOOMSBURG, PA. PLANT, ABBEVILLE, S.C. PLANT

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-2940, TA-W-2940-A, and TA-

W-2940-B: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigaion was initiated on January 23, 1978 in response to a worker petition received on January 3, 1978 which was filed on behalf of workers and former workers producing woven textile fabric at the Lock Haven, Pa., plant of Bloomsburg Mills, Inc. The investigation was expanded to include workers and former workers producing woven textile fabric at the Bloomsburg, Pa. and Abbeville, S.C. plants of Bloomsburg Mills, Inc.

The 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.

The information upon which the determination was made was obtained principally from officials of Bloomsburg Mills, 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 act must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met:

that increased imports have "contributed importantly" to the separations, or threat thereof, and to the decrease in sales or production of the firm or subdivision.

U.S. imports of greige woven acetate, rayon, polyester and nylon fabric decreased from 58 million square yards in 1976 to 53 million square yards in 1977. Imports of greige fabric increased from 40.8 million square yards to 43.3 million square yards in the first 9 months of 1977 compared to the like period of 1976. Imports of greige fabric relative to domestic production increased from 0.78 to 0.84 in the first 9 months of 1977 compared to the like period of 1976. U.S. imports of finished fabric decreased from 464 million square yards in 1976 to 453 million square yards in 1977. The ratios of imports to domestic production have been less than 2.0 percent since 1974.

None of the surveyed customers of the Lock Haven, Pa. plant of Bloomsburg Mills, Inc., import greige or finished fabric. The petition and attached documents received by the Office of Trade Adjustment Assistance allege that increased imports of wearing apparel adversely affected production and employment at the Lock Haven plant of Bloomsburg Mills, Inc. It has been previously determined (see: *United Shoe Workers of America v. Bedell, et. al.*, 506 F. 2d 174, 1974) that imported components are not like or directly competitive with finished articles.

Similarly, imported wearing apparel cannot be considered to be like or directly competitive with greige and finished fabric. Imports of greige and finished fabric must be considered in determining import injury to workers producing greige and finished fabric.

CONCLUSION

After careful review of the facts obtained in the investigation, I determine that all workers at the Lock Haven, Pa. plant, the Bloomsburg, Pa. plant, and at the Abbeville, S. C. plant of Bloomsburg Mills, Inc., 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 30th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18759 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-2920]

BYRON CLOTHING MANUFACTURING CO., SOMERVILLE, 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-2920: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on January 12, 1978 in response to a worker petition received on December 27, 1977 which was filed on behalf of workers producing men's suits at the Byron Clothing Manufacturing Co., Somerville, Mass. During the course of the investigation, the Department determined that only men's raincoats and municipal uniforms are produced at Byron.

The notice of investigation was published in the FEDERAL REGISTER on February 3, 1978 (43 FR 4695). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Byron Clothing Manufacturing Co., apparel manufacturers contracting out work to Byron, their customers, the U.S. International Trade Commission, U.S. Department of Commerce, 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 threats thereof, and to the absolute decline in sales or production.

Imports of men's raincoats are included in the market basket "Men's and Boys' Outercoats and Jackets". Imports of men's and boys' outercoats and jackets increased in absolute terms from 1975 to 1976 and increased 24.4 percent from 1976 to 1977. The ratios of imports to domestic production and consumption increased from 28.1 percent and 22.0 percent, respectively, in 1975 to 31.3 percent and 23.9 percent, respectively in 1976. Imports of men's raincoats constitute only a small portion of the aggregated market basket statistics cited above and, as such, import data may not accurately reflect the actual level of import penetration in the men's raincoat market.

Byron is a contractor of raincoats for apparel manufacturers. The Department surveyed apparel manufacturers doing business with Byron. Respondents to the survey which purchased imported men's raincoats did not decrease their business with Byron with the exception of one manufacturer accounting for an insignificant proportion of Byron's sales. Additionally, customers of an apparel manufacturer were surveyed. The manufacturer's customers did not increase their purchases of imported men's raincoats with exception of one minor customer.

CONCLUSION

After careful review I conclude that all workers at the Byron Clothing Manufacturing Co., Somerville, 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 27th day of June 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-18760 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-2996]

CENTRE FOUNDRY AND MACHINE CO., WHEELING, W.VA.

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-2996: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on January 31, 1978, in response to a worker petition received on January 10, 1978, which was filed by the United Steelworkers of America on behalf of workers and former workers producing iron castings at Centre Foundry and Machine Co., Wheeling, W. Va.

The notice of investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7067). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Centre Foundry and Machine Co. 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 sales or production, or both, of the firm or subdivision have decreased absolutely.

The investigation revealed that Centre Foundry's sales and production increased in every quarter of 1977 compared to the like quarter in 1976. Production in the first 2 months of 1978 was higher than in the same period in 1977.

CONCLUSION

After careful review I determine that all workers at Centre Foundry and Machine Co., Wheeling, W.Va. 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 27th day of June 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-18761 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-1611 and 1612]

COLEMAN PRODUCTS CO., COLEMAN, WIS. AND IRON RIVER, MICH.

Revised Determination on Reconsideration Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 222 of the Trade Act of 1974, and in accordance with section 223(a) of such act, the Department of Labor issued on October 18, 1977, a notice of negative determinations regarding eligibility to apply for adjustment assistance that applies to workers and former workers who produced wire harnesses for automotive use at the Coleman, Wis. and Iron River, Mich. plants of the Coleman Products Co., a wholly-owned subsidiary of the American Motors Corp. (AMC).

Pursuant to that notice, workers at the Coleman, Wis. and Iron River, Mich. plants were denied eligibility to apply for trade adjustment assistance. The notice of determination was published in the FEDERAL REGISTER on November 4, 1977 (42 FR 57767).

Officials of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) requested administrative reconsideration of TA-W-1611 and 1612. The Department denied reconsideration. The notice of negative determination regarding application for reconsideration was published in the FEDERAL REGISTER on January 17, 1978 (43 FR 2459).

Subsequent to the publication of the negative determination regarding application for reconsideration, the Office of Trade Adjustment Assistance, on its own motion and in the light of additional information, reopened the investigation into the petitions filed by the UAW on behalf of workers producing automotive wire harnesses at the Coleman, Wis. and Iron River, Mich., plants of the Coleman Products Co. (TA-W-1611 and 1612).

In the original investigation, it was indicated that the Coleman Products Co. is a wholly-owned subsidiary of the American Motors Corp. (AMC) and it supplies wire harnesses for AMC vehicles. A negative determination was issued on October 18, 1977, for these petitions and the decision was based on two factors: (1) With Domestic facilities supplying 100 percent of the component needs for the Canadian assembly plant of AMC, increased imports of Canadian-assembled AMC cars (the subcompact Gremlin and the compact Hornet) did not contribute importantly to separations of workers at the Coleman, Wis. and Iron River, Mich. plant of Coleman Products Co.; and (2) with intermediate size cars being the only relevant car class that was adversely affected by aggregate U.S. imports, production of wire harnesses for ultimate use in domestically-produced AMC intermediate cars did not represent a significant proportion of sales or production at the Coleman, Wis. and Iron River, Mich. plants of Coleman Products Co.

A further investigation of TA-W-1611 and 1612 reveals that little consideration was given to the import data for subcompact cars during the first quarter of model year (MY)[1] 1977. A review of the import data that were available in the investigation of TA-W-1611 and 1612 indicated that aggregate U.S. imports of subcompact cars increased from 301,300 units in the first quarter of MY 1976 to 350,500 units in the first quarter of MY 1977, an increase of 16.3 percent. The ratio of imports to domestic production of subcompact cars increased from 101.4 percent in the first quarter of MY 1976 to 260.8 percent in the first quarter of MY 1977. (More recent data indicate increased import penetration of subcompacts for the full MY 1977. Subcompact imports rose to 1,813,000 units equivalent to 294 percent of U.S. production in that year.)

Import data available in TA-W-1611 and 1612 indicated that in MY 1976 there were increased aggregate U.S. imports of intermediate size cars. Based on increased aggregate imports of subcompacts and increased aggregate imports of intermediates, the original investigation could have shown that increased aggregate imports contributed importantly to declines in production of AMC subcompact cars as well as intermediate cars.

With this expanded analysis of import influence, a reexamination of the degree to which the workers of the Coleman Products Co. produced wire harnesses for AMC subcompact and intermediate cars is warranted. Data from the investigation of TA-W-1611 and 1612 indicated that sales of wire harnesses for ultimate use in AMC domestically-produced subcompact and intermediate cars represented a significant proportion of both the Coleman, Wis. and Iron River, Mich. plants' outputs during the period from MY 1974 through MY 1976.

CONCLUSION

Based on additional evidence, a review of the entire record, and in accordance with the provisions of the act, I make the following revised determination:

All workers engaged in employment related to the production of wire harnesses for automotive use at the Coleman, Wis. and Iron River, Mich. plants of Coleman Products Co. who became totally or partially separated from employment on or after October 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 27th day of June 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-18762 Filed 7-6-78; 8:45 am]

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[1] Model year (MY) runs from October 1 through September 30 of a given year.

[4510-28]

[TA-W-2954]

CONSOLIDATED RAIL CORP., YOUNGSTOWN CONSOLIDATED YARD, YOUNGSTOWN, 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-2954: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on January 25, 1978 in response to a worker petition received on December 27, 1977, which was filed on behalf of workers and former workers maintaining and providing railway transport services in the Youngstown Consolidated Yard of Consolidated Rail Corp., in Youngstown, Ohio.

The notice of investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7068). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Consolidated Rail Corp. 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 Consolidated Rail Corp. (ConRail) is a railway transport firm which was founded in 1976 when six northeast railroads were merged under the Regional Rail Reorganization Act of 1972. The firm operates in 16 States and has no parent company. ConRail is licensed as a common carrier.

The petitioning group of workers work in the Youngstown Consolidated Yard in the Central Region of Consolidated Rail Corp. This division, like other divisions of the firm, transports passengers and a variety of products, especially steel-related items. Workers at the Youngstown Consolidated Yard of ConRail transport freight and passengers and do not produce an article within the meaning of section 222(3) of the act.

Consolidated Rail Corp. and its customers have no controlling interest in each other. The workers on whose behalf this petition was filed were hired and are paid by and subject to the control of Consolidated Rail Corp. personnel only. All employment benefits are provided and maintained by Consolidated Rail Corp. Thus, Consolidated Rail must be considered the workers' firm.

CONCLUSION

After careful review I determine that all workers at the Youngstown Consolidated Yard of Consolidated Rail Crop. in Youngstown, 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 28th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18763 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3026]

ELY AND WALKER, INC., KENNETT, MO.

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-3026: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 6, 1978 in response to a worker petition received on January 30, 1978, which was filed on behalf of workers and former workers producing men's and boys' shirts at the Kennett, Mo. plant of Ely and Walker, Inc.

The notice of investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7064). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Ely and Walker, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysis 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.

U.S. imports of men's and boys' woven dress, business, sport and uniform shirts increased from 91,808 thousand units in 1975 to 144,103 thousand units, in 1976. U.S. imports increased from 105,239 thousand units in the first three quarters of 1976 to 105,702 thousand units in the first three quarters of 1977.

The ratio of imported men's and boys' woven shirts to domestic production increased from 36.8 percent in 1975 to 53.9 percent in 1976.

Ely and Walker started importing men's and boys' dress shirts in July 1977 and eliminated the domestic production of dress shrits in September 1977. The company continues to produce men's and boys' woven western style shirts.

A survey of customers purchasing men's and boys' shirts from Ely and Walker, Inc. indicated that major customers decreased purchases from Ely and Walker in 1977 compared to 1976, while at the same time increasing their purchases of imported men's and boy's shirts.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's and boys' shirts produced at the Kennett, Mo. plant of Ely and Walker, Inc. contributed importantly to the decline in production and to the total or partial separation of workers at that plant. In accordance with the provisions of the act, I make the following certification:

All workers at the Kennett, MO. plant of Ely and Walker, Inc. who became totally or partrially separated from employment on or after January 27, 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 27th day of June 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-18765 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-1606 and 1607]

EVART PRODUCTS CO., EVART, MICH.

Revised Determination on Reconsideration Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 222 of the Trade Act of 1974, and in accordance with section 223(a) of such act, the Department of Labor issued on October 18, 1977, a notice of negative determinations regarding eligibility to apply for adjustment assistance that applied to workers and former workers who produced plastic parts for automotive use at the Evart, Mich., plant of the Evart Products Co., a wholly owned subsidiary of the American Motors Corp. (AMC).

Pursuant to that notice, workers at the Evart, Mich., plant were denied eligibility to apply for trade adjustment assistance. The notice of determination was published in the FEDERAL REGISTER on November 4, 1977 (42 FR 57769).

Officials of the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) requested administrative reconsideration of TA-W- 1606 and 1607. The Department denied reconsideration. The notice of negative determination regarding application for reconsideration was published in the FEDERAL REGISTER on January 17, 1978 (43 FR 2459).

Subsequent to the publication of the notice of negative determination regarding application for reconsideration, the Office of Trade Adjustment Assistance, on its own motion and in the light of additional information, reopened the investigation into the petitions filed by the UAW on behalf of workers producing automotive molded plastic parts at the Evart, Mich., plant of the Evart Products Co. (TA-W-1606 and 1607).

In the original investigation, it was indicated that the Evart Products Co., is a wholly owned subsidiary of the American Motors Corp. (AMC) and it supplies molded plastic parts for AMC vehicles. A negative determination was issued on October 18, 1977, for these petitions and the decision was based on two factors: (1) With domestic facilities supplying 100 percent of the component needs for the Canadian assembly plant of AMC, increased imports of Canadian-assembled AMC cars (the subcompact Gremlin and the compact Hornet) did not contribute importantly to separations of workers at Evart Products Co.; and (2) with intermediate-size cars being the only relevant car class that was adversely affected by aggregate U.S. imports, production of molded plastic parts for ultimate use in domestically produced AMC intermediate cars did not represent a significant proportion or sales or production at the Evart, Mich., plant of the Evart Products Co.

A further investigation of TA-W-1606 and 1607 reveals that little consideration was given to the import data for subcompact cars during the first quarter of model year (MY)[1] 1977. A review of the import data that were available in the investigation of TA-W- 1606 and 1607 indicated that aggregate U.S. imports of subcompact cars increased from 301,300 units in the first quarter of MY 1976 to 350,500 units in the first quarter of MY 1977, an increase of 16.3 percent. The ratio of imports to domestic production of subcompact cars increased from 101.4 percent in the first quarter of MY 1976 to 260.8 percent in the first quarter of MY 1977. (More recent data indicate increased import penetration of subcompacts for the full MY 1977. Subcompact imports rose to 1,813,000 units equivalent to 294 percent of U.S. production in that year.)

[1]Model Year (MY) runs from October 1 through September 30 of a given year.

Import data available in TA-W- 1606 and 1607 indicated that in MY 1976 there were increased aggregate U.S. imports of intermediate-size cars. Based on increased aggregate imports of subcompacts and increased aggregate imports of intermediates, the original investigation could have shown that increased aggregate imports contributed importantly to declines in production of AMC subcompact cars as well as intermediate cars.

With this expanded analysis of import influence, a reexamination of the degree to which the workers of the Evart Products Co. produced molded plastic parts for AMC subcompact and intermediate cars is warranted. Data from the investigation of TA-W- 1606 and 1607 indicate that sales of molded plastic parts from the Evart, Mich., plant for ultimate use in AMC's domestically produced intermediate and subcompact cars represented a significant proportion of the Evart plant's output for the period from MY 1974 through MY 1976.

CONCLUSION

Based on additional evidence, a review of the entire record, and in accordance with the provisions of the act, I make the following revised determination:

All workers engaged in employment related to the production of plastic parts for automotive use at the Evart, Mich., plant of Evart Products Co. in Evart, Mich., who became totally or partially separated from employment on or after October 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 27th day of June 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-18764 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3438]

FLAIR FOOTWEAR, WILKES-BARRE, 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-3438: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 28, 1978, in response to a worker petition received on March 10, 1978, which was filed by the Boot & Shoe Workers Union on behalf of all workers producing women's shoes at Flair Footwear, Wilkes-Barre, Pa.

The notice of investigation was published in the FEDERAL REGISTER on April 11, 1978 (43 FR 15205). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Flair Footwear, 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 sales or production, or both, of such firm or subdivision have decreased absolutely.

The Department's investigation revealed that sales and production of women's shoes by Flair Footwear increased absolutely from 1976 to 1977, and in January-May 1978 compared to January-May 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I determine that all workers at Flair Footwear, Wilkes-Barre, Pa., are denied eligibility to apply for adjustment assistance benefits under section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18766 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3084]

THE JAY GARMENT CO., PORTLAND, IND.

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-3084: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 7, 1978, in response to a worker petition received on January 31, 1978, which was filed by the Amalgamated Clothing & Textile Workers Union of America on behalf of workers and former workers producing men's jeans and work pants at the Portland, Ind., plants of the Jay Garment Co.

The notice of investigation was published in the FEDERAL REGISTER on

February 24, 1978 (43 FR 7744). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Jay Garment 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 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 Jay Garment Co. produces men's work pants and permanent-press jeans.

The Department conducted a survey of the sole customer of Jay Garment Co. The customer who purchases men's work pants revealed that it does not purchase any imported work pants. The same customer who purchases men's permanent-press jeans increased purchases from the subject firm while decreasing purchases of imported jeans in 1977 compared to 1976.

CONCLUSION

After careful review of the issues, I conclude that all workers at the Portland, Ind., plants of the Jay Garment Co. 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 28th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18767 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3295]

LEBOW BROTHERS, INC., BALTIMORE, MD.

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-3295: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 2, 1978, in response to a worker petition received on February 21, 1978, which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of all workers producing men's tailored clothing at Lebow Brothers, Inc., Baltimore, Md.

The notice of investigation was published in the FEDERAL REGISTER on March 17, 1978 (43 FR 11276). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Lebow Brothers, Inc., 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 a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

Average annual employment and average weekly hours of production workers at Lebow Brothers, Inc., increased in 1977 compared to 1976. Average annual employment increased in every quarter of 1977 compared to the corresponding quarter in 1976. Significant total or partial separations of workers did not occur at Lebow Brothers, Inc., in the first quarter of 1978 compared to the first quarter of 1977.

CONCLUSION

After careful review I determine that all workers of Lebow Brothers, Inc., Baltimore, Md., 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 26th day of June 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-18768 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3314]

LINDEN MANUFACTURING, INC., LINDENHURST, 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-3314: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 7, 1978, in response to a worker petition received on February 27, 1978, which was filed on behalf of workers and former workers producing ladies' raincoats, coats, and jackets at Linden Manufacturing, Inc., Lindenhurst, N.Y.

The notice of investigation was published in the FEDERAL REGISTER on March 17, 1978 (43 FR 11277). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Linden Manufacturing, 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 act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's raincoats increased from 191 thousand dozen in 1975 to 261 thousand dozen in 1976, and decreased to 242 thousand dozen in 1977. The import to domestic production ratio was 36.8 percent in 1975 and increased to 50.4 percent in 1976.

U.S. imports of women's, misses', and children's coats and jackets increased from 1,517 thousand dozen in 1975 to 2,252 thousand dozen in 1976, and increased to 2,723 thousand dozen in 1977. The import to domestic production ratio was 38.9 percent in 1975 and increased to 57.5 percent in 1976.

Linden exclusively contracts for one manufacturer. A survey of customers of the manufacturer indicated both direct and indirect purchases of imports by those customers. The survey revealed that customers were decreasing purchases from the manufacturer while increasing purchases from foreign sources in 1977 compared to 1976.

The manufacturer for which Linden exclusively contracts began importing ladies' raincoats in December 1977. Company officials indicate plans to continue importing in the future. Raincoats comprise approximately 60 percent of Linden's production while coats and jackets represent the remaining 40 percent of production.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with ladies' raincoats, coats and jackets produced by Linden Manufacturing, Inc., Lindenhurst, N.Y., contributed importantly to de-

clines in sales and production and to the total or partial separation of workers at the plant. In accordance with the provisions of the act, I make the following certification:

All workers of Linden Manufacturing, Inc., Lindenhurst, N.Y., who became totally or partially separated from employment on or after February 21, 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 30th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18769 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-2508]

MALLORY CONTROLS CO., FRANKFORT, IND.

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-2508: 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 26, 1977, in response to a worker petition received on October 18, 1977, which was filed on behalf of workers and former workers producing electronic components for TV's and radios at Mallory Controls Co., Frankfort, Ind. The investigation revealed that the workers produce controls and switches for TV's and radios.

The notice of investigation was published in the FEDERAL REGISTER on November 15, 1977 (42 FR 59133). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Mallory Controls 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 are met.

Imports of radio and television controls increased from $1.2 million in 1975 to $2.1 million in 1976 and increased from $2.1 million in 1976 to $6.3 million in 1977. The ratio of imports to domestic production increased from 4.4 percent in 1975 to 6.7 percent in 1976 and increased to 16.3 percent in 1977.

The investigation revealed that Mallory Controls Co. produces controls and switches for TV's and radios. Customers of Mallory decreased purchases from Mallory and increased purchases of imported controls and switches in both 1976 and 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with controls and switches produced by Mallory Controls Co., Frankfort, Ind., contributed importantly to the decline in sales and production and to the total or partial separation of workers at that firm.

In accordance with the provisions of the act, I make the following certification:

All workers at Mallory Controls Co., Frankfort, Ind., who became totally or partially separated from employment on or after June 15, 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 30th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18770 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-2886]

MIRANDO MANUFACTURING CO., INC., ELIZABETH, N.J.

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-2886: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on January 9, 1978, in response to a worker petition received on December 12, 1977, which was filed on behalf of workers and former workers producing men's and boys' jackets at Mirando Manufacturing Co., Inc., Elizabeth, N.J.

The notice of investigation was published in the *Federal Register* on January 27, 1978 (43 FR 3778). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Mirando Manufacturing Co., 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 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.

Evidence developed during the course of the investigation revealed that production and employment at Mirando have followed a distinct seasonal pattern in recent years. The company has closed in the fourth quarter of each year and has reopened in February, March, or April of the following year.

According to section 223(b)(1) of the Trade Act, separations that occurred more than 1 year prior to the date of the petition are outside the scope of coverage by the trade adjustment assistance program. The petition in this case was dated December 7, 1977. There were no separations at Mirando from December 7, 1976, through May 1977.

Employment fluctuated slightly from June 1977 until December 1977 when the firm once again shut down temporarily. The fluctuations in employment during this period were consistent with the normal seasonal pattern. Furthermore, employment levels at the firm were higher in each month from June 1977 through December 1977 than during the same months of the previous year. Average hours worked during the period June 1977 to December 1977 also exceeded hours worked during the same period of the previous year.

CONCLUSION

After careful review I determine that all workers at Mirando Manufacturing Co., Inc., Elizabeth, 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 28th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18771 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3262]

MISSISSIPPI VALLEY STRUCTURAL STEEL, ST. LOUIS, MO.

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-3262: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 27, 1978 in response to a worker petition received on February 13, 1978 which was filed by workers producing fabricated structural steel at the St. Louis, Mo. plant of Mississippi Valley Structural Steel.

The Notice of Investigation was published in the FEDERAL REGISTER on March 14, 1978 (43 FR 10648). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officals of Mississippi Valley Structural Steel, 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 partial separation, or threat thereof, and to such decline in sales or production.

The Department conducted a survey of some of the construction projects for which Mississippi Valley Structural Steel submitted unsuccessful bids during the recent year. The survey indicated that none of the domestic construction projects were awarded to foreign firms or to domestic firms utilizing imported fabricated structural steel.

CONCLUSION

After careful review I determine that all workers of Mississippi Valley Structural Steel, St. Louis, Mo. 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 30th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18772 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3032]

NEVADA MINES DIVISION, KENNECOTT COPPER CORP., RUTH AND MCGILL, NEV.

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-3032: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 6, 1978 in response to a worker petition received on January 30, 1978 which was filed by the International Association of Machinists and Aerospace Workers on behalf of workers and former workers mining copper ore and producing blister copper at the Nevada Mines Division of Kennecott Copper Corp., Ruth and McGill, Nev.

The Notice of Investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7064). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Kennecott Copper Corp., the U.S. Department of Commerce, the U.S. International Trade Commission, the U.S. Department of the Interior, The American Metals Market, Metal Bulletin, Metals Week, 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.

U.S. imports of refined copper increased from 147 thousand short tons in 1975 to 384 thousand short tons in 1976 and to 391 thousand short tons in 1977.

The ratio of imported refined copper to domestic production increased from 8.6 percent in 1975 to 21.0 percent in 1976 and to 22.2 percent in 1977.

The evidence developed during the Department's investigation revealed that 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. Kennecott Copper and other domestic producers of refined copper lost 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 producers' price for copper and the price established by the LME (London Metals Exchange). When the LME price drops more than the estimated transportation costs of 5-8 cents per pound below the domestic producers' price, the demand for imported copper increases. The yearly average LME price for copper was 10 cents below the yearly average domestic producers' price in 1977. In July and August 1977 the LME price was almost 12 cents per pound below the domestic producers' 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.

Price pressure from imported copper has reduced the ability to profitably mine domestic ore and convert it to copper concentrate and 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, domestic producers lose, on the average, 3 to 45 cents on each pound of copper they choose to sell.

Kennecott's decision to layoff workers and reduce operations of the Nevada Mines Division in May 1978 was based mainly on an attempt to minimize losses the division could not avoid were it to maintain normal production levels at the current market prices for copper.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with copper ore mined and blister copper produced by the Nevada Mines Division of Kennecott Copper Corp. contributed importantly to the decline in production and to the total or partial separation of the workers at the division. In accordance with the provisions of the act, I make the following certification:

"All workers of the Nevada Mines Division, Kennecott Copper Corp., Ruth and McGill, Nev. who became totally or partially separated from employment on or after June 11, 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 27th day of June 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-18773 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3107]

PAT JO BLOUSE CO., FRANKLINVILLE, N.J.

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-3107: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 9, 1978 in response to a worker petition received on January 30, 1978, which was filed by the International Ladies Garment Workers Union on behalf of workers and former workers producing ladies blouses and dresses at Pat Jo Blouse Co., Franklinville, N.J. During the course of the investigation it was determined that ladies sportswear such as skirts and slacks is also produced.

The notice of investigation was published in the FEDERAL REGISTER on February 24, 1978 (43 FR 7743). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Pat Jo Blouse Co., its customers, the U.S. Department of Commerce, the National Cotton Council of America, 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 sales or production, or both, of the firm or subdivision have decreased absolutely

The Department's investigation has revealed that sales and production at Pat Jo Blouse Co. increased in 1976 compared to 1975 and in 1977 compared to 1976.

CONCLUSION

After careful review I determine that all workers of Pat Jo Blouse Co., Franklinville, 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 30th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18774 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3191]

REINFORCEMENT BAR FABRICATING SHOP AND WIRE ROPE MILL DEPOT, BETHLEHEM STEEL CORP., BALTIMORE, MD.

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-3191: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 22, 1978 in response to a worker petition received on February 8, 1978, which was filed on behalf of all workers producing reinforcement bar at the Baltimore Reinforcing Bar Shop of Bethlehem Steel Corp. in Baltimore, Md. During the course of the investigation, it was established that the correct name of the plant is the Reinforcement Bar Fabricating Shop and Wire Rope Mill Depot. It was also established that the plant warehouses, cuts to order and ships wire rope.

The notice of investigation was published in the FEDERAL REGISTER on March 3, 1978 (43 FR 8863). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Bethlehem Steel 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. 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.

Imports of rebars, the product which accounted for the majority of the plant's total 1977 production, declined from 192 thousand tons in 1976 to 93 thousand tons in 1977. The ratio of imports to domestic shipments decreased from 5 percent in 1976 to 2.2 percent in 1977.

The Department conducted surveys of a representative sample of customers of reinforcement bar and wire rope of the Baltimore plant. None of the customers of reinforcement bar purchased any imported bars in 1976 or 1977. Among the respondents to the wire rope survey, most revealed they did not purchase any imports in 1976 and 1977. The few customers that did purchase imported wire rope increased purchases from the Baltimore Reinforcement Bar Shop in 1977 compared to 1976.

CONCLUSION

After careful review I determine that all workers at the Reinforcing Bar Fabricating Shop and Wire Rope Mill Depot, Bethlehem Steel Corp., Baltimore, Md. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Singed at Washington, D.C., this 30th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18775 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3014]

ROMA PRINTING & FINISHING CORP., PATERSON, N.J.

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-3014: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on January 16, 1978 in response to a worker petition received on January 16, 1978, which was filed on behalf of workers and former workers engaged in the printing of synthetic fabric at Roma Printing & Finishing Corp., Paterson, N.J.

The notice of investiation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7066). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Roma Printing & Finishing Corp. and 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. 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 decline in sales or production.

U.S. imports of finished fabrics, which include printed polyester fabrics, decreased in each year from 1973 to 1976 and also decreased in 1977 compared with 1976.

The Department's investigation revealed that while many customers had reduced printing purchases from the subject firm, none had shifted to foreign sources for purchases of knit or woven printed polyester fabric. Some customers had increased their fabric purchases from other domestic sources capable of supplying solid colored synthetic fabric rather than printed fabric.

CONCLUSION

After a careful review of the facts obtained in the investigation, it is concluded that all workers at Roma Printing & Finishing Corp. of 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 28th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18776 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-2696]

ROSE VENICE, LYNDHURST, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with sectioin 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2696: Investigation regarding certification of eligibility to apply for worker adjustmnent assistance as prescribed in section 222 of the act.

The investigation was initiated on December 1, 1977 in response to a worker petition received on November 14, 1977, which was filed by the International Ladies Garment Workers Union on behalf of workers and former workers producing ladies' slips and lingerie at Rose Venice, Lyndhurst, N.J. The investigation revealed that the articles produced were ladies' nightgowns and bed jackets.

The notice of investigation was published in the FEDERAL REGISTER on December 16, 1977 (42 FR 63484). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Rose Venice, its manufacturers, 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. 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.

Imports of women's, girls' and children's nightwear increased from 372 thousand dozen in 1975 to 539 thousand dozen in 1976 and further increased to 657 thousand dozen in 1977. The imports to domestic production ratio was 2.2 percent in 1975 and 3.3 percent in 1976.

A Department survey of the two manufacturers for whom Rose Venice performed contract work since 1975 indicated that neither manufacturer used foreign contractors or purchased imported ladies' nightgowns or bed jackets. Both manufacturers experienced increasing or constant sales since 1975. Both manufacturers decreased contract work with Rose Venice and either increased in house production or increased purchases from other domestic sources.

CONCLUSION

After careful review, I determine that all workers at Rose Venice 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 26th day of June 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-18777 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-2827]

TIM COIL & LOOP CO., SOUTH SIOUX CITY, NEBR.

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-2827: 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 28, 1977 in response to a worker petition received on December 9, 1977 which was filed on behalf of workers and former workers producing antennas and transformers at Tim Coil & Loop Co., South Sioux City, Nebr.

The notice of investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1554). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Tim Coil & Loop Co., its customers, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affimative 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.

A Department survey of customers that purchase antennas from Tim Coil & Loop indicated that none of these customers purchase imported antennas. Customers that purchase imported transformers also increased purchases of transformers from Tim Coil & Loop.

The petitioners allege that the firm's major customer cutback production operations when it began to increase imports of its finished product (stereos), which caused a reduction in the customer's need for the antennas produced by Tim Coil & Loop. While imports of stereos incorporate antennas of the same origin, stereo imports are not "like or directly competitive" with antennas within the meaning of section 222(3) of the Trade Act of 1974.

CONCLUSION

After careful review, I determine that all workers at Tim Coil & Loop Co., South Sioux City, Nebr., 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 27th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18778 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3040]

U.S. STEEL CORP. SUPPLY DIVISION, DALLAS, TEX. STEEL SERVICE CENTER

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-3040: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 6, 1978 in response to a worker petition received on January 16, 1978 which was filed by the United Steelworkers of America on behalf of all workers selling U.S. Steel products at the Dallas, Tex. Steel Service Center, U.S. Steel Supply Division.

The notice of investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7064). 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 Corp., 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 sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales at the Dallas, Tex. Steel Service Center increased in 1977 compared to 1976 and continued to increase in the first 2 months of 1978.

The Dallas, Tex. Steel Service Center does not maintain any production facilities. The center serves as a selling and servicing unit.

CONCLUSION

After careful review I determine that all workers at the Dallas, Texas Steel Service Center are denied eligibility to apply for trade adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 27th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18779 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3042]

U.S. STEEL CORP. SUPPLY DIVISION, HOUSTON, TEX. STEEL SERVICE CENTER

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-3042: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 6, 1978 in response to a worker petition received on January 16, 1978 which was filed by the United Steelworkers of America on behalf of all workers selling U.S. Steel products at the Houston, Tex. Steel Service Center, U.S. Steel Supply Division.

The notice of investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7064). 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 Corp., 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 sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales at the Houston, Tex. Steel Service Center increased in 1977 compared to 1976 and continued to increase in the first 2 months of 1978.

The Houston, Tex. Steel Service Center does not maintain any production facilities. The center serves as a selling and servicing unit.

CONCLUSION

After careful review I determine that all workers at the Houston, Tex. Steel Service Center are denied eligibility to apply for trade adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 27th day of June 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-18780 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3045]

U.S. STEEL CORP. SUPPLY DIVISION, CONSHOHOKEN, PA. STEEL SERVICE CENTER

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3045: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 6, 1978 in response to a worker petition received on January 16, 1978 which was filed by the United Steelworkers of America on behalf of all workers selling U.S. Steel products at the Conshohoken, Pa. Steel Service Center, U.S. Steel Supply Division.

The notice of investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7064). 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 Corp., 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 sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales at the Conshohoken, Pa. Steel Service Center increased in 1977 compared to 1976 and continued to increase the first 2 months of 1978.

The Conshohoken, Pa. Steel Service Center does not maintain any production facilities. The center serves as a selling and servicing unit.

CONCLUSION

After careful review I determine that all workers at the Conshohoken, Pa. Steel Service Center are denied eligibility to apply for trade adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 27th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18781 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3051]

U.S. STEEL CORP. SUPPLY DIVISION, CLEVELAND, OHIO STEEL SERVICE CENTER

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1977 the Department of Labor herein presents the results of TA-W-3051: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 6, 1978 in response to a worker petition received on January 16, 1978 which was filed by the United Steelworkers of America on behalf of all workers selling U.S. Steel products at the Cleveland, Ohio Steel Service Center, U.S. Steel Supply Division.

The notice of investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7064). 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 Corp., 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 sales or production, or both, of the firm or subdivison have decreased absolutely.

Sales at the Cleveland, Ohio Steel Service Center increased in 1977 compared to 1976 and continued to increase in the first 2 months of 1978.

The Cleveland, Ohio Steel Service Center does not maintain any production facilities. The center serves as a selling and servicing unit.

CONCLUSION

After careful review I determine that all workers at the Cleveland, Ohio Steel Service Center are denied eligibility to apply for trade adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 27th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18782 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3052]

UNITED STATES STEEL CORP., SUPPLY DIVISION, MEMPHIS, TENN. STEEL SERVICE CENTER

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-3052: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 6, 1978 in response to a worker petition received on January 16, 1978 which was filed by the United Steelworkers of America on behalf of all workers selling U.S. Steel products at the Memphis, Tenn, Steel Service center, U.S. Steel Supply Division.

The notice of investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7064). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of United States Steel Corp., 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 sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales at the Memphis, Tenn. Steel Service Center increased in 1977 compared to 1976 and continued to increased in the first 2 months of 1978.

The Memphis, Tenn. Steel Service Center does not maintain any production facilities. The center serves as a selling and servicing unit.

CONCLUSION

After careful review I determine that all workers at the Memphis, Tenn. Steel Service Center are denied eligibility to apply for trade adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18783 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3053]

UNITED STATES STEEL CORP., SUPPLY DIVISION, BIRMINGHAM, ALA. STEEL SERVICE CENTER

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-3053: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 6, 1978 in response to a worker petition received on January 16, 1978 which was filed by the United Steelworkers of America on behalf of all workers selling U.S. Steel products at the Birmingham, Ala. Steel Service Center, U.S. Steel Supply Division.

The notice of investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7064). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of United States Steel Corp., 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 sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales at the Birmingham, Ala. Steel Service Center increased in 1977 compared to 1976 and continued to increase in the first 2 months of 1978.

The Birmingham, Ala. Steel Service Center does not maintain any production facilities. The Center serves as a selling and servicing unit.

CONCLUSION

After careful review I determine that all workers at the Birmingham, Ala. Steel Service Center are denied eligibility to apply for trade adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 27th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18784 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3054]

UNITED STATES STEEL CORP., SUPPLY DIVISION, CINCINNATI, OHIO STEEL SERVICE CENTER

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-3054: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 6, 1978 in response to a worker petition received on January 16, 1978 which was filed by the United Steelworkers of America on behalf of all workers selling U.S. Steel products at the Cincinnati, Ohio Steel Service Center, U. S. Steel Supply Division.

The notice of investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7064). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of United States Steel Corp., 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 eligbility 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 sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales at the Cincinnati, Ohio Steel Service Center increased in 1977 compared to 1976 and continued to increase in the first 2 months of 1978.

The Cincinnati, Ohio Steel Service Center does not maintain any production facilities. The center serves as a selling and servicing unit.

CONCLUSION

After careful review I determine that all workers at the Cincinnati, Ohio Steel Service Center are denied eligibility to apply for trade adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18785 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3059]

UNITED STATES STEEL CORP., UNITED STATES STEEL PRODUCTS DIVISION, ST. LOUIS, MO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1977, the Department of Labor herein presents the results of TA-W-3059: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 6, 1978, in response to a worker petition received on January 16, 1978, which was filed by the United Steelworkers of America on behalf of workers producing small steel pails, drums, and some miscellaneous steel products at the St. Louis, Mo., plant of the United States Steel Products Division of the United States Steel Corp.

The notice of investigation was published in the *Federal Register* on February 17, 1978 (43 FR 7064). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the United States Steel Corp. and 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 threats thereof, and to the absolute decline in sales or production.

The ratio of imports of pails and drums to domestic shipments has been less than 1 percent in each year between 1973 and 1977 and was 0.7 percent in 1977. The investigation revealed that the plant produced steel shipping containers in the form of drums. Production was terminated at the St. Louis plant as of December 31, 1977, and was transferred to a new company plant in nearby Fenton, Mo., as of January 1, 1978.

A survey of some of the customers purchasing drums from the plant was conducted by the Department. None of the respondents purchased any imported drums in 1976 or 1977. Most of the respondents indicated that imports of steel drums were not affecting the domestic industry. Their statements are consistent with the finding that total domestic shipments of pails and drums increased 23.3 percent from $629.7 million in 1976 to $776.6 million in 1977.

CONCLUSION

After careful review, I determine that all workers at the St. Louis, Mo., plant of the United States Steel Products Division of the United States Steel Corp. are denied eligibility to apply for adjustment assistance benefits under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 27th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18786 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3701, TA-W-3702]

UNITED STATES STEEL CORP., PITTSBURGH SERVICE CENTER, PITTSBURGH, PA.

Termination of Investigations

Pursuant to section 221 of the Trade Act of 1974, investigations were initiated on May 11, 1978, in response to a worker petition received on April 19, 1978, on behalf of all workers performing data processing and direct mail services at the Grant Street and Muriel Street locations of the Pittsburgh service center of the United States Steel Corp.

The notice of investigation was published in the FEDERAL REGISTER on May 30, 1978 (43 FR 23036). No public hearing was requested and none was held.

On April 14, 1978, the Department certified as eligible to apply for adjustment assistance, all workers at the United States Steel Corp.'s corporate headquarters in Pittsburgh, Pa. (TA-W-2850). Since workers newly separated, from employment totally or partially, on or after March 1, 1977 (impact date), and before April 14, 1980 (expiration date of the certification), from the Pittsburgh service centers are covered by an existing certification; continuation of these investigations would serve no purpose. Consequently, the investigations have been terminated.

Signed at Washington, D.C., this 22d day of June 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-18787 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-2625, TA-W-2623]

VINCENT'S FORMAL AND LEISURE WEAR, INC., AND ROMA FASHIONS, INC., NEW YORK, 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-2625 and TA-W-2623: 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 Amalgamated Clothing & Textile Workers Union on behalf of workers and former workers producing men's suits at Vincent's Formal & Leisure Wear, Inc., New York, N.Y., and Roma Fashions, Inc., New York, N.Y. The investigation revealed that men's sportcoats and overcoats are also produced by the company.

The notice of investigation was published in the FEDERAL REGISTER on December 13, 1977 (42 FR 62587). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Vincent's Formal & Leisure Wear, 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. 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.

Sales increases by Vincent's Formal & Leisure Wear (including Roma Fashions) during the first 6 months of 1977 are attributed to a contract performed for a firm who was a major customer during that period. Sales declines during the latter 6 months are attributed to the fact that the customer filed for bankrupcy and ceased all its operations in June 1977.

A previous Department investigation revealed that workers employed by Vincent's major customer were denied eligibility to apply for adjustment assistance. A finding in that investigation revealed that import purchases by the firm declined in 1976. Furthermore, a survey of Vincent's other customer during 1977 indicated that the customer increased purchases from Vincent's in 1977 compared to 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I determine that workers of Vincent's Formal & Leisure Wear, Inc., New York, N.Y., and Roma Fashions, Inc., New York, N.Y., 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 27th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18788 Filed 7-6-78 8:45 am]

[4510-28]

WHEELING-PITTSBURGH STEEL CORP. DUVAL CENTER-SYSTEMS & DATA PROCESSING, WHEELING, W. VA.

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-3435 investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 28, 1978 in response to a worker petition received on March 1, 1978 which was filed on behalf of workers and former workers engaged in employment related to the production of various steel products at the Duval Center-Systems and Data Processing Center of Wheeling-Pittsburgh Steel Corp., Wheeling, W. Va.

The notice of investigation was published in the FEDERAL REGISTER on April 11, 1978 (43 FR 15205 and 15206). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Wheeling-Pittsburgh Steel Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the American Iron and Steel Institute, industry analysts and Department files.

In order to make an affimative 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.

The Duval Center is the systems and data processing center for Wheeling-Pittsburgh Steel Corp. Workers at the center handle data processing for the entire corporation.

Workers producing over 90 percent of Wheeling-Pittsburgh's total output have been certified eligible to apply for adjustment assistance by the Department in previous cases (see TA-W-1397, 1472, 1572, 2742, 2743, 2744, 2745, 2746).

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with various steel products produced by Wheeling-Pittsburgh Steel Corp., contributed importantly to the total or partial separation of workers at the Duval Center-Systems and Data Processing Center of Wheeling-Pittsburgh Steel Corp., Wheeling, W. Va.

In accordance with the provisions of the act, I make the following certification:

All workers at the Duval Center-Systems and Data Processing Center of Wheeling-Pittsburgh Steel Corp., Wheeling, W. Va., who became totally or partially separated from employment on or after February 23, 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 30th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18789 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-2932]

WHEELING-PITTSBURGH STEEL CORP., LOUISVILLE, KY. DISTRICT SALES OFFICE

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-2932 investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on January 12, 1978 in response to a worker petition received on December 27, 1977 which was filed on behalf of workers and former workers producing various steel products at the Louisville, Ky. District Sales Office of Wheeling-Pittsburgh Steel Corp.

The notice of investigation was published in the FEDERAL REGISTER on

February 3, 1978 (43-FR-4695). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Wheeling-Pittsburgh Steel Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the American Iron and Steel Institute, 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.

The Louisville, Ky. District Sales Office was a sales office of Wheeling Pittsburgh Steel Corp. The major portion of the sales through the Louisville office were products produced at the Allenport, Pa., the Steubenville and Yorkville, Ohio plants of Wheeling-Pittsburgh Steel Corp.

Workers at these three plants of Wheeling-Pittsburgh have been certified eligible to apply for adjustment assistance by the Department in previous cases (See TA-W-1397, 2745, 2743, 2746).

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with various steel products produced by Wheeling-Pittsburgh Steel Corp., contributed importantly to the decline in sales and to the total or partial separation of workers at the Louisville, Ky. District Sales Office of Wheeling-Pittsburgh Steel Corp.

In accordance with the provisions of the act, I make the following certification:

All workers at the Louisville, Ky. District Sales Office of Wheeling-Pittsburgh Steel Corp. 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 30th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18790 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-2938]

WHEELING-PITTSBURGH STEEL CORP., WHEELING FABRICATING PLANT, WHEELING, W. VA.

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-2938: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on January 17, 1978 in response to a worker petition received on December 22, 1977 which was filed by the United Steelworkers of America on behalf of workers and former workers producing structural steel framing and utility buildings at the Wheeling Fabricating Plant of Wheeling-Pittsburgh Steel Corp., Wheeling, W. Va.

The 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.

The information upon which the determination was made was obtained principally from officials of Wheeling-Pittsburgh Steel Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the American Iron and Steel Institute, 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, with regard to structural steel framing, the following criterion has not been met.

That sales or production, or both, of the firm or subdivision have declined absolutely.

With regard to utility buildings, 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 Wheeling Fabricating Plant produces steel framing and steel utility buildings from steel produced at the Steubenville plant.

Production and shipments of steel framing at the plant increased in 1977 from 1976.

Imports of metal buildings increased in 1976 from 1975 and decreased 24 percent in 1977 from 1976. The ratio of imports to domestic shipments decreased from 3.8 percent in 1976 to 2.4 percent in 1977.

U.S. exports of metal buildings exceeded imports in each year from 1973 through 1977. In 1977 exports exceeded imports by over 500 percent.

None of Wheeling-Pittsburgh's utility building customers who were surveyed by the Department purchased imported utility buildings in 1976 or 1977.

CONCLUSION

After careful review, I determine that all workers at the Wheeling Fabricating Plant of Wheeling-Pittsburgh Steel Corp., Wheeling, W. Va. 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 30th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18791 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-2745]

WHEELING-PITTSBURGH STEEL CORP., MONESSEN, PA. AND ALLENPORT, PA.

Certifications 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-2745 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 7, 1977 in response to a worker petition received on November 23, 1977, which was filed by the United Steelworkers of America on behalf of workers and former workers producing carbon steel slabs, billets and rounds at the Monessen, Pa. plant of Wheeling-Pittsburgh Steel Corp. During the couse of the investigation the petition was expanded to include workers producing hot and cold rolled sheet and strip at the Allenport, Pa. plant of Wheeling-Pittsburgh Steel Corp.

The notice of investigation was published in the FEDERAL REGISTER on December 30, 1977 (42 FR 65308). No public hearing was requested and none was held.

The information upon which the determinations were made was obtained principally from Wheeling-Pittsburgh Steel Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the American Iron and Steel Institute, 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 requrements have been met.

The investigation revealed that the Monessen plant principally produces slabs, which are shipped to the Allenport plant where they are made into hot and cold rolled sheet and strip, and rounds which are shipped to the Allenport plant where they are made into seamless tubing. Workers at Allenport producing seamless tubing have been certified eligible to apply for adjustment assistance by the De-

partment in a previous case (See TA—W—1397).

Imports of hot and cold rolled carbon steel sheet and strip increased in 1976 from 1975 and increased 50 percent in 1977 from 1976. The ratio of imports to domestic shipments increased from 11.8 percent in 1976 to 18.6 percent in 1977.

Customers of Wheeling-Pittsburgh decreased purchases of hot and cold rolled sheet and strip from Wheeling-Pittsburgh and increased import purchases in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with hot and cold rolled sheet and strip produced at the Monessen and Allenport, Pa. Plants of Wheeling-Pittsburgh Steel Corp., contributed importantly to the decline in sales and production and to the total or partial separation of workers at those plants.

In accordance with the provisions of the act, I make the following certification:

All workers at the Monessen, Pa. plant of Wheeling-Pittsburgh Steel Corp., including the Monessen southwestern Railway Co., and all workers engged in employment related to the production of hot and cold rolled sheet and strip at the Allenport, Pa. plant of Wheeling-Pittsburgh Steel Corp. who became totally or partially separated 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 30th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18792 Filed 7-6-78; 8:45 am]

[4510-28]

[TA-W-3290]

WILLIAM AMER CO., INC., PHILADELPHIA, 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-3290: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 1, 1978 in response to a worker petititon received on February 22, 1978 which was filed on behalf of workers and former workers of William Amer Co., Inc., Philadelphia, Pa.

The notice of investigation was published in the FEDERAL REGISTER on March 14, 1978 (43 FR 10649). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of William Amer Co., 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 act must be met. It is concluded that all of the requirements have been met.

United States imports of tanned and finished kid and goatskin increased from 22,146 thousand square feet in 1975 to 32,902 thousand square feet in 1976, and decreased to 28,819 thousand square feet in 1977. Although imports declined in 1977 from 1976, 1977 imports were 31 percent greater than average annual imports during the 1973-1976 period; in 1977 imports exceeded domestic production nearly sixfold.

Several customers of William Amer who were surveyed revealed that they reduced purchases from William Amer in 1976 and 1977 and increased direct and indirect purchases from foreign sources.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with tanned and finished kid leather produced by the William Amer Co., Inc., Philadelphia, Pa., contributed importantly to the total or partial sepration of workers at that firm. In accordance with the provisions of the act, I make the following certification:

All workers of William Amer Co., Inc., Philadelphia, Pa. who became totally or partially separated from employment on or after Februry 17, 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 30th day of June 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-18793 Filed 7-6-78; 8:45 am]

[7510-01]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 78-28]

NASA ADVISORY COUNCIL (NAC) SPACE AND TERRESTRIAL APPLICATIONS ADVISORY COMMITTEE (STAAC)

Meeting

The Ad Hoc Informal Advisory Subcommittee on Satellite Communications Applications of the NAC-STAAC will meet on July 25 and 26, 1978 from 8:30 a.m. to 4:30 p.m. at NASA Headquarters, Room 226A, Federal Office Building 10B, 600 Independence Avenue SW., Washington, D.C. 20546. Members of the public will be admitted to the meeting at 8:30 a.m. on both days on a first-come first-serve basis and will be required to sign a visitors' register. The seating capacity of the meeting room is for 35 persons.

This Subcommittee, comprised of five members of the NAC-STAAC including the Subcommittee Chairman, Dr. John V. Harrington, will review the current and planned program in communications and discuss the future direction of this program.

July 25, 1978

8:30 a.m. Overview of the Communications Program. 3:30 p.m. Discussion of Advanced Systems Studies and Strategies. 4:30 p.m. Adjourn.

July 26, 1978

8:30 a.m. Discussion of the Communications Program. 1:15 p.m. Summary of Conclusions and Recommendations. 3 p.m. Adjourn.

For further information regarding the meeting, please contact Mr. Louis B. C. Fong, Executive Secretary of the Subcommittee, Washington, D.C. 20546, telephone 202-755-8617.

Dated: June 30, 1978.

ROBERT A. NEWMAN,
Acting Associate Administrator for External Relations.

[FR Doc. 78-18713 Filed 7-6-78; 8:45 am]

[7510-01]

[Notice 78-29]

APPLICATIONS STEERING COMMITTEE (ASC) SUPPORTING RESEARCH AND TECHNOLOGY (SR&T) AD HOC ADVISORY SUBCOMMITTEE

Meeting

The Geodynamics Panel of the ASC, SR&T Ad Hoc Advisory Subcommittee will meet at the Goodard Space Flight Center, Greenbelt, Md. 20771, on July 24-27, 1978. The meeting will be held in Room 205 of Building 26 from 8:30 a.m. to 5:30 p.m. on each day. The Subcommittee will conduct a comprehensive evaluation of the proposals submitted to NASA in response to the Applications Notice for the Supporting Research and Technology phase of the Space and Terrestrial Applications Program. Discussion of the professional qualifications of the proposers and their potential scientific contributions to the SR&T Program would invade the privacy of the proposers and the other individuals involved. Since the Subcommittee sessions will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), as described

above, it has been determined that the sessions should be closed to the public.

For further information, please contact Mr. James Murphy, NASA Headquarters, Washington, D.C. 20546, area code 202-755-6038.

Dated: June 30, 1978.

ROBERT A. NEWMAN,
Acting Associate Administrator for External Relations.

[FR Doc. 78-18714 Filed 7-6-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-366]

GEORGIA POWER CO. ET AL.

Issuance of a Facility Operating License and Granting of Exemptions From Certain Requirements

In the matter of *Georgia Power Co., Oglethorpe Electric Membership Corp., Municipal Electric Authority of Georgia and City of Dalton, Ga. Edwin I. Hatch Nuclear Plant, Unit No. 2. Notice of issuance of a facility operating license and granting of exemptions from certain requirements of (1) section 50.55a(g)(2) of 10 CFR Part 50, (2) criterion 2 of appendix A to 10 CFR Part 50, (3) criterion 50 of appendix A to 10 CFR Part 50, and (4) appendices G and H to 10 CFR Part 50.*

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. NPF-5 to Georgia Power Co., Oglethorpe Electric Membership Corp., Municipal Electric Authority of Georgia, and the City of Dalton, Ga., authorizing operation of the Edwin I. Hatch Nuclear Plant, Unit No. 2, a boiling water reactor and associated equipment located at the licensees' site in Appling County, Ga., at steady state reactor core power levels not in excess of 2436 megawatts thermal, in accordance with the provisions of the license and the technical specifications.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license. The application for the license complies with the standards and requirements of the act and the Commission's rules and regulations.

This action is in furtherance of the licensing action encompassed in the combined Notice of Receipt of Application for Facility Operating License; Notice of Availability of Applicants' Environmental Report; and Notice of Consideration of Issuance of Facility Operating License and Notice of Opportunity for Hearing published in the FEDERAL REGISTER on January 5, 1976 (41 FR 830).

The license is effective as of its date of issuance and shall expire on December 27, 2012.

The Commission has determined that the facility requires exemptions from certain requirements of (1) section 50.55a(g)(2) of 10 CFR Part 50, (2) criterion 2 of appendix A to 10 CFR Part 50, (3) criterion 50 of appendix A to 10 CFR Part 50, and (4) appendices G and H to 10 CFR Part 50. These exemptions are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. In making this determination, the Commission has given due consideration to the burden that could result if these requirements were imposed on the facility.

The exemption from certain requirements of section 50.55a(g)(2) of 10 CFR Part 50 relates to the preservice examination requirements of section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (the ASME Code) for certain circumferential and longitudinal piping welds and integrally welded supports of the piping pressure boundary.

The Commission has evaluated the preservice examination program for the Edwin I. Hatch Nuclear Plant, Unit No. 2, has determined that a large portion of the ASME Code required preservice examinations were performed, and has concluded that failure to perform 100 percent preservice examination of the welds identified in the exemption will not significantly affect the assurance of the initial system integrity or the ability to subsequently detect and correct service-induced defects.

The exemption from certain requirements of criterion 2 of appendix A to 10 CFR Part 50 relates to the capability of the reactor protection system power supply to withstand the effects of earthquakes without jeopardizing the capability of the reactor protection system to perform its intended safety function.

The Commission has evaluated the Edwin I. Hatch Nuclear Plant, Unit 2 reactor protection system power supply design and has concluded that, based on the favorable operating experience attained with essentially the same reactor protection system power supplies on similar operating reactors and on the sequence of events that must occur in order to result in the loss of capability to scram the plant, the benefits of allowing the plant to operate until the end of the first refueling outage while a systen that will enable the reactor protection system power supply to conform to the applicable requirements of criterion 2 of appendix A to 10 CFR Part 50 is designed, fabricated, installed, and tested outweigh the cost to the public of delaying the startup of the plant.

The exemption from certain requirements of criterion 50 of appendix A to 10 CFR Part 50 relates to the demonstrated safety margin of the Mark I containment system for the Edwin I. Hatch Nuclear Plant, Unit No. 2 for recently identified hydrodynamic suppression pool loads associated with a postulated design basis loss-of-coolant accident and provides for operation under the conditions specified in the "Mark I Containment Short Term Program Safety Evaluation Report" (NUREG-0408), dated December 1977 and under any resulting technical specification requirements. To this extent, this exemption encompasses any related requirements of section 50.55a of 10 CFR Part 50 and criterion 1 of appendix A to 10 CFR Part 50.

The Commission has evaluated the demonstrated safety margin of the containment system for the Edwin I. Hatch Nuclear Plant, Unit No. 2 under present conditions and has concluded that sufficient margin exists to preclude undue risk to the health and safety of the public. This evaluation is documented in NUREG-0408.

This exemption is granted for an interim period of approximately 2 years while a more detailed review is conducted. At the conclusion of this review, the design safety margin of the containment system for the Edwin I. Hatch Nuclear Plant, Unit No. 2 will be restored to that which was originally intended.

The exemption from certain requirements of appendices G and H to 10 CFR Part 50 relates to the fracture toughness requirements for the ferritic materials of the pressure-retaining components of the reactor coolant pressure boundary and the reactor vessel material surveillance program.

Although the Edwin I. Hatch Nuclear Plant, Unit No. 2 reactor vessel was ordered and fabricated and its testing program was developed well before the requirements of appendices G and H to 10 CFR Part 50 became effective, alternative methods for providing adequate margins of safety against fracture and an alternative material surveillance program were proposed.

The Commission has evaluated the alternative methods for providing adequate margins of safety against fracture and the alternative material surveillance program and has concluded that they are acceptable.

The Commission has determined that the granting of these exemptions will not result in any significant environmental impact and that pursuant to section 51.5(d)(4) of 10 CFR Part 51, an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared on connection with the granting of these exemptions.

A copy of (1) Facility Operating License No. NPF-5, complete with technical specifications (appendices A and B); (2) the report of the Advisory Committee on Reactor Safeguards, dated February 16, 1978; (3) the Office of Nuclear Reactor Regulation's Safety Evaluation Report (NUREG-0411), dated June 1978; (4) the licensees' Final Safety Analysis Report and amendments thereto; (5) the licensees' Environmental Report and supplements thereto; (6) the Draft Environmental Statement (NUREG-0257), dated April 1977; (7) the Final Environmental Statement (NUREG-0417), dated March 1978; (8) the Office of Nuclear Reactor Regulation's "Safety Evaluations in Support of Exemptions from Certain Requirements of the Commission's Rules and Regulations," and (9) the "Mark I Containment Short Term Program Safety Evaluation Report" (NUREG-0408), dated December 1977 are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. and the Appling County Public Library, Parker Street, Baxley, Ga.

Copies of Items (1), (2), (6) and (8) may be obtained upon request addressed to the United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management. Copies of Items (3), (7), and (9) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Va. 22161.

Dated at Bethesda, Md., this 13th day of June 1978.

For the Nuclear Regulatory Commission.

JOHN F. STOLZ,
Chief, Light Water Reactors Branch No. 1, Division of Project Management.

[FR Doc. 78-18728 Filed 7-6-78; 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) Office of Nuclear Reactor Regulation has published Revision No. 1 to section Nos. 5.4.8 (reactor water cleanup system—BWR), 6.5.1 (ESF atmosphere cleanup systems), 9.3.2 (process sampling system), 10.4.2 (main condenser evacuation system), 10.4.3 (turbine gland sealing system), 10.4.8 (steam generator blowdown system—PWR), 11.1 (source terms), 11.2 (liquid waste management systems), 11.3 (gaseous waste management systems), 11.4 (solid waste management systems), 11.5 (process and effluent radiological monitoring and sampling systems), and 15.7.3 (postulated radioactive releases due to liquid-containing tank failures) 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 Nos. 5.4.8, 6.5.1, 9.3.2, 10.4.2, 10.4.3, 10.4.8, 11.1, 11.2, 11.3, 11.4, 11.5, and 15.7.3 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 Public Document room at 1717 H Street NW., Washington, D.C. 20555 (5 U.S.C. 552(a)).

Dated at Bethesda, Md., this 26th day of June, 1978.

For the U.S. Nuclear Regulatory Commission.

DANIEL R. MULLER,
Deputy Director, Division of Site Safety & Environmental Analysis, Office of Nuclear Reactor Regulation.

[FR Doc. 78-18725 Filed 7-6-78; 8:45 am]

[7590-01]

[Docket No. 50-280]

VIRGINIA ELECTRIC & POWER CO., SURRY POWER STATION, UNIT NO. 1

Order for Modification of License

I.

Virginia Electric & Power Co. (the licensee) is the holder of facility operating license No. DPR-32 which authorizes the operation of the nuclear power reactor known as Surry Power Station, Unit No. 1 (the facility) at steady-state reactor power levels not in excess of 2441 thermal megawatts (rated power). The reactor is a pressurized water reactor (PWR) located at the licensee's site in Surry County, Va.

II.

On February 8, 1977, the NRC staff issued an Order for Modification of License No. DPR-32 which addressed operation of Surry Power Station Unit No. 1 under conditions in which steam generator tubes have been plugged as a result of the tube denting caused by corrosion of the tube support plate in the annular spaces between tube and the tube support plate. Subsequently on February 11, 1977, the NRC staff issued a safety evaluation supporting the order. In order to perform an inspection of the steam generators, the February 8, 1977, order limited operation to 60 equivalent days of operation.[1] On May 6, 1977, a subsequent order was issued with an accompanying safety evaluation providing for an additional 6 months of equivalent operation, after the staff evaluated the results of an inspection and repair program. On November 30, 1977, the licensee submitted the results of the inspection and repair program required by the May 6, 1977, order. On December 3, 1977, an order was issued to permit continued operation of Unit No. 1 for 6 equivalent months beyond December 3, 1977. During the cycle 5 refueling outage, steam generator tube inspections were performed and the results submitted on May 30, 1978. The NRC staff has evaluated the results of the inspection and repair program and has assessed whether continued operation of the facility would be safe. This evaluation is set forth in the staff's concurrently issued safety evaluation relating to steam generator tube integrity.

We have reviewed the licensee's May 30, 1978, inspection program submittal. The plugging pattern used is based on criteria that reasonably predict areas of increased strain. To assure early detection and repair of leaks in tubes that have not been plugged, the licensee proposed in his May 30, 1978, submittal to continue the operating limitations of the May 6 and December 3, 1977 orders applicable to this facility. With the plugging that has been performed and these operating limitations, the assessment of accidents in our May 6 and December 3, 1977, safety evaluations remain valid. As described in those safety evaluations

[1] Equivalent operation is defined as operation with the reactor coolant at or above 350° F.

continued operation under these limitations will provide reasonable assurance that the public health and safety will not be endangered. The NRC staff believes that under the circumstances, the limitations proposed by the licensee are appropriate and should be confirmed by NRC order.

III.

Copies of the following documents are available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, and at the Swem Library, College of William and Mary, Williamsburg, VA, (1) licensee's submittal of May 30, 1978, (2) safety evaluations dated February 11, May 6, and December 3, 1977, (3) Orders for Modification of License dated February 8, May 6, and December 3, 1977, (4) this Order for Modification of License, In the Matter of Virginia Electric & Power Co., Surry Power Station, Unit No. 1, Docket No. 50-280, and (5) the Commission's concurrently issued Safety Evaluation supporting this order.[2]

IV.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, *It is ordered*, That Facility Operating License No. DPR-32 is hereby amended by replacing in its entirety existing paragraph 3.E. of the license with the following:

E. STEAM GENERATOR INSPECTION

(1) Unit No. 1 shall be brought to the cold shutdown condition in order to perform an inspection of the steam generators within 6 equivalent months of operation from the date of this order. Nuclear Regulatory Commission approval shall be obtained before resuming power operation following this inspection. Equivalent operation is defined as operation with the reactor coolant at or above 350° F.

(2) Leakage from the reactor coolant system to the secondary system through the steam generator tubes shall be limited to 0.3 gpm per steam generator, as described in the NRC Safety Evaluation of May 6, 1977. With any steam generator tube leakage greater than this limit the reactor shall be brought to the cold shutdown condition within 24 hours. Nuclear Regulatory Commission approval shall be obtained before resuming reactor operation.

(3) Reactor operation will be terminated if reactor coolant leakage which is attributable to two or more steam generator tubes occurs during a 20-day period. Nuclear Regulatory Commission approval shall be obtained before resuming reactor operation.

(4) The concentration of radioiodine in the reactor coolant shall be limited to 1μCi/gram during normal operation and to 10μCi/gram during power transients as defined in appendix A-1 to the technical specifications of the license. Appendix A-1 was issued with the May 6, 1977, order and shall remain in effect for 6 equivalent months of operation from the date of this order.

For the Nuclear Regulatory Commission.

Dated in Bethesda, Md., this 23rd day of June 1978.

VICTOR STELLO, Jr.,
Director, Division of Operating Reactors, Office of Nuclear Reactor Regulation.

[FR Doc. 78-18726 Filed 7-6-78; 8:45 am]

[2] A Copy of items (2), (3), (4) and (5) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

[7590-01]

NUCLEAR REGULATORY COMMISSION ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON RADIOLOGICAL EFFECTS AND SITE EVALUATION

Meeting

The ACRS Subcommittee on Radiological Effects and Site Evaluation (formerly the Siting Evaluation Subcommittee) will hold an open meeting on July 24, 1978 in room 1046, 1717 H Street NW., Washington, D.C. 20555 to discuss the draft revision, dated February 1978, of NUREG 0180, "Early Site Reviews for Nuclear Power Facilities—Procedures and Possible Technical Review Options." Notice of this meeting was published in the FEDERAL REGISTER on May 17 and June 16, 1978 (43 FR 21385 and 26162).

In accordance with the procedures outlined in the FEDERAL REGISTER on October 31, 1977 (42 FR 56972), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the designated Federal employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

MONDAY, JULY 24, 1978, 8:30 A.M. UNTIL THE CONCLUSION OF BUSINESS.

The subcommittee may met in executive session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full committee.

At the conclusion of the executive session, the subcommittee will hear presentations by and hold discussions with representatives of the nuclear industry, the NRC Staff, and their consultants, pertinent to the above topics. The subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full committee.

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 therefore can be obtained by a prepaid telephone call to the designated Federal employee for this meeting, Dr. Thomas G. McCreless, telephone 202-634-1374 between 8:15 a.m. and 5 p.m., e.t.d.

Dated: June 29, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-18982 Filed 7-6-78; 9:49 am]

[7590-01]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON WASTE MANAGEMENT

Meeting

The ACRS Subcommittee on Waste Management will hold an open meeting on July 24-25, 1978 in room 1046, 1717 H Street NW., Washington, D.C. 20555, to review progress on the NRC staff study of waste disposal classification, discuss recent USGS reports on high level waste management, discuss NRC response to actions suggested in DOE/ER-004/D, February 1978, "Report of Task Force for Review of Nuclear Waste Management," review NUREG 0300, "Proposed Goals for Radioactive Waste Management," NUREG 0411, "Essays or Issues Relevant to the Regulation of Radioactive Waste Management," and be briefed by the NRC Staff on the Presidentially-constituted Interagency Nuclear Waster Management Task Force. Notice of this meeting was published in the FEDERAL REGISTER on June 17, 1978 (43 FR 26162).

In accordance with the procedures outlined in the FEDERAL REGISTER on October 31, 1977 (42 FR 56972), oral or written statements may be presented by members of the public, recordings will be permitted only during those

portions of the meeting when a transcript is being kept, and questions may be asked only by members of the subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the designated Federal employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

MONDAY, JULY 24, 1978, 1 P.M. UNTIL THE CONCLUSION OF BUSINESS.

TUESDAY, JULY 25, 1978, 8:30 A.M. UNTIL THE CONCLUSION OF BUSINESS.

The subcommittee may meet in executive session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full committee.

At the conclusion of the executive session, the subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, and their consultants, pertinent to the agenda items. The subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full committe.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the chairman's ruling in requests for the opportunity to present oral staerments and the time allotted therefor can be obtained by a prepaid telephone call to the designated Federal employee for this meeting, Mr. Ragnwald Muller, telephone 202-634-1413 between 8:15 a.m. and 5 p.m., e.d.t.

Date: June 29, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-18981 Filed 7-6-78; 9:49 am]

[7590-01]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON WESTINGHOUSE WATER REACTORS

Meeting

The ACRS Subcommittee on Westinghouse Water Reactors will hold a meeting on July 24, 1978, in Room 1130, 1717 H Street NW., Washington, D.C. 20555, to review the application of the Westinghouse Electric Co. for a preliminary design approval for the RESAR-414 standardized nuclear steam supply system. Notice of this meeting was published in the FEDERAL REGISTER on June 16, 1978 (43 FR 26162).

In accordance with the procedures outlined in the FEDERAL REGISTER on October 31, 1977 (42 FR 56972), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the designated Federal employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

MONDAY, JULY 24, 1978, 8:30 A.M. UNTIL THE CONCLUSION OF BUSINESS

The subcommittee may meet in executive session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full committee.

At the conclusion of the executive session, the subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the Westinghouse Electric Co., and their consultants, pertinent to the above topics. The subcommittee may then caucus to determine whether the matters identified in the initial session have been adquately covered and whether the project is ready for review by the full committee.

In addition, it may be necessary for the subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with section 10(d) of Pub. L. 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been canceled 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 to the designated Federal employee for this meeting, Dr. Richard P. Savio, telephone 202-634-1374, between 8:15 a.m. and 5 p.m., e.d.t.

Dated: June 29, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-18983 Filed 7-6-78; 9:49 am]

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on July 3, 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

DEPARTMENT OF ENERGY

Synthetic Natural Gas Plant Report, EIA-19, Monthly, 156 synthetic natural gas plants, C. Louis Kincannon, 395-3211.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service, Summer Food Service Program Study of Cost and Meal Quality, single time, 906 summer programs in the 50 States, D.C. and P.R. Human Resources Division, Ellett, C. A., 395-3532.

REVISIONS

DEPARTMENT OF LABOR

Employment and Training Administration, Questionnaire—National Longitudinal Survey of Labor Force Behavior Youth Cohorts, MT-292A, on occasion, Pretest: 230 youths, age 14-21, 79,000 responses, 19,750 hours, Office of Federal Statistical Policy and Standard, 673-7956.

EXTENSIONS

ENVIRONMENTAL PROTECTION AGENCY

State Priority Certification, EPA-5700-28, on occasion, State Water Pollution Control Agency, 1,000 responses, 2,000 hours, Ellett, C. A., 395-6132.

Title VI, Compliance Report, EPA-4700-4, on occasion, municipalities, States and interstate agencies, 2,500 responses, 5,000 hours, Ellett, C. A., Laverne V. Collins, 395-6132.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development:
Justification of Requisition for Project Capital Grant Progress Payment, HUD-693, on occasion, local public agencies with urban renewal projects, 600 responses, 600 hours, Cearance Office, 395-3772.
Project Expenditures Budget, HUD 6220, HUD 6220A, on occasion, local public agencies with urban renewal projects, 1,000 responses, 1,000 hours, Roye L. Lowry, 395-3772.
New Communities, New Communities Administration, Title I, Community Development Block Grant Budget and Progress Report, monthly, federally assisted new communities, 180 responses, 360 hours, Roye L. Lowry, 395-3772.

DEPARTMENT OF LABOR

Employment and Training Administration:
Monthly Youth Program Status Report, ETA-11, monthly, State and local agencies, 1,620 responses, 810 hours, Budget Review Division, 395-4775.
Part C, Handbook on Adjustment Assistance for Workers Under the Trade Act of 1974, MA8-55 through MA8-62, on occasion, TRA claimants, 287,180 responses, 83,945 hours, Roye L. Lowry, 395-3772.

BRENDA A. MAYBERRY,
Acting Budget and Management Officer.

[FR Doc. 78-18882 Filed 7-6-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-14914/June 30, 1978; File No. SR-NASD-78-4]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Self-Regulatory Organization; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exhange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975) notice is hereby given that on June 5, 1978 the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission a proposed rule change as follows:

ASSOCIATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The following is the full text of the proposed amendment to Part III of Schedule D of the Association's By-Laws relating to the Association's Consolidated Quotations Service. (New language indicated by italics, deleted language indicated by brackets.)

III. CONSOLIDATED QUOTATIONS SERVICE

A. Description of Service

The Consolidated Quotations Service (CQS) [will] provides the subscriber with access to bid/ask quotations *and quotation sizes* for securities listed on national stock exchanges. [Initially,] The CQS [will] includes [approximately 2,000] *all* common stocks, preferred stocks, warrants and rights registered or admitted to unlisted trading privileges on the *American Stock Exchange, and the* New York Stock Exchange *and certain securities listed on the regional stock exchanges.* The Subscriber will have access to quotations *and quotation sizes* in such securities from all registered CQS Third Market Makers and the *American,* Boston, Midwest, New York, Pacific and Philadelphia Stock Exchanges. Quotations [entered and displayed by registered Third Market Makers] are required *by SEC Rule 11Acl-1* to be firm *for the displayed size or if no size is displayed* for [at least] a normal unit of trading.

The CQS will operate between 9 a.m. and 6:30 p.m. Eastern Time. All quotations for marketplaces that are open will be listed according to the best bid quotation or the best ask quotation following the quotations of the open marketplaces. If a stock exchange suspends trading in a security, a "Halt" notation will be displayed along with the last quotation. During any such suspension, quotations from marketplaces remaining open will continue to be displayed.

B. Definitions

(1) Third Market Maker—Any broker or dealer who holds himself out as being willing to buy and sell a reported security for his own account on a regular and continuous basis otherwise than on a national securities exchange in amounts of less than block size (including any such broker or dealer who also represents, as agent, orders to buy or sell reported securities on behalf of any other person and communicates bids and offers to the Corporation on behalf of such other persons as well as for his own account).

(2) Reported Security—Any equity security as to which last sale information is reported in the consolidated transaction reporting system (Consolidated Tape).

[B.] C. Initiating Service

[Any member who desires to enter and display bid/ask quotations for CQS securities may apply for registration as a Third Market Maker.]

Every Third Market Maker shall communicate to the Corporation through the NASDAQ System his bids, offers and quotation sizes in reported securities by registering with the Corporation as a Third Market Maker. If accepted for registration and a terminal is in place, a Third Market Maker's registration shall be effective at the start of business on the second business day following receipt of its application by the Corporation. Otherwise registration shall be effective at the start of business on the second business day following installation of the terminal.

[C. Character of quotations entered into the CQS

A registered Third Market Maker which receives a buy or sell order must execute a trade for at least a normal unit of trading at its quotations as they appear on the CQS CRT screens at the time of receipt of any buy or sell order. Each qoutation entered and displayed by a registered Third Market Maker must be reasonably related to the prevailing market.]

D. Obligations of Third Market Makers

The rules and regulations with respect to the obligations of Third Market Makers in reported securities are contained in SEC Rule 11Acl-1 which is hereby incorporated as part of this schedule D. Rule 11Acl-1 is reprinted at paragraph 1655.

Paragraphs D., E., F., and G. are redesignated E., F., G., and H.

ASSOCIATION'S STATEMENT OF PURPOSE OF PROPOSED RULE CHANGE

The purpose of the proposed amendment to schedule D is to in corporate the requirments of SEC Rule 11Acl-1 into the Association's By-Laws. SEC Rule 11Ac1-1, which becomes effective on August 1, 1978, requires third market makers to communicate to the Association their bids, offers, and quotation sizes in reported securities. The rule also contains regulations concerning the firmness of quotations and quotation sizes.

In addition to incorporating SEC Rule 11Acl-1 as a part of schedule D, the proposed amendment includes the definitions of a "third market maker" and a "reported security" contained in the rule. It also requires third market makers to use the NASDAQ System to communicate quotation information to the Association. Adoption of the proposed amendment containing SEC Rule 11Acl-1 is considered necessary by the Association to comply with SEC Rule 11Acl-1.

ASSOCIATION'S STATEMENT OF BASIS FOR PROPOSED RULE CHANGE

SEC Rule 11Acl-1(b)(1) requires that every exchange and association shall establish and maintain procedures and mechanisms for collecing bids, offers, quotation sizes and aggregate quotation sizes from responsible brokers or dealers who are members of such exchange or association (as the case may be), processing such bids, offers and sizes, and making such bids, offers and sizes available to quotation vendors. The proposed amendment incorporates SEC Rule 11Acl-1 and its requirements into the Associstion's By-Laws and provides the prcedures and mechanisms for collecting quotations and quotation sizes.

COMMENTS RECEIVED FROM MEMBERS PARTICIPANTS OR OTHERS ON PROPOSED RULE CHANGE

Article XVI of the Association's By-Laws provides that the Board of Governors may amend schedule D without recourse to the membership.

Comments of the membership were not solicited or received.

ASSOCIATION'S STATEMENT OF BURDEN ON COMPETITION

The Association believes that no burden on competition is imposed by the proposed amendment to schedule D.

On or before August 11, 1978, or within such longer period (i) as the Commission may designate if it finds

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submission will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 24, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 30, 1978.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc. 78-18720 Filed 7-6-78; 8:45 am]

[8010-01]

[Release No. 34-14915/June 30, 1978; File No. SR-PSE-78-10]

PACIFIC STOCK EXCHANGE INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. NO. 94-29, 16 (June 4, 1975), notice is hereby given that on May 30, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule changes. The Pacific Stock Exchange Inc. has provided the commission with the following statement of the terms of substance, basis and purpose of the proposed rule changes.

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGES

The proposed rule changes provide for the amendment of Pacific (PSE) rules necessary to implement the plan previously submitted to the Securities and Exchange commission for the purpose of creating and operating an intermarket communications linkage pursuant to section 11A(a)(3)(B) of the Securities Exchange Act of 1934.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule changes are as follows:

Pursuant to the intent of the Congress, as expressed in section 11A(a)(3)(B) of the Securities Exchange Act of 1934, as amended, (the act)—that self-regulatory organizations act jointly in planning, developing, operating and regulating a national market system (or a subsystem) or one or more facilities thereof—the PSE and the American, Boston, New York, and Philadelphia Stock Exchanges have entered into a plan agreement (the plan) providing for an electronic communications system (the system) which will link together the various equity trading floors maintained by the participating exchanges. This system is intended to support the intermarket trading system application (ITS) and the preopening application.

The ITS application of the system will facilitate intra-day (post opening) trades between broker-dealers on different participants. The following example describes the operation of ITS:

Assume that a member firm of the NYSE receives from a customer an order to purchase 100 shares of a given NYSE listed stock that is also traded on the Pacific (PSE) and Philadelphia (PHLX) Stock Exchanges and sends that order to the NYSE floor for execution. There a NYSE member, acting as agent for the customer, will receive the order and attempt to execute it. He will go to the post at which the stock is traded on the NYSE and inquire as to the market for that stock. He may find that the best bid on the NYSE floor is 40 and that the best offer is 40¼. A continuously updated quotation display at the same trading post will also show the broker the best bid and offer available throughout the System other than on the NYSE floor, identifying the participant with the best bid and the participant with the best offer. thus, the broker may discover that the best bid for the stock from other participants is a bid of 40 on the PHLX and the best offer from other participants is one of 40⅛ on the PSE. Having learned this information, the broker may decide to attempt to buy the 100 shares for his customer from the 40⅛ offer on the PSE. The broker would send, or cause to be sent, through ITS a so-called "commitment to trade" to the PSE. (As used in the plan, the term "commitment to trade" means a message issued by a broker-dealer in one participating market center which is sent to another participating market center through ITS and which communicates the sender's firm offer to buy (or sell) a specific number of shares of a specific security at a specified price or "at the market".) In this example, the broker would send to the PSE a commitment to buy 100 shares of the stock at 40⅛. If the 40⅛ offer on the PSE is still available when the commitment to buy reaches the PSE and if the rules of the PSE permit an execution at that price, then the PSE offer would accept the commitment and an execution at 40⅛ would take place.

The preopening application of the system will enable a specialist on any participant who wishes to open his market in a security traded through ITS to obtain through the system any preopening interest of other specialists registered in that security on the other participants. In this way, the specialist in a given stock on one participant may be able to participate (as agent and/or principal) in the opening transaction in that stock on another participant and thus be able to provide an execution for limited price orders left with him which would otherwise go unexecuted. Briefly stated, the preopening application would operate as follows:

Whenever a specialist on any participant, in arranging an opening transaction in his market in a stock traded through ITS, determines that the opening transaction will be at a price which is more than one-fourth of a point away from the previous day's closing price of that stock, as reported on the consolidated tape, the specialist will notify specialists in that stock on the other participants of such situation by sending a message, called a "preopening notification", through the system. This message will identify the stock and will state the side of the market in which the order imbalance exists, the amount of the imbalance, and the amount paired off. The specialist who issues a preopening notification is referred to in the plan as the "inquiring specialist".

If any specialist who receives a preopening notification desires to participate in the inquiring specialist's opening transaction in the stock in question, he would do so by sending through the system to the inquiring specialist a message, known as a "preopening response" containing "obligations to trade", both as principal for his own account and/or as agent for orders left with him, at each price level at which the stock might open. The specialist who issues a preopening response is referred to in the plan as the "responding specialist".

Upon receiving such obligations to trade from the responding specialist(s), the inquiring specialist would combine them with the orders he already holds in the stock in question and, on the basis of this aggregated information, decide upon the opening transaction in that stock.

Responses to preopening notifications are voluntary but, each obliga-

tion to trade which is included in any preopening response, or in any modification of a preopening response, will remain binding on the responding specialist, and on any person for whom he is acting, until the inquiring specialist has either opened the stock in question or received a cancellation or modification of such obligation.

ITS and the preopening application, and the various procedures related thereto as agreed upon by the participants, are explained fully in the plan.

The plan, which has been submitted separately to the SEC for approval, describes a number of rules and rule changes that each participant agrees to adopt in order to ensure that both the preopening application and ITS operate in the manner intended by the plan participants.

Thus, the general purpose of the proposed rule changes submitted in this filing is to provide for the implementation and operation of ITS and the preopening application on the floor of the PSE in accordance with the provisions and intent of the plan.

The Exchange proposes to adopt new sections 19, 20, and 21 to rule I, in connection with ITS and preopening application, liability of the exchange relating to operation of ITS and floor officials functions concerning ITS.

Specific to section 19 of rule I, the proposed rule change would:

Define key terms that are unique to the plan;

Incorporate the salient provisions of the plan into rule so the exchange membership will be aware of them and so that they can be properly enforced by the exchange; and

Identify those rules which would be applicable to commitments to trade received on the floor through ITS and those rules which would be applicable to commitments to trade and also obligations to trade issued from the floor of the exchange though ITS or the preopening application, respectively.

Section 20 provides that the exchange shall not assume any liability in connection with transactions effected by its members through ITS or the preopening application and provides that member firms must accept responsibility for trades through ITS or the preopening application assigned to them by the exchange whether or not due to exchange error.

Section 21 provides that floor officials shall have the power to supervise and regulate the operation of ITS and the preopening application during active openings, heavy trading, and unusual situations.

The proposed changes to section 3(d) and commentary .01, 3(e), 3(g) commentary .01 and .02, 5(b)(1), 5(b)(2), 7(a) and commentary .01 and 7(e) of rule II, concerning the dealings of exchange specialists would provide, essentially, that when an exchange specialist effects a principal purchase of a specialty stock in another market through ITS, at or above the price at which he holds orders to sell that stock, the specialist must also fill the orders he holds which remain unexecuted by buying the stock for his own account at the same price as his ITS principal trade. The same principle would apply in the case where the specialist effects a principal sale through ITS. However, certain exceptions are provided, for example, in the case where a transaction on the floor at that price would not be consistent with the maintenance of fair and orderly markets.

In addition to the foregoing, changes are also proposed to rule I, section 1(a) and commentary .01, section 6(a) and 6(c), section 10(a); rule III, commentary .01 to section 1(a), 2(a), 2(b) and 2(c), commentary .01 to section 4(a), section 6(a), commentary .01 to section 7(a); and rule X, section 14. These changes are intended to clarify the application and meaning of the rules in terms compatible with the ITS System.

The proposed rule changes relate to section 11A(a) of the act because they would provide for the implementation and operation of the Intermarket Trading system and the preopening application on the Equity floors of the PSE. Implementation of the Intermarket Trading System and the preopening application is consistent with the findings and directives of the Congress, as expressed in section 11A(a) of the act, that:

"New data processing and communications techniques create the opportunity for more efficient and effective market operations." (Section 11A(a)(1)(B));

"It is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure . . . the practicability of brokers executing investors' orders in the best market * * *" (Section 11A(a)(1)(C)(iv));

"The linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders." (Section 11A(a)(1)(D));

"The Commission is authorized * * * by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under [the Act] in planning, developing, operating or regulating a national market system (or a sub-system thereof) or one or more facilities thereof * * *" (Section 11A(a)(3)(B)).

The proposed rule changes also relate to section 6(b)(1) of the act in that they would enable the Exchange to carry out the purposes of the act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the act, the rules and regulations thereunder, and the rules of the Exchange in an environment where Exchange members on the floor of the PSE will be able to effect securities transactions with broker-dealers located in different market centers.

Finally, the proposed rule changes relate to, and are consistent with, section 6(b)(5) of the act in that they are designed to promote just and equitable principles of trade; to remove impediments to, and perfect the mechanism of, a free and open market and a national market system; and, in general, to proctect investors and the public interest.

The Exchange has not solicited nor has it received any comments regarding the proposed rule changes.

The proposed rule changes will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the act.

On or before August 11, 1978, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will: (A) By order approve such proposed rule changes; or (B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the public reference room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before August 7, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 30, 1978.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc. 78-18721 Filed 7-6-78; 8:45 am]

[8010-01]

[Release No. 34-14913/June 30, 1978; File No. PSE-78-14]

PACIFIC STOCK EXCHANGE INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on June 30, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT ON THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The Pacific Stock Exchange ("PSE") hereby requests to amend Rule I by amending Section 10(e) and adding Section 10(f) thereto (brackets indicate deletions and italic indicates additions):

RULE I—DEALINGS UPON THE EXCHANGE

Transmissions of Bids or Offers

Sec. 10(e). *Except as stated in Section 10(f) of this Rule n*[N]o member shall transmit from the Trading Floor any information regarding a bid, offer or other indication of an order to a non-member until such bid, offer or other indication of an order has been disclosed to both Trading Floors and permission to transmit such information has been obtained from the originating member.

Firm Quotations

Sec. 10(f). All bids made and all offers made shall be in accordance with the provisions of Rule 11Ac1-1 under the Securities Exchange Act of 1934, governing the dissemination of quotations for reported securities.

The following Commentary pertains to all specialist system issues for which last sale information is reported on the consolidated transaction reporting system.

Commentary

.01 Specialists shall input their current markets and sizes to the quotation system through the key terminal at the post. These quotations shall be firm as to both price and size unless exempted under one of the conditions specified in paragraphs 5-7 of this Commentary.

.02 Market Makers, while at the post, shall input to the quotation system their bids and/or offers which better the current Exchange market. Such quotations shall remain in force until the market maker leaves the post. Market Maker quotations and accompanying sizes shall be firm unless exempted under one of the conditions specified in paragraphs 5-7 of this Commentary.

Floor Brokers, while at the post, shall input to the quotation system those bids or offers which better the current Exchange market unless the bid or offer is cancelled or withdrawn if not executed immediately. If a floor broker transfers possession of an order to a specialist, the requirement for input to the quotation system becomes the obligation of the specialist. When a floor broker who retains possession of an order leaves the post he must withdraw his bid or offer from the quotation system. Quotations and accompanying sizes shall be firm until withdrawn unless exempted under one of the conditions specified in paragraphs 5-7 of this Commentary.

.04 Quotation sizes, unless otherwise specified, shall be assumed to be for 100 shares. Where bids or offers are made at the same price the aggregate quotation size of such equal bids or offers shall be input into the quotation system. Such aggregate sizes shall remain firm until withdrawn unless exempted under one of the conditions specified in paragraphs 5-7 of this Commentary.

.05 No offer shall be executed in violation of applicable short sale rules:

Example

PSE market in XYZ—43¼-43½ (short) NYSE market in XYZ—43⅜-43⅝ Consolidated tape last sale—43⅜.

The Pacific Stock Exchange offering at 43½ may not be filled at its limit price subsequent to a Consolidated Tape sale at 43⅜. However. any floor member entering s short offering into the quote system is responsible for promptly adjusting the order into conformity with applicable short sale rules.

.06 No specialist, market maker or floor broker shall be obligated to execute a transaction for any security as provided for in paragraphs .01, .02 and .03 of this Commentary if;

(A) before an order sought to be executed is presented, such specialist, market maker or floor broker has input a revised bid, offer or quotation size into the quotation system, or

(B) at the time an order sought to be executed is presented, such specialist, market maker or floor broker is in the process of effecting a transaction in such security and, immediately after the completion of such transaction, such specialist, market maker or floor broker inputs a revised bid, offer or quotation size into the quotation system.

.07 In the event of unusual market conditions as determined by two members of the Floor Trading Committee, quotations in a given issue will not be subject to the firmness requirement provided that the Exchange has notified the following specified persons:

1. Each quotation vendor,

2. The processor for the consolidated system, and

3. The processor for the Options Price Reporting Authority (in the case of a notification with respect to a reported security which is a class of securities underlying options admitted to trading on any exchange).

.08 Prior to making a determination that a particular security or securities be exempted from the firmness requirement, the Floor Trading Committee members shall consider:

1. The level of trading activity in existence at the time on the Exchange,

2. The level of trading activity in existence at the time at other exchanges on which the particular security is traded, and

3. The condition of the Exchange's quotation dissemination system.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change are as follows:

The purpose of the proposed rule change is to implement, within the rules of the Exchange, the mandates contained within rule 11Ac1-1 under the Securities Exchange Act of 1934 which governs the dissemination of quotations for reported securities.

The proposed rule change is consistent with Section 11A(c)(1) of the Securities exchange Act of 1934, as amended, which in part requires that any information with respect to quotations in any security shall not be distributed or published in contravention of rules and regulations of the commission.

Comments have neither been solicited nor received from members on the proposed rule change.

The Exchange believes that the proposed rule change imposes no burden upon competition.

On or before August 11, 1978, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute Proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be avaiable for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 24, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 30, 1978.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc. 78-18722 Filed 7-6-78; 8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

[License No. 04/04-5138]

MERIT FUNDING, INC.

Issuance of License to Operate as a Small Business Investment Company

On April 12, 1978, a notice was published in the FEDERAL REGISTER (43 FR

15379), stating that Merit Funding, Inc., located at 340 Biscayne Boulevard, Miami, Fla. 33132, had filed an application with the Small Business Administration (SBA), pursuant to 13 CFR 107.702 (1977), for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business April 27, 1978, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and all other pertinent information, SBA issued License No. 04/04-5138 to Merit Funding, Inc., on June 14, 1978, to operate as a small business investment company, pursuant to section 301(d) of the act.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: June 30, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-18803 Filed 7-6-78; 8:45 am]

[8025-01]

[License No. 02/02-0349]

NEW COURT VENTURES, INC.

Issuance of License To Operate as a Small Business Investment Company

On May 3, 1978, a Notice of Application for a License as a Small Business Investment Company was published in the FEDERAL REGISTER (43 FR 19093) stating that an Application had been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1978)) for a license as a small business investment company by New Court Ventures, Inc., One Rockefeller Plaza, New York, N.Y. 10020.

Interested parties were given until the close of business May 18, 1978, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information and the facts with regard thereto, SBA on June 20, 1978, issued License No. 02/02-0349 to New Court Ventures, Inc., to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: June 28, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-18802 Filed 7-6-78; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Customs Service

[TMK-2-R:E:R]

SOCCER SPORT SUPPLY CO., INC.

Notice of Application for Recordation of Trade Name

Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12) for recordation under section 42 of the act of July 5, 1976, as amended (15 U.S.C. 1124), of the trade name Soccer Sport Supply Co., Inc. used by Soccer Sport Supply Co., Inc., a corporation organized under the laws of the State of New York, located at 1745 First Avenue, New York, N.Y. 10028.

The application states that the trade name is applied to soccer equipment, soccer gloves, soccer balls and soccer wearing apparel, manufactured in West Germany, Argentina, Pakistan, India and various other countries. The application states further that no foreign persons, entities, parent or subsidiary company are authorized to use the trade name sought to be recorded. Appropriate accompanying papers were submitted with the application.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Any such submission should be addressed to the Commissioner of Customs, Washington, D.C. 20229, in time to be received not later than August 7, 1977.

Notice of the action taken on the application for recordation of the trade name will be published in the FEDERAL REGISTER.

HARVEY B. FOX,
Acting Assistant Commissioner, Regulations and Rulings.

JUNE 28, 1978.

[FR Doc. 78-18719 Filed 7-6-78; 8:45 am]

[1505-01]

Fiscal Service

[Dept. Circ. 570, 1978 Rev., Supp. No. 1]

ALLIED SURETY CO.

Surety Companies Acceptable on Federal Bonds: Termination of Authority

Correction

In FR Doc. 78-18299 appearing in the issue of Monday, July 3, 1978 on page 28883 in the middle column, directly following the title "Acting Commissioner," the letterhead was omitted and should have been included to read as follows:

COMMONWEALTH OF PENNSYLVANIA

INSURANCE DEPARTMENT

Liquidation Division, Room G-20
Finance Bldg., Harrisburg 17120

[4510-29]
[4830-01]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

EMPLOYEE BENEFIT PLANS

Proposed Exemption Relating to a Transaction Involving the Barry, Barry, Angelides & Hinds, M.D.'s, P.A. Employees Pension Trust (Application No. D-292)

AGENCIES: Department of the Treasury/Internal Revenue Service Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Internal Revenue Service and the Department of Labor (the agencies) of a proposed exemption from certain taxes imposed by the Internal Revenue Code of 1954 (the Code) and from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the act). The proposed exemption would exempt the sale by the Barry, Barry, Angelides & Hinds, M.D.'s, P.A. Employees Pension Trust (the Trust) of certain trust assets to Barry, Barry, Angelides & Hinds, M.D.'s, P.A. (the Employer). The proposed exemption, if granted, would affect participants and beneficiaries of the plan, the employer, and other persons participating in the proposed transaction.

DATE: Written comments and requests for a public hearing must be received by the service on or before August 7, 1978.

ADDRESS: All written comments and requests for a hearing (at least six

copies) should be addressed to the Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: E:EP:PT (D-292). The application for exemption and the comments received will be available for public inspection at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue NW., Washington, D.C. 20224 and in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

Ivan Strasfeld of the Prohibited Transactions Staff of the Employee Plans Division, Internal Revenue Service, 202-566-3045. (this is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the agencies of a proposed exemption from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code and from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the act. The proposed exemption was requested in an application filed by the employer, pursuant to section 4975(c)(2) of the Code and section 408(a) of the Act, and in accordance with procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722 and ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application and supporting documents on file with the Agencies for a complete statement of the representations of the applicant.

1. The employer is a professional association of doctors located in Hialeah, Fla. Patrick J. Barry, M.D., Terrence J. Barry, M.D., Alexander C. Angelides, M.D. and Ronald B. Hinds, M.D., serve as directors of the employer as well as trustees of the trust.

2. The employer has adopted a qualified money purchase pension plan. Pursuant to a meeting of the employer's directors held on June 26, 1974, a decision was made to have the trust purchase (or finance) 2 IBM mag card typewriters and console units. The equipment was leased to the employer on May 1, 1975 for a 4 year period.

3. Applicants believe that the transitional relief afforded by sections 414(c)(2) and 2003(c)(2) of the act is available for the lease of the typewriters to the employer. Based upon the facts and representations submitted by the applicants, the agencies were unable to rule that the lease transaction satisfies the conditions of sections 414(c)(2) and 2003(c)(2) of the act. Accordingly, the lease was terminated pursuant ot an agreement between the trust and the employer. The trust now retains 2 used typewriters. Economic hardship could result to the trust in the event a suitable buyer can not be located. The applicants have not been able to determine either the fair market value or the availability of a market for this type or equipment. Several office equipment dealers were contacted and declined to estimate the value of the typewriters and further indicated that they do not ordinarily deal in this type of equipment. IBM was also contacted and indicated that reconditioned equipment commands a price almost equal to that of new typwriters. However, because IBM has no interest in reacquiring these units, it would not state what the cost of reconditioning would be and what it would be willing to pay for the units. The trust's typewriters, nevertheless, are worth less than the original cost because of, at the very least, a reconditioning cost.

4. Accordingly, the applicants have requested an exemption to permit the sale of typewriters to parties in interest or disqualified persons. The exempton was requested to permit the employer to purchase the equipment for $14,196, th original cost to the trust of the equipment.

Notice to Interested Persons

Notification of the pending exemption will be provided to all employees presently participating by distribution of a letter to each interested person setting forth their rights under the exemption procedure within 10 days of publication in the Federal Register of the notice of pendency of the exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under 4975(c)(2) of the Code and section 408(a) of the act does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Code and the act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the act; nor does it affect the requirment of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code or section 406(b)(3) of the act;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code and section 408(a) of the act, the agencies must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code and the act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that the transaction is subject to an administrative or statutory exemption is not dispositive of whether the transacton is in fact a phohibited transaction. This document does not meet the Treasury Department's criteria for "significant regulations".

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the addresses set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the agencies are considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and section 408(a) of the act and in accordance with the procedures set forth in Rev. Proc. 75-26 and ERISA Procedure 75-1. If the exemption is granted, the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code and the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the of the Act, shall not apply to the sale by the trust of two typewriters to the employer, pursuant to the terms, conditions and representations set forth in the application. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application de-

scribes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 28th day of June 1978.

FRED J. OCHS,
Director, Employee Plans Division, Internal Revenue Service.

IAN D. LANOFF,
Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 78-18554 Filed 7-6-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 672]

ASSIGNMENT OF HEARINGS

JULY 3, 1978.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the official docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

No. MC 128273 (Sub-No. 287), Midwestern Distribution, Inc., now being assigned for September 11, 1978 (1 day), at Philadelphia, PA, in a hearing room to be later designated.

No. MC 143799, Specialty Transport, Inc., now being assigned September 12, 1978 (2 days), at Philadelphia, PA, in a hearing room to be later designated.

No. MC 107615 (Sub-No. 11F), Untco, Inc., now being assigned September 14, 1978 (2 days), at Philadelphia, PA, in a hearing room to be later designated.

MC 75406 (Sub-No. 43), Superior Forwarding Co., Inc, is assigned for hearing July 17, 1978, at El Dorado, KS, and will be held at Holiday Inn, 301 West Hillsboro Street

MC 139761 (Sub-No. 3), George Hand & J. R. Rutherford, d.b.a. H & R Trucking, is assigned for hearing July 19, 1978, at Amarillo, TX, and will be held at Main Court Room, U.S. Courthouse and Federal Building, 205 East 5th Street.

No. MC 121654 (Sub-No. 9), Coastal Transport & Trading Co., and No. MC 142207 (Sub-No. 12), Gulf Coast Truck Services, Inc., now being assigned September 26, 1978 (9 days), at New Orleans, LA, in a hearing room to be later designated.

No. MC 103993 (Sub-No. 914), Morgan Drive-Away, Inc., now being assigned September 26, 1978 (1 day), at Little Rock, AR, in a hearing room to be later designated.

No. MC 114211 (Sub-No. 334), Warren Transport, Inc., now being assigned September 27, 1978 (3 days), at Little Rock, AR, in a hearing room to be later designated.

No. MC 111231 (Sub-No. 221), Jones Truck Lines, Inc., now being assigned October 2, 1978 (1 week), at Little Rock, AR, in a hearing room to be later designated.

No. MC 11457 (Sub-No. 331), Dart Transit Co., is now assigned for hearing September 12, 1978 (1 day), at St. Paul, MN., at a location to be later designated.

No. MC 74321 (Sub-No. 142F), B. F. Walker, Inc., is now assigned for hearing September 13, 1978 (1 day), at St. Paul, MN., at a location to be later designated.

No. MC 59367 (Sub-No. 116F), Decker Truck Line, Inc., is now assigned for hearing September 14, 1978 (1 day), at St. Paul, MN, at a location to be later designated.

No. MC 129387 (Sub-No. 41), Payne Transportation, Inc., is now assigned for hearing September 15, 1978 (1 day), at St. Paul, MN, at a location to be later designated.

No. MC 118142 (Sub-No. 165), M. Bruenger & Co., Inc., now being assigned September 12, 1978 (1 day), at Kansas City, MO, in a hearing room to be later designated.

MC 118535 (Sub-No. 110), Tiona Truck Line, Inc., now being assigned September 13, 1978 (3 days), at Kansas City, MO, in a hearing room to be later designated.

MC 135797 (Sub-No. 93), J. B. Hunt Transportation, Inc., now being assigned September 18, 1978 (1 day), at Kansas City, MO, in a hearing room to be later designated.

MC 115841 (Sub-No. 608F), Colonial Refrigerated Transportation, Inc., now being assigned September 19, 1978, at Kansas City, MO, in a hearing room to be later designated.

MC 52460 (Sub-No. 199), Ellex Transportation, Inc.; MC 112822 (Sub-No. 436), Bray Lines, Inc.; MC 114632 (Sub-No. 119), Apple Lines, Inc.; MC 117119 (Sub-No. 654), Willis Shaw Frozen Express, Inc.; MC 117815 (Sub-No. 266), Pulley Freight Lines, Inc.; MC 117954 (Sub-No. 25), H. L. Herrin, d.b.a. H. L. Herrin Trucking Co.; MC 118142 (Sub-No. 155), M. Bruenger & Co., Inc.; MC 119741 (Sub-No. 83), Green Field Transport Co., Inc.; MC 120181 (Sub-No. 7), Main Line Hauling Co., Inc.; MC 134286 (Sub-No. 29), Illini Express, Inc.; MC 134477 (Sub-No. 189), Schanno Transportation, Inc; MC 134755 (Sub-No. 113), Charter Express, Inc.; MC 139495 (Sub-No. 267), National Carriers, Inc.; MC 140033 (Sub-No. 31), Cox Refrigerated Express, Inc.; MC 143701, William Oberste, Inc.; MC 143702, All Freight Systems, Inc.; and MC 144004, John Treff, Jr., d.b.a. Treff Trucking., now assigned continued hearing September 20, 1978 (3 days), at Kansas City, MO, in a hearing room to be later designated.

No. MC 41404 (Sub-No. 130), Argo-Collier Truck Lines Corp., is now assigned for hearing September 18, 1978 (3 days), at Milwaukee, WI, at a location to be later designated.

No. MC 112822 (Sub-No. 437), Bray Lines Inc., and MC 141033 (Sub-No. 36F), Continental Contract Carier Corp., now being assigned September 12, 1978 (1 day), at San Francisco, CA, in a hearing room to be later designated.

No. MC 125996 (Sub-No. 53), Road Runner Trucking, Inc., now being assigned September 13, 1978 (1 day), at San Francisco, CA, in a hearing room to be later designated.

No. MC 143546, Atlantic Marketing Cooperative Association, now being assigned September 14, 1978 (1 day), at San Francisco, CA, in a hearing room to be later designated.

No. MC 124947 (Sub-No. 98), Machinery Transports, Inc., now being assigned September 15, 1978 (1 day), at San Francisco, CA, in a hearing room to be later designated.

No. MC 107012 (Sub-No. 259), North American Van Lines, Inc., now being assigned September 18, 1978 (3 days), at San Francisco, CA, in a hearing room to be later designated.

No. MC 144268, Barney Hirson, d.b.a. B. Hirson Trucking, now being assigned September 21, 1978 (2 days), at San Francisco, CA, in a hearing room to be later designated.

No. MC 75421 (Sub-No. 140), B. F. Walker, Inc., and MC 125433 (Sub-No. 115), F-B Truck Line Co., now being assigned September 25, 1978 (1 week), at San Francisco, CA, in a hearing room to be later designated.

MC 115841 (Sub-No. 577), Colonial Refrigerated Transportation, Inc., now being assigned September 6, 1978 (1 day), at Nashville, TN, in a hearing room to be later designated.

MC 19157 (Sub-No. 50F), McCormack's Highway Transportation, Inc., now being assigned September 7, 1978 (1 day), at Nashville, TN, in a hearing room to be later designated.

MC 61592 (Sub-No. 408), Jenkins, Truck Line, Inc.; MC 61592 (Sub-No. 417F), Jenkins Truck Line, Inc.; and MC 117574 (Sub-No. 291), Daily Express, Inc., now being assigned September 8, 1978 (1 day), at Nashville, TN, in a hearing room to be later designated.

MC 73165 (Sub-No. 435F), Eagle Motor Lines, Inc., now being assigned September 11, 1978 (1 day), at Nashville, TN, in a hearing room to be later designated.

MC 115841 (Sub-No. 578), Colonial Refrigerated Transportation, Inc., now being assigned September 12, 1978, at Nashville, TN, in a hearing room to be later designated.

MC 114569 (Sub-No. 201), Shaffer Trucking, Inc.; MC 128273 (Sub-No. 274), Midwestern Distribution Inc., now being assigned September 14, 1978, at Nashville, TN, in a hearing room to be later designated.

No. MC 1263 (Sub-No. 25), McCarty Truck Line, Inc.; No. MC 2052 (Sub-No. 10), Blair Transfer, Inc.; No. MC 113651 (Sub-No. 205), Indiana Refrigerated Lines, Inc.; No. MC 115180 (Sub-No. 97), Onley Refrigerated Transportation, Inc.; No. MC 118142 (Sub-No. 141), M. Bruenger & Co., Inc.; No. MC 119765 (Sub-No. 43), Eight Way Xpress, Inc.; No. MC 123389 (Sub-No. 33), Crouse Cartage Co.; No. MC 135874 (Sub-No. 66), LTL Perishables, Inc.; No. MC 139850 (Sub-No. 8), Four Star Transportation, Inc.; No. MC 139999 (Sub-No. 19), Red-Feather Fast Freight, Inc.; and No. MC 133119 (Sub-No. 108), Heyl Truck Lines, Inc., are now assigned for hearing September 21, 1978 (2 days), at Omaha, NE, at a location to be later designated.

MC 115669 (Sub-No. 165), Dahlsten Truck Line, Inc., is assigned for hearing July 31, 1978, at Kansas City, MO, and will be held at Room 609, Federal Office Building, 911 Walnut Street.

MC 53965 (Sub-No. 133), Graves Truck Line, Inc., is assigned for hearing July 24, 1978, at Oklahoma City, OK, and will be held at Room 637, New Federal Building, Northwest 5th and Robinson.

MC 142760 (Sub-No. 1), Data Processing Maintenance, Inc., d.b.a. Luxury Coaches, is assigned for hearing July 19, 1978, at Houston, TX, and will be held at Creditors Meeting Room, 7th floor, Federal Building, 515 Rusk Avenue.

MC 111545 (Sub-No. 238), Home Transportation Co., Inc., is assigned for hearing July 24, 1978, at Dallas, TX, and will be held at Room 5A15-17, Federal Building, 1100 Commerce Street.

No. MC 121496 (Sub-No. 7), Cango Corp., is now assigned for hearing September 19, 1978 (1 day), at Dallas, TX, at a location to be later designated.

MC 124947 (Sub-No. 89), Machinery Transports, Inc., is now assigned for hearing September 20, 1978 (1 day), at Dallas, TX, at a location to be later designated.

MC 25798 (Sub-No. 298), Clay Hyder Trucking Lines, Inc.; No. MC 95540 (Sub-No. 992), Watkins Motor Lines, Inc.; No. MC 105813 (Sub-No. 227), Belford Trucking Co., Inc.; No. MC 107515 (Sub-No. 1110), Refrigerated Transport Co., Inc.; No. MC 113651 (Sub-No. 236), Indiana Refrigerated Lines, Inc.; No. MC 114045 (Sub-No. 488), Trans-Cold Express, Inc.; No. MC 116763 (Sub-No. 387), Carl Subler Trucking, Inc. and No. MC 143386 (Sub-No. 1), RC Cola-7 Up Bottling Co. of HGN, Inc., are now assigned for hearing September 21, 1978 (2 days), at Dallas, TX, at a location to be later designated.

No. MC 119988 (Sub-No. 133F), Great Western Trucking Co., Inc., is now assigned for hearing September 25, 1978 (1 day), at Dallas, TX, at a location to be later designated.

No. MC 60014 (Sub-No. 66), Aero Trucking, Inc., and No. MC 123048 (Sub-No. 393F), Diamond Transportation System, Inc., are now assigned for hearing September 26, 1978 (1 day), at Dallas, TX, at a location to be later designated.

No. MC 13250 (Sub-No. 139), J. H. Rose Truck Line, Inc., and No. MC 73165 (Sub-No. 426), Eagle Motor Lines, Inc., are now assigned for hearing September 27, 1978 (1 day), at Dallas, TX, at a location to be later designated.

No. MC 43867 (Sub-No. 40), A. Leander McAlister Trucking Co., and No. MC 105984 (Sub-No. 18), John B. Barbour Trucking Co., are now assigned for hearing September 28, 1978 (2 days), at Dallas, TX, at a location to be later designated.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-18795 Filed 7-6-78; 8:45 am]

[7035-01]

FOURTH SECTION APPLICATIONS FOR RELIEF

JUNE 3, 1978.

These applications for long-and-short-haul relief have been filed with the ICC.

Protests are due at the ICC within 15 days from the date of publication of this notice.

FSA No. 43571, Hoegh Container Lines (No. 1), intermodal rates on general commodities in containers, between rail carriers' terminals at U.S. Pacific Coast ports, on the one hand, and, on the other, ports in the United Kingdom, Scandinavia, and Continental Europe, by way of New Orleans, LA, Galveston and Houston, TX, in its tariffs Nos. 2 and 3, ICC Nos. 2 and 3, respectively, effective July 22, 1978. Grounds for relief—Water competition.

FSA No. 43572, Traffic Executive Association—Eastern Railroads, Agent (E.R. No. 3071), rates on plastic articles, between points in official territory, in sup. 187 to its tariff E-2009-I, ICC C-1008, effective July 22, 1978. Grounds for relief—Revised rate structure.

By the Commission.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-18794 Filed 7-6-78; 8:45 am]

[7035-01]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY—ELIMINATION OF GATEWAY LETTER NOTICES

JUNE 30, 1978.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before July 17, 1978. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

The following applicants seek to operate as a *common carrier*, by motor vehicles, over irregular routes.

No. MC 56383 (Sub-No. E1), filed June 6, 1975. Applicant: KESSELL TRANSFER & STORAGE CO., P.O. Box 7408, Colorado Springs, CO 80933. Applicant's representative: Charles J. Kimball, Suite 350, Capitol Life Center, Denver, CO 80203. *Household goods*, as defined by the Commission, (1) between those points in WY on and south of U.S. Hwy 30 and 30S, on the one hand, and, on the other, points in MO on, east, and north of a line beginning at the AR-MO State line, then along U.S. Hwy 65 to junction MO Hwy 13, then along MO Hwy 13 to junction U.S. Hwy 69, then along U.S. Hwy 69 to the IA-MO State line; points in IA on and east of a line beginning at the IA-MO State line, then along U.S. Hwy 169 to the MN-IA State line and points in IL. (2) Between points in WY on, north and east of a line beginning at the NE-WY State line, then along WY Hwy 20 to junction U.S. Hwy 26, then along U.S. Hwy 26 to the ID-WY State line, on the one hand, and, on the other, points in IL; points in the Kansas City, KS commercial zone; points in MO on and east of a line beginning at the KS-MO State line, and extending along the state line to Interstate Hwy 29, then along Interstate Hwy 29 to junction U.S. Hwy 169, then along U.S. Hwy 169 to the IA-MO State line; and points in IA on, east and south of a line beginning at the IA-MO State line, then along U.S. Hwy 169 to junction U.S. Hwy 30, then along U.S. Hwy 30 to junction IA Hwy 14, then along IA Hwy 14 to junction U.S. Hwy 20, then along U.S. Hwy 20 to the IA-IL State line. Gateway eliminated: Des Moines, IA.

No. MC 108119 (Sub-No. E47), filed April 24, 1978. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Applicant's representative: Mark E. Moser (same as above). *Commodities*, which because of size or weight, require special handling, and *related parts, materials, and supplies* when their transportation is incidental to the transportation by carrier of commodities which by reason of size or weight, require special handling or which are metal and metal articles, or self-propelled articles, each weighing 15,000 pounds or more, and *related machinery, tools, parts and supplies* moving in connection therewith, or such commodities as are contractors' equipment, heavy and bulky articles, machinery and machine parts, articles requiring specialized handling or rigging, and machinery, materials, supplies, and equipment used or useful in road construction, mining, logging and sawmill operations, between points in IN on and north of U.S. Hwy 30, on the one hand, and, on the other, points in AZ, CA, ID, NV, UT, WA, WY, OR, points in CO on, north and west of a line extending from the CO-KS State line westerly along U.S. Hwy 50 to La-Junta, CO, then southwest along U.S. Hwy 350 to Trinidad, CO, then south along U.S. Hwy 85 to the CO-NM State line, points in NM on and west of a line extending south from the NM-CO State line along U.S. Hwy 85 to Ribera, NM, then south along NM Hwy 3 to Duran, NM, then south

along U.S. Hwy 54 to the NM-TX State line, and points in El Paso County, TX. Gateway eliminated: Points in MN.

No. MC 108119 (Sub-No. E48), filed April 24, 1978. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Applicant's representative: Mark E. Moser (same as above). *Commodities,* which because of size or weight, require special handling, and *related parts, materials, and supplies* when their transportation is incidental to the transportation by carrier of commodities which by reason of size or weight, require special handling or which are metal and metal articles, or self-propelled articles, each weighing 15,000 pounds or more, and *related machinery tools, parts and supplies* moving in connection therewith or such commodities as are contractor's equipment, heavy and bulky articles, machinery and machine parts, articles requiring specialized handling or rigging, and machinery, materials, supplies, and equipment used or useful in road construction, mining, logging and sawmill operations, between points in IN south of U.S. Hwy 30 and points on and north of a line extending from the IL-IN State line east along U.S. Hwy 24 to junction U.S. Hwy 30 at Fort Wayne, IN, on the one hand, and, on the other, points in AZ, CA, ID, NV, OR, UT, WA, WY, and points in CO on, north and west of a line extending from the CO-NE State line south along CO Hwy 113 to junction U.S. Hwy 138, then south along U.S. Hwy 138 to Sterling, CO, then southwest along U.S. Hwy 6 to Denver, CO, then southwest along U.S. Hwy 285 to junction CO Hwy 291, then south along CO Hwy 291 to Salida, CO, then west along U.S. Hwy 50 to Montrose, CO, then south along U.S. Hwy 550 to the CO-NM State line. Gateway eliminated: points in MN.

No. MC 108119 (Sub-No. E49), filed April 24, 1978. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Applicant's representative: Mark E. Moser (same as above). *Commodities,* which because of size or weight, require special handling, and *related parts, materials, and supplies* when their transportation is incidental to the transportation by carrier of commodities which by reason of size or weight, require special handling or which are metal and metal articles, or self-propelled articles, each weighing 15,000 pounds or more, and *related machinery tools, parts and supplies* moving in connection therewith or such commodities as are contractor's equipment, heavy and bulky articles, machinery and machine parts, articles requiring specialized handling or rigging, and machinery, materials, supplies, and equipment used or useful in road construction, mining, logging and sawmill operations, between points in IN on and north of Interstate Hwy 74 and south of a line extending from the IL-IN State line east along U.S. Hwy 24 to Fort Wayne, IN, then east along U.S. Hwy 30 to the IN-OH State line, on the one hand, and, on the other, points in AZ on and west of a line extending southwest from the AZ-NM State line along U.S. Hwy 160 to junction U.S. Hwy 89, then south along U.S. Hwy 89 to Flagstaff, AZ, then south along Interstate Hwy 17 to Phoenix, AZ, then south along U.S. Hwy 89 to the AZ-MX State line, points in CO on, north and west of a line extending from the CO-WY State line south along U.S. Hwy 87 to junction U.S. Hwy 34, then west along U.S. Hwy 34 to Granby, CO, then west along U.S. Hwy 40 to Craig, CO, then south along CO Hwy 789 to Rifle, CO, then west along U.S. Hwy 6 to the CO-UT State line, points in WY on, north and west of a line extending from the NE-WY State line west along WY Hwy 151 to junction U.S. Hwy 85, then south along U.S. Hwy 85 to the CO-WY State line, points in CA, ID, NV, OR, UT and WA. Gateway eliminated: Points in MN.

No. MC 108119 (Sub-No. E50), filed April 24, 1978. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Applicant's representative: Mark E. Moser (same as above). *Commodities,* which because of size or weight, require special handling, and *related parts, materials, and supplies* when their transportation is incidental to the transportation by carrier of commodities which by reason of size or weight, require special handling, or which are metal and metal articles, or self-propelled articles, each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith, or such commodities as are contractors' equipment, heavy and bulky articles, machinery and machine parts, articles requiring specialized handling or rigging, and machinery, materials, supplies, and equipment used or useful in road construction, mining, logging, and sawmill operations, between points in IN south of Interstate Hwy 74, on the one hand, and, on the other, points in CA on, north and west of a line extending from the CA-NV State line southwest along Interstate Hwy 15 to junction U.S. Hwy 395, then south along U.S. Hwy 395 to the city limits of San Diego, CA, and points within the commercial zone of San Diego, points in NV on, north and west of a line extending from the AZ-NV State line west along U.S. Hwy 93 to Alunite, NV, then south along U.S. Hwy 95 to Searchlight, NV, then west along NV Hwy 68 to the CA-NV State line, points in UT on, north and west of a line extending from the UT-WY State line south along UT Hwy 44 to Vernal, UT, then west along U.S. Hwy 40 to Myton, UT, then south along UT Hwy 53 to junction U.S. Hwy 50, then west along U.S. Hwy 50 to Thistle, UT, then south along U.S. Hwy 89 to Sevier, UT, the west along UT Hwy 4 to Cove Fort, UT, then south along U.S. Hwy 91 to the AZ-UT State line, points in WY on, north and west of a line extending from the NE-WY State line west along U.S. Hwy 26 to Torrington, WY, then southwest along U.S. Hwy 85 to junciton U.S. Hwy 87, then south along U.S. Hwy 87 to the CO-WY State line, including points in the Cheyenne, WY commercial zone, and points in ID, OR, and WA. Gateway eliminated: Points in MN.

No. MC 108119 (Sub-No. E51), filed April 24, 1978. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Applicant's representative: Mark E. Moser (same as above). *Commodities,* which because of size or weight, require special handling, and *related parts, materials, and supplies* when their transportation is incidental to the transportation by carrier of commodities which by reason of size or weight, require special handling, or which are metal and metal articles, or self-propelled articles, each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith, or such commodities as are contractors' equipment, heavy and bulky articles, machinery, and machine parts, articles requiring specialized handling or rigging, and machinery, materials, supplies, and equipment used or useful in road construction, mining, logging, and sawmill operations, between all points in MI located in the Upper Peninsula of MI, on the one hand, and, on the other points in AR on and west of a line beginning at the AR-LA State line north along U.S. Hwy 167 to Little Rock, AR, then north along U.S. Hwy 65 to the AR-MO State line, points in LA on and west of LA Hwy 23 beginning at the Gulf of MX extending northwest to New Orleans, LA, then northwest along U.S. Hwy 61 to Baton Rouge, LA, then west along U.S. Hwy 190 to junctiuon U.S. Hwy 71, then north along U.S. Hwy 71 to junction U.S. Hwy 167, then north along U.S. Hwy 167 to the AR-LA State line, points in MO on and west of U.S. Hwy 65, points in AZ, CA, CO, ID, KS, NV, NM, OK, OR, TX, UT, WA, and WY. Gateway eliminated: Points in MN.

No. MC 108119 (Sub-No. E52), filed April 24, 1978. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Applicant's representative: Mark E. Moser (same as above).

Commodities, which because of size or weight, require special handling, and *related parts, materials, and supplies* when their transportation is incidental to the transportation by carrier of commodities which by reason of size or weight, require special handling, or which are metal and metal articles, or self-propelled articles, each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith or such commodities as are contractors' equipment, heavy and bulky articles, machinery and machine parts, articles requiring specialized handling or rigging, and machinery, materials, supplies, and equipment used or useful in road construction, mining, logging and sawmill operations, between points in MI located in the Lower Peninsula of MI, on the one hand, and, on the other, points in AZ, CA, CO, ID, NV, NM, OR, UT, WA, WY and points in TX on and south of a line extending from the NM-TX State line along TX Hwy 18 to Fort Stockton, TX, then east along U.S. Hwy 290 to junction, TX, then southeast along Interstate Hwy 10 to San Antonio, TX, then southeast along U.S. Hwy 181 to the Gulf of Mexico. Gateway eliminated: Points in MN.

No. MC 108119 (Sub-No. E53), filed April 24, 1978. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Applicant's representative: Mark E. Moser (same as above).

Commodities, which because of size or weight, require special handling, and *related parts, materials, and supplies* when their transportation is incidental to the transportation by carrier of commodities which by reason of size or weight, require special handling, or which are metal and metal articles, or *self-propelled articles*, each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith or such commodities as are contractors' equipment, heavy and bulky articles, machinery and machine parts, articles requiring specialized handling or rigging, and machinery, materials, supplies, and equipment used or useful in road construction, mining, logging and sawmill operations, between points in MO on and north of U.S. Hwy 36 and on and west of MO Hwy 5, on the one hand, and, on the other, points in CA on, north and west of a line extending from the CA-NV State line along U.S. Hwy 6 to Bishop, CA, then south along U.S. Hwy 395 to Rialto, CA, then west along Interstate Hwy 10 to LaVerne, CA, then south along CA Hwy 57 to Fullerton, CA, then south along CA Hwy 72 to the Pacific Ocean, including the commercial zone of Santa Ana, CA; points in CT on and north of a line extending from the Atlantic Ocean north along CT Hwy 85 to junction CT Hwy 66, then west along CT Hwy 66 to Waterbury, CT, then west along Interstate Hwy 84 to the CT-NY State line; points in ID on and west of a line extending southwest along the ID-WY State line along U.S. Hwy 191 to junction Interstate Hwy 15W, then west along Interstate Hwy 15W to junction Interstate Hwy 80N, then south along Interstate Hwy 80N to the ID-UT State line; points in NV on and west of a line extending from the NV-OR State line south along U.S. Hwy 95 to Winnemucca, NV, then east along U.S. Hwy 40 to Battle Mountain, NV, then south along NV Hwy 8A to junction U.S. Hwy 6, then west along U.S. Hwy 6 to the CA-NV State line; points in NY on, north and east of a line extending from the CT-NY State line along Interstate Hwy 84 to junction NY Hwy 17, then northwest along NY Hwy 17 to Deposit, NY, then north along NY Hwy 8 to Utica, NY, then north along NY Hwy 14 to Watertown, NY, then west on NY Hwy 3 to Lake Ontario; points in WY on and north of a line extending from the SD-WY State line west along U.S. Hwy 16 to Worland, WY, then south along U.S. Hwy 20 to Shoshoni, WY, then along U.S. Hwy 26 to Riverton, WY, then southwest along WY Hwy 789 to Lander, WY, then northwest along U.S. Hwy 287 to junction U.S. Hwy 89, then west along U.S. Hwy 289 to the ID-WY State line; points in ME, MA, NH, OR, RI, VT and WA. Gateway eliminated: Points in MN.

No. MC 108119 (Sub-No. E54), filed April 24, 1978. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Applicant's representative: Mark E. Moser (same as above). *Commodities*, which because of size or weight, require special handling, and *related parts, materials, and supplies* when their transportation is incidental to the transportation by carrier of commodities which by reason of size or weight, require special handling or which are metal and metal articles, or self-propelled articles, each weighing 15,000 pounds or more, and *related machinery tools, parts, and supplies* moving in connection therewith, or such commodities as are contractors' equipment, heavy and bulky articles, machinery and machine parts, articles requiring specialized handling or rigging, and machinery, materials, supplies, and equipment used or useful in road construction, mining, logging and sawmill operations, between points in MO on and north of U.S. Hwy 36 and east of MO Hwy 5, on the one hand, and, on the other, points in CA on, north and west of a line extending from the CA-NV State line west along U.S. Hwy 6 to Bishop, CA, then south along U.S. Hwy 395 to Riverside, CA, then west along CA Hwy 91 to junction CA Hwy 55, then south along CA Hwy 55 to the Pacific Ocean; points in NV on and north of a line extending from the NV-UT State line southwest along U.S. Alt Hwy 50 to Ely, NV, then west along U.S. Hwy 6 to the CA-NV State line; points in UT on, west and north of a line extending from the ID-UT State line south along U.S. Hwy 89 to Salt Lake City, UT, then west along U.S. Hwy 40 to the NV-UT State line; points in ID, OR, WA and WY (except those in Uinta, Sweetwater, Carbon, Albany, Platte, Laramie, Niobrara and Goshen Counties). Gateway eliminated: Points in MN.

No. MC 108199 (Sub-No. E55), filed April 24, 1978. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Applicant's representative: Mark E. Moser (same as above). *Commodities*, which because of size or weight, require special handling, and *related parts, materials, and supplies* when their transportation is incidental to the transportation by carrier of commodities which by reason of size or weight, require special handling, or which are metal and metal articles, or self-propelled articles, each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith, or such commodities as are contractors' equipment, heavy and bulky articles, machinery and machine parts, articles requiring specialized handling or rigging, and machinery, materials, supplies, and equipment used or useful in road construction, mining, logging, and sawmill operations, between points in that portion of MO beginning at the KS-MO State line, south of U.S. Hwy 36, then east along to junction MO Hwy 5, on and west of MO Hwy 5 extending south along to junction U.S. Hwy 40, then on and south of U.S. Hwy 40 extending east to Columbia, MO, then on and west of U.S. Hwy 63 to Rolla, MO, then on and north of U.S. Hwy 66 extending west to Lebanon, MO, then on and north of MO Hwy 32 to Buffalo, MO, then on and north of MO Hwy 13 to Collins, MO, then on and north of U.S. Hwy 54 to the KS-MO State line, except points in the commercial zone of Kansas City, MO, on the one hand, and, on the other, points in CA in and north of the counties of Alpine, Tuolumne, Mariposa, Merced, Santa Clara, and points in Monterey County on and west of U.S. Hwy 101 south to Salinas, CA, then west along CA Hwy 68 to the Pacific Ocean; points in ID on and west of a line extending southwest from the ID-WY State line along U.S. Hwy 191 to junction Interstate Hwy 15W, then west along Interstate Hwy 15W to junction Interstate Hwy 80N, then along Interstate Hwy 80N to the ID-UT State line; points in NV on, north, and west of a line extending from the ID-NV State line south along U.S. Hwy 93 to Wells, NV, then west

along U.S. Hwy 40 to Winnemucca, NV, then south along U.S. Hwy 95 to Fallon, NV, then west along U.S. Hwy 50 to Carson City, NV, then west along U.S. Hwy 50 to the NV-CA State line; points in WY on, north and west of a line extending from the NE-WY State line west along U.S. Hwy 20 to Casper, WY, then southwest along WY Hwy 220 to Muddy Gap, WY, then northwest along U.S. Hwy 287 to junction U.S. Hwy 89, then south along U.S. Hwy 89 to the ID-WY State line; points in OR and WA. Gateway eliminated: Points in MN.

No. MC 108119 (Sub-No. E56), filed April 24, 1978. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Applicant's representative: Mark E. Moser (same as above). *Commodities,* which because of size or weight, require special handling, and *related parts, materials, and supplies* when their transportation is incidential to the transportation by carrier of commodities, which by reason of size or weight, require special handling or which are metal and metal articles, or self-propelled articles, each weighting 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith or such commodities as are contractors' equipment, heavy and bulky articles, machinery, and machine parts, articles requiring specialized handling or rigging, and machinery, materials, supplies, and equipment used of useful in road construction, mining, logging and sawmill operations, between points in that portion of MO beginning at the IL-MO State line south of a line extending west on U.S. Hwy 36 to junction MO Hwy 5, then east along MO Hwy 5 to junction U.S. Hwy 40, then north along U.S. Hwy 40 to Columbia, MO, then east along U.S. Hwy 63 extending south to Rolla, MO, then on and north of U.S. Hwy 66 extending east to junction MO Hwy 8, then on and north of MO Hwy 8 extending east to Potosi, MO, then on and east of MO Hwy 21 extending southeast to Ironton, MO, then on and north of MO Hwy 72 to Jackson, MO, then on and east of U.S. Hwy 61 extending southeast to the MO-IL State line at Cape Girardeau, MO, except points within the St. Louis commercial zone, on the one hand, and, on the other, points in CA on, west and north of a line extending from the CA-NV State line west along U.S. Hwy 6 to Bishop, CA, then south along U.S. Hwy 395 to Perris, CA, then west along CA Hwy 74 to the Pacific Ocean; points in NV on and north of a line extending southwest from the NV-UT State line along U.S. alt Hwy 50 to Ely, NV, then west along U.S. Hwy 6 to the CA-NV State line; points in UT on and north of a line extending west and south from the UT-WY State line along U.S. Hwy 189 to junction U.S Hwy 50, then west along U.S. Hwy 50 to Silver City, UT, then north along UT Hwy 36 to junction U.S. Hwy 40, then west along U.S. Hwy 40 to the NV-UT State line; points in WY on and north of a line extending along from the NE-WY State line west along U.S. Hwy 20 to Casper, WY, then southwest along WY Hwy 220 to Muddy Gap, WY, then west along U.S. Hwy 287 to junction WY Hwy 28 to Farson, WY, then via unnumbered road west from Farson, WY to Emigrant Springs, WY, then south along U.S. Hwy 189 to the UT-WY State line; points in ID and OR. Gateway eliminated: Points in MN.

No. MC 108119 (Sub-No. E57), filed April 24, 1978. Applicant: E. L. MURHPY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Applicant's representative: Mark E. Moser (same as above). *Commodities,* which because of size or weight, require special handling, and *related parts, materials, and supplies* when their transportation is incidental to the transportation by carrier of commodities which by reason of size or weight, require special handling, or which are metal and metal articles, or self-propelled articles, each weighing 15,000 pounds or more, and *related machinery tools, parts, and supplies* moving in connection therewith or such commodities as are contractors' equipment, heavy and bulky articles, machinery and machine parts, articles requiring specialized handling or rigging, and machinery, materials, supplies, and equipment used or useful in road construction, mining, logging and sawmill operations, between points in MO south of a line extending from the MO-KS State line along U.S. Hwy 54 east to Collins, MO, then along MO Hwy 13 southeast to Bolivar, MO, then east along MO Hwy 32 to Lebanon, MO, then northeast along U.S. Hwy 66 to Rolla, MO, then on and west of U.S. Hwy 63 extending south to the AR-MO State line, on the one hand, and, on the other, points in CA in and north of the counties of Alpine, Calaveras, San Joaquin, Santa Clara and Santa Cruz; points in NV on and north of a line extending from the NV-UT State line west along U.S. Hwy 40 to Winnemucca, NV, then south along U.S. Hwy 95 to Fallon, NV, then west along U.S. Hwy 50 to the CA-NV State line; points in UT on, west and north of a line extending from the ID-UT State line south along U.S. Hwy 89 to Salt Lake City, UT, then west along U.S. Hwy 40 to the NV-UT State line; points in ID, OR, WA, and WY (except those in Uinta, Sweetwater, Carbon, Albany, Platte, Laramie, Niobrara, and Goshen Counties). Gate eliminated: Points in MN.

No. MC 108119 (Sub-No. E58), filed April 24, 1978. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Applicant's representative: Mark E. Moser (same as above). *Commodities,* which because of size or weight, require special handling, and *related parts, materials, and supplies* when their transportation is incidental to the transpsortation by carrier of commodities which by reason of size or weight, require special handling, or which are metal and metal articles, or self-propelled articles, each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith or such commodities as are contractors' equipment, heavy and bulky articles, machinery and machine parts, articles requiring specialized handling or rigging, and machinery, materials, supplies, and equipment used or useful in road construction, mining, logging and sawmill operations, between points in MO east of a line extending from the AR-MO line north along U.S. Hwy 63 to Rolla, MO, then south of a line extending east from Rolla, MO along U.S. Hwy 66 to junction MO Hwy 8, then east along MO Hwy 8 to Potosi, MO, then southeast along MO Hwy 21 to Ironton, MO, then east along MO Hwy 72 to Jackson, MO, then southeast along U.S. Hwy 61 to the IL-MO State line at Cape Girardeau, MO, on the one hand, and, on the other, points in CA on and north of a line extending from the CA-NV State line west along CA Hwy 88 to Jackson, CA, then south along CA Hwy 49 to Mariposa, CA, then west along CA Hwy 140 to Merced, CA, then south along CA Hwy 59 to junction CA Hwy 152, then west along CA Hwy 152 to Gilroy, CA, then south along U.S. Hwy 101 to Salinas, CA, then west along CA Hwy 68 to the Pacific Ocean; points in NV on, north and west of a line extending from the NV-UT State line west along U.S. Hwy 40 to Winnemucca, NV, then south along U.S. Hwy 95 to Fallon, NV, then west along U.S. Hwy 50 to the CA-NV State line; points in UT on, west and north of a line extending from the ID-UT State line south along U.S. Hwy 89 to Salt Lake City, UT, then west along U.S. Hwy 40 to the NV-UT State line; points in WY on and north of a line extending from the NE-WY State line west along U.S. Hwy 20 to Casper, WY, then southwest along WY Hwy 220 to Muddy Gap, WY, then northwest along U.S. Hwy 287 to junction U.S. Hwy 89, then south along U.S. Hwy 89 to the ID-WY State line; points in ID, OR, and WA. Gateway eliminated: Points in MN.

No. MC 108119 (Sub-No. E59), filed April 24, 1978. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Applicant's representative: Mark E. Moser (same as above). *Commodities,* which because of size or weight, require special

handling, *and related parts, materials, and supplies* when their transportation is incidental to the transportation by carrier of commodities which by reason of size or weight, require special handling, or which are metal and metal articles, or self-propelled articles, each weighting, 15,000 pounds or more, and *related machinery tools, parts, and supplies* moving in connection therewith, or such commodities as are contractors' equipment, heavy and bulky articles, machinery and machine parts, articles requiring specialized handling or rigging, and machinery, materials, supplies, and equipment used or useful in road construction, mining, logging, and sawmill operations, between points in the St. Louis commercial zone, on the one hand, and, on the other, points in CA on and north of a line extending from the Pacific Ocean, near San Juan Capistrano, CA, along CA Hwy 74 to junction U.S. Hwy 395, then north along U.S. Hwy 395 to junction Interstate Hwy 15, then northeast along Interstate Hwy 15 to the CA-NV State line; points in the Upper Peninsula of MI; points in NV on and north of Interstate Hwy 15; points in UT on and west of a line extending from the AZ-UT State line northeast along Interstate Hwy 15 to junction UT Hwy 20, then east along UT Hwy 20 to U.S. Hwy 89, then north along U.S. Hwy 89 to Provo, UT, then northeast along U.S. Hwy 189 to the UT-WY State line; points in WY on and west of a line extending from the CO-WY State line north on WY Hwy 789 to junction Interstate Hwy 80 at Creston, WY, then east along Interstate Hwy 80 to Rawlins, WY, then north along U.S. Hwy 287 to Muddy Gap, WY, then northeast along WY Hwy 220 to Casper, WY, then east along U.S. Hwy 20 to the NE-WY State line; points in ID, OR, and WA. Gateway eliminated: Points in MN.

No. MC 108119 (Sub-No. E60), filed April 24, 1978. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Applicant's representative: Mark E. Moser (same as above). *Commodities,* which because of size or weight, require special handling, *and related parts, materials, and supplies* when their transportation is incidental to the transportation by carrier of commodities which, by reason of size or weight, require special handling, or which are metal and metal articles, or self-propelled articles, each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith, or such commodities as are contractors' equipment, heavy and bulky articles, machinery and machine parts, articles requiring specialized handling or rigging, and machinery, materials, supplies, and equipment used or useful in road construction, mining, logging, and sawmill operations, between points in the Kansas City, MO, commercial zone, on the one hand, and, on the other, points in CA on, west and north of a line extending from the CA-NV State line west along U.S. Hwy 6 to Bishop, CA, then south along U.S. Hwy 395 to junction CA Hwy 178, then west along CA Hwy 178 to junction CA Hwy 155, then west along CA Hwy 155 to CA Hwy 65, then south along CA Hwy 65 to Bakersfield, CA, then west along CA Hwy 58 to junction CA Hwy 33, then south along CA Hwy 33 to Meiners Oaks, CA, then southeast along CA Hwy 150 to Santa Paula, CA, then east along CA Hwy 126 to junction Interstate Hwy 5, then south to the city limits of Los Angeles, CA, and points within the Los Angeles commercial zone; points in CT on, north and east of a line extending east from the CT-NY State line along Interstate Hwy 84 to Waterbury, CT, then east along CT Hwy 66 to junction CT Hwy 16, then east along CT Hwy 16 to junction CT Hwy 85, then south along CT Hwy 85 to New London, CT; points in the Upper Peninsula of MI; points in NV on, north and west of a line extending from the NV-UT State line south along U.S. Alt. Hwy 50 to Ely, NV, then west along U.S. Hwy 6 to the NV-CA State line; points in NY on, north and east of a line extending from the CT-NY State line west along Interstate Hwy 84 to Newburgh, NY, then west along NY Hwy 52 to junction NY Hwy 17 at Liberty, NY, then northwest along NY Hwy 17 to Deposit, NY, then north along NY Hwy 8 to Utica, NY, then north along NY Hwy 12 to Watertown, NY, then west along NY Hwy 3 to Lake Ontario; points in UT on and west of a line extending from the UT-WY State line south along U.S. Hwy 189 to Provo, UT, then south along U.S. Hwy 91 to Santaquin, UT, then west along U.S. Hwy 50 to Silver City, UT, then north along UT Hwy 36 to Interstate Hwy 80, then west along Interstate Hwy 80 to the NV-UT State line; points in WY on and north of a line extending from the WY-NE State line west along U.S. Hwy 20 to Casper, WY, then west along U.S. Hwy 26 to Riverton, WY, then south along WY Hwy 789 to Lander, WY, then south along U.S. Hwy 287 to junction WY Hwy 28, then southwest along WY Hwy 28 to Farson, WY, then via unnumbered road west to Emigrant Springs, WY, then south along U.S. Hwy 189 to the UT-WY State line, points in ID, ME, MA, NH, OR, RI, VT, and WA. Gateway eliminated: Points in MN.

No. MC 108119 (Sub-No. E61), filed April 24, 1978. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Applicant's representative: Mark E. Moser (same as above). *Commodities,* which because of size or weight, require special handling, and *related parts, materials, and supplies* when their transportation is incidental to the transportation by carrier of commodities which by reason of size or weight, require special handling, or which are metal and metal articles, or self-propelled articles, each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith, or such commodities as are contractors' equipment, heavy and bulky articles, machinery and machine parts, articles requiring specialized handling or rigging, and machinery, materials, supplies, and equipment used or useful in road construction, mining, logging, and sawmill operations, between points in OH west of U.S. Hwy 23, on the one hand, and, on the other, points in AZ (except Greenlee, Graham, Cochise, and Santa Cruz Counties); points in CO on, north and west of a line extending south from the CO-NE State line along CO Hwy 113 to junction U.S. Hwy 6, then southwest along U.S. Hwy 6 to the Denver commercial zone, including all points within the Denver commercial zone, then southwest from the Denver commercial zone along U.S. Hwy 285 to junction U.S. Hwy 50, also the commercial zone of Salida, CO, then west along U.S. Hwy 50 to Montrose, CO, then south along U.S. Hwy 550 to the CO-NM State line; points in CA, ID, NV, OR, UT, WA, and WY. Gateway eliminated: Points in MN.

No. MC 108119 (Sub-No. E62), filed April 24, 1978. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Applicant's representative: Mark E. Moser (same as above). *Commodities,* which because of size or weight, require special handling, and *related parts, materials, and supplies* when their transportation is incidental to the transportation by carrier of commodities which by reason of size or weight, require special handling, or which are metal and metal articles, or self-propelled articles, each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith, or such commodities as are contractors' equipment, heavy and bulky articles, machinery and machine parts, articles requiring specialized handling or rigging, and machinery, materials, supplies, and equipment used or useful in road construction, mining, logging, and sawmill operations, between points in OH south of U.S. Hwy 40 and also on and east of U.S. Hwy 23, on the one hand, and, on the other, points in CO on, north and west of a line extending from the CO-NE State line southwest along Interstate Hwy 80S to Denver, CO, then south along U.S. Hwy 87 to Colorado Springs, CO, then southwest along CO Hwy 115 to junction U.S. Hwy 50, then west along U.S. Hwy 50 to Poncha Springs, CO, then south along U.S.

Hwy 285 to the CO-NM State line; points in NM, on, north and west of a line extending from the CO-NM State line south along U.S. Hwy 84 to junction NM Hwy 96, then west and south along NM Hwy 96 to Cuba, NM, then west along NM Hwy 44 to Counselor, NM, then south along NM Hwy 509 to junction NM Hwy 53, then south along NM Hwy 53 to junction U.S. Hwy 66, then west along U.S. Hwy 66 to the AZ-NM State line; points in AZ, CA, ID, NV, OR, UT, WA, and WY. Gateway eliminated: Points in MN.

No. MC 115093(Sub-No. E3), filed June 8, 1978. Applicant: MERCURY MOTOR EXPRESS, INC., P.O. Box 23406, Tampa, FL 33622. Applicant's representative: Mr. William H. Shawn, Grove, Jaskiewicz, Gilliam & Cobert, 1730 M Street NW., Suite 501, Washington, DC 20036. (I) *Lumber, building materials, and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment), (A) from points in NC on, west and south of a line beginning at the Atlantic Ocean over NC Hwy 50 to junction U.S. Hwy 17, then along U.S. Hwy 17 to junction with unnumbered highway at Verona, NC, then along unnumbered highway via Haw, NC, to junction NC Hwy 50, then along NC Hwy 50 to junction NC Hwy 53, then along NC Hwy 53 to junction U.S. Hwy 258, then along U.S. Hwy 258 to junction NC Hwy 24, then along NC Hwy 24 to the Duplin-Sampson County line, then along the Duplin-Sampson County line to the Wayne-Sampson County line, then along the Wayne-Sampson County line to NC Hwy 55, then along NC Hwy 55 to junction NC Hwy 50, then along NC Hwy 50 to junction NC Hwy 27, then along NC Hwy 27 to the Johnston-Harnett County line, then along the Johnston-Harnett County line to the Wake-Harnett County line, then along the Wake-Harnett County line, to the Wake-Chatham County line, then along the Wake-Chatham County line to U.S. Hwy 1, then along U.S. Hwy 1 to the Chatham-Lee County line, then along the Chatham-Lee County line to U.S. Hwy 421, then along U.S. Hwy 421 to the Chatham-Randolph County line, then along the Chatham-Randolph County line to the Moore-Randolph County line, then along the Moore-Randolph County line to the Montgomery-Randolph County line, then along the Montgomery-Randolph County line to U.S. Hwy 220, then along U.S. Hwy 220 to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction NC Hwy 901, then along NC Hwy 901 to the Tredell-Alexander County line, then along the Tredell-Alexander County line to NC Hwy 90, then along NC Hwy 90 to junction U.S. Hwy 321, then along U.S. Hwy 321 to junction NC Hwy 194, then along NC Hwy 194 to junction U.S. Hwy 19E, then along U.S. Hwy 19E to the NC-TN State line, to points in Cattaraugus, Chautauqua, and Erie Counties, NY, except Buffalo, NY, and (B) from points in Marion County, TN, on and south of a line beginning at the Hamilton-Marion County line along U.S. Hwy 41 to junction TN Hwy 27, then along TN Hwy 27 to the TN-AL State line; from Chattanooga, TN; from points in Polk County, TN, on and south of a line beginning at the Monroe-Polk County line along TN Hwy 68 to junction U.S. Hwy 64, then along U.S. Hwy 64 to the Polk-Bradley County line, and from Tellico Plains, TN, and points in Monroe County south thereof on TN Hwy 68, to points in Cattaraugus, Chautauqua, and Erie Counties, NY.

(II) *Lumber, building materials, and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment), (A) from points in NC on, west and south of a line beginning at Bayshore Park, NC, along NC Hwy 24 to junction U.S. Hwy 117, then along U.S. Hwy 117 to the Duplin-Wayne County line, then along the Duplin-Wayne County line to the Wayne-Sampson County line, then along the Wayne-Sampson County line to the Johnston-Sampson County line, then along the Johnston-Sampson County line to U.S. Hwy 701, then along U.S. Hwy 701 to junction U.S. Hwy 301, then along U.S. Hwy 301 to junction NC Hwy 27, then along NC Hwy 27 to junction NC Hwy 55, then along NC Hwy 55 to the Harnett-Wake County line, then along the Harnett-Wake County line to U.S. Hwy 1, then along U.S. Hwy 1 to junction unnumbered highway at Moncure, then along unnumbered highway to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction U.S. Hwy 52, then along U.S. Hwy 52 to the Davidson-Forsyth County line, then along the Davidson-Forsyth County line to the Davie-Forsyth County line, then along the Davie-Forsyth County line to U.S. Hwy 158, then along U.S. Hwy 158 to junction U.S. Hwy 64, then along U.S. Hwy 64 to Davie-Tredell County line, then along the Davie-Tredell County line to Tredell-Yadkin County line, than along the Tredell-Yadkin County line to the Tredell-Wilkes County line, then along the Tredell-Wilkes County line to NC Hwy 115, then along NC Hwy 115 to junction U.S. Hwy 421, then along U.S. Hwy 421 to junction NC Hwy 268, then along NC Hwy 268 to the Wilkes-Caldwell County line, then along the Wilkes-Caldwell County line to the Caldwell-Watauga County line, then along the Caldwell-Watauga County line to U.S. Hwy 321, then along U.S. Hwy 321 to junction NC Hwy 194, then along NC Hwy 194 to junction U.S. Hwy 19E, then along U.S. Hwy 19E to the NC-TN State line to point in Genesee, Niagara, and Orleans Counties, NY, and Buffalo, NY and (B) from points in Cocke County, TN, on and south of a line beginning at the Greene-Cocke County line along U.S. Hwy 411 to the Cocke-Jefferson County line; from points in Jefferson County, TN, on and south of a line beginning at the Cocke-Jefferson County line along U.S. Hwy 70 to the Jefferson-Sevier County line; from points in Sevier County, TN on, east and south of a line beginning at the Jefferson-Sevier County line along TN Hwy 66 to junction U.S. Hwy 441, then along U.S. Hwy 441 to junction unnumbered highway at Pine Grove, then along unnumbered highway via Cove Creek Cascades to the Sevier-Blount County line; from Calderwood, Townsend, Coker Creek, and Chattanooga, TN; from points in Polk County, TN, on and south of a line beginning at the Monroe-Polk County line along TN Hwy 68 to junction U.S. Hwy 64, then along U.S. Hwy 64 th the Polk-Bradley County line; and from points in Marion County, TN, on and south of a line beginning at the Hamilton-Marion County line along U.S. Hwy 64 to junction TN Hwy 27, then along TN Hwy 27 to the TN-AL State line, to points in Genesee, Niagara, and Orleans Counties, NY, and Buffalo, NY.

(III) *Lumber, building materials, and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment), (A) from points in NC on, west and south of a line beginning at the Atlantic Ocean along NC Hwy 50 to junction U.S. Hwy 17, then along U.S. Hwy 17 to junction unnumbered highway at Verona, NC, then along unnumbered highway via Haw, NC, to junction NC Hwy 50, then along NC Hwy 50 to junction NC Hwy 24, then along NC Hwy 24 to junction U.S. Hwy 701, then along U.S. Hwy 701 to junction NC Hwy 50, then along NC Hwy 50 to junction NC Hwy 27, then along NC Hwy 27 to junction NC Hwy 55, then along NC Hwy 55 to junction U.S. Hwy 1, then along U.S. Hwy 1 to the Chatham-Lee County line, then along the Chatham-Lee County line to U.S. Hwy 421, then along U.S. Hwy 421 to the Chatham-Randolph County line, then along the Chatham-Randolph County line to the Morre-Randolph County line, then along the Moore-Randolph County line to the Montgomery-Randolph County line, then along the Montgomery-Randolph County line to U.S. Hwy 220, then along U.S. Hwy 220 to junction U.S. Hwy 64, then along U.S. Hwy 65 to junction NC Hwy 901, then along NC Hwy 901 to junction U.S. Hwy 21, then along U.S. Hwy 21 to junction U.S. Hwy 421, then along U.S. Hwy 421 to junction NC Hwy 194 at Valle Crucis,

NC, then along NC Hwy 194 to junction U.S Hwy 19E, then along U.S. Hwy 19E to the NC-TN State line, to points in Allegany and Steuben Counties, NY; and (B) from points in TN on, west and south of a line beginning at the NC-TN State line along NC Hwy 70 to junction U.S. Hwy 11E, then along U.S. Hwy 11E to the Jefferson-Hamblen County line, then along the Jefferson-Hamblen County line to TN Hwy 92, then along TN Hwy 92 to junction U.S. Hwy 11W, then along U.S. Hwy 11W to junciton TN Hwy 61, then along TN Hwy 61 to the Union-Anderson County line, then along the Union-Anderson County line to the Campbell-Anderson County line, then along the Campbell-Anderson County line to Interstate Hwy 75, then along Interstate Hwy 75 to junction TN Hwy 63, then along TN Hwy 63 to the Campbell-Scott County line, then along the Campbell-Anderson County line to the Anderson-Scott County line, then along the Anderson-Scott County line to the Anderson-Morgan County line, then along the Anderson-Morgan County line to the Morgan-Roane County line, then along the Morgan-Roane County line to the Cumberland-Roane County line, then along the Cumberland-Roane County line to the Cumberland-Rhea County line, then along the Cumberland-Rhea County line to the Cumberland-Bledsoe County line, then along the Cumberland-Bledsoe County line to U.S. Hwy 127, then along U.S. Hwy 127 to the Bledsoe-Sequatchie County line, then along the Bledsoe-Sequatchie County line to the Van Buren-Sequatchie County line, then along the Van Buren-Sequatchie County line to the Warren-Sequatchie County line, then along the Warren-Sequatchie County line to the Warren-Grundy County line, then along the Warren-Grundy County line to TN Hwy 108, then along TN Hwy 108 to junciton TN Hwy 127, then along TN Hwy 127 to the Warren-Coffee County line, then along the Warren-Coffee County line to TN Hwy 55, then along TN Hwy 55 to junction TN Hwy 50, then along TN Hwy 50 to junction U.S. Hwy 231, then along U.S. Hwy 231 to junction TN Hwy 110, then along TN Hwy 110 to the TN-AL State line; and from Elkmont Springs, TN to points in Allegany and Steuben Counties, NY.

(IV) *Lumber, building materials, and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment), (A) from points of NC on, west and south of a line beginning at Swansboro, NC, along NC Hwy 24 to junction NC Hwy 53, then along NC Hwy 53 to junction NC Hwy 50, then along NC Hwy 50 to junction NC Hwy 24, then along U.S. Hwy 24 to junction U.S. Hwy 701, then along U.S. Hwy 701 to junction NC Hwy 50, then along NC Hwy 50 to the Wake-Johnston County line, then along the Wake-Johnston County line to the Wake-Harnett County line, then along the Wake-Harnett County line to the Wake-Chatham County line, then along the Wake-Chatham County line to U.S. Hwy 1, then along U.S. Hwy 1 to junction unnumbered highway at Montour, NC, then along unnumbered highway to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction U.S. Hwy 52, then along U.S. Hwy 52 to the Davidson-Forsyth County line, then along the Davidson-Forsyth County line to NC Hwy 150, then along NC Hwy 150 to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction U.S. Hwy 601, then along U.S. Hwy 601 to junction U.S. Hwy 421, then along U.S. Hwy 421 to junction U.S Hwy 321, then along U.S. Hwy 321 to junction NC Hwy 194, then along NC Hwy 194 to the Avery-Watauga County line, then along the Avery-Watauga County line to the NC-TN State line, to points in Livingston and Wyoming Counties, NY: and (B) from points in TN on and south of a line beginning at the NC-TN State line along U.S. Hwy 19E to the Sullivan-Carter County line, then along the Sullivan-Carter County line to the Washington-Carter County line, then along the Washington-Carter County line to the Unicoi-Washington County line, then along the Unicoi-Washington County line to the Washington-Greene County line, then along Washington-Greene County line to TN Hwy 107, then along TN Hwy 107 to junction U.S. Hwy 11E, then along U.S. Hwy 11E to the Jefferson-Hamblen County line, then along the Jefferson-Hamblen County line to the Jefferson-Grainger County line, then along the Jefferson-Grainger County line to TN Hwy 61, then along TN Hwy 61 to the Grainger-Union County line, then along the Grainger-Union County line to TN Hwy 33, then along TN Hwy 33 to the Knox-Blount County line, then along the Knox-Blount County line to the Knox-Loudon County line, then along the Knox-Loudon County line to U.S. Hwy 11, then along U.S. Hwy 11 to junction TN Hwy 153, then along TN Hwy 153 to junction unnumbered highway, then along unnumbered highway via Soddy-Daisy, TN, to the Hamilton-Bledsoe County line, then along the Hamilton-Bledsoe County line to the Hamilton-Sequatchie County line, then along the Hamilton-Sequatchie County line to the Marion-Sequatchie County line, then along the Marion-Sequatchie County line to the Marion-Grudny County line, then along the Marion-Grundy County line to TN Hwy 108, then along TN Hwy 108 to junction unnumbered highway, then along unnumbered highway to the Coffee-Grundy County line near Pelham, TN, then along the Coffee Grundy County line to the Marion-Franklin County line, then along the Marion-Franklin County line to U.S. Hwy 64, then along U.S. Hwy 64 to junction TN Hwy 56, then along TN Hwy 56 to the IN-AL State line, to points in Livingston and Wyoming Counties, NY.

(V) *Lumber, building materials, and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment), (A) from points in NC on, west and south of a line commencing at Bayshore Park along NC Hwy 24 to the Duplin-Sampson county line, then along the Duplin-Sampson County line to the Sampson-Wayne County line, then along the Sampson-Wayne County line to the Sampson-Johnston County line, then along the Sampson-Johnston County line to U.S. Hwy 701, then along U.S. Hwy 701 to junction U.S. Hwy 301, then along U.S. Hwy 301 to the Johnston-Harnett County line, then along the Johnston-Harnett County line to the Wake-Harnett County line, then along the Wake-Harnett County line to the Wake-Chatham County line, then along the Wake-Chatham County line to U.S. Hwy 1, then along U.S. Hwy 1 to junction with unnumbered hwy at Montour, then along unnumbered hwy to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction U.S. Hwy 421, then along U.S. Hwy 421 to the Randolph-Guilford County line, then along the Randolph-Guilford County line to U.S. Hwy 29, then along U.S. Hwy 29 to junction U.S. Hwy 52, then along U.S. Hwy 52 to the Davidson-Forsyth County line, then along the Davidson-Forsyth County line to NC Hwy 150, then along NC Hwy 150 to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction U.S. Hwy 601, then along U.S. Hwy 601 to junction U.S. Hwy 421, then along U.S. Hwy 421 to the TN-NC State line, to points in Monroe County, NY; and (B) from points in TN on and south of a line beginning at the NC-TN State line along U.S. Hwy 421 to the Johnson-Sullivan County line, then along the Johnson-Sullivan County line to the Carter-Johnson County line, then along the Carter-Johnson County line to TN Hwy 91, then along TN Hwy 91, then along TN Hwy 91 to junction TN Hwy 67A, then along TN Hwy 67A, then along TN Hwy 67A to the Carter-Unicoi County line, then along the Carter-Unicoi County line to the Washington-Unicoi County line, then along the Washington-Unicoi County line to the TN Hwy 81, then along the TN Hwy 81 to junction U.S. Hwy 411, then along U.S. Hwy 411 to junction U.S. Hwy 11E, then along U.S. Hwy 11E to the Hamblen-Hawkins County line, then along the Hamblen-Hawkins County line to the Grainger-Hawkins County line. then along the Grainger-Hawkins

County line to U.S. Hwy 11W, then along U.S. Hwy 11W to junction TN Hwy 131, then along TN Hwy 131 to the Union-Grainger County line, then along the Union-Grainger County line to the Union-Knox County line, then along the Union-Knox County line to the Anderson-Knox County line, then along the Anderson-Knox County line to the Loudon-Knox county line, then along the Loudon-Knox County line to U.S. Hwy 11, then along U.S. Hwy 11 to the Loudon-Monroe County line, then along the Loudon-Monroe County line to the Monroe-McMinn county line, then along the Monroe-McMinn County line to U.S. Hwy 11, then along U.S. Hwy 11 to the McMinn-Bradley County line, than along the McMinn-Bradley County line to the Meigs-Bradley County line, then along the Meigs-Bradley County line to the Hamilton-Bradley County line, then along the Hamilton-Bradley County line to the Hamilton-Meigs County line, then along the Hamilton-Meigs County line to the Hamilton-Rhea County line, then along the Hamilton-Rhea County line to the Hamilton-Bledsoe County line, then along the Hamilton-Bledsoe County line to the Bledsoe-Sequatchie County line, then along the Bledsoe-Sequatchie County line to U.S. Hwy 127, then along U.S. Hwy 127 to the Hamilton-Marion County line, then along the Hamilton-Marion County line to the Sequatchie-Marion county line, then along the Sequatchie-Marion County line to the Marion-Grundy County line, then along the Marion-Grundy County line to the TN Hwy 108, then along TN Hwy 108 to the Warren-Grundy County line, then along the Warren-Grundy County line to TN Hwy 127, then along TN Hwy 127 to junction U.S. Hwy Alternate 41, then along U.S. Hwy Alt 41 to U.S. Hwy 64, then along U.S. Hwy 64 to junction TN Hwy 121, then along TN Hwy 121 to junction TN Hwy 122, then along TN Hwy 122 to the TN-AL State line, to points in Monroe County, NY.

(VI) *Lumber, building materials, and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment), (A) from points in NC on, west and south of a line beginning at the Atlantic Ocean along the Pender-Onslow County line to the Pender-Duplin County line, then along the Pender-Duplin County line to the Sampson-Duplin County line, then along the Sampson-Duplin County line to U.S. Hwy 421, then along U.S. Hwy 421 to the Sampson-Harnett County line, then along the Sampson-Harnett County line to the Harnett-Cumberland County line, then along the Harnett-Cumberland County line to U.S. Hwy 401, then along U.S. Hwy 401 to junction U.S. Hwy 421, then along U.S. Hwy 421 to junction U.S. Hwy 64, then along U.S. Hwy 64 to the Randolph-Chatham County line, then along the Randolph-Chatham County line to the Moore-Randolph County line, then along the Moore-Randolph County line to the Randolph-Montgomery County line, then along the Randolph-Montgomery County line to U.S. Hwy 220, then along U.S. Hwy 220 to junction U.S. Hwy 64, then along U.S. Hwy 64 to the Davie-Tredell County line, then along the Davie-Tredell County line to the Yadkin-Tredell County line, then along the Yadkin-Tredell County line to U.S. Hwy 21, then along U.S. Hwy 21 to junction U.S. Hwy 421, then along U.S. Hwy 421 to the Wilkes-Watauga County line, then along the Wilkes-Watauga County line to the Caldwell-Watauga County line, then along the Caldwell-Watauga County line to U.S. Hwy 321, then along U.S. Hwy 321 to junction NC Hwy 194 to junction U.S. Hwy 19E, then along U.S. Hwy 19E to the NC-TN State line, to points in Chemung, Schuyler, and Yates Counties, NY; and (B) from points in TN on and south of a line beginning at the TN-NC State line along U.S. Hwy 19E to junction unnumbered highway, approximately 2 miles west of Blevins, TN, then along unnembered highway to the Carter-Unicoi County line, then along the Carter-Unicoi County line to the Unicoi-Washington County line, then along the Unicoi-Washington County line to the Washington-Greene County line, then along the Washington-Greene County line to NC Hwy 107, then along NC Hwy 107 to junction U.S. Hwy 11E, then along U.S. Hwy 11E to the Hamblen-Jefferson County line, then along the Hamblen-Jefferson County line to TN Hwy 92, then along TN Hwy 92 to junction U.S. Hwy 11W, then along U.S. Hwy 11W to the Grainger-Knox County line, then along the Grainger-Knox County line to NC Hwy 61, then along NC Hwy 61 to the Union-Anderson County line, then along the Union-Anderson County line to the Campbell-Anderson County line, then along the Campbell-Anderson County line to U.S. Hwy 25W, then along U.S. Hwy 25W to junction TN Hwy 63, then along TN Hwy 63 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction TN Hwy 52, then along TN Hwy 52 to junction TN Hwy 85, then along TN Hwy 85 to the Overton-Jackson County line, the along the Overton-Jackson County line to the Clay-Jackson County line, then along the Clay-Jackson County line to the Clay-Macon County line, then along the Clay-Macon County line to the TN Hwy 52, then along TN Hwy 52 to junction TN Hwy 10, then along TN Hwy 10 to the Macon-Trousdale County line, then along the Macon-Trousdale County line to the Trousdale-Wilson County line, then along the Trousdale-Wilson County line to the Sumner-Wilson County line, then along the Sumner-Wilson County line to the Davidson-Wilson County line, then along the Davidson-Wilson County line to the Davidson-Rutherford County line, then along the Davidson-Rutherford County line to the Davidson-Williamson County line, then along the Davidson-Williamson County line to the Williamson-Cheatham County line, then along the Williamson-Cheatham County line to the Dickson-Cheatham County line, then along the Dickson-Cheatham County line to U.S. Hwy 70, then along U.S. Hwy 70 to junction U.S. Hwy Alternate 70, then along U.S. Hwy Alternate 70 to junction U.S. Hwy 79, then along U.S. Hwy 79 to junction unnumbered highway, approximately 2 miles west of Atwood, TN, then along unnumbered highway via Cades, TN, to junction TN Hwy 104, then along TN Hwy 104 to the Dyer-Gibson County line, then along the Dyer-Gibson County line to the Dyer-Crockett County line, then along the Dyer-Crockett County line to the Dyer-Lauderdale County line, then along the Dyer-Lauderdale County line to the TN-AR State line, and from Donelson and Oak Hill, TN, to points in Chemung, Schuyler, and Yates Counties, NY.

(VII) *Lumber, building materials, and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment), (A) from points in NC on, west and south of a line beginning at the Atlantic Ocean along NC Hwy 172 to junction NC Hwy 210, then along NC Hwy 210 to junction U.S. Hwy 17, then along U.S. Hwy 17 to junction NC Hwy 50, then along NC Hwy 50 to junction NC Hwy 41, then along NC Hwy 41 to junction U.S. Hwy 117, then along U.S. Hwy 117 to junction NC Hwy 24, then along NC Hwy 24 to junction U.S. Hwy 701, then along U.S. Hwy 701 to the Sampson-Johnston County line, then along the Sampson-Johnston County line to the Sampson-Harnett County line, then along the Sampson-Harnett County line to U.S. Hwy 421, then along U.S. Hwy 421 to the Lee-Harnett County line, then along the Lee-Harnett County line to the Harnett-Chatham County line, then along the Harnett-Chatham County line to the Chatham-Wake County line, then along the Chatham-Wake County line to U.S. Hwy 1, then along U.S. Hwy 1 to the Chatham-Lee County line, then along the Chatham-Lee County line to U.S. Hwy 421, then along U.S. Hwy 421 to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction U.S. Hwy 52, then along U.S. Hwy 52 to the Davidson-Forsyth County line, then along the Davidson-Forsyth County line to NC Hwy 150, then along NC Hwy 150 to junction

U.S. Hwy 64, then along U.S. Hwy 64 to junction U.S. Hwy 601, then along U.S. Hwy 601 to the Davie-Yadkin County line, then along the Davie-Yadkin County line to the Yadkin-Wilkes County line, then along the Yadkin-Wilkes County line to U.S. Hwy 421, then along U.S. Hwy 421 to junction U.S. Hwy 321, then along U.S. Hwy 321 to the NC-TN State line to points in Ontario and Wayne Counties, NY, and (B) from points in TN on and south of a line beginning at the NC-TN State line along U.S. Hwy 321 to junction U.S. Hwy 19E, then along U.S. Hwy 19E to junction unnumbered highway, approximately 2 miles west of Blevins, TN, then along unnumbered highway to the Carter-Unicoi County line, then along the Carter-Unicoi County line to the Washington-Unicoi County line, then along the Washington-Unicoi County line to the Greene-Washington County line, then along the Greene-Washington County line to TN Hwy 107, then along TN Hwy 107 to junction U.S. Hwy 11E, then over U.S. Hwy 11E to the Hawkins-Hamblen County line, then over the Hawkins-Hamblen County line to the Grainger-Hawkins County line, then over the Grainger-Hawkins County line to the Grainger-Hancock County line, then over the Grainger-Hancock County line, to the Claiborne-Hancock County line, then over the Claiborne-Hancock County line to the VA-TN State line, then over the VA-TN State line to the KY-TN State line, then over the KY-TN State line to the Claiborne-Campbell County line, then over the Claiborne-Campbell County line to TN Hwy 63, then over TN Hwy 63 to junction U.S. Hwy 25W, then over U.S. Hwy 25W to the Campbell-Anderson County line, then over the Campbell-Anderson County line to the Scott-Anderson County line, then over the Scott-Anderson County line to the Morgan-Anderson County line, then along the Morgan-Anderson County line to TN Hwy 62, then along TN Hwy 62 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction unnumbered highway at Sunbright, TN, then along unnumbered highway via Deer Lodge, TN, to TN Hwy 62, then along TN Hwy 62 to the Morgan-Fentress County line, then along the Morgan-Fentress County line to the Cumberland-Fentress County line, then along the Cumberland-Fentress County line to the Putnam-Cumberland County line, then along the Putnam-Cumberland County line to the White-Cumberland County line, then along the White-Cumberland County line to the Van Buren-Bledose County line, then along the Van Buren-Bledose County line to the Van Buren-Sequatchie County line, then along the Van Buren-Sequatchie County line to the Van Buren-Warren County line, then along the Van Buren-Warren County line to TN Hwy 8, then along TN Hwy 8 to junction TN Hwy 55, then along TN Hwy 55 to junction U.S. Hwy 41, then along U.S. Hwy 41 to the Bedford-Coffee County line, then along the Bedford-Coffee County line to the Bedford-Rutherford County line, then along the Bedford-Rutherford County line to the Williamson-Marshall County line, then along the Williamson-Marshall County line to U.S. Hwy Alternate 31, then along U.S. Hwy Alternate 31 to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction TN Hwy 125, then along TN Hwy 125 to the TN-MS State line, to points in Ontario and Wayne Counties, NY.

(VIII) *Lumber, building materials, and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment), (A) from points in NC on, west and south of a line beginning at Sneads Ferry, NC, along unnumbered hwy to junction NC Hwy 172, then along NC Hwy 172 to junction U.S. Hwy 17, then along U.S. Hwy 17 to NC Hwy 50, then along NC Hwy 50 to the Pender-Onslow County line, then along the Pender-Onslow County line to the Pender-Duplin County line, then along the Pender-Duplin County line to the Bladen-Duplin County line, then along the Bladen-Duplin County line to U.S. Hwy 421, then along U.S. Hwy 421 to U.S. Hwy 64, then along U.S. Hwy 64 to the Davie-Tredell County line, then along the Davie-Tredell County line to the Yadkin-Tredell County line, then along the Yadkin-Tredell County line to U.S. Hwy 21, then along U.S. Hwy 21 to the junction U.S. Hwy 421, then along U.S. Hwy 421 to the Wilkes-Watauga County line, then along the Wilkes-Watuga County line to the Caldwell-Watauga County line, then along the Caldwell-Watauga County line to U.S. Hwy 321, then along U.S. Hwy 321 to junction NC Hwy 194, then along NC Hwy 194 to junction U.S. Hwy 19E, then along U.S. Hwy 19E to the NC-TN State line, to points in Madison and Tioga counties, NY and points in Broome and Chenango Counties, NY north of NY Hwy 7; and (B) from points in TN on and south of a line beginning at the TN-NC State line along the Carter-Unicoi County line to the Washington-Unicoi County line, then along the Washington-Unicoi County line to the Greene-Washington County line, then along the Greene-Washington County line to TN Hwy 107, then along TN Hwy 107 to a junction U.S. Hwy 11E, then along U.S. Hwy 11E to the Greene-Hamblen County line, then along the Greene-Hamblen County line to the Hamblen-Hawkins County line, then along the Hamblen-Hawkins County line to the Grainger-Hawkins County line, then along the Grainger-Hawkins County line to the Grainger-Hancock County line, then along the Grainger-Hancock County line to the Hancock-Claiborne County line, then along the Hancock-Claiborne County line to the TN-VA State line, then along the TN-VA State line to the KY-TN State line, then along the KY-TN State line to the Macon-Clay County line, then along the Morgan-Clay County line to the TN Hwy 52, then along TN Hwy 52 to junction TN Hwy 10, then along TN Hwy 10 to junction TN Hwy 25, then along TN Hwy 25 to junction U.S. Hwy 31E, then along U.S. Hwy 31E to Sumner-Davidson County line, then along the Sumner-Davidson County line to the Robertson-Davison County line, then along the Robertson-Davidson County line to the Robertson-Cheatham County line, then along Robertson-Cheatham County line to TN Hwy 49, then along TN Hwy 49 to the Dickson-Houston County line, then along the Dickson-Houston County line to the Montgomery-Houston County line, then along the Montgomery-Houston County line to the Houston-Stewart County line, then along the Houston-Stewart County line to the Houston-Henry County line, then along the Houston-Henry County line to the Benton-Henry County line, then along the Benton-Henry County line to TN Hwy 69, then along TN Hwy 69 to junction TN Hwy 54, then along TN Hwy 54 to junction TN Hwy 22, then along TN Hwy 22 to the MO-TN State line, to points in Madison and Tioga Counties, NY, and to points in Broome and Chenango Counties, NY north of NY Hwy 7.

(IX) *Lumber, building materials, and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment) (A) from points in NC on, west and south of a line beginning at Sneads Ferry, NC along unnumbered hwy to junction NC Hwy 172, then along NC Hwy 172 to junction NC Hwy 210, then along NC Hwy 210 to junction U.S. Hwy 17, then along U.S. Hwy 17 to junction NC Hwy 50, then along NC Hwy 50 to the Onslow-Pender County line, then along the Onslow-Pender County line to the Pender-Duplin County line, then along the Pender-Duplin County line to U.S. Hwy 117, then along U.S. Hwy 117 to junction NC Hwy 50, then along U.S. Hwy 50 to the Duplin-Sampson County line, then along the Duplin-Sampson County line to the Wayne-Sampson County line, then along the Wayne-Sampson County line to the Johnston-Sampson County line, then along the Johnston-Sampson County line to the Sampson-Harnett County line, then along the Sampson-Harnett County line to NC Hwy 55, then along NC Hwy 55 to junction NC Hwy 217, then along NC Hwy 217 to junction

U.S. Hwy 401, then along U.S. Hwy 401 to junction U.S. Hwy 421, then along U.S. Hwy 421 to junction U.S. Hwy 64, then along U.S. Hwy 64 to the David-Tredell County line, then along the David-Tredell County line to the Yadkin-Tredell County line, then along the Yadkin-Tredell County line to U.S. Hwy 21, then along U.S. Hwy 21 to junction U.S. Hwy 421, then along U.S. Hwy 421 to junction NC Hwy 268, then along NC Hwy 268 to the Wilkes-Caldwell County line, then along the Wilkes-Caldwell County line to the Caldwell-Watauga County line, then along the Caldwell-Watauga County line to U.S. Hwy 321, then along U.S. Hwy 321 to junction NC Hwy 194, then along NC Hwy 194 to the Watauga-Avery County line, then along the Watauga-Avery County line to the NC-TN State line to points in Cayuga, Cortland, Seneca, and Tompkins Counties, NY; and (B) from points in TN on and south of a line beginning at the TN-NC State line along the Carter-Unicoi County line to the Washington-Unicoi County line, then along the Washington-Unicoi County line to the Washington-Greene County line, then along the Washington-Greene County line to TN Hwy 107, then along TN Hwy 107, then along TN Hwy 107 to junction U.S. Hwy 11E, then along U.S. Hwy 11E to the Greene-Hamblen County line, then along the Greene-Hamblen County line to the Hamblen-Hawkins County line, then along the Hamblen-Hawkins County line to the Grainger-Hawkins County line, then along the Grainger-Hawkins County line to the Grainger-Hancock County line, then along the Grainger-Hancock County line to the Claiborne-Hancock County line, then along the Claiborne-Hancock County line to the VA-TN State line, then along the VA-TN State line to the KY-TN State line, then along the KY-TN State line to TN Hwy 56, then along TN Hwy 56 to junction TN Hwy 80, then along TN Hwy 80 to the Macon-Smith County line, then along the Macon-Smith County line to the Macon-Trousdale County line, then along the Macon-Trousdale County line to TN Hwy 10, then along TN Hwy 10 to junction TN Hwy 25, then along TN Hwy 25 to junction TN Hwy 141, then along TN Hwy 141 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction U.S. Hwy Alt 70, then along U.S. Hwy Alt 70 to junction U.S. Hwy 79, then along U.S. Hwy 79 to junction TN Hwy 77, then along TN Hwy 77 to junction TN Hwy 104, then along TN Hwy 104 to junction TN Hwy 20, then along TN Hwy 20 to the TN-MO State line, to points in Cayuga, Cortland, Seneca, and Tompkins Counties, NY.

(X) *Lumber, building materials, and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment), (A) from points in NC on, west and south of a line beginning at the Atlantic Ocean along NC Hwy 24 to the Onslow-Duplin County line, then along the Onslow-Duplin County line to the Duplin-Pender County line, then along the Duplin-Pender County line to NC Hwy 50, then along NC Hwy 50 to junction NC Hwy 24, then along NC Hwy 24 to junction U.S. Hwy 701, then along U.S. Hwy 701 to the Sampson-Johnston County line, then along the Sampson-Johnston County line to NC Hwy 50, then along NC Hwy 50 to junction NC Hwy 27, then along NC Hwy 27 to the Johnston-Harnett County line, then along the Johnston-Harnett County line to the Wake-Harnett County line, then along the Wake-Harnett County line to the Chatham-Wake County line, then along the Chatham-Wake County line to U.S. Hwy 1, then along U.S. Hwy 1 to junction unnumbered hwy to Moncure, NC, then along unnumbered hwy to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction NC Hwy 22, then along NC Hwy 22 to junction unnumbered hwy at Franklinville, NC, then along unnumbered hwy to junction U.S. Hwy 311, then along U.S. Hwy 311 to the Randolph-Guilford County line, then along the Randolph-Guilford County line to the Davidson-Randolph County line, then along the Davidson-Randolph County line to U.S. Hwy 29, then along U.S. Hwy 29 to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction U.S. Hwy 601, then along U.S. Hwy 601 to junction U.S. Hwy 421, then along U.S. Hwy 421 to the Wilkes-Watauga County line, then along the Wilkes-Watauga County line to the Ashe-Watauga County line, then along the Ashe-Watauga County line to the TN-NC State line, to points in Onondaga and Oswego Counties, NY; and (B) from points in TN on and south of a line beginning at the NC-TN State line along U.S. Hwy 421 to junction TN Hwy 67, then along TN Hwy 67 to junction U.S. Hwy 321, then along U.S. Hwy 321 to junction U.S. Hwy 19E, then along U.S. Hwy 19E to junction unnumbered hwy, approximately 2 miles west of Blevins, TN, then along unnumbered hwy to the Carter-Unicoi County line, then along the Carter-Unicoi County line to the Washington-Unicoi County line, then along the Washington-Unicoi County line to the Washington-Greene County line, then along the Washington-Greene County line to U.S. Hwy 11E, then along U.S. Hwy 11E to the Greene-Hamblen County line, then along the Greene-Hamblen County line to the Hamblen-Hawkins County line, then along the Hamblen-Hawkins County line to the Grainger-Hawkins County line, then along the Grainger-Hawkins County line to the Grainger-Hancock County line, then along the Grainger-Hancock County line to the Clairborne-Hancock County line, then along the Clairborne-Hancock County line to the VA-TN State line, then along the VA-TN State line to the KY-TN State line, then along the KY-TN State line to the Claiborne-Campbell County line, then along the Claiborne-Campbell County line to TN Hwy 90, then along TN Hwy 90 to junction TN Hwy 9, then along TN Hwy 9 to junction U.S. Hwy 25W, then along U.S. Hwy 25W to junction TN Hwy 63, then along TN Hwy 63 to junction U.S. Hwy 27, then along U.S. Hwy 27 to the Scott-Morgan County line, then along the Scott-Morgan County line to the Morgan-Fentress County line, then along the Morgan-Fentress County line to TN Hwy 62, then along TN Hwy 62 to the Fentress-Cumberland County line, then along the Fentress-Cumberland County line to the Putnam-Cumberland County line, then along the Putnam-Cumberland County line to U.S. Hwy 70N, then along U.S. Hwy 70N to junction TN Hwy 56, then along TN Hwy 56 to junction U.S. Hwy 70, then along U.S. Hwy 70 to the Wilson-DeKalb County line, then along the Wilson-DeKalb-County line to the Wilson-Cannon County line, then along the Wilson-Cannon County line to the Wilson-Rutherford County line, then along the Wilson-Rutherford County line to the Davidson-Rutherford County line, then along the Davidson-Rutherford County line to the Williamson-Rutherford County line, then along the Williamson Rutherford County line to the Williamson-Marshall County line, then along the Williamson-Marshall County line to the Williamson-Maury County line, then along the Williamson-Maury County line to U.S. Hwy 31, then along U.S. Hwy 31 to junction TN Hwy 99, then along TN Hwy 99 to junction TN Hwy 48, then along TN Hwy 48 to the Lewis-Perry County line, then along the Lewis-Perry County line to the Perry-Wayne County line, then along the Perry-Wayne County line to the Wayne-Decatur County line, then along the Wayne-Decatur County line to TN Hwy 114, then along TN Hwy 114 to junction TN Hwy 69, then along TN Hwy 69 to junction TN Hwy 20, then along TN Hwy 20 to the Decatur-Henderson County line, then along the Decatur-Henderson County line to TN Hwy 100, then along TN Hwy 100 to junction U.S. Hwy 64, then along U.S. Hwy 64 to the Fayette-Hardeman County line, then along the Fayette-Hardeman County line to the Haywood-Fayette County line, then along the Haywood-Fayette County line to the Tipton-Haywood County line, then along the Tipton-Haywood County line to U.S. Hwy 79, then along U.S. Hwy 79 to junction TN Hwy

59, then along TN Hwy 59 to the AR-TN State line, to points in Onandaga and Oswego Counties, NY.

(XI) *Lumber, building materials, and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment), (A) from points in NC (except Jacksonville, NC), on, west and south of a line beginning at Swansboro, NC, along NC Hwy 24 to junction NC Hwy 53, then along NC Hwy 53 to the Pender-Onslow County line, then along the Pender-Onslow County line to the Pender-Duplin County line, then along the Pender-Duplin County line to NC Hwy 50, then along NC Hwy 50 to junction NC Hwy 24, then along NC Hwy 24 to junction US Hwy 701, then along U.S. Hwy 701 to the Sampson-Johnston County line, then along the Sampson-Johnston County line to NC Hwy 50, then along NC Hwy 50 to junction NC Hwy 27, then along NC Hwy 27 to junction U.S. Hwy 401, then along U.S. Hwy 401 to the Wake-Harnett County line, then along the Wake-Harnett County line to the Wake-Chatham County line, then along the Wake-Chatham County line to U.S. Hwy 1, then along U.S. Hwy 1 to the Chatham-Lee County line, then along the Chatham-Lee County line to U.S. Hwy 421, then along U.S. Hwy 421 to the Chatham-Randolph County line, then along the Chatham-Randolph County line, to U.S. Hwy 64, then along U.S. Hwy 64 to junction NC Hwy 22, then along NC Hwy 22 to junction unnumbered hwy at Franklinville, NC, then along unnumbered hwy to junction U.S. Hwy 311, then along U.S. Hwy 311 to the Randolph-Guilford County line, then along the Randolph-Guilford County line to the Randolph-Davidson County line, then along the Randolph-Davidson County line to U.S. Hwy 29, then along U.S. Hwy 29, to junction U.S. Hwy 52, then along U.S. Hwy to the Forsyth-Davidson County line, then along the Forsyth-Davidson County line to NC Hwy 150, then along NC Hwy 150 to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction U.S. Hwy 601, then along U.S. Hwy 601 to junction U.S. Hwy 421, then along U.S. Hwy 421 to the Wilkes-Watauga County line, then along the Wilkes-Watauga County line to the Ashe-Watauga County line, then along the Ashe-Watauga County line to the TN-NC State line to points in Otsego and Schoharie Counties NY, north of NY Hwy 7; and (B) from points in TN on and south of a line beginning at the TN-NC State line, along the Carter-Unicoi County line to the Washington-Unicoi County line, then along the Washington-Unicoi County line to the Washington-Greene County line, then along the Washington-Greene County line to TN Hwy 107, then along TN Hwy 107 to junction U.S. Hwy 11E, then along U.S. Hwy 11E to the Greene-Hamblen County line, then along the Greene-Hamblen County line to the Hawkins-Hamblen County line, then along the Hawkins-Hamblen County line to the Hawkins-Grainger County line, then along the Hawkins-Grainger County line to the Grainger-Hancock County line, then along the Grainger-Hancock County line to the Clairborne-Hancock County line, then along the Clairborne-Hancock County line to the VA-TN State line, then along the VA-TN State line to the KY-TN State line, then along the KY-TN State line to the MO-TN State line, then along to points in Otsego and Schoharie Counties, NY, north of NY Hwy 7.

(XII) *Lumber, building materials, and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment), (A) from points in NC on, west, and south of a line beginning at Bayshore Park, NC along NC Hwy 24 to junction U.S. Hwy 17, then along U.S. Hwy 17 to the Jones-Onslow County line, then along the Jones-Onslow County line to U.S. Hwy 258, then along U.S. Hwy 258 to junction NC Hwy 24, then along NC Hwy 24 to junction U.S. Hwy 701, then along U.S. Hwy 701 to junction U.S. Hwy 301, then along U.S. Hwy 301 to the Johnston-Harnett County line, then along the Johnston-Harnett County line to the Wake-Harnett County line, then along the Wake-Harnett County line to the Wake-Chatham County line, then along the Wake-Chatham County line to U.S. Hwy 1, then along U.S. Hwy 1 to junction unnumbered hwy at Moncure, NC, then along unnumbered hwy to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction U.S. Hwy 421, then along U.S. Hwy 421 to the Randolph-Chatham County line, then along the Randolph-Chatham County line to the Randolph-Alamance County line, then along the Randolph-Alamance County line to the Randolph-Guilford County line, then along the Randolph-Guilford County line to the Davidson-Guilford County line, then along the Davidson-Guilford County line to the Davidson-Forsyth County line, then along the Davidson-Forsyth County line to the Davie-Forsyth County line, then along the Davie-Forsyth County line to the Yadkin-Forsyth County line, then along the Yadkin-Forsyth County line to U.S. Hwy 421, then along U.S. Hwy 421 to junction U.S. Hwy 601, then along U.S. Hwy 601 to junction NC Hwy 67, then along NC Hwy 67 to junction NC Hwy 268, then along NC Hwy 268 to junction U.S. Hwy 421, then along U.S. Hwy 421 to the Wilkes-Watauga County line, then along the Wilkes-Watauga County line to the Ashe-Watauga County line, then along the Ashe-Watauga County line to the NC-TN State line, to points in Herkimer and Oneida Counties, NY; and (B) from points in TN on and south of a line beginning at the NC-TN State line along U.S. Hwy 321 to junction U.S. Hwy 411, then along U.S. Hwy 411 to junction U.S. Hwy 11E, then along U.S. Hwy 11E to the Greene-Hamblen County line, then along the Greene-Hamblen County line to the Hamblen-Hawkins County line, then along the Hamblen-Hawkins County line to the Grainger-Hawkins County line, then along the Grainger-Hawkins County line to the Grainger-Hancock County line, then along the Grainger-Hancock County line to the Hancock-Claiborne County line, then along the Hancock-Claiborne County line to the VA-TN State line, then along the VA-TN State line to the KY-TN State line, then along the KY-TN State line to the Clay-Macon County line, then along the Clay-Macon County line to TN Hwy 52, then along TN Hwy 52 to junction TN Hwy 10, then along TN Hwy 10 to the Macon-Trousdale County line, then along the Macon-Trousdale County line to the Trousdale-Sumner County line, then along the Trousdale-Sumner County line to TN Hwy 25, then along TN Hwy 25 to junction U.S. Hwy 31E, then along U.S. Hwy 31E to junction U.S. Hwy 31, then along U.S. Hwy 31 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction TN Hwy 47, then along TN Hwy 47 to junction TN Hwy 48, then along TN Hwy 48 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction U.S. Hwy Alt 70, then along U.S. Hwy Alt 70 to junction U.S. Hwy 79, then along U.S. Hwy 79 to junction TN Hwy 77, then along TN Hwy 77 to junction TN Hwy 104, then along TN Hwy 104 to junction TN Hwy 20, then along TN Hwy 20 to the MO-TN State line, to points in Herkimer and Oneida Counties, NY.

(XIII) *Lumber, building materials, and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment), (A) from points in NC on, west, and south of a line beginning at Beaufort, NC, along U.S. Hwy 70 to junction NC Hwy 24, then along NC Hwy 24 to junction NC Hwy 58, then along NC Hwy 58 to the Carteret-Jones County line, then along the Carteret-Jones County line to the Jones-Onslow County line, then along the Jones-Onslow County line to U.S. Hwy 17, then along U.S. Hwy 17 to junction NC Hwy 24, then along NC Hwy 24 to junction NC Hwy 11, then along NC Hwy 11 to junction unnumbered hwy, approximately 3 miles northeast of Kenansville, then along unnumbered hwy to the Duplin-Wayne County line, then along the Duplin-Wayne County line to U.S. Hwy 117, then along U.S. Hwy 117 to junction U.S. Hwy 13, then along U.S. Hwy 13 to the Wayne-Sampson County line, then along the

Wayne-Sampson County line to the Sampson-Johnston County line, then along the Sampson-Johnston County line to U.S. Hwy 701, then along U.S. Hwy 701 to junction U.S. Hwy 301, then along U.S. Hwy 301 to junction NC Hwy 210, then along NC Hwy 210 to the Johnston-Harnett County line, then along the Johnston-Harnett County line to the Wake-Harnett County line, then along the Wake-Harnett County line to the Wake-Chatham County line to U.S. Hwy 1, then along U.S. Hwy 1 to junction unnumbered hwy at Moncure, NC, then along unnumbered hwy to junction NC Hwy 87, then along NC Hwy 87 to junction unnumbered hwy, approximately 4 miles south of Saxapahaw, NC, then along unnumbered hwy via Snow Camp, NC, to junction NC Hwy 49, then along NC Hwy 49 to the Alamance-Randolph County line, then along the Alamance-Randolph County line to the Alamance-Guilford County line, then along the Alamance-Guilford County line to NC Hwy 62, then along NC Hwy 62 to junction U.S. Hwy 311, then along U.S. Hwy 311 to the Davidson-Guilford County line, then along the Davidson-Guilford County line to the Forsyth-Davidson County line, then along the Forsyth-Davidson County line to the Davie-Forsyth County line, then along the Davie-Forsyth County line to the Davie-Yadkin County line, then along the Davie-Yadkin County line to U.S. Hwy 601, then along U.S. Hwy 601 to junction NC Hwy 67, then along NC Hwy 67 to junction NC Hwy 268, then along NC Hwy 268 to junction NC Hwy 16, then along NC Hwy 16 to the VA-NC State line, to points in Jefferson, Lewis, and St. Lawrence Counties, NY, and (B) points in TN on and south of a line beginning at the NC-TN State line along the Carter-Johnson County line, then along the Carter-Johnson County line to the Carter-Sullivan County line, then along the Carter-Sullivan County line to the Washington-Sullivan County line, then along the Washington-Sullivan County line to the Greene-Hawkins County line, then along the Greene-Hawkins County line to TN Hwy 70, then along TN Hwy 70 to junction U.S. Hwy 11W, then along U.S. Hwy 11W to junction TN Hwy 70, then along TN Hwy 70 to the VA-TN State line, then along the VA-TN State line to the KY-TN State line, then along the KY-TN State line to U.S. Hwy 25W, then along U.S. Hwy 25W to junction Interstate Hwy 75, then along Interstate Hwy 75 to junction TN Hwy 63, then along TN Hwy 63 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction TN Hwy 52, then along TN Hwy 52 to the Scott-Morgan County line, then along the Scott-Morgan County line to the Morgan-Fentress County line, then along the Morgan-Fentress County line to TN Hwy 62, then along TN Hwy 62 to the Fentress-Cumberland County line, then along the Fentress-Cumberland County line to the Cumberland-Putnam County line, then along the Cumberland-Putnam County line to U.S. Hwy 70N, then along U.S. Hwy 70N to junction TN Hwy 56, then along TN Hwy 56 to junction U.S. Hwy 70, then along U.S. Hwy 70 to the DeKalb-Wilson County line, then along the Wilson-DeKalb County line to the Cannon-Wilson County line, then along the Cannon-Wilson County line to the Rutherford-Wilson County line, then along Rutherford-Wilson County line to the Davidson-Rutherford County line, then along Davidson-Rutherford County line to the Williamson-Rutherford County line, then along the Williamson-Rutherford County line to the Williamson-Marshall County line, then along the Williamson-Marshall County line to the Maury-Marshall County line, then along the Maury-Marshall County line to TN Hwy 99, then along TN Hwy 99 to junction TN Hwy 48, then along TN Hwy 48 to the Lewis-Wayne County line, then along the Lewis-Wayne County line to the Wayne-Perry County line, then along the Wayne-Perry County line to TN Hwy 114, then along the TN Hwy 114 to junction TN Hwy 100, then along TN Hwy 100 to junction U.S. Hwy 64, then along U.S. Hwy 64 to the Fayette-Hardeman County line, then along the Fayette-Hardeman County line to the Haywood-Fayette County line, then along the Haywood-Fayette County line to the Fayette-Tipton County line, then along the Fayette-Tipton County line to the Shelby-Tipton County line, then along the Shelby-Tipton County line to the AR-TN State line, to points in Jefferson, Lewis, and St. Lawrence Counties, NY.

(XIV) *Lumber, building materials, and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment), (A) from points in NC on, west and south of a line beginning at Bayshore Park, NC, along NC Hwy 24 to junction U.S. Hwy 17, then along U.S. Hwy 17 to the Jones-Onslow County line, then along the Jones-Onslow County line to the Duplin-Onslow County line to NC Hwy 24, then along NC Hwy 24 to junction U.S. Hwy 701, then along U.S. Hwy 701 to junction U.S. Hwy 301, then along U.S. Hwy 301 to junction U.S. Hwy 421, then along U.S. Hwy 421 to junction U.S. Hwy 401, then along U.S. Hwy 401 to the Wake-Harnett County line, then along the Wake-Harnett County line to the Wake-Chatham County line, then along the Wake-Chatham County line to U.S. Hwy 1, then along U.S. Hwy 1 to junction unnumbered highway at Moncure, NC, then along unnumbered highway to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction NC Hwy 22, then along NC Hwy 22 to junction unnumbered highway at Franklinville, NC, then along unnumbered highway to junction U.S. Hwy 311, then along U.S. Hwy 311 to junction NC Hwy 67, then along NC Hwy 67 to the Forsyth-Yadkin County line, then along the Forsyth-Yadkin County line to unnumbered highway at Siloam, NC, then along unnumbered highway to junction NC Hwy 268, then along NC Hwy 268 to the Wilkes-Surry County line, then along the Wilkes-Surry County line to the Wilkes-Alleghany County line, then along the Wilkes-Alleghany County line to the Wilkes-Ashe County line, then along the Wilkes-Ashe County line to NC Hwy 16, then along NC Hwy 16 to junction NC Hwy 194, then along NC Hwy 194 to the VA-NC State line, to points in Fulton, Hamilton, and Montgomery Counties, NY, and to points in Albany, Rennselaer, and Schenectady Counties, NY, north of NY Hwy 7; and (B) from points in TN on and south of a line beginning at the NC-TN State line along U.S. Hwy 421 to the Johnson-Sullivan County line, then along the Johnson-Sullivan County line to the Johnson-Carter County line, then along the Johnson-Carter County line to TN Hwy 91, then along TN Hwy 91 to junction TN Hwy 67, then along TN Hwy 67 to the Carter-Washington County line, then along the Carter-Washington County line to U.S. Hwy 411, then along U.S. Hwy 411 to junction TN Hwy 70, then along TN Hwy 70 to the VA-TN State line, then along the VA-TN State line to the KY-TN State line, then along the KY-TN State line to the MO-TN State line, to points in Fulton, Hamilton, and Montgomery Counties, NY, and to points in Albany, Rennselaer, and Schenectady Counties, NY, north of NY Hwy 7.

(XV) *Lumber, building materials, and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment), (A) from points in NC on, west and south of a line beginning at Ocean, NC, along NC Hwy 24 to junction unnumbered highway, via Silverdale, NC, then along unnumbered highway to U.S. Hwy 17, then along U.S. Hwy 17 to junction U.S. Hwy 258, then along U.S. Hwy 258 to the Jones-Onslow County line, then along the Jones-Onslow County line to the Jones-Duplin County line, then along the Jones-Duplin County line to the Lenoir-Duplin County line, then along the Lenoir-Duplin County line to NC Hwy 11, then along NC Hwy 11 to junction NC Hwy 24, then along NC Hwy 24 to junction U.S. Hwy 117, then along U.S. Hwy 117 to the Wayne-Duplin County line, then along the Wayne-Duplin County line to the Sampson-Wayne County line, then

along the Sampson-Wayne County line to the Johnston-Sampson County line to U.S. Hwy 701, then along U.S. Hwy 701 to junction U.S. Hwy 301, then along U.S. Hwy 301 to junction NC Hwy 27, then along NC Hwy 27 to the Johnston-Harnett County line, then along the Johnston-Harnett County line to the Wake-Harnett County line, then along the Wake-Harnett County line to U.S. Hwy 1, then over U.S. Hwy 1 to junction unnumbered highway at Moncure, NC, then over unnumbered highway to junction NC Hwy 87, then over NC Hwy 87 to junction unnumbered highway, then over unnumbered highway via Snow Camp, NC, to the Alamance-Guilford County line, then over the Alamance-Guilford County line to I Hwy 85, then over I Hwy 85 to junction I Hwy 40, then over I Hwy 40 to junction U.S. Hwy 421, then over U.S. Hwy 421 to junction NC Hwy 66, then over NC Hwy 66 to junction NC Hwy 268, then over NC Hwy 268 to the Surry-Wilkes County line, then over the Surry-Wilkes County line to the Alleghany-Wilkes County line, then over the Alleghany-Wilkes County line to the Wilkes-Ashe County line, then over the Wilkes-Ashe County line to junction NC Hwy 16, then over NC Hwy 16 to junction NC Hwy 194, then over NC Hwy 194 to the NC-VA State line, to points in Essex, Saratoga, Warren, and Washington Counties, NY; and (b) from Sullivan Gardens, TN, and points in TN on and south of a line beginning at the NC-TN State line extending over U.S. Hwy 421 to the Sullivan-Johnson County line, then along the Sullivan-Johnson County line to the Carter-Johnson County line, then over the Carter-Johnson County line to junction TN Hwy 91, then over TN Hwy 91 to junction TN Hwy 67, then over TN Hwy 67 to junction U.S. Hwy 23, then over U.S. Hwy 23 to the Sullivan-Washington County line, then over the Sullivan-Washington County line to the Sullivan-Hawkins County line, then over the Sullivan-Hawkins County line to junction U.S. Hwy 11W, then over U.S. Hwy 11W to junction TN Hwy 70, then over TN Hwy 70 to the VA-TN State line, then over the VA-TN State line to the KY-TN State line, then over the KY-TN State line to the MO-TN State line, to points in Essex, Saratoga, Warren, and Washington Counties, NY.

(XVI) *Lumber, building materials and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment), (A) from points in NC (except Goldsboro, NC) on, west and south of a line beginning at Beauford, NC, extending along U.S. Hwy 70 to junction unnumbered highway at Newport, NC, then over unnumbered highway to junction NC Hwy 58, then over NC Hwy 58 to junction U.S. Hwy 17, then over U.S. Hwy 17 to junction NC Hwy 58, then over NC Hwy 58 to the Lenoir-Jones County line, then over the Lenoir-Jones County line to the Craven-Lenoir County line, then over the Craven-Lenoir County line to the Pitt-Lenoir County line, then over the Pitt-Lenoir County line to junction NC Hwy 11, then over NC Hwy 11 to the Lenoir-Duplin County line, then over the Lenoir-Duplin County line to junction NC Hwy 403, then over NC Hwy 403 to junction NC Hwy 55, then over NC Hwy 55 to junction U.S. Hwy 117, then over U.S. Hwy 177 to junction U.S. Hwy 70, then over U.S. Hwy 70 to junction U.S. Hwy Alternate 70, then over U.S. Hwy Alternate 70 to junction U.S. Hwy 70, then over U.S. Hwy 70 to junction unnumbered highway approximately one mile north of the junction of U.S. Hwys 70 and 401, then over unnumbered highway to junction U.S. Hwy 64, then over U.S. Hwy 64 to the Wake-Chatham County line, then over the Wake-Chatham County line to the Chatham-Durham County line, then over the Chatham-Durham County line to the Orange-Durham County line, then over the Orange-Durham County line to junction NC Hwy 54, then over NC Hwy 54 to the Orange-Alamance County line, then over the Orange-Alamance County line to junction unnumbered highway, then over the unnumbered highway via Snow Camp, NC, to the Guilford-Alamance County line, then over the Guilford-Alamance County line to junction U.S. Hwy 70, then over U.S. Hwy 70 to junction U.S. Hwy 421, then over U.S. Hwy 421 to junction TN Hwy 66, then over TN Hwy 66 to junction TN Hwy 268, then over TN Hwy 268 to junction U.S. Hwy 21, then over U.S. Hwy 21 to junction NC Hwy 113, then over NC Hwy 113 to the Ashe-Alleghany County line, then over the Ashe-Alleghany County line to the VA-NC State line, to points in Franklin County, NY; and (B) from points in TN on and south of a line beginning at the TN-NC State line extending along U.S. Hwy 421 to the Sullivan-Johnson County line, then over the Sullivan-Johnson County line to the Carter-Johnson County line, then over the Carter-Johnson County line to junction U.S. Hwy 19E, then over U.S. Hwy 19E to junction U.S. Hwy 19, then over U.S. Hwy 19 to junction TN Hwy 37, then over TN Hwy 37 to junction TN Hwy 126, then over TN Hwy 126 to junction U.S. Hwy 23, then over U.S. Hwy 23 to the TN-VA State line, then over the TN-VA State line to the KY-TN State line, then over the KY-TN State line to the Scott-Pickett County line, then over the Scott-Pickett County line to the Fentress-Pickett County line, then over the Fentress-Pickett County line to the Overton-Pickett County line, then over the Overton-Pickett County line to the Clay-Pickett County line, then over the Clay-Pickett County line to the KY-TN State line, then over the KY-TN State line to the Macon-Sumner County line, then over the Macon-Sumner County line to the Sumner-Trousdale County line, then over the Sumner-Trousdale County line to the Sumner-Wilson County line, then over the Sumner-Wilson County line to the Wilson-Davidson County line, then over the Wilson-Davidson County line to U.S. Hwy 70, then over U.S. Hwy 70 to junction U.S. Hwy Alternate 70, then over U.S. Hwy Alternate 70 to junction TN Hwy 104, then over TN Hwy 104 to the Dyer-Gibson County line, then over the Dyer-Gibson County line to the Dyer-Crockett County line, then over the Dyer-Crockett County line to the Dyer-Lauderdale County line, then over the Dyer-Lauderdale County line to the AR-TN State line, to points in Franklin County, NY.

(XVII) *Lumber, building materials, and supplies* (except commodities in bulk and those which because of size or weight require the use of special equipment), (A) from points in NC (except Goldsboro, NC) on, west and south of a line beginning at the junction of NC Hwy 101 and U.S. Hwy 70 extending over NC Hwy 101 to junction U.S. Hwy 70, then over U.S. Hwy 70 to the Craven-Carteret County line, then over the Craven-Carteret County line to the Jones-Carteret County line, then over the Jones-Carteret County line to NC Hwy 58, then over NC Hwy 58 to junction U.S. Hwy 17, then over U.S. Hwy 17, to junction NC Hwy 58, then over NC Hwy 58 to the Jones-Lenoir County line, then over the Jones-Lenoir County line to the Carven-Lenoir County line, then over the Craven-Lenoir County line to the Pitt-Lenoir County line, then over the Pitt-Lenoir County line to junction NC Hwy 11, then over NC Hwy 11 to the Lenoir-Duplin County line, then over the Lenoir-Duplin County line to the Wayne-Duplin County line, then over the Wayne-Duplin County line to junction NC Hwy 111, then over NC Hwy 111 to junction U.S. Hwy 70, then over U.S. Hwy 70 to junction U.S. Hwy Alternate 70, then over U.S. Hwy Alternate 70 to junction NC Hwy 54, then over NC Hwy 54 to junction NC Hwy 55, then over NC Hwy 55 to junction U.S. Hwy 1, then over U.S. Hwy 1 to the Wake-Chatham County line, then over the Wake-Chatham County line to the Durham-Chatham County line, then over the Durham-Chatham County line to the Orange-Durham County line, then over the Orange-Durham County line to NC Hwy 54, then over NC Hwy 54 to junction U.S. Hwy 70, then over U.S. Hwy 70 to junction U.S. Hwy 220, then over U.S. Hwy 220 to the Guildord-Rockingham

County line then over the Guilford-Rockingham County line to the Stokes-Rockingham County line, then over the Stokes-Rockingham County line to U.S. Hwy 311, then over U.S. Hwy 311 to the Stokes-Forsyth County line, then over the Stokes-Forsyth County line to NC Hwy 66, then over NC Hwy 66 to junction NC Hwy 89, then over NC Hwy 89 to the Stokes-Surry County line, then over the Stokes-Surry County line to NC Hwy 268, then over NC Hwy 268 to junction U.S. Hwy 52, then over U.S. Hwy 52 to junction U.S. Hwy 601, then over U.S. Hwy 601 to the Yadkin-Surry County line, then over the Yadkin-Surry County line to the Surry-Wilkes County line, then over the Surry-Wilkes County line to the Wilkes-Alleghany County line, then over the Wildes-Alleghany County line to U.S. Hwy 21, then over U.S. Hwy 21 to the VA-NC State line, to points in Clinton County, NY; (B) from points in TN to points in Clinton County, NY; and (C) from points in VA on and south of a line beginning at the NC-VA State line extending over U.S. Hwy 21 to junction U.S. Hwy 58, then over U.S. Hwy 58 to junction U.S. Hwy 23, then over U.S. Hwy 23 to the Scott-Lee County line, then over the Scott-Lee County line to the Wise-Lee County line, then over the Wise-Lee County lne to U.S. Hwy 23, then over U.S. Hwy 23 to junction VA Hwy 160, then over VA Hwy 160 to the KY-VA State line, to points in Clinton County, NY. Gateways eliminated: GA and SC.

No. MC 116073 (Sub-No. E10), filed March 27, 1978. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., P.O. Box 919, Moorhead, MN 56560. Applicant's representative: John C. Barrett (same as above). *Buildings*, in sections, mounted on wheeled undercarriages, from Seattle, Vancouver, Kent, Union Gap, Burlington, Mount Vernon, Maple Falls, Tacoma, Aberdeen, Lacey and Spokane, WA to points in the U.S. (except AK and HI). Gateway eliminated: Custer County, MT.

No. MC 116073 (Sub-No. E11), filed March 27, 1978. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., P.O. Box 919, Moorhead, MN 56560. Applicant's representative: John C. Barrett (same as above). *Buildings*, in sections, mounted on wheeled undercarriages, with hitchball connector, from Seattle, Vancouver, Kent, Union Gap, Burlington, Mount Vernon, Maple Falls, Aberdeen, Lacey and Spokane WA, to points in the U.S. (except ND, MN, WI, OR, CA, NV, ID, AZ, AK, CO, WY, MT, WA, and HI). Gateway eliminated: OR.

No. MC 116073 (Sub-No. E12), filed March 27, 1978. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., P.O. Box 919, Moorhead, MN 56560. Applicant's representative: John C. Barrett (same as above). *Buildings*, in section, mounted on wheeled undercarriages with hitchball connectors, from Tacoma, WA to points in the U.S. (except MT, ND, MN, WA, HI, WI, OR and that portion of ID north of the 46th parallel). Gateway eliminated: OR.

No. MC 116073 (Sub-No. E13), filed March 27, 1978. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., P.O. Box 919, Moorhead, MN 56560. Applicant's representative: John C. Barrett (same as above). *Trailers designed to be drawn by passenger automobiles*, in secondary movements, from Seattle, Vancouver, Kent, Union Gap, Burlington, Mount Vernon, Maple Falls, Aberdeen, Lacey, and Spokane, WA, to points in IA, KS, NM, and TX. Gateways eliminated: Denver, CO, and Albuquerque, NM.

No. MC 116073 (Sub-No. E14), filed March 27, 1978. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., P.O. Box 919, Moorhead, MN 56560. Applicant's representative: John C. Barrett (same as above). *Trailers designed to be drawn by passenger automobiles*, in secondary movements, from Seattle, Vancouver, Kent, Union Gap, Burlington, Mount Vernon, Maple Falls, Aberdeen, Lacey, and Spokane, WA, to points in NE. Gateway eliminated: Cody, WY.

By the Commission.

NANCY WILSON,
Acting Secretary.

[FR Doc. 78-8175 Filed 7-6-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6351-01]

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., July 11, 1978.

PLACE: 2033 K Street NW., Washington, D.C., fifth floor hearing room.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

Proposed standards for Title III Association.

Proposed call schedule for contracts to be reviewed pursuant to Regulation 1.50.

Portions closed to the public:

Enforcement matters/order of investigation; private investigation into rule enforcement program and procedures.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-1396-78 Filed 7-5-78; 9:27 am]

[6740-02]

2

JULY 15, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., July 12, 1978.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

NOTE.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Office of Public Information.

POWER AGENDA—149TH MEETING, JULY 12, 1978, REGULAR MEETING (10 A.M.)

I. Electric rate matters

ER-1. Docket No. ER78-312, Upper Peninsula Generating Co.
ER-2. Docket No. ER78-283, South Carolina Electric & Gas Co.
ER-3. Docket No. ER77-531, Illinois Power Co.
ER-4. Docket No. E-9181, Nantahala Power & Light Co.
ER-5. Docket Nos. EL78-15 and ER78-339, Public Service Co. of New Hampshire.
ER-6. Docket No. EL78-9, *Jackson Purchase Electric Cooperative Corporation and Big Rivers Electric Corporation* v. *Kentucky Utilities Company.*
ER-7. Docket No. ER76-495 (Phase II), Carolina Power & Light Co.
ER-8. Docket Nos. ER76-654 and E-9145, Utah Power & Light Co.
ER-9. Docket No. E-6730, Reeves Bros., Inc.
ER-10. Docket No. E-9555, Metropolitan District of Southern California.

II. Licensed Project Matters

P-1. Project No. 5, the Montana Power Co.
P-2. (A) Bureau of Land Management, Boise, Idaho (I-12772). (B) Bureau of Land Management, Boise, Idaho (I-12848). (C) Bureau of Land Management, Portland, Oreg. (OR-16790, OR-16793, OR-16795). (D) Bureau of Land Management, Boise, Idaho (I-13032). (E) Bureau of Land Management, Portland, Oreg. (OR-16798, OR-16923, OR-16926).

POWER AGENDA—149TH MEETING, JULY 12, 1978, REGULAR MEETING

CAP-1. Docket No. ER78-325, Florida Power & Light Co.
CAP-2. Docket No. ER78-451, Montana Light & Power Co.
CAP-3. Docket Nos. ER78-429 and ER78-430, Arizona Public Service.
CAP-4. Docket Nos. ER78-293, ER78-298, and ER78-302, Illinois Power Co.
CAP-5. Docket No. ER78-238, Mid-Continent Area Power Pool.
CAP-6. Docket No. ES78-23, Idaho Power Co.
CAP-7. Project No. 349, Alabama Power Co.
CAP-8. Project No. 137, Pacific Gas & Electric Co.
CAP-9. Project No. 1394, Southern California Edison Co.
CAP-10. Project No. 516, South Carolina Electric & Gas Co.
CAP-11. (A) Bureau of Land Management, Cheyenne, Wyo. (W-50059). (B) Bureau of Land Management, Sacramento, Calif. (S-1184). (C) Bureau of Land Management, Anchorage, Alaska (AA-16045).
CAP-12. *City of Piqua, Ohio* v. *F.E.R.C.*, D.C. Cir No. 78-1487.

MISCELLANEOUS AGENDA—149TH MEETING, JULY 12, 1978, REGULAR MEETING

M-1. Inflated rate increase filings.
M-2. Docket No. R-441, revision in section 2.75 of title 18 of the Code of Federal Regulations to amend optional procedure requirements.
M-3. Secretary of Energy's proposed rule on allocation of natural gas liquids.

MISCELLANEOUS AGENDA—149TH MEETING, JULY 12, 1978, REGULAR MEETING

CAM-1. Rumford Falls Power Co.
CAM-2. Northwest Pipeline Corp.

GAS AGENDA—149TH MEETING, JULY 12, 1978, REGULAR MEETING

I. PIPELINE RATE MATTERS

A. Pipeline rates

RP-1. Docket No. RP74-61 (PGA77-5), RP76-10 (PGA77-5), RP77-54 and RP77-55, Arkansas Louisiana Gas Co.
RP-2. Docket No. RP77-6, Sea Robin Pipeline Co.
RP-3. Docket No. RP78-33, Southern Natural Gas Co.
RP-4. Docket No. RP75-105, Columbia Gulf Transmission Co., Docket No. RP75-106 (consolidated taxes), Columbia Gas Transmission Corp.
RP-5. Docket Nos. RP74-89 and RP73-35 (AP76-1), Trunkline Gas Co.
RP-6. Docket No. RP76-114, Midwestern Gas Transmission Co.
RP-7. Docket Nos. RP75-96 and RP76-100, Michigan Wisconsin Pipeline Co.

II. PRODUCER CERTIFICATE MATTERS

A. Special relief

CI-1. Docket Nos. RI77-67, CI75-626 and CI75-656, Bill J. Graham

III. PIPELINE CERTIFICATE MATTERS

A. Pipeline certificates

CP-1. Docket No. CP74-192, Florida Gas Transmission Co.
CP-2. (A) Docket No. CP78-150, Transcontinental Gas Pipe Line Corp. (B) Docket No. CP77-527, Transcontinental Gas Pipe Line Corp.
CP-3. Docket No. CP77-599, Columbia Gas Transmission Corp.
CP-4. Reserved.
CP-5. Reserved.
CP-6. Reserved.

B. Storage

CP-7. Docket No. CP66-237, Natural Gas Pipeline Co. of America.
CP-8. Reserved.

C. Curtailment

CP-9. Docket No. RP71-29, et al. (phase II), United Gas Pipe Line Co.

GAS AGENDA—149TH MEETING, JULY 12, 1978, REGULAR MEETING

CAG—1. Docket No. RP74-86, Gulf Energy & Development Corp.
CAG—2. Docket Nos. AR61-2, AR69-1, et al., G-1964, G-12706, G-18841, RP65-69, RP69-13 and RP70-29, Texas Eastern Transmission Corp.
CAG—3. Docket No. RP72-110 (PGA No. 78-9), Algonquin Gas Transmission Co.
CAG—4. Docket No. RP73-8 (PGA No. 78-7), North Penn Gas Co.
CAG—5. Docket Nos. RP67-10, RP69-41, RP70-14, and RP72-157, Consolidated Gas Supply Corp.
CAG—6. Docket No. RP72-157, Consolidated Gas Supply Corp.
CAG—7. Docket Nos. AR61-2, RP67-23, G-11980, et al., and RP73-114, Tennessee Gas Pipeline Co.
CAG—8. Docket No. CI78-725, Pan Eastern Exploration Co.
CAG—9. Docket No. CI78-571, Atlantic Richfield Co.
CAG—10. Docket No. CI78-585, Diamond Shamrock Corp.
CAG—11. Docket No. G-4809, et al., Chevron U.S.A. Inc. (operator), et al.
CAG—12. Docket Nos. CS69-4, et al., Hytech Energy Corp. (formerly Western States Producing Co.), et al.
CAG—13. Docket Nos. CS76-842, et al., Devon Corp., et al.
CAG—14. Docket No. CI77-209, Curtis Hankamer.
CAG—15. Docket No. CP78-209, National Fuel Gas Supply Corp. Docket No. CP78-234, Tennessee Gas Pipeline Co., a division of Tenneco Inc. Docket No. CP77-465, Columbia Gas Transmission Corp., National Fuel Gas Supply Corp. Docket No. CP78-305, Columbia Gas Transmission Corp. Docket No. CP78-316, Transcontinental Gas Pipe Line Corp.
CAG—16. Docket No. CP78-277, Colorado Interstate Gas Co.
CAG—17. Docket No. CP78-319, Mississippi River Transmission Corp.
CAG—18. Docket No. CP78-341, Michigan Wisconsin Pipe Line Co.
CAG—19. Docket No. CP76-426, Kentucky West Virginia Gas Co.
CAG—20. Docket No. CP78-204, Northwest Pipeline Corp. Docket No. CP78-231, Colorado Interstate Gas Co.
CAG—21. Docket No. CP78-89, Natural Gas Pipeline Co. of America. Docket No. CP78-213, Transcontinental Gas Pipe Line Corp. Docket No. CP78-282, Eastern Shore Natural Gas Co.
CAG-22. Docket No. CP76-500, Cities Service Gas Co.

KENNETH F. PLUMB,
Secretary.

[S-1403-78 Filed 7-5-78; 3:56 pm]

[6730-01]

3

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., July 13, 1978.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTER TO BE CONSIDERED: 1. Commission/staff discussion of general accounting principles and theories.

CONTACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5725.

[S-1399-78 Filed 7-5-78; 3:08 pm]

[6720-01]

4

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: July 12, 1978, 9:30 a.m.

PLACE: 1700 G Street NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED:

Application to incur debt—Guarantee Financial Corp. of California, Fresno, Calif.
Branch office application—Bay View Federal Savings & Loan Association, San Mateo, Calif.
Service corporation application—Humboldt Federal Savings & Loan Association, Eureka, Calif.
Branch office application—First Federal Savings & Loan Association of Chicago, Chicago, Ill.
Branch office application—First Federal Savings & Loan Association of Grand Forks and Grafton, Grand Forks, N. Dak.
Branch office application—American Federal Savings & Loan Association of Helena, Helena, Mont.
Application for merger, maintenance of branch office, cancellation of membership and insurance and transfer of stock—Brighton Federal Savings & Loan Association, Chicago, Ill., into First Federal & Loan Association of Chicago, Chicago, Ill.
Application for permission to acquire and merge an insured institution—Pat Griffin Co., Fort Collins, Colo., to acquire Central Savings & Loan Association, Casper, Wyo., and merge it into Capitol Savings & Loan Association, Cheyenne, Wyo.

No. 162, July 5, 1978.

[S-1397-78 Filed 7-5-78; 9:27 am]

[6210-01]

5

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS.

TIME AND DATE: 10 a.m., Wednesday, July 12, 1978.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

SUMMARY AGENDA

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board requests that an item be moved to the discussion agenda.

1. Request for a Board interpretation of Regulation Z (Truth in Lending) to permit a creditor to overstate the finance charge under certain circumstances.
2. Report to the Comptroller of the Currency regarding the competitive factors involved in the proposed merger of the National Bank of Arendtsville, Arendtsville, Pa., with Adams County National Bank, Cumberland Township, Pa.
3. Proposed amendment to Regulation Y (Bank Holding Companies) to permit bank holding companies to engage in check verification and "check factoring" services.
4. Proposed amendment to Regulation T (Margin Credit Extended by Brokers and Dealers) relaxing the restrictions on subordinated loans between broker/dealers for capital purposes.

DISCUSSION AGENDA

1. Proposed statement to be presented to the Subcommittee on Domestic Monetary Policy of the House Committee on Banking, Finance and Urban Affairs regarding legislation (1) to broaden the class of collateral eligible to secure Federal notes, and (2) to increase the number of Class C directors of the Federal Reserve Banks.
2. Proposed statement to be presented to the House Committee on Small Business regarding H.R. 12666, a bill to amend the Small Business Investment Act of 1958.
3. Proposed amendment to Regulation Q (Interest on Deposits) modifying the early withdrawal penalty rule primarily as it applies to Individual Retirement and Keogh Accounts.
4. 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: July 3, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-1395-78 Filed 7-5-78; 9:27 am]

[6750-01]

6

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Wednesday, July 12, 1978.

PLACE: Room 432, Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Consideration of Revisions of the Proposed Vocational Schools Trade Regulation Rule.

CONTACT PERSON FOR MORE INFORMATION:

Wilbur T. Weaver, Office of Public Information, 202-523-3830.
Recorded message: 202-523-3806.

[S-1401-78 Filed 7-5-78; 3:08 pm]

[7910-01]

7

RENEGOTIATION BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 28084, June 28, 1978.

PREVIOUSLY ANNOUNCED DATE AND TIME OF MEETING: Tuesday, July 11, 1978; 10 a.m.

CHANGE IN MEETING:

A. Date postponed to: Wednesday, July 12, 1978; 10 a.m.

B. Matters 9, 10, 11, 12, 13, 14, and 15 are added to the previously announced agenda.

MATTERS TO BE CONSIDERED: Board meeting concerning:

9. Recommended clearances without assignment: List 1912:

A. Comarco, Inc., fiscal year ended December 31, 1975.

B. Hoffman-LaRoche Inc., fiscal year ended December 31, 1975.

C. Arwood Corp., fiscal year ended December 31, 1975.

D. Aydin Corp., fiscal year ended December 31, 1975.

E. Systron-Donner Corp., fiscal years ended July 31, 1974, 1975, and 1976.

F. Trinidad Corp., fiscal year ended December 31, 1975.

10. Recommended clearances and determinations of excessive profits: Gillmore M. Perry, fiscal years ended December 31, 1969, through 1975, and January 24, 1976.

11. Consideration of alternative approaches to the accelerated processing of filings in the Board's backlog in the event of the lapse of agency funding.

12. Recommended determination of excessive profits: Vinnell Corp., fiscal year ended December 31, 1972.

13. Recommended finding of excessive profits: Poloron Products, Inc., fiscal year ended November 30, 1969.

14. Recommended determination of excessive profits: DeLong Corp., fiscal year ended December 31, 1969.

15. Court of claims case: Pacific Architects & Engineers, Inc., Ct. Cl. No. 407-45.

STATUS: Matters 9 through 14 are open for public observation. Matter 15 is closed to public observation.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: July 5, 1978.

HARRY R. VAN CLEVE,
Acting Chairman.

[S-1400-78 Filed 7-5-78; 3:08 pm]

[8010-01]

8

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of July 10, 1978, in room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, July 11, 1978, at 2:30 p.m. and on Thursday, July 13, 1978, immediately following the open meeting scheduled for 10 a.m. An open meeting will be held on Thursday, July 13, 1978, at 10 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(8)(9)(i) and (10).

Chairman Williams, Commissioners Loomis and Evans determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 11, 1978, at 2:30 p.m., will be:

Formal orders of investigation.
Referral of investigative files to Federal, State or Self-Regulatory authorities.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Freedom of Information Act appeal.
Other litigation matters.

The subject matter of the closed meeting scheduled for Thursday, July 13, 1978, immediately following the open meeting scheduled for 10 a.m., will be:

Consideration of administrative proceeding of an enforcement nature.
Opinions.

The subject matter of the open meeting scheduled for Thursday, July 13, 1978, at 10 a.m., will be:

1. Consideration of the re-entry application of Paul Alessandrini, to allow him to become associated with a registered investment adviser, in a non-supervisory, non-proprietary capacity.

2. Request for Commission review filed by Bernard Screen Printing Corporation concerning denial of the company's request for an extension of time, within which to file the annual report on Form 10-K, for the fiscal year ended February 28, 1978.

3. Consideration of proposed amendments to Form MSD, the form for registration of municipal securities dealers which are banks or separately identifiable departments or divisions of banks.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Linda Griggs, 202-755-1129.

JULY 3, 1978.

[S-1402-78 Filed 7-5-78; 3:28 pm]

federal register

FRIDAY, JULY 7, 1978
PART II



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

■

OFF-ROAD VEHICLES

Management and Control of Recreation Vehicles on Public Lands

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 6290]

OFF-ROAD VEHICLES

Use of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking is developed to provide for management and control of off-road vehicle recreation on public lands. Concentrated off-road vehicle recreation on public lands has, in some areas, caused excessive damage to natural resources and disrupted more passive land uses. Management of off-road vehicle activities will provide for continuation of off-road vehicle recreation under conditions that will protect natural resources and other resource users and promote public safety.

DATE: Comments by September 5, 1978.

ADDRESS: Send comments to: Director (210), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20246. Comments will be available for public review in Room 5555 at the above address from 7:45 a.m.-4:15 p.m. on regular working days.

FOR FURTER INFORMATION CONTACT:

Larry Young, 202-343-9353.

SUPPLEMENTARY INFORMATION: On April 15, 1974, final rulemaking was published in the FEDERAL REGISTER (FR 13613) establishing regulations to control and direct the use of ORV's on public lands. By decision and order issued by the U.S. District Court for the District of Columbia on May 2, 1975, these regulations were declared to be in violation of Executive Order 11644 and to have been promulgated without adequate consideration of alternatives as required by the National Enviromental Policy Act. The court further ordered that after adequate consideration of alternatives, as required by the National Environmental Policy Act, regulations be issued which did meet the requirements of Executive Order 11644. Under the direction of the Bureau of Outdoor Recreation, the Off-Road Vehicle Environmental Impact Statement was revised to expand the alternatives as ordered by the court. A draft statement was made available to the public on July 19, 1976, and open to public comment until October 7, 1976. On July 28, 1976, proposed Off-Road Vehicle regulations were published in the FEDERAL REGISTER (FR 31518) and the public was given until October 7, 1976, to submit comments on this proposal. More than 1,300 comments were received on the proposed rulemaking and 140 comments were received on the draft environmental impact statement. Based on careful consideration of the comments received a final Environmental Impact Statement has been prepared by the Heritage Conservation and Recreation Service, formerly the Bureau of Outdoor Recreation.

Of the more than 1,300 comments received on the proposed rulemaking approximately 830 were mailgrams and letters addressed to the President, later referred to the Bureau, asking that Executive Order 11644 be amended or rescinded. The Bureau does not have the authority to amend or rescind the Executive order but is in fact under order by the courts to issue regulations that will conform to the Executive order. However, the President has recently amended Executive Order 11644, and the regulations have been amended as appropriate to include provisions under the amended Executive order.

Of the remaining comments received, totalling more than 470, many commentors were generally opposed to the entire proposal and offered few, if any, suggested amendments. In addition to changes to include provisions of the amendments to Executive Order 11644, changes have been made in the proposed rulemaking in response to public comments received on the July 28, 1976, publication of proposed rulemaking. Public comments and suggestions are invited regarding the amended proposed rulemaking.

Final regulations will reflect any additional comments received on the amended proposed rules.

DISCUSSION OF MAJOR COMMENTS RECEIVED ON THE PROPOSED RULEMAKING OF JULY 28, 1976

PUBLIC PARTICIPATION AND INFORMATION

The need for improved public participation and dissemination of information was of major concern to many commentors. They felt the Bureau had not done an adequate job of informing the public and obtaining public input in the planning and management of the ORV program. Request was made to amend the proposed rules to insure that the public would be involved in the planning system and in the designation procedures. It was also suggested that designation notices be available in local Bureau Offices at all times and that maps and other information informing the public of designations and other conditions of use be readily available and widely distributed.

It has been the procedure of the Bureau to obtain public participation in its planning process. Guidelines for planning, which reflect the Bureau's planning process, have been signed into law with the passage of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.). The rulemaking has been amended to strengthen the provision for public participation. Comments also stressed the need for the Bureau to improve its public distribution of maps, brochures and other information concerning the location of public lands and ORV land use designations. The Bureau agrees with these suggestions and will strive to improve communication with the public during the land use planning phase as well as the use phase of the management cycle for a particular administrative unit.

PERMITS

The majority of the comments addressing the provisions for issuing permits requested that the 25 vehicle limit be eliminated or substantially increased, that family-type, non-commercial, and non-competitive events be exempt from permit requirements, and that the term "organized events" be deleted or amended to be less inclusive. A few commentors wanted permits for all ORV use. A permit system is felt to be necessary for management and control of ORV's. The permit provisions have been amended, removed from this part, and placed in part 6260 of this chapter. The provisions require permits for (1) commercial events (2) competitive events for which participants register, and (3) events involving 50 or more ORV's. The amendment also requires that applications for permits be submitted on forms approved by the Director and be made no less than 120 calendar days in advance of the intended use unless a shorter time is authorized by the authorized officer. The lead time is required for preparing the necessary environmental reports, statements and conditions of use, and to provide that the applicant receive an approved permit 30 days in advance of the use date.

CONDITIONS OF USE

Interest in the provisions relating to conditions governing use centered on the licensing and supervision provisions. Commentors asked that the requirement be deleted or modified. This provision has been amended to provide an exemption from the licensing and supervisions requirement for an individual who has been certified by an agency of State government as competent to drive an ORV as a result of successfully completing a State endorsed operators training program. The licensing and supervision requirement is also waived for areas in Alaska designated by the State Director for Alaska. Executive Order 11644 requires that the ORV regulations provide for safety provisions. Because many of the deaths and injuries associated with ORV use have occurred to

younger drivers, the training, licensing and supervision provisions required for individuals under 18 years of age should provide for greater safety to users of the public lands.

Commentors also suggested that ORV use should be in harmony with other authorized uses of the public lands. The proposal has been amended to provide that ORV use be managed to minimize conflicts with other authorized uses of the public lands.

Comments suggested that the terms "reckless," "careless," and "negligent" were too broad and could be the basis of arbitrary decisions. These are terms that are commonly used in State vehicle operating requirements. They have been retained in the proposal. The terms have been used extensively enough that vehicle users have a general understanding as to what the terms mean and can use them as a guide in the operation of their vehicles.

Suggestion was made to improve the safety provisions relating to the use of headlights and taillights. A change was made in the proposal to require lighted headlights and taillights when operating during night hours from sunset to sunrise. This will reduce the possibility of an ORV operating in the dark without lights when coming to or going from an ORV use area.

DEFINITIONS

The definition section of the proposal prompted many comments. Of major interest was the definition of an "ORV." It was suggested that there be separate definitions for the different types of ORV's (snowmobiles, two-wheel, four-wheel, etc.). As the Department is under court order to conform its regulations to Executive Order 11644, the definition of ORV was amended only slightly. The changes made are the insertion of the word "motorized," the deletion of the words "deriving motive power from any source other than muscle," and deletion of the exception provision exempting as an ORV a vehicle operating under a special recreation permit issued in accordance with Part 6260 of 43 CFR. It was not the intent of this rulemaking to exclude, as an ORV, motorized vehicles permitted under the provisions thereof.

The term "authorized officer" was deleted because it is already defined in 43 CFR Part 1810. Several commentors expressed concern over the broad authorities of the authorized officer and wanted to know who he is and to whom he is subject. Bureau Order No. 701 is the official delegation document for the Bureau. Under section 3.9 of this Order all ORV actions have been delegated to the District Manager. Under section 3.1 of the Order the District Manager may redelegate his authority to Area Managers or the Chief, Division of Administration after first obtaining approval of such delegation from the State Director and after publicizing the delegation in the FEDERAL REGISTER.

As suggested in a comment, the word "designated" has been added to clarify the definitions of open, limited and closed areas and trails.

DESIGNATION—CRITERIA AND PROCEDURES

A great diversity of public concern was demonstrated in the comments dealing with designation. Many commentors were opposed to any designation while others wanted all lands closed to ORV use until designated. Some commentors wanted immediate closures not only on "wilderness" and "primitive" areas but also on "natural" areas, special cultural areas, and other areas having fragile or scenic values. Other commentors suggested keeping open to ORV use only those areas presently being used. Some commentors expressed strong disagreement with the designation deadline date of 1987. This date was felt to be too distant and allowed an unwarranted period of time to bring ORV use under adequate control and management.

The status of the public lands prior to designation in conformance with Executive Order 11644, under the terms of the District Court Order of May 5, 1975, is simply undesignated. This means that those areas which have previously been open, closed, or limited shall generally remain so until designated under E.O. 11644 or 11989. However, this does not preclude the use of other existing authorities to open, close, or limit areas as needed for reasons other than ORV use. Closures or limitations might be because of withdrawals for habitat preservation, public safety, resource protection, etc. Wilderness areas, big-game wintering areas, critical watersheds, etc., can be protected even though the Executive Order 11644 designations have not been made.

To correlate the management of the several resources uses of the public lands, the Bureau of Land Management uses a coordinated multiple use planning system approach. The designation of ORV areas must be accomplished in harmony with this planning system. Action necessary to make designations is beginning immediately. All areas will be designated by 1987. It is estimated that 40 percent of the total designation process will be accomplished by 1981. This 40 percent will cover 60 percent of the major ORV use areas. For example, the Federal Land Policy and Management Act of 1976 designated the California Desert Conservation Area and directed that a comprehensive management plan be completed and implemented by September 30, 1980. This Conservation Area presently sustains about half of the total ORV use occurring on the public lands administered by the Bureau. Other major ORV use areas are also receiving timely planning and management attention.

Executive Order 11644 directed that officially designated wilderness and primitive areas be closed to ORV use and need not be designated under the three ORV designations defined in this part. Additional closures may be justified through the Bureau planning system. The Federal Land Policy and Management Act of 1976 has directed that by October 21, 1991, the Secretary shall review those roadless areas of 5,000 acres or more and roadless islands of the public lands identified during the inventory required by the Federal Land Policy and Management Act as having wilderness characteristics as described in the Wilderness Act (16 U.S.C. 1131 et seq.). Once identified, these areas having wilderness characteristics shall continue to be managed during the review period so as not to impair the suitability of such areas for preservation as wilderness, subject, however, "to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on the date of approval" of the Federal Land Policy and Management Act. The ORV designations of lands identified as potential wilderness areas are being made consistent with these provisions of the Federal Land Policy and Management Act.

Request was made to clarify the status of current ORV designations. Designations made to date under 43 CFR Part 6290 are null and void. United States District Court, District of Columbia Court Order 74-1215, dated May 2, 1975, declared 43 CFR Part 6290 in violation of Executive Order 11644. Therefore, any designations made under those regulations also were in violation of the Executive Order. ORV closures and conditions of uses made under subpart 6221—Primitive Areas, § 6010.4—Closure of lands and subpart 6261—Rules for Visitor Use of Developed Recreation Sites, remain valid and in effect.

As suggested in the comments, the provision for monitoring ORV use has been clarified by stating that the authorized officer or his delegate shall monitor the effects of ORV use. The types of temporary designation changes have been expanded by adding that temporary designations may also "open" areas previously closed. The paragraph dealing with withdrawals has been deleted since the withdrawal procedures referred to do not comply with the provisions of the Federal Land Policy and Management Act of 1976.

VEHICLE STANDARDS

Commentors suggested reducing the required level of vehicle operating

standards as required in the proposal, feeling that the standards were excessive. Snowmobile interests as well as other ORV groups wanted the spark arrester requirement removed. Request was made to delete the requirements for having brakes in good working condition as no one would operate an ORV without good brakes. The provision of the proposal covering noise standards appeared to some commentors as excessive since the Environmental Protection Agency did not have established noise standards. Some commentors read the proposal as saying that all ORV's required lights. Some commentors suggested that state standards be followed in lieu of Federal standards. The provision requiring minimum vehicle standards was retained because it is felt that basic vehicle standards are necessary. Even though states may have vehicle standards there is a lack of consistency of standards among states. The broad standards in the regulations are the minimum standards and will prevail where State law and regulations do not exist or are less stringent.

The proposal requires that an ORV have a spark arrester only when the authorized officer requires it. The proposal has been amended to waive the spark arrester requirement where three or more inches of snow are on the ground. The provision on noise standards has been amended to require compliance with Environmental Protection Agency standards when they are established and become available to the public. The requirement for lights on ORV's was apparently misunderstood. It requires ORV's operating during night hours from sunset to sunrise to be equipped with and use lights. Vehicles operated only during daylight hours are not required to have lights.

OTHER COMMENTS

The law enforcement provision drew several comments that the Bureau lacked both personnel and the authority to conduct law enforcement activities. The proposal used as the authority the act of September 15, 1960, as amended (16 U.S.C. 670 et seq.), sometimes referred to as the Sikes Act. This act provides authority to enforce the regulations issued to control ORV use on those specific designated areas of public land within a State on which conservation and rehabilitation programs are to be implemented. The other authority on which the law enforcement provisions was based was the Land and Water Conservation Fund Act (16 U.S.C. 460 1-6a) which provides for enforcing the collection of fees and permit requirements.

After this proposed rulemaking was printed in the FEDERAL REGISTER on July 28, 1976, the Federal Land Policy and Management Act of 1976 was enacted. This law provides the Bureau of Land Management with broad law enforcement authority. Not only may BLM personnel be given law enforcement responsibilities, but the act provides for the use of local law enforcement personnel through compensation by the Bureau.

A few commentors wanted limits established for temporary designations. Generally, such designations would be for a season—for deviation from normal wildlife use patterns, climatic conditions, public safety, etc., which most often would not exceed a year in duration.

Some commentors expressed concern that the proposed regulations would hinder access to isolated tracts of State or private lands within large blocks of public lands. The Bureau does not intend to hinder lawful and proper ingress and egress to such lands. Owners of such lands who desire access to their lands may work with local Bureau officials to arrive at solutions to their access needs. A number of commentors, including many who have mineral interests and holders of rights of way permits, suggested the proposed regulations be amended to specifically allow for the use of motorized vehicles in exploring and prospecting for minerals and for inspection and maintenance of rights-of-way. The definition of an "off-road vehicle" specifically excludes vehicles expressly authorized by the authorized officer or otherwise officially approved. Examples of situations where authorized and approved use of motorized vehicles would be excluded from the definition of an ORV are: the specific conditions of motorized vehicle use contained in a right-of-way permit, an approved plan of operation as described in the proposed regulations dealing with the surface management of public lands under the U.S. mining laws as published in the FEDERAL REGISTER on December 9, 1976, or a condition of use in a grazing license.

PRINCIPAL AUTHOR

Larry Young of the Bureau of Land Management, Washington Office, Division of Recreation Management.

INFLATION IMPACT STATEMENT

The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Analysis under Executive Order 11821 and OMB Circular A-107.

It is proposed to amend 43 CFR Part 6290 as set forth below.

Dated: June 28, 1978.

GUY R. MARTIN,
Assistant Secretary of the Interior.

1. Part 6290 is revised to read as follows:

PART 6290—OFF-ROAD VEHICLES

Subpart 6290—General

Sec.
6290.0-1 Purpose.
6290.0-2 Objectives.
6290.0-3 Authority.
6290.0-5 Definitons.
6290.0-7 Enforcement.
6290.0-8 Applicability.

Subpart 6291—Conditions of Use of Public Lands

6291.1 Regulations governing use.
6291.2 Special rules.

Subpart 6292—Areas and Trails Designation

6292.1 Designation criteria.
6292.2 Designation procedures.
6292.3 Designation changes.

Subpart 6293—Vehicle Operation

6293.1 Standards.

Subpart 6294—Permits

6294.1 Permit requirements.

AUTHORITY: 43 U.S.C. 1201, National Environmental Policy Act of 1969, 42 U.S.C. 4321; 43 U.S.C. 2, 1201; and Executive Order 11644 (37 FR 2877); Executive Order 11989 (42 FR 26959) (43 U.S.C. 1701 et. seq.)

Subpart 6290—General

§ 6290.0-1 Purpose.

The purpose of this part is to establish criteria for designating public lands as open, limited or closed to the use of off-road vehicles and for establishing controls governing the use and operation of off-road vehicles in such areas.

§ 6290.0-2 Objectives.

The objectives of these regulations are to protect the resources of the public lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

§ 6290.0-3 Authority.

The provisions of this part are issued under the Federal Land Policy and Management Act of 1976 (90 Stat. 2743; 43 U.S.C. 1701 et seq.); the Taylor Grazing Act (43 U.S.C. 315a); the National Environmental Policy Act (42 U.S.C. 4321 et seq.); the Endangered Species Act (16 U.S.C. 1531 et seq.); the Wild and Scenic Rivers Act (16 U.S.C. 1281c); the act of September 15, 1960, as amended (16 U.S.C. 670 et seq.); the Land and Water Conservation Fund Act (16 U.S.C. 460 1-6a); the National Trails System Act (16 U.S.C. 1241 et seq.) and E.O. 11644 (Use of Off-Road Vehicles on the Public Lands), 37 FR 2877, 3 CFR 74, 332, as amended by E.O. 11989 42 FR 26959 (May 25, 1977).

§ 6290.0-5 Definitions.

As used in this part:

(a) "Off-Road Vehicle" means any motorized vehicle capable of, or de-

signed for, travel on or immediately over land, water, or other natural terrain, excluding: (1) any nonamphibious registered motorboat; (2) any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes; (3) any vehicle whose use is expressly authorized by the authorized officer except use authorized under § 6294.1 of this part, or otherwise officially approved; (4) official use; and (5) any combat or combat support vehicle when used in times of national defense emergencies.

(b) "Public Lands" means any lands the surface of which is administered by the Bureau of Land Management.

(c) "Bureau" means the Bureau of Land Management.

(d) "Official Use" means use by an employee, agent, or designated representative of the Federal Government or one of its contractors in the course of his employment agency, or representation.

(e) "Planning System" means the approach provided in Bureau regulations, directives and manuals to formulate mulitiple use plans for the public lands. This approach provides for public participation within the system.

(f) "Open areas and trails" are designated areas and trails where off-road vehicles may be operated subject to the operating regulations and vehicle standards set forth at subparts 6291 and 6293 of this part.

(g) "Limited areas and trails" are designated areas and trails where the use of off-road vehicles is subject to restrictions deemed appropriate by the authorized officer. Restrictions may limit the number or types of vehicles allowed times of use, areas or trails used, and similar matters. Limited areas and trails may be designated for special or intensive use, including, but not limited to, organized events, and may be subject to, but not limited to, rules set forth at subpart 629.1.2.

(h) "Closed areas and trails" are designated areas and trails where the use of off-road vehicle is permanently or temporarily prohibited.

§ 6290.0–7 Enforcement.

Any person who violates or fails to comply with the regualtions of Subparts 6291 and 6293 is subject to arrest and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000 or imprisonment for not longer than 12 months, or both.

§ 6290.0–8 Applicability.

The regulations in this part apply to all public lands, roads, and trails under administration of the Bureau.

Subpart 6291—Conditions of Use

§ 6291.1 Regulations governing use.

(a) The operation of off-road vehicles is permitted on those areas and trails designated as open to off-road vehicle use.

(b) Operators of off-road vehicles on those areas and trails designated as limited must conform to all terms and conditions of the applicable designation orders.

(c) The operation of off-road vehicles is prohibited on those areas and trails designated as closed to off-road vehicle use.

(d) Applicable State laws and regulations relating to use, standards, registration, operation, and inspection of off-road vehicles shall apply on public lands. To the extent that State laws and regulations do not exist or are less stringent than the regulations in this part, the regulations in this part are minimum standards and are controlling.

(e) Off-road vehicles operated on the pulbic lands must conform to the vehicles standards set forth in subpart 6293 of this part.

(f) No person, except one who is certified by an agency of State government as competent to drive an off-road vehicle as a result of successfully completing a State sponsored or endorsed operator's training program, may operate an off-road vehicle on public lands without a valid State operator's license or learner's permit unless under the direct supervision of an individual 18 years of age or older who has a valid operator's license and who is responsible for the acts of that person, except in areas of Alaska designated by the State Director for Alaska pursuant to § 6291.2.

(g) No person shall operate an off-road vehicle on public lands:

(1) In a reckless, careless, or negligent manner;

(2) In excess of established speed limits;

(3) While under the influence of alcohol, narcotics, or dangerous drugs;

(4) In a manner causing, or likely to cause significant, undue damage to or disturbance of the soil, wildlife, wildlife habitat, improvements, cultural, or vegetative resources or other authorized uses of the public lands; and

(5) During night hours, from sunset to sunrise, without lighted headlights and taillights.

(h) Any person who operates an off-road vehicle on public lands must comply with the regulations in this part, and in § 6291.2 as applicable, while operating such vehicle on public lands.

§ 6291.2 Special rules.

(a) Where the authorized officer determines that off-road vehicles are causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, or historical resources, the authorized officer shall immediately close the areas or trails affected to the type of vehicle causing the adverse effect until the adverse effects are eliminated and measures implemented to prevent recurrence. Lands closed under this section will be designated in accordance with procedures in part 6992 of this subpart, but these lands will not be opened to the type of off-road vehicle to which it was closed unless the authorized officer determines that the adverse effects have been eliminated and measures implemented to prevent recurrence.

(b) The authorized officer may establish rules for the operation of off-road vehicles in specific areas and for special vehicle standards applicable to all or any type of off-road vehicle. Such rules may amend, modify, relax, or make more stringent the regulations contained in subparts 6291 and 6293 of this chapter. Notice of such special rules and standards shall be published in the FEDERAL RESIGTER, and the public shall be provided the opportunity to comment before adoption.

(c) Each State director is authorized to close portions of the public lands to use by off-road vehicles, except those areas or trails which are suitable and specifically designated as open to such use pursuant to subpart 6292 of this part.

Subpart 6292—Designation of Areas and Trails

§ 6292.1 Criteria.

The authorized officer shall designate all public lands as either open, limited, or closed to off-road vehicles, based on the portection of the resources of the public lands, the promotion of the safety of all the users of the public lands, and the minimization of conflcts among various uses of the public lands; and in accordance with the following criteria:

(a) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(b) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats. Special attention will be given to protect endangered or threatened species and their habitats.

(c) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

(d) Areas and trails shall not be located in officially designated wilderness areas or primitive areas. Areas and trails shall be located in natural areas only if the authorized officer determines that off-road vehicle use in such locations will not adversely affect

their natural, esthetic, or scenic values.

§ 6292.2 Designation procedures.

(a) *Public participation.* The authorized officer shall, to the extent practical, designate and redesignate areas and trails in conjunction with the Bureau planning system for the formulation of multiple-use management plans. Plans shall consider current and potential impacts of specific vehicle types on all resources and users in the region of the area under consideration. Prior to making designations or redesignations, the authorized officer shall consult with interested user groups, Federal, State, county, and local agencies, local landowners, and other parties in a manner that provides an opportunity for the public to express itself and have those views taken into account.

(b) *Identification of designated areas and trails.* The authorized officer shall take action by posting and other appropriate measures to identify designated areas and trails so that the public will be aware of locations and limitations applicable thereto. Public notice of designations or redesignations shall be given at the time of designation or redesignation through publication in the FEDERAL REGISTER and local news media. Copies of such notices shall be available to the public in local Bureau offices. The authorized officer will make available to the public other information material as may be appropriate.

§ 6292.3 Designation changes.

(a) *Monitoring use.* The authorized officer shall monitor effects of the use of off-road vehicles. On the basis of information so obtained, and whenever the authorized officer deems it necessary to carry out the objectives of the part, designations may be amended, revised, revoked, or other actions taken pursuant to the regulations in this part.

(b) *Temporary action.* The authorized officer may temporarily open, close, or limit public use and travel in accordance with the provisions of § 6010.4 of this chapter as to public lands which have been designated or redesignated in accordance with this subpart, and as to public lands which have not been designated.

Subpart 6293—Vehicle Operations

§ 6293.1 Standards.

(a) No off-road vehicle may be operated on public lands unless equipped with brakes in good working condition.

(b) No off-road vehicle equipped with a muffler cutout, bypass, or similar device, or producing excessive noise exceeding Environmental Protection Agency standards, when established, may be operated on public lands.

(c) The authorized officer may, by posting appropriate signs or by marking a map which shall be available for public inspection at local Bureau offices, indicate those public lands upon which no off-road vehicle may be operated unless equipped with a properly installed spark arrester that meets and is qualified to either the U.S. Department of Agriculture—Forest Service Standard 5100-1a, or the 80-percent efficiency level when determined by the appropriate Society of Automotive Engineers (SAE) Recommended Practices J335 or J350, which standards include the requirement that such spark arrester shall have an efficiency to retain or destroy at least 80 percent of carbon particles for all flow rates, and which includes a requirement that such spark arrestor has been warranted by its manufacturer as meeting such requirement for at least 1,000 hours subject to normal use, with maintenance and mounting in accordance with the manufacturer's recommendation. A spark arrester is not required when an off-road vehicle is being operated in an area which has 3 or more inches of snow on the ground.

(d) Vehicles operating during the time specified in § 6291.1(g)(5) shall comply with the following: (1) Headlights shall be of sufficient power to illuminate an object at 300 feet at night under normal, clear atmospheric conditions. Two- or three-wheeled vehicles or single-tracked vehicles will have a minimum of one headlight. Vehicles having four or more wheels or more than a single track will have a minimum of two headlights, except double tracked snowmachines with a maximum capacity of two people may have only one headlight. (2) Red taillights, capable of being seen at a distance of 500 feet from the rear at night under normal, clear atmospheric conditions, are required on vehicles in the same numbers as headlights.

Supart 6294—Permits

§ 6294.1 Permit requirements.

Permits are required for certain types of ORV use and shall be issued in accordance with the special recreation permit procedures under part 6260 of this chapter.

[FR Doc. 78-18478 Filed 7-6-78; 8:45 am]

federal register

FRIDAY, JULY 7, 1978
PART III



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 Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for 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.

Alabama:	
AL78-1004	Feb. 3, 1978
Florida:	
FL 78-1055	June 16, 1978
FL77-1146	Mar. 24, 1978
FL77-1149	Feb. 24, 1978
Kansas:	
KS77-4025	Feb. 18, 1977
Louisiana:	
LA78-4052	May 12, 1978
Maryland:	
MD77-3086	Aug. 5, 1977
MD78-3002	Mar. 3, 1978
MD78-3020	Apr. 14, 1978
Michigan:	
MI78-2001	Feb. 3, 1978
MI78-2054	June 2, 1978
Pennsylvania:	
PA77-3057	May 13, 1977
PA77-3100	July 15, 1977
PA77-3103; PA77-3104	July 22, 1977
PA77-3121; PA77-3122; PA77-3123; PA77-3124; PA77-3125; PA77-3126	Sept. 9, 1978
PA77-3128; PA77-3129	Sept. 16, 1978
PA78-3005	Feb. 24, 1978
PA78-3016	Apr. 14, 1978
Texas:	
TX78-4014	Feb. 17, 1978
TX78-4017	Mar. 10, 1978
TX78-4028; TX78-4030; TX78-4031; TX78-4032; TX78-4033; TX78-4034; TX78-4035; TX78-4036; TX78-4037; TX78-4039; TX78-4040; TX78-4041; TX78-4042; TX78-4043; TX78-4044	Apr. 14, 1978
TX78-4051	May 12, 1978
TX78-	
Washington, D.C:	
DC78-3008	Mar. 17, 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.

California:	
CA78-5100 (CA78-5106); CA78-5101 (CA78-5107)	May 26, 1978
North Carolina:	
NC75-1015 (NC78-1061)	Jan. 31, 1975
Tennessee:	
TN77-1151 (TN78-1058)	Mar. 10, 1977
TN77-1036 (TN78-1060)	Mar. 25, 1977
TN76-1055 (TN78-1059)	July 2, 1976

CANCELLATION OF GENERAL WAGE DETERMINATION DECISIONS

None.

Signed at Washington, D.C., this 30th day of July 1978.

HERBERT GOLDSTEIN,
Acting Assistant Administrator,
Wage and Hour Division.

MODIFICATIONS P. 1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #AL78-1004 MOD. #1 (43 FR 4807 February 3, 1978) Colbert and Lauderdale Counties Alabama					
CHANGE:					
ELECTRICIANS:					
Electricians	$10.35	.55	3%+.35		1%
Cable Splicers	10.50	.55	3%+.35		1%
PLUMBERS, Steamfitters	10.70	.50	.60		.08
POWER EQUIPMENT OPERATORS Under Group "C" All scraper operators (in tandem) additional $.25 per hour.					
DECISION NO. FL78-1055 - MOD. #1 (43 FR 26234 - June 16, 1978) Martin and Palm Beach Counties, Florida					
CHANGE: Under the phrase: "Supersedes Decision No. FL77-1148 published April 16, 1977 in 42 FR 17761" To read: "Supersedes Decision No. FL77-1034 published April 16, 1977 in 42 FR 17761"					
DECISION NO. FL77-1149 - MOD. #3 (43 FR 7912 - February 24, 1978) Alachua County, Florida					
CHANGE: Decision No. FL78-1149 published under MOD. #2 in the Federal Register of June 16, 1978 to read: Decision No. FL77-1149					
DECISION NO. FL77-1146 - MOD. #2 (43 FR 12534 - March 24, 1978) Orange County, Florida					
CHANGE: Decision No. FL78-1146 published under MOD. #1 in the Federal Register of June 16, 1978 to read: Decision NO. FL77-1146					

MODIFICATIONS P. 2

Decision #KS77-4025 - Mod. #4 - (42 FR 10235 - February 18, 1977)-Allen, Anderson, Atchison, Bourbon, Brown, Butler, Chase, Chautaugua, Cherokee, Clay, Cloud, Coffey, Cowley, Crawford, Dickinson, Doniphan, Elk, Franklin, Geary, Greenwood, Harper, Harvey, Jackson, Kingman, Labette, Linn, Lyon, Marion, Marshall, McPherson, Montgomery, Morris, Nemaha, Neosho, Osage, Ottawa, Pottawatomie, Reno, Republic, Riley, Saline, Sumner, Wabaunsee, Washington, Wilson and Woodson Counties, and Geary and Riley Counties, for Highway Construction only Kansas

Changes:
Area of Coverage to read: Allen, Anderson, Atchison, Bourbon, Brown, Butler, Chase, Chautauga, Cherokee, Clay, Cloud, Coffey, Cowley, Crawford, Dickinson, Doniphan, Elk, Franklin, Geary, Greenwood, Harper, Harvey, Jackson, Kingman, Labette, Linn, Lyon, Marion, Marshall, McPherson, Montgomery, Morris, Nemaha, Neosho, Osage, Ottawa, Pottawatomie, Reno, Republic, Riley, Saline, Sumner, Wabaunsee, Washington, Wilson, and Woodson Counties, and Geary County, for Highway Construction only Kansas.

MODIFICATIONS P. 3

DECISION #LA78-4052 - Mod. #5 (43 FR 20659 - May 12, 1978) Statewide Louisiana	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers & stonemasons:					
Zone 6	$ 9.90	.40	.45		
Carpenters (Building Construction):					
Zone 10 - Carpenters & soft floor layers	9.60	.55	.35		.05
Millwrights	10.50	.55	.35		.05
Piledrivermen	10.10	.55	.35		.05
Carpenters & piledrivermen (Highway Construction):					
Zone 1	10.06				
Zone 2	11.06				
Zone 3	11.17				
Zone 4	10.475				
Zone 5	9.17				
Zone 6	8.95				
Zone 7	8.40				
Cement masons (Highway Construction):					
Zone 1	9.20	.45	.40		
Zone 3	9.05	.35			
Zone 4	9.40				
Zone 5	8.90				
Zone 6	8.40				
Zone 7	8.90				
Zone 8	8.40				
Ironworkers (Building Contruction):					
Zone 6	10.70	.35	.60		.05
Ironworkers (Highway Construction):					
Zone 1	11.22				
Zone 3	10.80				
Zone 4	10.66				
Zone 5	8.95				
Zone 6	8.40				
Laborers (Highway Construction):					
Group 1 - Zone 1	6.33	.25	.27		.05
Zone 3	5.76	.25	.14		.05
Zone 4	6.46	.25	.14		.05
Zone 5	5.56	.25	.14		.05
Zone 6	5.36	.25	.14		.05
Group 2 - Zone 1	6.43	.25	.27		.05
Zone 3	5.86	.25	.14		.05
Zone 4	6.56	.25	.14		.05
Zone 5	5.66	.25	.14		.05
Zone 6	5.46	.25	.14		.05
Group 3 - Zone 1	6.88	.25	.27		.05
Zone 3	6.31	.25	.14		.05
Zone 4	7.01	.25	.14		.05
Zone 5	6.11	.25	.14		.05
Zone 6	5.91	.25	.14		.05
Group 4 - Zone 1	7.13	.25	.27		.05
Zone 3	6.56	.25	.14		.05
Zone 4	7.26	.25	.14		.05
Zone 5	6.31	.25	.14		.05
Zone 6	6.11	.25	.14		.05

MODIFICATIONS P.4

DECISION #LA78-4052 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Marble, tile & terrazzo workers & finishers:					
Zone 5 - Marble, tile & terrazzo workers	$ 8.85	.30			
Plasterers - Zone 2	9.00				.01
Power equipment operators (Highway Construction):					
Group 1 - Zone 1	9.96	.65	.65		.05
Zone 3	9.43	.65	.65		.05
Zone 4	9.61	.65	.65		.05
Zone 5	7.65	.65	.65		.05
Zone 6	7.15	.65	.65		.05
Group 2 - Zone 1	10.21	.65	.65		.05
Zone 3	9.68	.65	.65		.05
Zone 4	9.86	.65	.65		.05
Zone 5	7.90	.65	.65		.05
Zone 6	7.40	.65	.65		.05
Group 3 - Zone 1	9.71	.65	.65		.05
Zone 3	9.18	.65	.65		.05
Zone 4	9.36	.65	.65		.05
Zone 5	7.40	.65	.65		.05
Zone 6	6.90	.65	.65		.05
Group 4 - Zone 1	8.46	.65	.65		.05
Zone 3	8.13	.65	.65		.05
Zone 4	8.14	.65	.65		.05
Zone 5	6.43	.65	.65		.05
Zone 6	5.93	.65	.65		.05
Group 5 - Zone 1	8.11	.65	.65		.05
Zone 3	7.54	.65	.65		.05
Zone 4	7.53	.65	.65		.05
Zone 5	5.91	.65	.65		.05
Zone 6	5.41	.65	.65		.05
Group 6 - Zone 1	7.26	.65	.65		.05
Zone 3	6.68	.65	.65		.05
Zone 4	6.68	.65	.65		.05
Zone 5	5.13	.65	.65		.05
Zone 6	4.63	.65	.65		.05
Group 7 - Zone 1	6.95	.65	.65		.05
Zone 3	6.34	.65	.65		.05
Zone 4	6.34	.65	.65		.05
Zone 5	4.84	.65	.65		.05
Zone 6	4.34	.65	.65		.05
Group 8 - Zone 1	8.31	.65	.65		.05
Zone 3	7.98	.65	.65		.05
Zone 4	7.99	.65	.65		.05
Zone 5	6.33	.65	.65		.05
Zone 6	5.83	.65	.65		.05
Group 9 - Zone 1	8.56	.65	.65		.05
Zone 3	8.23	.65	.65		.05
Zone 4	8.24	.65	.65		.05
Zone 5	6.58	.65	.65		.05
Zone 6	6.08	.65	.65		.05

DECISION #LA78-4052 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 10 - Zone 1	$ 7.20	.65	.65		.05
Zone 3	6.59	.65	.65		.05
Zone 4	6.59	.65	.65		.05
Zone 5	5.09	.65	.65		.05
Zone 6	4.59	.65	.65		.05
Roofers - Zone 3 - Roofers	9.06	.35	.60		.04
Zone 4 - Roofers	8.30				
Kettlemen	7.35				
Sheet metal workers - Zone 4	10.14	3%+.55	.40		.16
Truck drivers (Highway Construction):					
Group 1 - Zone 1	6.63	.45			
Zone 3	6.81				
Zone 4	7.24				
Zone 5	5.92				
Zone 6	6.02				
Group 2 - Zone 1	6.76	.45			
Zone 3	6.91				
Zone 4	7.37				
Zone 5	6.05				
Zone 6	6.15				
Group 3 - Zone 1	6.82	.45			
Zone 3	7.14				
Zone 4	7.43				
Zone 5	6.11				
Zone 6	6.21				
Group 4 - Zone 1	6.90	.45			
Zone 3	7.35				
Zone 4	7.50				
Zone 5	6.18				
Zone 6	6.28				
Group 5 - Zone 1	7.09	.45			
Zone 3	7.77				
Zone 4	7.69				
Zone 5	6.38				
Zone 6	6.47				

Decision #MD77-3086 - Mod. #6 (42 FR 39880 - August 5, 1977) Allegany & Garret Counties, Maryland	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters	$10.65	.50	.60		.02
Millwrights	11.01	.50	.60		.02
Decision #MD78-3002 - Mod. #1 (42 FR 9076 - March 3, 1978) Allegany & Garret Counties, Maryland					
Change:					
Carpenters	$10.54	.50	.60		.02
Decision #MD78-3020 - Mod. #3 (42 FR 16045 - April 14, 1978) Counties of Anne Arundel (excluding the D.C. Training School), Baltimore and Baltimore City, Maryland, and for Heavy Construction projects in Harford and Howard Counties, Maryland					
Change:					
Lead Burners	$12.15	.65			.01
Painters:					
Brush & roller	9.33	1.00	.55		.07
Spackling, taping and wall covering	9.50	1.00	.55		.07
Spray painting (except steel)	9.60	1.00	.55		.07
Steel painters; any painting using swinging stages and boatswain chair; sand and water blasting; steam cleaning; all epoxy spray (steel only)	9.85	1.00	.55		.07
Sprinkler Fitters:					
Baltimore City including a 10-mile radius beyond the city limits	11.30	.75	1.05		.05
Tile & Terrazzo workers	8.56	.70	.50		.04

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #MI78-2001 - MOD. #2 (43 FR 4817 - February 3, 1978) Kent County, Michigan					
CHANGE:					
Plumbers & Steamfitters	$12.09	.60+.15	.90		
DECISION #MI78-2054 - MOD. #2 (43 FR 24200 - June 2, 1978) Statewide, Michigan					
CHANGE:					
Carpenters:					
Zone 2E	$10.38	.60	.60		.01
Zone 2W	10.25	.60	.60		.01
Zone 3LP	10.14	.60	.60		.01
Zone 3UP	10.09	.60	.60		.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #PA77-3057 - Mod. # 9 (42 FR 24700 - May 13, 1977) Sullivan County, Pennsylvania					
Change:					
Carpenters:					
Benton Air Force Base	$11.04	.50	.55		.05
Remainder of County	10.30	.50	.55		.05
Electricians					
Western Part of County	9.73	.50	3%+.60	.75	.02
Millwrights	11.45	.50	.55		.05
DECISION #PA77-3100 - Mod. # 9 (42 FR 36775 - July 15, 1977) Columbia, Montour, & Snyder Counties, Pennsylvania					
Change:					
Carpenters	$10.30	.50	.55		.05
Electricians					
Zone III	10.86	.65	3%+.49		½ of 1%
Millwrights	11.45	.50	.55		.05
DECISION #PA77-3103 - Mod. # 7 (42 FR 37759 - July 22, 1977) Bradford, Tioga & Union Counties, Pennsylvania					
Change:					
Carpenters	$10.30	.50	.55		.05
Electricians					
Zone I	9.73	.50	3%+.60	.75	.02
Zone II	11.45	.50	3%+.20		.05
Millwrights	11.45	.50	.55		.05
Painters:					
Brush	9.55	.75	.40		.10
Tapers	9.81	.75	.40		.10
Hazardous	10.81	.75	.40		.10
Roofers:					
Composition & Kettleman	9.90	.85	.80		

Decision #PA77-3104 - Mod. #9
(42 FR 37762 - July 22, 1977)
Lancaster County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpernters	$10.30	.50	.55		.05
Electricians:					
That portion northwest of a line extending from the Susquehanna River to the intersection of State Highways 441 and 241 along 241 to the Borough of Elizabethtown around the limits of Elizabethtown on the west and north side, but including the Masonic Homes in Elizabethtown, continuing along State Highway 241 to Lebanon County and that portion north of the Pennsylvania Turnpike, but including all buildings on the Turnpike, from Lebanon County line to West Cocalico township.	9.59	.65	3%+.49		½ of 1%
Laborers:					
General Laborers	6.85	.50	.57		
Operators of Jackhammer	7.05	.50	.57		
Wagon drill	7.15	.50	.57		
Handling of all materials	7.00	.50	.57		
Laborers assisting tile	6.90	.50	.57		
Handling & using dynamite	7.18	.50	.57		
Caisson Work (Top Men)	7.10	.50	.57		
Caisson Work (Bottom Men)	7.30	.50	.57		
Mixer Man	7.25	.50	.57		
Lathers	10.11	.40	.25		.01
Millwrights	11.45	.50	.55		.05
Plumbers & Steamfitters	11.30	.70	.80		.12

DECISION #PA77-3121 - Mod. # 8
(42 FR 45612 - Sept. 9, 1977)
Lebanon County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters	$10.30	.50	.55		.05
Electricians:					
Lawn, East Hanover & Indiantown Gap Military Reservation	10.86	.65	3%+.49		½ of 1%
Millwrights	11.45	.50	.55		.05
Painters: (East of Rte. 72)					
Brush	9.35	.70	.65		
Structural steel & spray	10.40	.70	.65		
Highway bridges	10.80	.70	.65		
Plumbers & steamfitters:					
East of Rte. 501	12.26	.80	1.45		.11
West of Rte. 501	11.30	.70	.80		.12
Add:					
Electricians:					
Portion of Lebanon County which extends South and East of Interstate Route 81	9.59	.65	3%+.49		½ of 1%

Decision #PA77-3122 - Mod. #5
(42 FR 45614 - September 9, 1977)
Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters	$10.30	.50	.55		.05
Electricians	10.86	.65	3%+.49		½ of 1%
Millwrights	11.45	.50	.55		.05
Laborers:					
Air, fuel and electric tool operators and all other pneumatic and mechanical tools including blow pipe and vacuum cleaners	8.05	.35	.40		
Pipelayer, power buggy, precast slab placers and signal men	8.05	.35	.40		
Unskilled laborer	7.90	.35	.40		
Plaster and cement mason tenders machine mixers, plaster pump and scaffold builder (excluding masonry scaffolding) for caisson workers, blasters, wagon air track and diamond point drill operators, burning torches, green cutting machine and steam jenny	8.37	.35	.40		
Nursery workers, window washers, floor scubbers and watchmen	7.55	.35	.40		
Lathers	10.11	.40	.25		.01
Plumbers & Steamfitters	11.30	.70	.80		.12
Add:					
Laborers:					
Mason tenders, machine mixers, motorized stockers, scaffold builders (masonry), mortar pump conveyors, mechanical cleaners and sandblasting for masonry and masonry equipment	8.47	.35	.40		

DECISION #PA77-3123 - Mod. # 8
(42 FR 45616 - Sept. 9, 1977)
Schuylkill County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters	$10.30	.50	.55		.05
Electricians:					
Pine Grove & Tremont Townships	9.59	.65	3%+.49		½ of 1%
Remainder of County	11.45	.50	3%+.20		.05
Millwrights	11.45	.50	.55		.05
Painters:					
Townships of North Union, East Union, Union, Mahonoy, West Mahanoy, Butler, Kline, Delano, Ryan, Rush, Rahn, West Penn, City of Tamaqua					
Brush	9.55	.75	.40		.10
Tapers	9.81	.75	.40		.10
Hazardous	10.81	.75	.40		.10
Remainder of County					
Commercial & Industrial					
Brush	9.35	.70	.65		
Steel	10.40	.70	.65		
Spray	10.40	.70	.65		
Roofers:					
Barry Branch, Butler, Delano, East Brunswick, East Union, Eldred, Foster, Fraily, Hegins Hubley, Kline, New Castle, North Union, Porter, Hahn, Reilly, Rush, Fremont, Union, Upper Mahantango, West Penn:					
Composition	9.90	.85	.80		

Decision #PA77-3124 - Mod. #6
(42 FR 45618 - September 9, 1977)
Northampton County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Laborers:					
Laborers & window cleaners	$ 7.55	.62	.59		
Operator of jackhammer, paving breaking and other pneumatic and mechanical tools coming under the jurisdiction of laborers, laying of all clay terra cotta, ironstone, vitrified concrete or non-metallic pipe and the making of joints for same and cofferdams (below 10')	7.80	.62	.59		
Wagon drills and men handling buring torches in the wrecking of buildings	8.30	.62	.59		
Plaster and mason tenders, scaffold builders and handling of all material to be used by plasterers and masons, brick and block loaded on pallets, cement finisher tanders, gunniting and moldeo D and sand blaster helpers, power buggies, all floor hardner and "cure" application shall be work of the mason tender, all pumps such as the concrete, plaster mortar and water, installing rafractory materials in connection with the boiler work	7.95	.62	.59		
Barko Tamper Operator	8.57	.62	.59		
Electricians:					
Allen, Hanover, Lehigh, Bath Freemansburg, Hellertown and Bethlehem	11.25	.50	3%+.80		.02
Remainder of County	11.80	7%	3%+1.00		.02
Soft Floor Layers	9.05	.44	.72	.45	

DECISION #PA77-3125 - Mod. # 8 (42 FR 45620 - Sept, 9, 1977) Berks County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters	$9.48	.72	.45		
Bricklayers & Stonemasons	9.95	.70	.75		
Electricians:					
Herford, Longswamp & Washington, Twps., portion of Maxatawney, Twp., east of Saccony Creek	11.25	.50	3%+.80		.02
Marion, Tulpehocken & Bethel Twps.	9.59	.65	3%+.49		½ of 1%
Millwrights	10.00	.72	.45		
Painters:					
Brush	9.35	.70	.65		
Bridge, tower, stacks & tanks	10.80	.70	.65		
Spray & steel	10.40	.70	.65		
Plumbers & steamfitters	12.26	.80	1.45		.11

DECISION #PA77-3126 - Mod. # 4 (42 FR 45622 - Sept, 9, 1977) Lycoming County, Pennsylvania					
Change:					
Carpenters	$10.30	.50	.55		.05
Electricians	9.73	.50	3%+.60	.75	.02
Millwrights	11.45	.50	.55		.05

MODIFICATIONS P. 15

Decision #PA77-3128 - Mod. #8
(42 FR 46901 - September 16, 1977)
Adams & York Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Laborers:					
General laborers	$ 6.85	.50	.57		
Operators of jackhammer (etc.)	7.05	.50	.57		
Wagon drill (etc.)	7.15	.50	.57		
Handling of all materials (etc.)	7.00	.50	.57		
Laborers assisting tile (etc.)	6.90	.50	.57		
Handling & using dynamite	7.18	.50	.57		
Caisson work (top men)	7.10	.50	.57		
Caisson work (bottom men)	7.30	.50	.57		
Mixer man	7.25	.50	.57		
Plumbers & Steamfitters	11.30	.70	.85		.12
Millwrights					
Adams County	11.45	.50	.55		.05
Carpenters					
Adams County	10.30	.50	.55		.05

DECISION #PA77-3129 - Mod. # 5
(42 FR 46903 - Sept., 16, 1977)
Northumberland County, Pennsylvania

Change:					
Carpenters	$10.30	.50	.55		.05
Electricians:					
Delaware, Lewis & Trubut	9.73	.50	3%+.60	.75	.02
Millwrights	11.45	.50	.55		.05

MODIFICATIONS P. 16

Decision #PA78-3005 - Mod. #2
(42 FR 7923 _ February 24, 1978)
Butler, Cambria, Erie, Fayette, 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	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Truck Drivers:					
Zone 1					
Class 1	$ 9.11	9%	6%		
Class 2	8.86	9%	6%		
Class 3	8.96	9%	6%		
Class 4	9.04	9%	6%		
Class 5	8.91	9%	6%		
Class 6	8.82	9%	6%		
Class 7	9.14	9%	6%		
Zone 2					
Class 1	8.92	9%	6%		
Class 2	8.61	9%	6%		
Class 3	8.72	9%	6%		
Class 4	8.87	9%	6%		
Class 5	8.58	9%	6%		
Class 6	8.77	9%	6%		
Class 7	8.96	9%	6%		

CLASSIFICATION DEFINITIONS ZONE 1

CLASS 1 - Heavy duty trailer, such as low boy, hi-boy, dump trailer, pole trailer, A-frame (when used for transporting materials), dumpsters, ross carriers, form trucks, dual-purpose trucks (when load has been loaded or unloaded with truck winch, loading, hauling and unloading), mechanical tailgate trucks, bucket self-loading trucks, farm tractors (when pulling and hauling), fork lift trucks (in storage areas and warehouses), tar and asphalt distributing trucks, tar and asphalt trailer trucks

CLASS 2 - Single-axle ready-mixed concrete trucks (such as agitators, barrel, redi-mix concrete trucks, etc.)

CLASS 3 - Liquid tank trucks - straight and smi (including water, sprinkler, oil trucks, etc.), tandem-axle ready-mixed concrete trucks (such as agitators, barrel, redi-mix concrete trucks, etc.), trucks over 33,000 lbs. gross load category (including all types of trucks such as fuel, dump (tandem), flate bottom, scissors, and combination fuel and grease)

CLASS 4 - Tri-axle ready-mixed concrete trucks (such as agitators, barrel, redi-mix concrete trucks, etc.) heavy equipment whose capacity exceeds that for which state licenses are issued - specifically refers to units in excess of 8 feet width (such as euclids, athey wagon, payloader, tournawagons, ans similar equipment when not self-loaded) rated under forty-five tons, tri-axle trucks

CLASS 5 - Trucks with dolly or trailer

CLASS 6 - Trucks under 33,000 lbs. gross load category (including all types of trucks such as fuel, dump, flat bottom, pick-up and similar equipment. Also part man and warehouseman

CLASS 7 - Heavy off the road equipment (rated at forty-five tons or over) bottom or belly-dumptrucks

CLASSIFICATION DEFINITIONS ZONE 2

CLASS 1 - Heavy duty trailer, such as low-boy, hi-boy, dump trailer, pole trailer, A-frame (when used for transporting materials), dumpsters, ross carriers, form trucks, dual-purpose trucks (when load has been loaded or unloaded with truck winch, loading, hauling and unloading), mechanical trailgate trucks, bucket self-loading trucks, farm tractors (when pulling and hauling), fork lift trucks (in storage areas and warehouses), tar and asphalt distributing trucks, tar and asphalt trailer trucks

CLASS 2 - Single axle ready-mixed concrete trucks such as agitators, barrel, redi-mix concrete trucks, etc.)

CLASS 3 - Tandem-axle ready-mixed concrete trucks (such as agitators, barrel, redi-mix concrete trucks, etc.), trucks with dolly or trailer

CLASS 4 - Tri-axle ready-mixed concrete trucks (such as agitators, barrel, redi-mix concrete trucks, etc.), Heavy equipment whose capacity exceeds that for which state licenses are issued - specifically refers to units in excess of 8 feet width (such as euclids, athey wagon, payloader, tournawagons, and similar equipment when not self-loaded) rated under forty-five tons, tri-axle trucks

CLASS 5 - Trucks under 33,000 lbs. gross load category (including all types of trucks such as fuel, dump, flat bottom, pick-up and similar equipment. Also parts man and warehouseman

CLASS 6 - Trucks over 33,000 lbs. gross load category (including all types of trucks such as fuel, dump (tandem), flat bottom, scissors, and combination fuel and grease), liquid tank trucks - straight and semi (including water, sprinkler, oil trucks, etc.)

CLASS 7 - Heavy off the road equipment (rated at forty-five tons or over) bottom or belly dump trucks

MODIFICATIONS P. 19

Decision #PA78-3016 - Mod. #2
(43 FR 16106 - April 14, 1978)
Lehigh County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Electricians	$11.25	.50	3%+.80		.02
Laborers:					
Laborer & window cleaners	7.55	.62	.59		
Operator of jackhammer, paving breaking and other pneumatic and mechanical tools coming under the jurisdiction of laborers, laying of all clay terra cotta, ironstone, vitrified concrete or non metallic pipe and the making of joints for same and conferdams (below 10')	7.80	.62	.59		
Wagondrills and men handling burning torches in the wrecking of buildings	8.30	.62	.59		
Plaster and mason tenders, scaffold builders and handling of all material to be used by plasterers and masons, brick and block loaded on pallets, cement finisher tenders, gunniting and moldeo-D and sandblaster helpers, power buggies, all floor hardner and "cure" application shall be work of the mason tender, all pumps such as the concrete, plaster mortar and water, installing rafractory materials in connection with the boiler work	7.95	.62	.59		
Barko Tamper Operator	8.57	.62	.59		
Marble Setters	9.05	1.00	1.15		
Soft Floor Layers	9.05	.44	.72	.45	
Terrazzo Workers	9.30	1.00	1.15		
Tile Setters	9.05	1.00	1.15		

MODIFICATIONS P. 20

DECISION #TX78-4014 - Mod. #4 (43 FR 7132 - February 17, 1978) Gregg County, Texas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters: Carpenters	$ 8.50				.015
Millwrights	10.75				.015
Piledrivermen	9.00				.015
DECISION #TX78-4017 - Mod. #2 (43 FR 10272 - March 10, 1978) Taylor County, Texas					
Change:					
Plumbers & pipefitters	8.98	.30	.65		.05
DECISION #TX78-4028 - Mod. #5 (43 FR 16112 - April 14, 1978) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Counties, Texas					
Change:					
Asbestos workers	10.30	.75	.85		.07
Carpenters:					
Zone 2 - Carpenters	9.97	.48	.40		.07
Millwrights	10.47	.48	.40		.07
Lathers	10.20				.01
Plasterers	10.20				.01
DECISION #TX78-4030 - Mod. #5 (43 FR 16115 - April 14, 1978) Bee, Kleberg & Nueces Cos., Texas					
Change:					
Asbestos workers	10.89	.50	.50		
DECISION #TX78-4031 - Mod. #5 (43 FR 16116 - April 14, 1978) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas					
Change:					
Building Construction:					
Asbestos workers - Zone 1	11.05	.60	.60		.08
Line Construction:					
Linemen: Linemen operators	12.15		3%		1/2%
Cable splicers	13.37		3%		1/2%
Groundman, 1st 6 mos.	7.29		3%		1/2%
Groundman, 2nd 6 mos.	7.90		3%		1/2%
Groundman, 1 yr. & over	8.51		3%		1/2%

DECISION #TX78-4031 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sheet metal workers - Zone 1	$ 9.19	.45	.44		.07
Zone 2	9.76	.45	.44		.07
Zone 3	10.19	.45	.44		.07
DECISION #TX78-4032 - Mod. #2					
(43 FR 16119 - April 14, 1978)					
Bowie County, Texas					
Change:					
Carpenters: Carpenters	8.75				.01
Millwrights	10.95				.04
Piledrivermen	9.45				.01
DECISION #TX78-4033 - Mod. #3					
(43 FR 16120 - April 14, 1978)					
Brazos County, Texas					
Change:					
Asbestos workers	11.75	.90	.90		.05
Line construction:					
Lineman & cable splicer	11.87	.50	3%		1/2%
Groundman (1st 6 mos.)	4.15	.50	3%		1/2%
Groundman (2nd 6 mos.)	4.99	.50	3%		1/2%
Groundman	6.88	.50	3%		1/2%
Pipefitters	11.60	.50	.65		.045
Plasterers	11.30	.87	.30		.02
DECISION #TX78-4034 - Mod. #1					
(43 FR 16121 - April 14, 1978)					
Cameron, Hidalgo, Starr & Willacy Counties, Texas					
Change:					
Asbestos workers	10.89	.50	.50		
DECISION #TX78-4035 - Mod. #3					
(43 FR 16122 - April 14, 1978)					
Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas					
Change:					
Line Construction:					
Linemen; Linemen operators	12.15		3%		1/2%
Cable splicers	13.37		3%		1/2%
Groundman, 1st 6 mos.	7.29		3%		1/2%
Groundman, 2nd 6 mos.	7.90		3%		1/2%
Groundman, 1 year & over	8.51		3%		1/2%
Sheet metal workers - Zone 3	10.58				.07

DECISION #TX78-4036 - Mod. #5	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
(43 FR 16125 - April 14, 1978)					
El Paso County, Texas					
Change:					
Drywall - Group 1	$ 7.70	.38			.02
Group 2	7.92	.38			.02
Group 3	8.40	.38			.02
Sheet metal workers	9.82	3%+.51	.385		.04
DECISION #TX78-4037 - Mod. #4					
(43 FR 16127 - April 14, 1978)					
Galveston & Harris Cos., Texas					
Change:					
Asbestos workers	11.75	.90	.90		.05
Lathers (Harris Co. only)	11.42	.70	.35		.02
Line Construction:					
Lineman & cable splicer	11.87	.50	3%		1/2%
Groundmen (1st 6 mos.)	4.15	.50	3%		1/2%
Groundmen (2nd 6 mos.)	4.99	.50	3%		1/2%
Groundmen	6.88	.50	3%		1/2%
Painters (Galveston County):					
Group 1	10.31	.60	.50	.85	.035
Group 2	10.56	.60	.50	.85	.035
Group 3	9.555	.60	.50	.85	.035
Pipefitters:					
That part of Galveston Co. west of the Trinity River & all of Harris Co.	11.60	.50	.65		.045
Plasterers	11.30	.87	.30		.02
DECISION #TX78-4039 - Mod. #1					
(43 FR 16130 - April 14, 1978)					
Howard County, Texas					
Change:					
Ironworkers, structural & ornamental	9.13	.55	1.00		.10
DECISION #TX78-4040 - Mod. #6					
(43 FR 16131 - April 14, 1978)					
Jefferson & Orange Cos., Texas					
Change:					
Asbestos worker-Jefferson Co.	11.75	.90	.90		.05
Plasterers	11.30	.87	.30		.02

MODIFICATIONS P. 23

DECISION #TX78-4041 - Mod. #4 (43 FR 16133 - April 14, 1978) Lubbock County, Texas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos workers	$10.30	.75	.85		.07
Bricklayers & stonemasons	9.82		.30		.03
Ironworkers:					
Structural; Ornamental; Reinforcing	9.13	.55	1.00		.10
All ironworkers on jobs 30 miles or more from the city of Lubbock	9.255	.55	1.00		.10
Plumbers & steamfitters	9.95	.50	.45		.04
DECISION #TX78-4042 - Mod. #2 (43 FR 16134 - April 14, 1978) Smith County, Texas					
Change:					
Carpenters	8.40				
DECISION #TX78-4043 - Mod. #5 (43 FR 16134 - April 14, 1978) Travis County, Texas					
Change:					
Asbestos workers	11.05	.60	.60		.08
Marble, tile & terrazzo workers	9.14	.45	.30	.25	
Plumbers & pipefitters	11.05	.45	.40		.05
DECISION #TX78-4044 - Mod. #4 (43 FR 16136 - April 14, 1978) Wichita County, Texas					
Change:					
Carpenters - Carpenters Millwrights	9.97	.48	.40		.07
	10.47	.48	.40		.07
Cement masons	9.12				
Ironworkers:					
Structural; Ornamental; Reinforcing	9.13	.55	1.00		.10
Ironworkers on jobs 30 miles or more from the city of Wichita Falls	9.255	.55	1.00		.10
Sheet metal workers	10.58				.07

MODIFICATIONS P. 24

DECISION #TX78-4051 - Mod. #1 (43 FR 20718 - May 12, 1978) Ector & Midland Cos., Texas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters	$ 9.25				.05
Ironworkers:					
Structural; Ornamental; Reinforcing	9.13	.55	1.00		.10
All ironworkers on jobs 30 miles or more from Terminal (midway Odessa-Midland)	9.255	.55	1.00		.10
DECISION # DC78-3008 - Mod. # 4 (42 FR 11464 - March 17, 1978) District of Columbia; Maryland - Montgomery and Prince Georges; and D. C. Training School; Virginia - Independent City of Alexandria & Arlington					
Change:					
Heading of Wage rate Schedule presently issued to read: Highway Construction (D. C. only) except paving projects where the grading is incidental to the paving; Water & Sewer Lines to read:(District of Columbia and Montgomery County Maryland only)					
HEAVY CONSTRUCTION EXCLUDING WATER AND SEWER LINES:					
All Counties					
BUILDING CONSTRUCTION:					
Excluding Alexandria, Virginia					
Bricklayers	$11.65	1.18	.65		.10
Painters:					
Brush, spray, paperhangers tapers	10.61	.86	1.10		.08
Steel, sandblasting, swing stage, power brushing	11.11	.86	1.10		.08
PAVING AND INCIDENTIAL GRADING; (District of Columbia only)					
Paving project where the grading is incidental to the paving:					
Bricklayers	11.65	1.18	.65		.10
WATER AND SEWER LINES: (District of Columbia and Montgomery County Maryland only)					
Bricklayers	11.65	1.18	.65		.10

SUPERSEDEAS DECISION

STATE: California

COUNTIES: Alameda, Alpine, Amador, Calaveras, Contra Costa, Del Norte, El Dorado, Fresno, Humboldt, Marin, Mariposa, Merced, Monterey, Napa, Nevada, Placer, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Sutter, Tehama, Tuolumne, Yolo and Yuba

DECISION NUMBER: CA78-5106

DATE: Date of Publication

Supersedes Decision CA78-5100 dated May 26, 1978, in 43 FR 22879

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	.95	$ 1.27	$ 2.00	.07
BOILERMAKERS	13.625	1.075	1.00	.75	.02
BRICKLAYERS; Stonemasons:					
Del Norte, Humboldt, Marin, Napa, San Francisco, San Mateo, Solano and Sonoma Counties	11.67	1.50	1.10	1.00	.05
Alameda and Contra Costa Cos.	13.50	1.50	1.25		05
Fresno, Mariposa and Merced Cos.	12.05	.95	1.00		
El Dorado, Nevada, Placer, Sacramento, Sutter, Tehama, Yolo and Yuba Counties	12.50	1.03	1.21		.25
Monterey and Santa Cruz Counties	13.80	1.22	1.33		
San Benito and Santa Clara Cos.	13.50	1.50	1.25		.05
Alpine, Amador, Calaveras, San Joaquin and Tuolumne Counties	11.70	1.00	1.30	1.00	
BRICK TENDERS:					
Calaveras and San Joaquin Cos.	10.68	1.30	1.75		
San Francisco and San Mateo Cos.	10.00	.65	.80		
Alpine, Amador, El Dorado, Nevada, Placer, Sacramento and Yolo Counties	9.30	1.00	1.70		
Fresno County	10.80	.80	1.40		
CARPENTERS:					
Carpenters	12.70	1.575	1.81	1.00	.09
Hardwood Floor Layers; Power Saw Operators; Saw Filers; Shinglers; Steel Scaffold Erectors and/or Steel Shoring Erectors	12.85	1.575	1.81	1.00	.09
Millwrights	12.20	1.575	1.81	1.00	.07
Piledrivermen, Bridge, Wharf and Dock Builders	12.23	.84	1.26	.75	.04
Mariposa and Merced Counties:					
Carpenters (wood frame residential construction)	7.00	1.22			
Fresno County:					
Frame dwellings 2 stories or less	9.00	1.35	1.71	1.00	.07

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS:					
Cement Masons	$ 10.50	$ 1.30	$ 1.68	$ 1.65	.05
Mastic; Magnesite; All Composition Masons	10.75	1.30	1.68	1.65	.05
Men working from swinging or Slip Form Scaffolds	10.75	1.30	1.68	1.65	.05
Fresno County:					
Frame dwellings 2 stories or less	9.00	1.30	1.68	1.65	.05
DRYWALL INSTALLERS	11.52	1.22	1.71	.75	.07
ELECTRICIANS:					
Alameda County					
Electricians, Cable Splicers	13.91	1.30	3%+1.65		.069
Amador, Sacramento, Sutter, Yolo, Yuba and those portions of Alpine, El Dorado, Nevada and Placer Counties West of the Main Sierra Mountain Watershed					
Electricians	14.89	.95	3%+.85		.045
Cable Splicers	16.38	.95	3%+.85		.045
Lake Tahoe Area					
Electricians	14.33	.84	3%+1.07		.08
Cable Splicers	15.66	.84	3%+1.07		.08
Tehama County					
Electricians (Family residences, limited to 3 stories)	8.38	1.12	3%+.67		.04
Electricians (4 stories):					
Electricians	12.62	1.12	3%+.905		.04
Cable Splicers	13.88	1.12	3%+.905		.04
Calaveras and San Joaquin Cos.					
Electricians	14.35	1.02	3%+1.63		1/4%
Cable Splicers	16.14	1.02	3%+1.63		1/4%
Contra Costa County					
Electricians	15.20	.70	3%+1.00		
Cable Splicers	16.70	.70	3%+1.00		
Del Norte and Humboldt Counties					
Electricians	11.50	1.10	3%+2.80		.04
Cable Splicers	12.42	1.10	3%+2.80		.04
Fresno County					
Electricians (family residences, not to exceed 2 stories)	7.75	.80	3%+1.05		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
Electricians (3-4 stories):					
Electricians	$ 13.41	.80	3%+1.05		.05
Cable Splicers	14.71	.80	3%+1.05		.05
Marin and Sonoma Counties					
Electricians	13.15	1.11	3%+.30		.02
Cable Splicers	14.50	1.11	3%+.30		.02
Mariposa, Merced and Tuolumne Counties					
Electricians	12.73	.94	3%+1.50		1/4%
Cable Splicers	14.00	.94	3%+1.50		1/4%
Monterey County					
Electricians	13.62	1.15	3%+3.41		08
Cable Splicers	15.05	1.15	3%+3.41		.08
Napa and Solano Counties					
Electricians	12.91	1.08	3%+1.10		.04
Cable Splicers	13.42	1.08	3%+1.10		.04
San Benito, Santa Clara and Santa Cruz Counties					
Electricians	13.80	.92	3%+2.10		.05
Cable Splicers	15.53	.92	3%+2.10		.05
San Francisco county					
Electricians	15.585	1.04	3%+.90		.06
Cable Splicers	17.53	1.04	3%+.90		.06
San Mateo County					
Electricians	14.89	1.25	3%+1.75		.03
ELEVATOR CONSTRUCTORS	14.82	.745	.56	a	.025
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.56	a	.025
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
GLAZIERS:					
Alameda, Contra Costa, Marin, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano (SW from E of Fairfield), Sonoma Counties	11.79	1.00	1.41		.02
Alpine, Amador, Calaveras, El Dorado, Mariposa, Merced, (North of City of Livingston), Nevada, Placer, Sacramento, Yolo and Yuba Counties	10.886	.58	1.50		
Fresno and Remaining portions of Merced County	9.09	.81	1.04	.805	.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS:					
Fence Erectors	$11.00	$ 1.29	$ 2.47	$1.65	.07
Reinforcing	12.00	1.29	2.47	1.65	.07
Ornamental; Structural	12.00	1.29	2.47	1.65	.07
LATHERS:					
Alameda and Contra Costa Cos.	12.00	1.10	1.71		.03
Humboldt, Nevada, Placer and Tehama Counties	11.00	.66	.50		.01
Amador, El Dorado, Sacramento and Yolo Counties	11.02	.67	2.25	1.50	.02
Calaveras and San Joaquin Cos.	11.30	.68	.55		.01
Marin and Sonoma Counties	9.01	.87	.85	1.00	1/8%
Monterey and Santa Cruz Counties	11.30	.68	.55		.01
San Francisco and N½ of San Mateo County	13.07	.66	2.00		.02
San Benito and Santa Clara Cos.	12.69	.98	1.75		
Fresno County	12.13	.70	.70		
Mariposa, Merced and Tuolumne Counties	10.75				.01
Southern half of San Mateo County	10.03	.32	1.00		
PAINTERS:					
Alpine, Amador, Calaveras and San Joaquin Counties					
Brush	10.71	.85	2.34	1.11	
Spray; Sheetrock Tapers; Swing Stage; Scaffold; Sandblaster; Structural Steel	11.11	.85	2.34	1.11	
Fresno County					
Brush; Tapers	11.12	.41	.20		
Spray; Structrual Steel	11.37	.41	.20		
Del Norte and Humboldt Counties					
Brush	7.55	.60	.20	.80	
Spray; Sandblasters; Structural Steel; Swing Stage; Tapers; Paperhangers	7.80	.60	.20	.80	
Monterey, San Benito, San Mateo, Santa Clara and Santa Cruz Counties (excluding portions of the Lake Tahoe Area)					
Brush	12.74	1.10	1.50	.80	.06
Spray	12.99	1.10	1.50	.80	.06
Tapers	13.29	1.10	1.50	.80	.06

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Sutter, Tehama and Yuba Counties					
Brush; Pot Tender; Rollers	$ 8.75	.60	.40		
Spray; Sandblasters; Structural Steel; Swing Stage; Tapers	9.25	.60	.40		
Lake Tahoe Area					
Brush	10.95	.70	.75		
Spray; Structural Steel; Tapers	11.20	.70	.75		
Marin, San Francisco and Sonoma Counties					
Brush	12.18	1.10	1.50	.80	.06
Spray	12.68	1.10	1.50	.80	.06
Tapers	12.98	1.10	1.50	.80	.06
Alameda, Contra Costa, El Dorado, Napa, Nevada, Placer, Sacramento, Solano and Yolo Counties (excluding portions of Counties in the Lake Tahoe Area)					
Brush	12.31	1.10	1.50	.80	.06
Spray	12.81	1.10	1.50	.80	.06
Tapers	13.11	1.10	1.50	.80	.06
Mariposa, Merced and Tuolumne Counties					
Brush	9.60	.70	.45	.75	.02
Swing Stage, Paperhangers, Bosun Chair, Steam Cleaning and Water Blasting	9.85	.70	.45	.75	.02
Spray, Sandblasting	10.10	.70	.45	.75	.02
PLASTERERS:					
Alameda and Contra Costa Cos.	10.10	.745	1.05		.03
Sutter and Yuba Counties	9.79	.56	1.00		
Fresno County	9.24	.90	1.25	1.00	
Monterey County	12.31	1.00	.35		.01
Alpine, Amador, Calaveras, El Dorado, Nevada, Placer, Sacramento, San Joaquin, Sutter, Yolo and Yuba Counties	11.59	.71	1.50		.01
San Francisco County	12.33	1.00	2.25		.03
San Mateo County	7.72	.48	.90	1.50	.025
Del Norte, Humboldt, Marin, Napa, Solano, Sonoma and Tehama Cos.	10.65	.98	.80	1.25	.01
Mariposa, Merced and Tuolumne Counties	9.05	.90	1.55	1.20	

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS TENDERS:					
Alameda and Contra Costa Cos.	$ 8.87	.60	$ 1.10		
Fresno County	10.44	1.25	1.70		
Marin County	8.32	.80	1.40	.90	
Solano County	10.85	1.25	1.70	1.10	
Napa County	11.40	1.25		1.10	
San Francisco and San Mateo Cos.	10.65	1.25	1.40	1.25	
Alpine, Amador, El Dorado, Nevada, Placer, Sacramento and Yolo Counties	7.455	.455	1.40	.80	
Calaveras and San Joaquin Cos.	10.71	1.25	1.70	1.00	
Monterey County	10.40	1.25	1.70		
San Benito, Santa Clara and Santa Cruz Counties	11.16	1.30	1.35		
PLUMBERS:					
Alameda County	13.10	.83	1.55		.12
Contra Costa County	12.72	.90	1.72		.20
PLUMBERS; Steamfitters:					
Amador (Northern half of County), El Dorado, Sacramento, Yolo, Nevada, Placer (excluding Lake Tahoe Area)	13.84	1.32	1.81		.14
Lake Tahoe Area	10.99	.58	.60	1.95	.10
Marin, San Francisco and Sonoma Counties	14.45	2.205	2.15	1.35	.20
San Benito and Santa Clara cos.	15.15	1.08	1.77		.14
San Mateo County	14.41	1.14	2.30		.25
Alpine, Amador (Southern portion of County), Calaveras, Fresno, Mariposa, Merced, Monterey, San Joaquin, Santa Cruz, Sutter Tehama, Tuolumne and Yuba Cos.	13.60	1.44	2.00		.10
Napa and Solano Counties	14.44	1.25	2.29		.22
Del Norte and Humboldt Cos.	12.29	.86	1.22		.05
ROOFERS:					
Alameda and Contra Costa Cos.					
Roofers	11.44	1.17	1.35	.90	.09
Mastic workers; Kettlemen (2 kettles w/o pumps)	11.69	1.17	1.35	.90	.09
Bitumastic; Enamelers; Pipe-wrappers; Coal tar built up	12.44	1.17	1.35	.90	.09

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS: (Cont'd)					
Alpine, Calaveras, Mariposa, Merced, San Joaquin and Tuolumne Counties					
Roofers (slate, tile and composition and built up)	$ 11.29	.98	.67		
Felt Machine Operator	11.44	.98	.67		
El Dorado, Placer, Sutter and Yuba Counties					
Roofers	11.89	.93	.40		.06
Fresno County					
Roofers	11.35	.60	.80		
Marin, Napa, Solano and Sonoma Counties					
Roofers	10.13	.85	1.20	1.63	.04
Mastic Workers; Kettlemen (2 kettle w/o pumps)	10.38	.85	1.20	1.63	.04
Bitumastic; Enamelers; Pipe-wrappers; Coal tar pitch	11.13	.85	1.20	1.63	.04
Del Norte and Humboldt Counties					
Roofers	10.32	.40	.75	.35	
Monterey and Santa Cruz Counties					
Roofers	10.40	1.40	1.15		
San Francisco and San Mateo Cos.					
Roofers	11.58	.60	1.20	1.15	.09
Mastic Workers and Kettlemen (2 kettles w/o pumps)	11.83	.60	1.20	1.15	.09
Bitumastic; Enamelers; Pipe-wrappers; Coal tar	12.58	.60	1.20	1.15	.09
Amador, Sacramento and Yolo Counties					
Roofers	11.15	1.04	1.10	1.00	.10
Enamelers and Pitch	12.65	1.04	1.10	1.00	.10
San Benito and Santa Clara Cos.					
Roofers; Kettleman (1 kettle)	11.10	.85	1.29		
SHEET METAL WORKERS:					
Alameda, Contra Costa, Napa and Solano Counties	11.94	.73	2.11	12%	.04
Alpine, Calaveras and San Joaquin Counties	11.77	.66	1.40		.02
Amador, El Dorado, Nevada, Placer, Sacramento, Sutter, Tehama, Yolo and Yuba Cos.	11.68	.73	1.65		.11

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS: (Cont'd)					
Mariposa, Merced and Tuolumne Counties	$ 11.86	.73	$ 1.68		.11
Clara and Santa Cruz Counties	11.15	3%+.66	1.845	1.115	
San Mateo County	13.54	.73	1.84		.10
Del Norte, Humboldt, Marin, San Francisco and Sonoma Cos.	12.50	.66	1.74		.12
Fresno County:					
(Frame dwellings 2 stories or less)	9.29	.73	1.22		.14
(Frame dwellings 3-4 stories)	11.98	.73	1.22		.14
SOFT FLOOR LAYERS:					
Alpine, Amador, Calaveras, Merced (East of the San Joaquin River) San Joaquin, Sacramento, Sutter Tehama, Tuolumne, Yolo and Yuba Counties; and those portions of El Dorado, Nevada and Placer Counties (excluding Lake Tahoe Area)	11.73	.89	1.30	1.25	.10
Lake Tahoe Area	10.05	.70	.20		
Alameda, Contra Costa, Marin, Merced, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma Counties	13.10	.60	1.00	b	.10
SPRINKLER FITTERS:					
Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma Counties	16.26	.65	1.45		.09
Remaining Counties	15.52	.75	1.05		.08
STEAMFITTERS:					
Alameda and Contra Costa Cos.	13.30	1.25	2.29		.165
Del Norte and Humboldt Cos.	11.64	.61	1.12		.05
TERRAZZO WORKERS:					
Alameda, Contra Costa, Del Norte, Humboldt, Marin, Napa, San Francisco, San Mateo, Solano and Sonoma Counties	11.67	1.50	1.10	1.00	

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TERRAZZO WORKERS: (Cont'd)					
El Dorado, Nevada, Placer, Sacramento, Sutter, Tehama, Yolo and Yuba Counties	$ 11.80	.80	.90		.25
TILE SETTERS:					
Alameda, Contra Costa, Del Norte, El Dorado, Humboldt, Marin, Napa, Nevada, Placer, Sacramento, San Benito, San Francisco, San Mateo, Santa Clara, Solano, Sonoma, Sutter, Tehama, Yolo and Yuba Cos.	$ 13.00	$ 1.08	$1.30	$ 1.58	$ 1.15
Alpine, Amador, Calaveras, San Joaquin and Tuolumne Counties	9.92	1.00	.70	2.00	
Fresno, Mariposa and Merced Counties	11.25	1.00	.50		
Monterey and Santa Cruz Counties	13.41	1.09	1.18		
TILE SETTERS' HELPERS:					
Alameda, Contra Costa, Del Norte, Humboldt, Marin, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Sonoma and Solano Counties	9.27	.69	.51	10%	
Alpine, Amador, Calaveras, El Dorado, Nevada, Placer, Sacramento, San Joaquin, Sutter, Tehama, Yolo and Yuba Counties	7.78	.80	1.20		

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years as Vacation Pay Credit. Six Paid Holidays: A through F.

b. Employer contributes $.90 per hour for the first five years of employment; After five years $1.05 per hour to Vacation and Holidays Benefits.

Alameda County	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
(Rehabilitation on residential structures defined to include all work, including demolition, repair and alteration, on any existing structure which is intended for residential use only)					
Bricklayers	$ 10.04	$ 1.35	$1.25		.25
Carpenters	9.36	1.35	1.71	1.00	.07
Cement Masons	8.40	1.30	1.68	1.65	.05
Drywall Finishers	9.22	1.22	1.71	.75	.07
Electricians	11.13	1.30	3%+1.65		.069
Ironworkers	9.24	1.24	2.22	1.46	.06
Laborers	7.02	1.24	1.70	1.10	.10
Lathers	9.09	1.09	1.26		.025
Painters	9.85	1.10	1.50		.06
Plasterers	8.08	.745	1.05		.12
Plumbers	10.48	.83	1.55		.12
Roofers	8.75	1.17	1.10	.60	.04
Tile Setters	9.60	.98	1.20	1.40	.095

LABORERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$9.45	$ 1.30	$ 1.75	$1.10	.10
Group 1(a)	9.70	1.30	1.75	1.10	.10
Group 1(b)	9.975	1.30	1.75	1.10	.10
Group 1(c)	9.525	1.30	1.75	1.10	.10
Group 1(d)	9.475	1.30	1.75	1.10	.10
Group 1(e)	10.025	1.30	1.75	1.10	.10
Group 1(f)	10.06	1.30	1.75	1.10	.10
Group 1(f)1	9.075	1.30	1.75	1.10	.10
Group 1(g)	9.675	1.30	1.75	1.10	.10
Group 2	9.325	1.30	1.75	1.10	.10
Group 3	9.225	1.30	1.75	1.10	.10
LABORERS (Gunite)					
Group 1:	9.935	1.30	1.75	1.10	.10
Group 2:	9.345	1.30	1.75	1.10	.10
Group 3:	9.225	1.30	1.75	1.10	.10

LABORERS

Group 1: Asphalt Ironers and Rakers; Barko, wacker and similar type tampers; Buggymobile; Chainsaw, faller, logloader and bucker; Compactors of all types; Concrete and magnesite mixer 1/2 yard and under; Concrete pan work; Concrete saw; Concrete sander; Cribber and/or shoring; Cut granite curb setter; Form raisers; Slip forms; Green cutters, Headerboardmen, Hubsetters, Aligners; Jackhammer operators; Jacking of pipe over 12 inches; Jackson and similar type Compactors; Kettlemen, Potmen and men applying asphalt, lay-Kold, creosote, lime, caustic and similar type materials; Lagging, sheeting, whaling, bracking, trench-jacking, hand-guided lagging hammer; Magnesite, Epoxyresin, fiberglass, and mastic workers (wet or dry); Pavement Breakers and spaders, including tool grinder; Pipelayers, Caulkers, banders, Pipewrappers, conduit layers, plastic pipelayers; Post hole diggers - air, gas and electric; Power broom sweepers; Power tampers of all types (except as shown in Group 2); Ram set gun and stud gun; Riprap-stonepaver and rock-slinger ,iclcuding placing of sacked concrete and/or sand (wet or dry); Rotary scarifier, multiple head concrete chipper; Davis trencher - 300 or similar type (and all small trenchers); Roto and Ditch Witch; Roto-tiller; Sandblasters, Potman, Gunman, Nozzleman; Signalling and Rigging; Tank Cleaners; Tree Climbers; Vibra-screed - Bull float in connection with laborers' work; Vibrators; Dri-pak-it machine; High pressure blow pipe (1½" or over, 100 lbs. pressure or over); Hydro Seeder and similar type; Laser Beam in connection with laborers' work

Group 1(a): Joy Drill Model TWM-2A; Gardener-Denver Model DH143 and similar type drills; Track Drillers; Jack Leg Drillers; Diamond Drillers; Wagon Drillers; Mechanical Drillers - all types regardless of type or method of power; Multiple unit drills; Blasters and Powdermen; All work of loading, placing and blasting of all powder and explosives of whatever type regardless of method used for such loading and placing; High Scalers (including drilling of same); Tree Topper; Bit Grinder

Group 1(b): Sewer Cleaners

Group 1(c): Burning and Welding

Group 1(d): Repair Trackmen and rod beds (cut and cover work of subway after the temporary cover has been placed)

Group 1(e): Laborers on General construction work on or in bell hole footings and shaft

LABORERS (Cont'd)

Group 1(f): Wire winding machine in connection with guniting or shotcrete - Aligner

Group 1(f)1: Wire winding machine in connection with guniting or shotcrete - Aligner helper

Group 1(g): Contra Costa County Only: Pipelayers, Caulkers, Banders, Pipewrappers, Conduit layers and Plastic pipelayers; Pressure pipe tester, no joint pipe and stripping of same, including repair of voids, Precast manhole setters, cast in palce, Manhole form setters

Group 2: Asphalt Shovelers; Cement dumpers and handling dry cement or gypsum; Choke-setter and Rigger (clearing work); Concrete Bucker Dumper and Chuteman; Concrete Chipping and Grinding; Concrete Laborers (wet or dry); Driller's Helper; Chuck Tender; Nozzleman, adductors; Hydraulic Monitor (over 100 lbs. pressure); Loading and unloading, carrying and handling of all rods and materials for use in reinforcing concrete construction; Pittsburgh Chipper, and similar type Brush Shredders; Sloper; Singlefoot, hand held, pneumatic tamper; All pneumatic, air, gas, and electric tools; Jacking of Pipe under 12 inches

Group 3: All cleanup work of debris, grounds and buildings including but not limited to street cleaners; Cleaning and washing windows; Construction laborers including bridge and general laborers; Dumpman, load spotter; Fire Watcher; Street Cleaners; Gardeners, Horticultural and landscape laborers; Jetting; Limbers; Brush Loaders; Pilers, maintenance landscape laborers on new construction; Maintenance, Repair Trackmen and Road beds; Streetcar and Railroad construction Track Laborers; Temporary air and water lines, Victaulic or similar; Tool room attendant; Fence Erectors; Guardrail Erectors; Pavement Markers (button setters)

LABORERS
(Gunnite)

Group 1: Nozzleman (including Gunman, Potman); Rodmen; Groundman

Group 2: Reboundman

Group 3: General Laborers

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	AREA 1	AREA 2				
Group 1:	$ 9.53	$11.14	$1.83*	$ 2.35	$1.15	.29
Group 2:	10.00	11.51	1.83*	2.35	1.15	.29
Group 3:	10.23	11.74	1.83*	2.35	1.15	.29
Group 4:	10.82	12.33	1.83*	2.35	1.15	.29
Group 5:	11.05	12.56	1.83*	2.35	1.15	.29
Group 6:	11.21	12.72	1.83*	2.35	1.15	.29
Group 7:	11.37	12.88	1.83*	2.35	1.15	.29
Group 8:	11.81	13.32	1.83*	2.35	1.15	.29
Group 9:	12.04	13.55	1.83*	2.35	1.15	.29
Group 10:	12.26	13.77	1.83*	2.35	1.15	.29
Group 10-A:	12.38	13.89	1.83*	2.35	1.15	.29
Group 11:	12.56	14.07	1.83*	2.35	1.15	.29
Group 11-A:	13.72	15.23	1.83*	2.35	1.15	.29
Group 11-B:	14.02	15.53	1.83*	2.35	1.15	.29
Group 11-C:	14.34	15.85	1.83*	2.35	1.15	.29

*Includes $.33 per hour to Pensioned Health and Welfare Fund.

POWER EQUIPMENT OPERATORS
(AREAS I and II)

Group 1: Assistant to Engineers (Brakeman; Fireman; Heavy Duty Repairman Helper; Oiler; Deckhand; Signalman; Switchman; Tar Pot Fireman); Partsman (Heavy Duty Repair shop parts room)

Group 2: Compressor Operator; Concrete Mixer (up to and including 1 yard); Conveyor Belt Operator (tunnel); Fireman Hot Plant; Hydraulic; Monitor; Mechanical Conveyor (handling building materials); Mixer Box Operator (concrete plant); Pump Operator; Spreader Boxman (with screeds); Tar Pot Fireman (power agitated)

Group 3: Box Operator (bunker); Helicopter Radioman (signalman); Motorman; Locomotive; Oiler; Ross Carrier (construction job site); Rotomist Operator; Screedman (except asphaltic concrete paving); Self-propelled, automatically applied concrete curing machine (on streets, highways, airports and canals); Trenching Machine (Maximum digging capacity 3 ft. depth); Tugger Hoist, single drum; Truck Crane Oiler

Group 4: Ballast Jack Tamper; Ballast Regulator; Ballast Tamper Multipurpose; Boxman (asphalt plant); Elevator Operator (inside); Fork Lift or Lumber Stacker (construction job site); Line Master; Lubrication and Service Engineer (mobile and grease rack); Material Hoist (1 drum); Shuttlecar; Tie Spacer; Towermobile

POWER EQUIPMENT OPERATORS (Cont'd)
(AREAS 1 and 2) (Cont'd)

Group 5: Compressor Operator (over 2); Concrete Mixers (over 2 yard); Concrete Pumps or Pumpcrete guns; Generators; Grouting Machine; Press-weld (air operated); Pumps (over 2); Welding Machines (powered other than by electricity)

Group 6: BLH Lima Road Pactor or similar; Boom truck or dual purpose A-frame truck; Concrete batch plants (wet or dry); Concrete saws (self-propelled unit) on streets, highways, airports and canals; Drilling and boring machinery, vertical and horizontal (not to apply to waterliners, wagon drills or jackhammers); Gradesetter, Grade checker (mechanical or other-wise); Highline cableway Signalman; Locomotives (steam or over 30 tons); Maginnis Internatal Full Slab Vibrator (on airports, highways, canals and warehouses); Mechanical finishers (concrete); (Clary, Johnson, Bidwell Bridge Deck or similar types); Mechanical Burn, Curb and/or Curb and gutter machine, concrete or asphalt: Portable crusher; Post driver (M-1500 and similar); Power jumbo operator (setting slip forms, etc. in tunnels); Roller; Screeedman (Barber-Greene and similar) (asphaltic concrete paving); Self-propelled compactor (single engine); Self-propelled Pipeline wrapping machine; Perault, CRC, or similar types); Slip forms pumps (lifting device for concrete forms); Small rubber tired tractor; Surface heater

Group 7: Concrete conveyor or concrete pump, truck or equipment mounted (boom length to apply); Cocrete conveyor, building site; Deck engineers; Dual drum mixer; Fuller Kenyon pump and similar types; Gantry rider (or similar); Hydrahammer (or similar); Material hoist (2 or more drums); Mechanical finishers or spreader machine (asphalt, Barber-Greene and similar); Mine or Shaft Hoist; Mixermobile; Pavement breaker with or without compressor combination; Pavement breaker, truck mounted with compressor combination; Pipe bending machine (pipelines only); Pipe cleaning machine (tractor propelled and supported); Pipe wrapping machine (tractor propelled and supported); Refrigeration plant; Roller operator (finish asphalt); Self-propelled boom type lifting device (center mount) (10 tons or less M.R.C.); Self-propelled elevating grade plane; Slusher operator; Small tractor (with boom); Soil tester; Truck type loader; Instrumentman

Group 8: Armor-Coater (or similar); Asphalt plant engineer; Cast-in-place pipe laying machine; Combination slusher and motor operator; Concrete batch plant (multiple units); Dozer; Heading shield operator; Heavy duty repairman and/or welder; Ken seal machine (or similar); Kolman loader; Loader (up to 2 yds.); Mechanical trench shield; Portable crushing and screening plants; Push cat; Rubber tired earth moving equipment (up to and including 45 cu. yds. "struck" m.r.c.); Euclids, T-Pulls, DW-10, 20, 21 and similar; Rubber tired dozer; Self-propelled compactor with dozer; Sheepfoot; Timber skidder (rubber tired or similar equipment); Tractor drawn scraper; Tractor trenching machine; Tribatch paver; Tunnel mole boring mahcine; Welder; Woods-mixer (and other similar pugmill equipment)

Group 9: Canal finger drain digger; Chacago boom; Combination mixer and compressor (gunite); Combination slurry mixer and/or cleaner; Highline cableway (5 tons and under); Lull Hi-lift or similar (20 ft. or over); Mucking machine (rubber tire, rail or track type); Tractor (with boom)(d-6 or larger and similar)

POWER EQUIPMENT OPERATORS (Cont'd)
(AREAS 1 and 2) (Cont'd)

Group 10: Boom-type backfilling machine; Bridge crane; Cary-lift or similar); Chemical grouting machine, truck mounted; Combination backhoe and loader (up to and including 1/2 cu. yd. m.r.c.); Derrick (2 operators required when swing engine remote from hoist); Derrick barges (except excavation work); Do-more Loader; Adams elegrader; Elevating grader; Heavy duty rotary drill rig (including caisson foundation work and Euclid loader and similar type; Robbins type drills); Koehring skooper (or similar); Lift slab machine; (Vagtborg and similar types); Loader (2 yds. up to and including 4 yds.); Locomotive 100 tons) (single or multiple units); Multiple engine earthmoving machine (Euclids, dozers, etc.)(no tandem scraper); Pre-stress wire wrapping machine; Reservoir-debris tug (self-propelled floating); Rubber-tired scraper, self-loading (paddle wheels, etc.); Shuttle car (reclaim station); Single engine scraper over 45 yds. soil stabilizer (P & H or equal); Sub-grader (gurries or other automatic type); Tractor, compressor drill combination; Track laying type earth moving machine (single engine with tandem scrapers); Train loading station; Trenching machine, multi-engine with sloping attachment, Jefco or similar; Vacuum cooling plant; Whirley crane (up to and including 25 tons); Chief of party

Group 10-A: Backhoe (hydraulic) (up to and including 1 cu. yd. m.r.c.); Backhoe (cable) (up to and including 1 cu. yd. m.r.c.); Combination Backhoe and loader over 3/4 cu. yd. m.r.c.); Continuous flight tie back auger (up to and including 1 cu. yd.)(crane attached); Cranes (not over 25 tons, Hammerhead and Gantry); Grade-alls (up to and including 1 cu. yd.); Power shovels, clamshells, draglines, (up to and including 1 cu. yd. m.r.c.); Power blade (single engine); Self-propelled boom-type lifting device (centermount)(over 10 tons); Rubber-tired scraper, self-loading (paddle wheel twin engine); CMI dual lane Auto grader SP30 or similar

Group 11: Automatic concrete slip form paver; Automatic railroad car dumper; Canal trimmer; Canal trimmer w/ditching attachments; Cranes (over 25 tons up to and including 125 tons); Continuous flight tie back auger over 1 cu. yd. (including crane); Drott travelift 650-A-1 or similar (45 tons or over); Euclid loader when controlled from the pullcat; Highline cableway (over 5 tons); Loader (over 4 yds. up to and including 12 cu. yds.); Miller formless M900 sloper paver or similar; Power blade (multi-engine); Power shovels, clamshells, draglines, backhoes, grade-alls (over 1 yd. and up to and including 7 cu. yds. m.r.c.); Tubber-tired earth moving machines (multiple propulsion power units and two or more scrapers)(up to and including 75 cu. yds. "struck" m.r.c.); Self-propelled compactor (with multiple propulsion power units); Single engine rubber-tired earthmoving machines (with tandem scrapers); Slip form paver (concrete or asphalt); Tandem cats; Tower cranes mobile including rail mounted; Trencher (pulling attached shield); Universal Liebher and Tower cranes (and similar types); Wheel excavator (up to and including 750 cu. yd. per hour); Whirley Crane (over 25 tons)

Group 11-A: Band wagons (in conjunction with wheel excavator); Cranes (over 125 tons); Loader (over 12 cu. yds.; up to and including 18 cu. yds.); Power shovels and draglines (over 7 cu. yds. m.r.c.); Rubber tired multi-purpose earth moving machines (2 units over 75 cu. yds. "struck" m.r.c.); Wheel excavator (over 750 cu. yds. per hour)

Group 11-B: Loader (over 18 cu. yds.)

Group 11-C: Operator of Helicopter (when used in erection work); Remote controlled Earthmoving equipment

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BULK CEMENT SPREADER (w/wo auger, under 4 yds. water level); Bus or Manhaul driver; Concrete pump machine; Concrete pump truck (when flat rack truck is used appropriate flat rack rate shall apply); Dump (under 4 yds. water level); Dumpcrete truck (under 4 yds. water level); Escort or pilot car driver; Nipper truck (when flat rack truck is used appropriate flat rack rate shall apply); Pickups; Skids (debris box, under 4 yds. water level); Team drivers; Trucks (dry per-batch concrete mix, under 4 yds. water level); Helper; Ware-housemen	$ 10.725	$ 1.395	.75	$1.00	
TEAMSTER Oiler and/or Greaser and/or Serivice man	10.80	1.385	.75	1.00	
BULK CEMENT SPREADER (w/wo auger, 4 yds. and under 6 yds. water level); Dump (4 yds. and under 6 yds. water level); Dumpcrete (4 yds. and under 6 yds. water level); Dumpster (4 yds. and under 6 yds. water level); Skids (debris box 4 yds. and under 6 yds. water level); Single unit flat rack (2 axle unit); Indus-trial Lift truck (mehcanical tail-gate); Trucks (dry pre-batch con-crete mix, 4 yds. and under 6 yds. water level)	10.82	1.395	.75	1.00	
JETTING RRUCK and WATER TRUCK (under 2,500 gallons)	10.835	1.395	.75	1.00	

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROAD OIL TRUCK OR BOOT Man	$ 10.845	$ 1.395	.75	$1.00	
LIFT JITNEYS, Fork Lift	10.855	1.395	.75	1.00	
TRANSIT MIX, AGITATOR (under 6 yds.)	10.875	1.395	.75	1.00	
FUEL AND/OR GREASE TRUCK Driver or Fuelman	10.89	1.395	.75	1.00	
TRUCK REPAIRMAN HELPER	10.895	1.395	.75	1.00	
VACUUM TRUCK under (3,500 gallons)	10.905	1.395	.75	1.00	
SCISSOR TRUCK: Single unit flat rack (3 axle unit); Industrial Lift Truck (mechanical tailgate); Small rubber tired tractor (when used within teamsters' jurisdiction)	10.92	1.395	.75	1.00	
JETTING TRUCK & WATER TRUCK (2,500 gals. under 4,000 gals.)	10.935	1.395	.75	1.00	
COMBINATION WINCH TRUCK WITH HOIST; Transit, Mix Agitator (6 yds. and under 8 yds.)	10.975	1.395	.75	1.00	
VACUUM TRUCK (3,500 gals. and under 5,500 gals.)	10.985	1.395	.75	1.00	
RUBBER-TIRED MUCK CAR (not self-loaded)	10.995	1.395	.75	1.00	

TRUCK DRIVERS: (cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BULK CEMENT SPREADER (W/wo auger, 6 yds. and under 8 yds. water level); Dump (6 yds. and under 8 yds. water level); Dumpcrete (6 yds. and under 8 yds. water level); Dumpster (6 yds. and under 8 yds. water level); Skids (debris box, 6 yds. and under 8 yds. water level); Trucks (dry pre-batch concrete mix, 6 yds. and under 8 yds. water level)	$ 11.02	$ 1.395	.75	$ 1.00	
A-FRAME, WINCH TRUCKS; Buggymobile; Jetting and water truck (4,000 gals. and under 5,000 gals); Rubber tired Jumbo	11.035	1.395	.75	1.00	
HEAVY DUTY TRANSPORT (high bed)	11.04	1.395	.75	1.00	
ROSS HYSTER and SIMILAR STRADDLE CARRIER	11.065	1.395	.75	1.00	
TRANSIT MIX AGITATOR (8 yds. through 10 yds.)	11.075	1.395	.75	1.00	
VACUUM TRUCK (5,500 gals. and under 7,500 gals.)	11.085	1.395	.75	1.00	
JETTING TRUCK & WATER TRUCK (5,000 gals. and under 7,000 gals.)	11.135	1.395	.75	1.00	
COMBINATION BOOTMAN and ROAD OILER	11.165	1.395	.75	1.00	
TRANSIT MIX AGITATOR (over 10 yds. through 12 yds.)	11.175	1.395	.75	1.00	

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BULK CEMENT SPREADER (w/wo Auger, 8 yds. and including 12 yds. water level); Dump (8 yds. and including 12 yds. water level); Dumpcrete (8 yds. and including 12 yds. water level); Self-propelled street sweeper with self-contained refuse bin; Skids (debris box, 8 yds. and including 12 yds. water level); Snow go and/or snow plow; Truck (dry pre-batch concrete mix, 8 yds. and including 12 yds. water level); Dumpster (8 yds. and including 12 yds. water level	$ 11.26	$ 1.395	.75	$1.00	
HEAVY DUTY TRANSPORT (gooseneck lowbed)	11.27	1.395	.75	1.00	
TRANSIT MIX AGITATOR (over 12 yds. through 14 yds.)	11.275	1.395	.75	1.00	
AMMONIA NITRATE DISTRIBUTOR DRIVER and Mixer; Bulk Cement Spreader (w/wo auger, over 12 yds. and including 18 yds. water level); Dump (over 12 yds. and including 18 yds. water level); Dumpcrete (over 12 yds. and including 18 yds. water level); Dumpster (over 12 yds. and including 18 yds. water level); Trucks (dry pre-batch concrete mix, over 12 yds. and including 18 yds. water level)	11.30	1.395	.75	1.00	
DOUBLE GOOSENECK (7 or more axles; Heavy duty transport tiller man	11.32	1.395	.75	1.00	
P.B. OR SIMILAR TYPE SELF-LOADING TRUCK	11.36	1.395	.75	1.00	
TRANSIT MIX AGITATOR (over 14 yds. through 16 yds.)	11.375	1.395	.75	1.00	

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BULK CEMENT SPREADER (w/wo auger, over 18 yds. and including 24 yds. water level); Combination dump and dump trailer; Dump (over 18 yds. and including 24 yds. water level); Dumpcrete (over 18 yds. and including 24 yds. water level); Dumpster (over 18 yds. and including 24 yds. water level); Skid (debris box, over 17 yds. and including 24 yds. water level); Transit mix agitator (over 12 yds. through 15 yds.); Trucks (dry pre-batch concrete mix, over 17 yds. and including 24 yds. water level)	$ 11.405	$ 1.395	.75	$1.00	
BULK CEMENT SPREADER (w/wo auger, over 24 yds. and including 35 yds. water level); Dump (over 24 yds. and including 35 yds. water level); Dumpcrete (over 24 yds. and including 35 yds. water level); Dumpster (over 24 yds. and including 35 yds. water level); DW 10's, 20's, 21's and other similar cat type, Terra Cobra, LeTourneapulls, Tournarocker, Euclid and similar type equipment when pulling fuel and/or grease tann trailers or other misc. trailers; Skids (debris box, over 24 yds. and including 35 yds. water level); Truck (dry pre-batch concrete mix, over 24 yds. and including 35 yds. water level)	11.46	1.395	.75	1.00	
TRUCK REPAIRMAN	11.395	1.395	.75	1.00	

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BULK CEMENT SPREADER (w/wo auger, over 35 yds. and including 50 yds. water level); Dump (over 35 yds. and including 50 yds. water level); Dumpcrete (over 35 yds. and including 50 yds. water level); Dumpster (over 35 yds. and including 50 yds. water level); Skids (debris box, over 35 yds. and including 50 yds. water level); Trucks (dry pre-batch concrete mix, over 35 yds. and including 50 yds. water level)	$ 11.61	$ 1.395	.75	$1.00	
DW 10's, 20's, 21's and other similar cat type, Terra Cobra, LeTourneau Pulls, Tournorocker, Euclid and similar type equipment whel pulling Aqua/Pak or water tank trailers	11.71	1.395	.75	1.00	
BULK CEMENT SPREADER w/wo auger, over 50 yds. and under 65 yds. water level); Dump (over 50 yds. and under 65 yds. water level); Dumpcrete (over 50 yds. and under 65 yds. water level); Dumpster (over 50 yds. and under 65 yds. water level); Helicopter pilot (when transporting men or materials); Skids (debris box, over 50 yds. and under 65 yds. water level); Trucks (dry pre-batch concrete mix, over 50 yds. and under 65 yds. water level)	11.76	1.395	.75	1.00	

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BULK CEMENT SPREADER (w/wo auger, over 65 yds. and including 80 yds. water level); Dump (65 yds. and including 80 yds. water level); Dumpcrete (over 65 yds. and including 80 yds. water level); Dumpster (65 yds. and including 80 yds. water level); Skids (debris box, 65 yds. and including 80 yds. water level); Trucks (dry pre-batch concrete mix, 65 yds. and including 80 yds. water level)	$ 11.91	$ 1.395	.75	$1.00	
BULK CEMENT SPREADER (w/wo auger, over 80 yds. and incuding 95 yds. water level); Dump (over 80 yds. and including 95 yds. water level); Dumpcrete (over 80 yds. and including 95 yds. water level); Dumpster (over 80 yds. and including 95 yds. water level); Skids (debris box, over 80 yds. and including 95 yds. water level) Trucks (dry pre-batch concrete mix over 80 yds. and including 95 yds. water level)	12.06	1.395	.75	1.00	

CALIFORNIA
AREA DEFINITIONS for
POWER EQUIPMENT OPERATORS

*AREA 1: All areas included in the description defined below which is based upon township and range lines of Areas 1 and 2.

Commencing in the Pacific Ocean on the extension of the Southerly line of Township 19S.
Thence Easterly along the Southerly line of Township 19S, crossing the Mt. Diablo meridian to the S.W. corner of township 19S, range 6E, Mt. Diablo base line and meridian,
Thence Southerly to the S.W. corner of township 20S, range 6E,
Thence Easterly to the S.W. corner of township 20S, range 13E,
Thence Southerly to the S.W. corner of township 21S, range 13E,
Thence Easterly to the S.W. corner of township 21S, range 17E,
Thence Southerly to the S.W. corner of township 22S, range 17E,
Thence Easterly to the S.E. corner of township 22S, range 17E,
Thence Southerly to the S.W. corner of township 23S, range 18E,
Thence Easterly to the S.E. corner of township 23S, range 18E,
Thence Southerly to the S.W. corner of township 24S, range 19E, falling on the Southerly line of Kings County, thence Easterly along the Southerly boundary of Kings County and the Southerly boundray of Tulare County, to the S.E. corner of township 24S, range 29E,
Thence Northerly to the N.E. corner of township 21S, range 29E,
Thence Westerly to the N.W. corner of township 21S, range 29E,
Thence Northerly to the N.E. corner of township 13S, range 28E,
Thence Westerly to the N.W. corner of township 13S, range 28E,
Thence Northerly to the N.E. corner of township 11S, range 27E,
Thence Westerly to the N.W. corner of township 11S, range 27E,
Thence Northerly to the N.E. corner of township 10S, range 26E,
Thence Westerly to the N.W. corner of township 10S, range 26E,
Thence Northerly to the N.E. corner of township 9S, range 25E,
Thence Westerly to the N.W. corner of township 9S, range 25E,
Thence Northerly to the N.E. corner of township 8S, range 24E,
Thence Westerly to the N.W. corner of township 8S, range 24E,
Thence Northerly to the N.E. corner of township 6S, range 23E,
Thence Westerly to the S.E. corner of township 5S, range 19E,
Thence Northerly to the N.E. corner of township 5S, range 19E,
Thence Westerly to the N.W. corner of township 5S, range 19E,
Thence Northerly to the N.E. corner of township 3S, range 18E,
Thence Westerly to the N.W. corner of township 3S, range 18E,
Thence Northerly to the N.E. corner of township 2S, range 17E,
Thence Westerly to the N.W. corner of township 2S, range 17E,
Thence Northerly crossing the Mt. Diablo baseline to the N.E. corner of township 2N, range 16E,
Thence Westerly to the N.W. corner of township 2N, range 16E,
Thence Northerly to the N.E. corner of township 3N, range 15E,
Thence Westerly to the N.W. corner of township 3N, range 15E,
Thence Northerly to the N.E. corner of township 4N, range 14E,

CALIFONRIA
AREA DEFINITONS For POWER EQUIPMENT OPERATORS (Cont'd)

*AREA 1: (Cont'd):

Thence Westerly to the N.W. corner of township 4N, range 14E,
Thence Northerly to the N.E. corner of township 5N, range 13E,
Thence Westerly to the N.E. corner of township 5N, range 13E,
Thence Northerly to the N.E. corner of township 10N, range 12E,
Thence Easterly to the S.E. corner of township 11N, range 14E,
Thence Northerly to the N.E. corner of township 11N, range 14E,
Thence Westerly to the N.E. corner of township 11N, range 10E,
Thence Northerly to the N.E. corner of township 15N, range 10E,
Thence Easterly to the S.E. corner of township 16N, range 11E,
Thence Northerly to the N.E. corner of township 16N, range 11E,
Thence Easterly to the S.E. corner of township 17N, range 14E,
Thence Southerly to the S.W. corner of township 14N, range 15E,
Thence Easterly to the S.E. corner of township 14N, range 15E,
Thence Southerly to the S.W. corner of township 13N, range 16E,
Thence Easterly to the S.E. corner of township 13N, range 16E,
Thence Southerly to the S.W. corner of township 12N, range 17E,
Thence Easterly along the Southern line of township 12N to the Eastern boundary of the State of California,
Thence Northwesterly, thence Northerly along the Eastern boundary of the State of California to the N.E. corner of township 17N, range 18E,
Thence Westerly to the N.W. corner of township 17N, range 11E,
Thence Northerly to the N.E. corner of township 20N, range 10E,
Thence Westerly to the N.W. corner of township 20N, range 10E,
Thence Northerly to the N.E. corner of township 21N, range 9E,
Thence Westerly to the N.W. corner of township 21N, range 9E,
Thence Northerly to the N.E. corner of township 22N, range 8E,
Thence Westerly to the N.W. corner of township 27N, range 8E,
Thence Northerly to the S.W. corner of township 27N, range 8E,
Thence Easterly to the S.E. corner of township 27N, range 8E,
Thence Easterly to the S. E. corner of township 27N, range 8E,
Thence Northerly to the N.E. corner of township 28N, range 8E,
Thence Westerly to the N.W. corner of township 28N, range 7E,
Thence Northerly to the N.E. corner of township 30N, range 6E,
Thence Westerly to the N.W. corner of township 30N, range 1E,
Thence Northerly along the Mt. Diablo meridian to the N.E. corner of township 34N, range 1W,
Thence Westerly to the N.W. corner of township 34N, range 6W,
Thence Southerly to the N.E. corner of township 32N, range 7W,
Thence Westerly to the N.W. corner of township 32N, range 7W,
Thence Southerly to the S.W. corner of township 30N, range 7W,
Thence Easterly to the S.E. corner of township 30N, range 7W,
Thence Southerly to the S.W. corner of township 16N, range 6W,
Thence Easterly to the S.E. corner of township 16N, range 6W,
Thence Southerly to the S.W. corner of township 14N, range 5W,
Thence Westerly to the S.E. corner of township 14N, range 7W,
Thence Northerly to the N.E. corner of township 14N, range 7W,
Thence Westerly to the N.W. corner of township 14N, range 7W,

CALIFORNIA
AREA DEFINITIONS for POWER EQUIPMENT OPERATORS (Cont'd)

*AREA 1: (Cont'd):

Thence Northerly to the N.E. corner of township 15N, range 8W,
Thence Westerly to the S.E. corner of township 16N, range 12W,
Thence Northerly to the N.E. corner of township 16N, range 12W,
Thence Westerly to the N.W. corner of township 16N, range 12W,
Thence Northerly to the N.E. corner of township 18N, range 12W,
Thence Westerly to the N.W. corner of township 18N, range 14W,
Thence Southerly to the S.W. corner of township 18N, range 14W,
Thence Easterly to the S.E. corner of township 18N, range 14W,
Thence Southerly to the S.W. corner of township 16N, range 13W,
Thence Westerly to the N.W. corner of township 15N, range 14W,
Thence Southerly to the S.W. corner of township 14N, range 14W,
Thence Easterly to the S.E. corner of township 14N, range 14W,
Thence Southerly to the S.W. corner of township 13N, range 13W,
Thence Easterly to the S.E. corner of township 13N, range 13W,
Thence Southerly to the S.W. corner of township 11N, range 12W,
Thence Easterly to the S.E. corner of township 11N, range 12W,
Thence Southerly along the Eastern line of range 12W to the Pacific Ocean excluding that portion of Northern California within Santa Clara County included within the folloiwng line:
Commencing at the N.W. corner of township 6S, range 3E, Mt. Diablo baseline and Meridian:
Thence in a Southerly direction to the S.W. corner of township 7S, range 3E,
Thence in a Easterly direction to the S.E. corner of township 7S, range 4E,
Thence in a Northerly direction to the N.E. corner of township 6S, range 4E,
Thence in a Westerly direction to the N.W. corner of township 6S, range 3E, to the point of beginning which portion is a part of Area 2.
AREA 1 also includes that portion of Northern California within the following lines:
Commencing in the Pacific Ocean on an extension of the Southerly line of township 2N, Humboldt baseline and meridian:
Thence Easterly along the Southerly line of township 2N, to the S.W. corner of township 2N, range 1W,
Thence Southerly to the S.W. corner of township 1N, range 1W,
Thence Easterly along the Humboldt baseline to the S.W. corner of township 1N, range 2E,
Thence Southerly to the S.W. corner of township 2S, range 2E,
Thence Easterly to the S.E. corner of township 2S, range 2E,
Thence Southerly to the S.W. corner of township 4S, range 3E,
Thence Easterly to the S.E. corner of township 4S, range 3E,
Thence Northerly to the N.E. corner of township 2S, range 3E,
Thence Westerly to the N.W. corner of township 2S, range 3E,

CALIFORNIA
AREA DEFINITIONS FOR POWER EQUIPMENT OPERATORS (Cont'd)

*AREA 1: (Cont'd):

Thence northerly crossing the Humboldt baseline to the S.W. corner of township 1N, range 3E,
Thence Easterly along the Humboldt baseline to the S.E. corner of township 1N, range 3E,
Thence Northerly to the N.E. corner of township 9N, range 3E,
Thence Westerly to the N.W. corner of township 9N, range 2E,
Thence Northerly to the N.E. corner of township 10N, range 1E,
Thence Westerly along the Northerly line to township 10N, into the Pacific Ocean.
AREA 1 also includes that portion of Northern California included within the following line:
Commencing at the Northerly boundary of the State of California at the N.W. corner of township 48N, range 7W, Mt. Diablo baseline and meridian:
Thence Southerly to the S.W. corner of township 44N, range 7W,
Thence Easterly to the S.E. corner of township 44N, range 7W,
Tehnce Southerly to the S.W. corner of township 43N, range 6W,
Thence Easterly to the S.E. corner of township 43N, ragne 5W,
Thence Northerly to the N.E. corner of township 48N, range 5W, on the Northerly boundary of the State of California,
Thence Westerly along the Northerly boundary of the State of California to the point of beginning.

**AREA 2: All areas not included within AREA 1 as defined.

STATE: California

COUNTIES: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba

DECISION NUMBER: CA78-5107
DATE: Date of Publication
Supersedes Decision No. CA78-5101 dated May 26, 1978, in 43 FR 22892
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 and dredging.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 13.00	.95	$ 1.27	$2.00	.07
BOILERMAKERS	13.175	.775	1.00	.50	.02
BRICKLAYERS; Stonemasons:					
Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Siskiyou, Solano, Sonoma, and Trinity Counties	11.67	1.50	1.10	1.00	.05
Alameda and Contra Costa Cos.	13.50	1.50	1.25		.05
Fresno, Kings, Madera, Mariposa and Merced Counties	12.05	.95	1.00		
Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Sutter, Tehama, Yolo, and Yuba Counties	12.50	1.03	1.21		.25
Monterey and Santa Cruz Cos.	13.80	1.22	1.33		
San Benito and Santa Clara Cos.	13.50	1.50	1.25		.05
Alpine, Amador, Calaveras, San Joaquin, Stanislaus and Tuolumne Counties	11.70	1.00	1.30	1.00	
Tulare County	12.65	1.00	1.00		.07

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICK TENDERS:					
Alpine, Amador, El Dorado, Nevada, Placer, Sacramento, Sierra and Yolo Counties	$ 9.30	$1.00	$ 1.70		
San Francisco and San Mateo Counties	10.00	.65	.80		
Fresno, Kings, Madera and Tulare Counties	10.05	1.25	1.70		
Calaveras and San Joaquin Counties	10.68	1.30	1.75		
CARPENTERS:					
Carpenters	12.70	1.57$	1.81	1.00	.09
Hardwood Floor Layers; Power Saw Operators; Saw Filers; Shinglers; Steel Scaffold Erectors and/or Steel Shoring Erectors	12.85	1.57$	1.81	1.00	.09
Millwrights	13.20	1.57$	1.81	1.00	.09
Piledrivermen, bridge, wharf and dock builders	12.23	.84	1.26	.75	.04
CEMENT MASONS:					
Cement Masons	10.50	1.30	1.68	1.65	.05
Mastic; Magnesite; All Composition Masons	10.75	1.30	1.68	1.65	.05
Men working from swinging or slip form scaffolds	10.75	1.30	1.68	1.65	.05
DRYWALL INSTALLERS	11.97	1.35	1.71	1.00	.07
ELECTRICIANS:					
Alameda County					
Electricians, Cable Splicers	13.91	1.30	3%+1.65		.069
Amador, Cousa, Sacramento, Sutter, Yolo, Yuba and those portions of Alpine, El Dorado, Nevada, Placer and Sierra Counties West of the Sierra Mountain Watershed					
Electricians	14.89	.95	3%+.85		.045
Cable Splicers	16.38	.95	3%+.85		.045
Tunnels:					
Electricians	15.02	.95	3%+.85		.045
Cable Splicers	17.52	.95	3%+.85		.045

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
Lake Tahoe Area					
Electricians	$ 14.33	.84	3%+1.07		.08
Cable Splicers	15.66	.84	3%+1.07		.08
Butte, Glenn, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama and Trinity Counties					
Electricians	12.62	1.12	3%+.905		.04
Cable Splicers	13.88	1.12	3%+.905		.04
Tunnel:					
Electricians; Cable Splicers' Helpers	13.25	1.12	3%+.905		.04
Cable Splicers	14.54	1.12	3%+.905		.04
Calaveras and San Joaquin Counties					
Electricians; Technicians	14.35	1.02	3%+1.63		1/4%
Cable Splicers	16.14	1.02	3%+1.63		1/4%
Contra Costa County					
Electricians	15.20	.70	3%+1.00		
Cable Splicers	16.70	.70	3%+1.00		
Del Norte and Humboldt Counties					
Electricians	11.50	1.10	3%+2.80		.04
Cable Splicers	12.42	1.10	3%+2.80		.04
Fresno, Kings, Madera and Tulare Counties					
Electricians	13.76	.95	3%+1.15		.05
Cable Splicers	15.14	.95	3%+1.15		.05
Lake, Marin, Mendocino and Sonoma Counties					
Electricians	13.15	1.11	3%+.30		.02
Cable Splicers	14.50	1.11	3%+.30		.02
Mariposa, Merced, Stanislaus and Tuolumne Counties					
Electricians	12.73	.94	3%+1.50		1/4%
Cable Splicers	14.00	.94	3%+1.50		1/4%
Monterey County					
Electricians	13.62	1.15	3%+3.41		.08
Cable Splicers	15.05	1.15	3%+3.41		.08
Napa and Solano Counties					
Electricians	12.91	1.08	3%+1.10		.04
Cable Splicers	13.42	1.08	3%+1.10		.04

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
San Benito, Santa Clara and Santa Cruz Counties					
Electricians	$ 13.80	.92	3%+2.10		.05
Cable Splicers	15.53	.92	3%+2.10		.05
San Francisco County					
Electricians	15.585	1.04	3%+.90		.06
Cable Splicers	17.53	1.04	3%+.90		.06
San Mateo County					
Electricians	14.89	1.25	3%+1.75		.03
ELEVATOR CONSTRUCTORS	14.82	.745	.56	a	.025
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.56	a	.025
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
GLAZIERS:					
Alameda, Contra Costa, Lake, Marin, Mendocino, (Southern half of County from North of Ft. Bragg), Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, (S.W. from east of Fairfield) and Sonoma Counties	11.79	1.00	1.41		.02
Alpine, Amador, Butte, Calaveras, El Dorado, Mariposa, Merced, (North of the City of Livingston), Modoc, Nevada, Placer, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Tuolumne, Yolo and Yuba Cos.	10.886	.58	1.50		
Fresno, Kings, Madera and Tulare Counties and the remaining portions of Merced County	10.12	.94	1.04	.615	.05
IRONWORKERS:					
Fence Erectors	11.00	1.29	2.47	1.65	.07
Reinforcing	12.00	1.29	2.47	1.65	.07
Ornamental; Structural	12.00	1.29	2.47	1.65	.07
LATHERS:					
Alameda and Contra Costa Counties	12.00	1.10	1.71		.03

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS: (Cont'd)					
Butte, Colusa, Glenn, Humboldt, Lake (that portionof County from Lakeport up to County Line), Nevada, Placer, Plumas, Shasta, Sierra, Tehama and Trinity Counties	11.00	.66	.50		.01
Calaveras and San Joaquin Counties	11.30	.68	.55		.01
Lake (from City of Lakeport down to County Line), Marin, Mendocino and Sonoma Counties	9.01	.87	.85	1.00	1/8¢
Monterey and Santa Cruz Counties	11.30	.68	.55		.01
San Francisco and N½ of San Mateo County	13.07	.66	2.00		.02
San Benito and Santa Clara Cos.	12.69	.98	1.75		
Fresno, Kings, Madera and Tulare Counties	12.13	.70	.70		
Mariposa, Merced, Stanislaus and Tuolumne Counties	10.75				.01
Amador, El Dorado, sacramento and Yolo Counties	11.02	.67	2.25	1.50	.02
Southern half of San Mateo Co.	10.03	.32	1.00		
LINE CONSTRUCTION:					
Contra Costa County					
Groundmen	11.40	.70	3%+1.00		
Line Equipment Operators	13.68	.70	3%+1.00		
Linemen	15.20	.70	3%+1.00		
Cable Splicers	16.70	.70	3%+1.00		
Del Norte, Modoc and Siskiyou Counties					
Tree trimmer helper; Groundman	8.24	.45	3%	.10	1/2%
Head groundman; Headgroundman (Chipper); Powdermen; Jackhammermen	8.76	.45	3%	.10	1/2%
Line Equipment Men	10.02	.45	3%	.10	1/2%
Linemen Polesprayer; Heavy Line Equipment Men; Certified Lineman; Welder	11.63	.45	3%	.10	1/2%
Tree Trimmer	10.50	.45	3%	.10	1/2%
Cable Splicers; Leadman; Pole Sprayer	12.88	.45	3%	.10	1/2%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION: (Cont'd)					
Fresno, Kings, Madera and Tulare Counties					
Groundmen	$ 12.74	.75	3%+.95		.05
Linemenl; Line Equipment Operators	13.56	.75	3%+.95		.05
Cable Splicers	14.92	.75	3%+.95		.05
Calaveras and San Joaquin Cos.					
Groundmen	10.35	.96	3%+1.49		.01
Line Equipment Operators	12.42	.96	3%+1.49		.01
Linemen	13.80	.96	3%+1.49		.01
Cable Splicers	15.53	.96	3%+1.49		.01
Mariposa, Merced, Stanislaus and Tuolumne Counties					
Linemen	9.83	.62	1%		1%
Cable Splicers	10.81	.62	1%		1%
Monterey County					
Groundmen	10.28	1.15	3%+3.41		.06
Linemen; Technicians	13.70	1.15	3%+3.41		.06
Cable Splicers	15.14	1.15	3%+3.41		.06
Napa and Solano Counties					
Linemen	12.07	.68	3%+1.10		.04
Cable Splicers	13.58	.68	3%+1.10		.04
Butte, Glenn, Lassen, Plumas, Shasta, Tehama and Trinity Counties					
Groundmen	9.58	.87	1%+.705		.02
Linemen; Equipment Operators	11.98	.87	1%+.705		.02
Cable Splicers	13.18	.87	1%+.705		.02
Alameda County					
Groundmen	9.68	1.05	3%+1.15		.03
Linemen	12.91	1.05	3%+1.15		.03
Line Equipment Operators	11.62	1.05	3%+1.15		.03
Amador, Colusa, Sacramento, Sutter, Yolo, Yuba and those portions of Alpine, El Dorado, Nevada, Placer and Sierra Counties West of the Main Sierra Mountain Watershed					
Groundmen	8.97	.73	1%+.75		.045
Linemen	11.21	.73	1%+.75		.045
Cable Splicers	12.33	.73	1%+.75		.045

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION: (Cont'd)					
Lake, Marin, Mendocino and Sonoma Counties					
Groundman	$ 10.52	$ 1.11	3%+.80		.02
Line Equipment Operators	11.84	1.11	3%+.80		.02
Linemen	13.15	1.11	3%+.80		.02
Cable Splicers	14.50	1.11	3%+.80		.02
San Mateo County					
Groundman A	12.10	1.16	3%+1.25		.03
Groundman B	9.25	1.16	3%+1.25		.03
Line Equipment Operators	12.81	1.16	3%+1.25		.03
Linemen	14.23	1.16	3%+1.25		.03
Cable Splicers	16.01	1.16	3%+1.25		.03
Humboldt County					
Groundmen	9.20	1.10	3%+2.80		.04
Linemen	11.50	1.10	3%+2.80		.04
Cable Splicers	12.42	1.10	3%+2.80		.04
San Francisco County					
Groundmen	13.25	1.04	3%+.90		.06
Linemen; Technicians	15.585	1.04	3%+.90		.06
Cable Splicers	17.53	1.04	3%+.90		.06
San Benito, Santa Clara, and Santa Cruz Counties					
Groundmen	11.65	1.02	3%+2.10		.04
Linemen; Line Equipment Operators	13.70	1.02	3%+2.10		.04
Cable Splicers	15.41	1.02	3%+2.10		.04
MARBLE SETTERS	11.64	1.50	1.10	1.03	
PAINTERS:					
Alpine, Amador, Calaveras and San Joaquin Counties					
Brush	10.71	.85	2.34	1.11	
Spray; Sheetrock Taper; Swing Stage; Scaffold; Sandblaster Structural Steel	11.11	.85	2.34	1.11	
Fresno, Kings, Madera and Tulare Counties					
Brush; Tapers	11.12	.41	.20		
Spray; Structural Steel	11.37	.41	.10		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Mariposa, Merced, Stanislaus and Tuolumne Counties					
Brush	$ 9.60	.70	.45	.75	.02
Swing Stage; Paperhangers; Bosun Chain; Steam Cleaning; Water Blasting	9.85	.70	.45	.75	.02
Spray; Sandblasting	10.10	.70	.45	.75	.02
Monterey, San Benito, San Mateo, Santa Clara and Santa Cruz Counties (excluding portions of Counties in the the Lake Area)					
Brush	12.74	1.10	1.50	.80	.06
Spray	12.99	1.10	1.50	.80	.06
Tapers	13.29	1.10	1.50	.80	.06
Lake Tahoe Area					
Brush	10.95	.70	.75		
Spray; Structural Steel; Tapers	11.20	.70	.75		
Lake, Marin, Mendocino, San Francisco and Sonoma Cos.					
Brush	12.18	1.10	1.50	.80	.06
Spray	12.68	1.10	1.50	.80	.06
Tapers	12.98	1.10	1.50	.80	.06
Butte, Colusa, Glenn, Lassen, (excluding the extreme SE Corner), Modoc, Plumas, Shasta, Siskiyou, Sutter, Tehama, Trinity and Yuba Counties					
Brush; Pot Tenders; Rollers	8.75	.60	.40		
Spray; Sandblaster; Structural Steel; Swing Stage; Tapers	9.25	.60	.40		
Lassen County (that portion that lies Eastward of Hwy. #395, Northward to and including Honey Lake)					
Brush	10.95	.70	.75		
Spray; Structural Steel; Tapers	11.20	.70	.75		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Alameda, Contra Costa, El Dorado, Napa, Nevada, Placer, and Yolo Counties (excluding portions of Counties in the Lake Tahoe Area)					
Brush	$ 12.31	$ 1.10	$ 1.50	.80	.06
Spray	12.81	1.10	1.50	.80	.06
Tapers	13.11	1.10	1.50	.80	.06
Del Norte and Humboldt Counties					
Brush	7.55	.60	.20	.80	
Spray; Sandblasters; Structural Steel; Swing Stage; Tapers; Paperhangers	7.80	.60	.20	.80	
Parking Lot Striping Work and/or Highway Markers:					
Fresno, Kings and Tulare Counties					
Traffic Delineating Device applicator	9.37	.55	.40	b	
Wheel Stop Installer; Traffic Surface Sandblaster; Striper	8.98	.55	.40	b	
Helper (wheel stop installer, traffic surface sandblaster, striper)	7.08	.55	.40	b	
Slurry Seal Operation:					
Mixer Operator	8.98	.55	.40	b	
Squeegee Man	7.98	.55	.40	b	
Applicator Operator	7.08	.55	.40	b	
Shuttleman	6.90	.55	.40	b	
Top Man	6.08	.55	.40	b	
Remaining Counties					
Traffic Delineating Device Applicator; Wheel Stop Installer; Traffic Surface Sandblaster	9.37	.55	.40	b	
Helper (traffic delineating device applicator, wheel stop installer, traffic surface sandblaster)	7.97	.55	.40	b	
Striper	10.47	.55	.40	b	
Helper (striper)	8.47	.55	.40	b	
Slurry Seal Operation:					
Mixer Operator	9.37	.55	.40	b	
Squeegee Man	8.87	.55	.40	b	
Applicator Operator	7.97	.55	.40	b	
Shuttleman	6.90	.55	.40	b	
Top Man	6.47	.55	.40	b	

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS:					
Alameda and Contra costa Cos.	$ 10.10	.745	$ 1.05		.03
San Mateo County	7.72	.48	.90	1.50	.025
Butte, Colusa, Glenn, Lassen (Southeastern half of Lassen County), Plumas, Sierra, Sutter, and Yuba Counties	9.79	.56	1.00		
Monterey County	12.31	1.00	.35		.01
Fresno, Kings, Madera and Tulare Counties	9.24	.90	1.50	1.11	
Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen (SE¼), Nevada, Placer, Plumas, Sacramento, San Joaquin, Sierra, Sutter, Yolo and Yuba Counties	11.59	.71	1.50		.01
San Francisco County	12.33	1.00	2.25		.03
Del Norte, Humboldt, Lassen (Northwestern half), Marin, Modoc, Napa, Shasta, Siskiyou, Solano, Sonoma, Tehama and Trinity Counties	10.65	.98	.80	1.25	.01
Mariposa, Merced, Stanislaus and Tuolumne Counties	9.05	.90	1.55	1.20	
PLASTERERS' TENDERS:					
Alameda and Contra Costa Counties	8.87	.60	1.10		
Fresno, Kings and Madera Counties	10.44	1.25	1.70		
San Francisco and San Mateo Cos.	10.65	1.25	1.40	1.25	
Alpine, Amador, El Dorado, Nevada, Placer, Sacramento, Sierra and Yolo Counties	7.455	.455	1.40	.80	
Calaveras and San Joaquin Cos.	10.71	1.25	1.70	1.00	
Marin County	8.32	.80	1.40	.90	
Monterey County	10.40	1.25	1.70		
San Benito, Santa Clara and Santa Cruz Counties	11.16	1.30	1.35		
Solano County	10.85	1.25	1.70	1.10	
Napa County	11.40	1.25		1.10	
PLUMBERS:					
Alameda County	14.40	1.25	2.29		.16
Contra Costa County	14.37	1.25	2.29		.26

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS; Steamfitters:					
Amador (Northern half of County), Sacramento, Yolo, El Dorado, Nevada, Placer and Sierra Counties (excluding Lake Tahoe Area)	$ 13.84	$ 1.32	$ 1.81		.14
Lake Tahoe Area	10.99	.58	.60	1.95	.10
Marin, Mendocino, San Francisco and Sonoma Counties	14.45	2.205	2.15	1.35	.20
Alpine, Amador (southern portion of County), Butte, Calaveras, Colusa, Fresno, Glenn, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Monterey, Plumas, San Joaquin, Santa Cruz, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne and Yuba Counties	13.50	1.44	2.00		.10
Lake, Napa and Solano Counties	14.44	1.25	2.29		.22
Del Norte and Humboldt Counties	12.29	.86	1.22		.05
San Benito and Santa Clara Cos.	15.15	1.08	1.77		.14
San Mateo County	14.41	1.14	2.30		.25
ROOFERS:					
Alameda and Contra Costa Cos. Roofers	11.44	1.17	1.35	.95	.09
Mastic Workers; Kettlemen (2 kettles w/o pumps)	11.69	1.17	1.35	.90	.09
Bitumastic; Enamelers; Pipe-wrappers; Coal Tar built up	12.44	1.17	1.35	.95	.09
Alpine, Calaveras, Mariposa, Merced, San Joaquin, Stanislaus and Tuolumne, Counties Roofers (slate, tile composition and built up)	12.15	1.04	1.00		
Felt Machine Operator	12.30	1.04	1.00		
Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Placer, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity and Yuba Counties Roofers	11.89	.93	.40		.06
Fresno, Kings, Madera and Tulare Counties Roofers	11.65	.60	.90		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS: (Cont'd)					
Lake, Marin, Mendocino, Napa, Solano and Sonoma Counties					
Roofers	$ 10.98	$ 1.10	$ 1.20	$1.63	.09
Mastic Workers; Kettlemen (2 kettles w/o pumps)	11.23	1.10	1.20	1.63	.09
Bitumastic; Enamelers; Pipe-wrappers; Coal tap pitch	11.98	1.10	1.20	1.63	.09
Del Norte and Humboldt Counties					
Roofers	10.32	.40	.75	.35	
Monterey and Santa Cruz Counties					
Roofers	10.40	1.40	1.15		
San Francisco and San Mateo Cos.					
Roofers	11.58	.60	1.20	1.15	.09
Mastic Workers and Kettlemen (2 kettles) without pumps	11.83	.60	1.20	1.15	.09
Bitumastic; Enamelers; Pipewrappers; Coal tar	12.58	.60	1.20	1.15	.09
Amador, Sacramento and Yolo Counties					
Roofers (slate, tile and Composition)	11.15	1.04	1.10	1.00	.10
Enameler and Pitch	12.65	1.04	1.10	1.00	.10
San Benito and Santa Clara Counties					
Roofers; Kettle (1 kettle)	11.10	.85	1.29		
SHEET METAL WORKERS:					
Alameda, Contra Costa, Napa and Solano Counties	11.94	.73	2.11	12%	.04
Alpine, Calaveras and San Joaquin Counties	11.77	.66	1.40		.02
Amador, Butte, Colusa, El Dorado, Glenn, Plumas, Sacramento, Shasta, Sierra, Sutter, Tehama, Yolo and Yuba Counties	11.68	.73	1.65		.11
Mariposa, Merced, Stanislaus and Tuolumne Counties	11.86	.73	1.68		.11
Monterey, San Benito, Santa Clara and Santa Cruz Counties	11.15	3%+.66	1.845	1.115	

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS: (Cont'd)					
Del Norte, Humboldt, Lake, Marin, Mendocino, San Francisco, Sonoma and Trinity Counties	$ 12.50	.66	$ 1.74		.12
San Mateo County	13.54	.73	1.84		.10
Modoc and Siskiyou Counties	10.285	.52	.28		.035
Fresno, Kings, Madera and Tulare Counties	11.98	.73	1.22		.14
SOFT FLOOR LAYERS:					
Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen (excluding Honey Lake Area), Merced (east of San Joaquin River), Plumas, San Joaquin, Shasta, Sacramento, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo and Yuba Counties and those portions of El Dorado, Nevada, Placer and Sierra Counties (excluding Lake Tahoe Area)	11.73	.89	1.30	1.25	.10
Honey Lake Area and Lake Tahoe Area	10.05	.70	.20		
Alameda, Contra Costa, Lake, Marin, Mendocino, Merced, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa, Clara, Santa Cruz, Solano and Sonoma Counties	13.10	.60	1.00	c	.10
SPRINKLER FITTERS:					
Almeda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma Counties	16.26	.65	1.45		.09
Remaining Counties	15.52	.75	1.05		.08
STEAMFITTERS:					
Alameda and Contra Costa Cos.	13.30	1.25	2.29		.165
Del Norte and Humboldt Cos.	11.64	.61	1.12		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TERRAZZO WORKERS:					
Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Siskiyou, Solano, Sonoma and Trinity Counties	$ 11.67	$ 1.50	$ 1.10	$1.00	
Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Sutter, Tehama, Yolo and Yuba Counties	11.80	.80	.90		.25
TILE SETTERS:					
Alameda, Butte, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Mateo, Santa Clara, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba Counties	13.00	1.08	1.30	1.58	.115
Alpine, Amador, Calaveras, San Joaquin, Stanislaus and Tuolumne Counties	9.92	1.00	.70	2.00	
Fresno, Kings, Madera, Mariposa, Merced and Tulare Counties	11.25	1.00	.50		
Monterey and Santa Cruz Cos.	13.41	1.09	1.18		
TILE SETTERS' HELPERS:					
Alameda, Contra costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara Santa Cruz, Siskiyou, Sonoma, Solano and Trinity Counties	9.27	.69	.51	10%	
Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Stanislaus, Sutter, Tehama, Yolo and Yuba Counties	7.78	.80	1.20		

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for over 5 years' service, and 6% of basic hourly rate for 6 months to 5 years as Vacation Pay Credit. Six Paid Holidays: A through F.

b. Employer contributes $.23 per hour to Holiday Fund plus $.14 per hour to Vacation Fund for the first year of employment; 1 year byt less than 5 years $.34 per hour to Vacation Fund; 5 years but less than 10 years $.44 per hour to Vacation Fund; over 10 years $.54 per hour to Vacation Fund.

c. Employer contrubires $.90 per hour for the first five years of employment; after five years $1.05 per hour to Vacation and Holiday Benefits.

LABORERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 9.475	$ 1.30	$ 1.75	$1.10	.10
Group 1(a)	9.70	1.30	1.75	1.10	.10
Group 1(b)	9.975	1.30	1.75	1.10	.10
Group 1(C)	9.525	1.30	1.75	1.10	.10
Group 1(d)	9.475	1.30	1.75	1.10	.10
Group 1(e)	10.025	1.30	1.75	1.10	.10
Group 1(f)	10.06	1.30	1.75	1.10	.10
Group 1(f)1	9.075	1.30	1.75	1.10	.10
Group 1(g)	9.675	1.30	1.75	1.10	.10
Group 2	9.325	1.30	1.75	1.10	.10
Group 3	9.225	1.30	1.75	1.10	.10
LABORERS (Gunnite)					
Group 1	9.935	1.30	1.75	1.10	.10
Group 2	9.345	1.30	1.75	1.10	.10
Group 3	9.225	1.30	1.75	1.10	.10
LABORERS (Tunnel and Shaft Work)					
Group 1	11.045	1.30	1.75	1.10	.10
Group 2	10.735	1.30	1.75	1.10	.10
Group 3	10.555	1.30	1.75	1.10	.10
Group 4	10.435	1.30	1.75	1.10	.10
LABORERS (Wrecking Work)					
Group 1	9.475	1.30	1.75	1.10	.10
Group 2	9.125	1.30	1.75	1.10	.10
Group 3	9.225	1.30	1.75	1.10	.10

LABORERS

Group 1: Asphalt Ironers and Rakers; Barko, wacker and similar type tampers; Buggymobile; Chainsaw, faller, logloader and bucker; Compactors of all types; Concrete and magnesite mixer 1/2 yard and under; Concrete pan work; Concrete saw; Concrete sander; Cribber and/or shoring; Cut granite curb setter; Form raisers; Slip forms; Green cutters, Headerboardmen, Hubsetters, Aligners; Jackhammer operators; Jacking of pipe over 12 inches; Jackson and similar type Compactors; Kettlemen, Potmen and men applying asphalt, lay-Kold, creosote, lime, caustic and similar type materials; Lagging, sheeting, whaling, bracking, trench-jacking, hand-guided lagging hammer; Magnesite, Epoxyresin, fiberglass, and mastic workers (wet or dry); Pavement Breakers and spaders, including tool grinder; Pipelayers, Caulkers, banders, Pipewrappers, conduit layers, plastic pipelayers; Post hole diggers - air, gas and electric; Power broom sweepers; Power tampers of all types (except as shown in Group 2); Ram set gun and stud gun; Riprap-stonepaver and rock-slinger, including placing of sacked concrete and/or sand (wet or dry); Rotary Scarifier, multiple head concrete chipper; Davis trencher - 300 or similar type (and all small trenchers); Roto and ditch witch; Roto-tiller; Sandblasters, Potman, Gunman, Nozzleman; Signalling and Rigging; Tank Cleaners; Tree Climbers; Vibra-screed - Bull float in connection with laborers' work; Vibrators; Dri-pak-it machine; High pressure blow pipe (1½" or over, 100 lbs. pressure or over); Hydro Seeder and similar type; Laser Beam in connection with laborers' work

Group 1(a): Joy Drill Model TWM-2A; Gardener-Denver Model DH143 and similar type drills; Track Drillers; Jack Leg Drillers; Diamond Drillers; Wagon Drillers; Mechanical Drillers - all types regardless of type or method of power; Multiple unit drills; Blasters and Powdermen; All work of loading, placing and blasting of all powder and explosives of whatever type regardless of method used for such loading and placing; High Scalers (including drilling of same); Tree Topper; Bit Grinder

Group 1(b): Sewer Cleaners

Group 1(c): Burning and Welding

Group 1(d): Repair trackmen and road beds (cut and cover work of subway after the temporary cover has been placed)

Group 1(e): Laborers on general construction work on or in bell hole footings and shaft

Group 1(f): Wire winding machine in connection with guniting or shot-crete - Aligner

LABORERS (Cont'd)

Group 1(f)1: Wire winding machine in connection with guniting or shot-crete - Aligner helper

Group 1(g): Contra Costa County Only: PIpelayers, caulkers, banders, pipewrappers, conduit layers and plastic pipelayers; Pressure pipe tester, no joint pipe and stripping of same, including repair of voids, precast manhole setters, cast in place, manhole form setters

Group 2: Asphalt Shovelers; Cement dumpers and handling dry cement or gypsum; Choke-setter and Rigger (clearing work); Concrete Bucker Dumper and Chuteman; Concrete Chipping and Grinding; Concrete Laborers (wet or dry); Driller's Helper; Chuck Tender; Nozzleman, adductors; Hydraulic Monitor (over 100 lbs. pressure); Loading and unloading, carrying and handling of all rods and materials for use in reinforcing concrete construction; Pittsburgh Chipper, and similar type Brush Shredders; Sloper; Singlefoot, hand held, pneumatic tamper; All pneumatic, air, gas, and electric tools; Jacking of Pipe under 12 inches

Group 3: All cleanup work of debris, grounds and buildings including but not limited to street cleaners; Cleaning and washing windows; Construction laborers including bridge and general laborers; Dumpman, load spotter; Fire Watcher; Street Cleaners; Gardeners, Horticultural and landscape laborers; Jetting; Limbers; Brush Loaders; Pilers, maintenance landscape laborers on new construction; Maintenance, Repair Trackmen and Road beds; Streetcar and Railroad construction Track Laborers; Temporary air and water lines, Victaulic or similar; Tool room attendant; Fence Erectors; Guardrail Erectors; Pavement Markers (button setters)

LABORERS (Cont'd)
(Gunite)

Group 1: Nozzleman (including Gunman, Potman); Rodmen; Groundman

Group 2: Reboundman

Group 3: General Laborers

LABORERS
(Tunnel and Shaft Work)

Group 1: Diamond Driller; Groundman; Gunite and Shotcrete Nozzlemen; Rodmen; Shaft Work and Raise (below actual or excavated ground level)

Group 2: Bit Grinder; Blaster; Drillers, Powdermen-heading; Cherry Pickermen - where car is lifted; Concrete Finisher in Tunnel; Concrete Screed Man; Grout Pumpman and Potman; Gunite and Shotcrete Gunmen and Potmen; Headermen; High Pressure Nozzleman; Miners - Tunnel, including top and bottom man on shaft and raise work; Nipper Nozzleman on slick line; Sandblaster-potman (work assignment interchangeable) Steel Form Riasers and Setters; Timberman, Retimberman - wood or steel or substitute materials therefore; Tugger

Group 3: Cabletender; Chucktender; Powderman - primer house; Vibratormen, Pavement Breakers

Group 4: Bull Gang - Muckers, Trackmen; Concrete Crew - includes rodding and spreading; Dumpmen (any method); Grout Crew; Reboundmen; Swamper

LABORERS
(Wrecking Work)

Group 1: Skilled Wrecker (removing and salvaging of sash, windows, doors, plumbing and electric fixtures)

Group 2: Semi-skilled Wrecker (salvaging or other building materials)

Group 3: General Laborer (includes all cleanup work, loading, lumber, loading and burning of debris)

POWER EQUIPMENT OPERATORS: DREDGING SCHEDULE I CLAMSHELL AND DIPPER DREDGING (New Construction)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1:					
Bargeman; Deckhand; Fireman; Oiler					
Area 1	$8.29	$1.07*	$1.78	.80	.14
Area 2	9.13	1.07*	1.78	.80	.14
Area 3	9.41	1.07*	1.78	.80	.14
Area 4	9.69	1.07*	1.78	.80	.14
Group 2:					
Deck Engineers; Deck Mate					
Area 1	9.91	1.07*	1.78	.80	.14
Area 2	10.76	1.07*	1.78	.80	.14
Area 3	11.03	1.07*	1.78	.80	.14
Area 4	11.31	1.07*	1.78	.80	.14
Group					
Group 3:					
Welder; Mechanic Welder; Watch Engineer					
Area 1	10.31	1.07*	1.78	.80	.14
Area 2	11.15	1.07*	1.78	.80	.14
Area 3	11.43	1.07*	1.78	.80	.14
Area 4	11.71	1.07*	1.78	.80	.14
Group 4:					
Clamshell Operator (up to and including 7 cu. yds. m.r.c.) (Long Boom Pay)					
Area 1	11.01	1.07*	1.78	.80	.14
Area 2	11.86	1.07*	1.78	.80	.14
Area 3	12.14	1.07*	1.78	.80	.14
Area 4	12.41	1.07*	1.78	.80	.14
Group 4-A:					
Clamshell Operator (over 7 cu. yds. m.r.c.)Long Boom Pay)					
Area 1	12.08	1.07*	1.78	.80	.14
Area 2	12.93	1.07*	1.78	.80	.14
Area 3	13.31	1.07*	1.78	.80	.14
Area 4	13.48	1.07*	1.78	.80	.14

POWER EQUIPMENT OPERATORS (Cont'd) DREDGING SCHEDULE II HYDRAULIC SUCTION DREDGING AND ALL OTHER CLAMSHELL AND DIPPER DREDGING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group A-1:					
Bargeman; Deckhand; Leveehand; Fireman; Oiler					
Area 1	$8.27	$1.07*	$1.78	.80	.14
Area 2	9.11	1.07*	1.78	.80	.14
Area 3	9.39	1.07*	1.78	.80	.14
Area 4	9.67	1.07*	1.78	.80	.14
Group A-2:					
Winchman (stern winch on dredge); Deckmate; Deck Engineer					
Area 1	9.20	1.07*	1.78	.80	.14
Area 2	10.05	1.07*	1.78	.80	.14
Area 3	10.30	1.07*	1.78	.80	.14
Area 4	10.60	1.07*	1.78	.80	.14
Group A-3:					
Watch Engineer; Welder; Welder Mechanic					
Area 1	9.85	1.07*	1.78	.80	.14
Area 2	10.70	1.07*	1.78	.80	.14
Area 3	10.98	1.07*	1.78	.80	.14
Area 4	11.25	1.07*	1.78	.80	.14
Group A-4:					
Leverman; Clamshell Operator					
Area 1	10.69	1.07*	1.78	.80	.14
Area 2	11.54	1.07*	1.78	.80	.14
Area 3	11.82	1.07*	1.78	.80	.14
Area 4	12.09	1.07*	1.78	.80	.14

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TOW BOATS (Dredging): Work on slef-propelled vessels (except skiffs powered by out-board motors) engaged in towing and shifting of barges, vessels and water borne craft or in the transporation by water of personnel, materials, equipment and supplies					
Deckhand/Mechanics					
Area 1	$ 9.55	.89	$ 1.61	$1.18	
Area 2	10.05	.89	1.61	1.18	
Area 3	10.30	.89	1.61	1.18	
Area 4	10.55	.89	1.61	1.18	
Operator Mechanic/Watch Engineer					
Area 1	10.75	.96	1.36	1.15	
Area 2	11.25	.96	1.36	1.15	
Area 3	11.50	.96	1.36	1.15	
Area 4	11.75	.96	1.36	1.15	
Building and Heavy Construction Tow Boats (work on self-propelled vessels) Boat Operators	10.75	.96	1.36	1.15	

FOOTNOTES:

Four Centers designated: City Halls of Oakland, San Francisco, Sacramento and Stockton, California

Area 1 - Up to 20 road miles from said Centers.
Area 2 - More than 20 road miles to and including 80 road miles from said Centers.
Area 3 - Outside of 30 road miles from said Centers.
Area 4 - An area extending 25 road miles from shoreline of Lake Tahoe.

*Includes $.20 per hour to Pensioned Health and Welfare Fund.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS (Piledriving)					
Group 1	$ 9.58	$1.83*	$ 2.35	$1.15	.29
Group 1(a)	10.05	1.83*	2.35	1.15	.29
Group 1(b)	10.28	1.83*	2.35	1.15	.29
Group 2	10.28	1.83*	2.35	1.15	.29
Group 2(a)	11.10	1.83*	2.35	1.15	.29
Group 3	11.42	1.83*	2.35	1.15	.29
Group 3(a)	11.86	1.83*	2.35	1.15	.29
Group 4	12.43	1.83*	2.35	1.15	.29
Group 5	12.61	1.83*	2.35	1.15	.29

*Includes $.33 per hour to Pensioned Health and Welfare Fund.

POWER EQUIPMENT OPERATORS
(Piledriving)

Group 1: Assistant to Engineer (Fireman, Oiler, Deckhand)

Group 1-A: Compressor Operator

Group 1-B: Truck Crane Oiler

Group 2: Tugger Hoist (hoisting material only)

Group 2-A: Compressor Operator (2-7); Generator (100 K.W. or over); Pimp (2-7); Welding Machine (2-7) (Powered other than by electricity)

Group 3: Deck Engineer; Fork Lift; A-Frame; Self-propelled Boom type lifting device

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 (w/o boiler) up to and including 1 cu. yd.; Truck Crane, up to and inlcuding 25 tons hoisting material only

Group 5: Operator of Diesel or gasoline powered Crane Piledriver (w/boiler) over 1 cu. yd.; Operator of Crane (w/steam, flash boiler, pump or compressor attached); Operator of steam powered Crawler or Universal type driver (Raymond or similar type); Truck Crane, over 25 tons hoisting material or performing piledriving work

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	AREA 1	AREA 2				
Group 1:	$ 9.93	$11.14	$ 1.83*	$ 2.35	$1.15	.29
Group 2:	10.00	11.51	1.83*	2.35	1.15	.29
Group 3:	10.23	11.74	1.83*	2.35	1.15	.29
Group 4:	10.82	12.33	1.83*	2.35	1.15	.29
Group 5:	11.05	12.56	1.83*	2.35	1.15	.29
Group 6:	11.21	12.72	1.83*	2.35	1.15	.29
Group 7:	11.27	12.88	1.83*	2.35	1.15	.29
Group 8:	11.81	13.32	1.83*	2.35	1.15	.29
Group 9:	12.04	13.55	1.83*	2.35	1.15	.29
Group 10:	12.26	13.77	1.83*	2.35	1.15	.29
Group 10-A:	12.38	12.89	1.83*	2.35	1.15	.29
Group 11:	12.56	14.07	1.83*	2.35	1.15	.29
Group 11-A:	13.72	15.23	1.83*	2.35	1.15	.29
Group 11-B:	14.02	15.53	1.83*	2.35	1.15	.29
Group 11-C:	14.34	15.85	1.83*	2.35	1.15	.29

*Includes $.33 per hour to Pensioned Health and Welfare Fund.

POWER EQUIPMENT OPERATORS
(AREAS I and II)

Group 1: Assistants to Engineers (Brakeman; Fireman; Heavy Duty Repairman Helper; Oiler; Deckhand; Signalman; Switchman; Tar Pot Fireman); Partsman (Heavy Duty Repair shop parts room)

Group 2: Compressor Operator; Concrete Mixer (up to and including 1 yard); Conveyor Belt Operator (tunnel); Fireman Hot Plant; Hydraulic; Monitor; Mechanical Conveyor (handling building materials); Mixer Box Operator (concrete plant); Pump Operator; Spreader Boxman (with screeds); Tar Pot Fireman (power agitated)

Group 3: Box Operator (bunker); Helicopter Radioman (signalman): Motorman; Locomotive; Oiler; Ross Carrier (construction job site); Rotomist Operator; Screedman (except asphaltic concrete paving); Self-propelled, automatically applied concrete curing machine (on streets, highways, airports and canals); Trenching Machine (Maximum digging capacity 3 ft. depth); Tugger Hoist, single drum; Truck Crane Oiler

POWER EQUIPMENT OPERATORS (Cont'd)
AREAS I and II (Cont'd)

Group 4: Ballast Jack Tamper; Ballast Regulator; Ballast Tamper Multi-purpose; Boxman (asphalt plant); Elevator Operator (inside); Fork Lift or Lumber Stacker (construction job site); Line Master; Lubrication and Service Engineer (mobile and grease rack); Material Hoist (1 drum); Shuttle-car; Tie Spacer; Towermobile

Group 5: Compressor Operator (over 2); Concrete Mixers (over 2 yards); Concrete Pumps or Pumpcrete guns; Generators; Grouting Machine; Press-weld (air operated); Pumps (over 2); Welding Machines (powered other than by electricity)

Group 6: BLH Lima Road Pactor or similar; Boom Truck or Dual Purpose A-Frame Truck; Concrete Batch Plants (wet or dry); Concrete Saws (self-propelled unit) on streets, highways, airports and canals; Drilling and Boring Machinery, vertical and horizontal (not to apply to waterliners, wagon drills or jackhammers); Gradesetter, Grade Checker (mechanical or other-wise); Highline Cableway Signalman; Locomotives (steam or over 30 tons); Maginnis Internal Full Slab Vibrator (on airports, highways, canals and warehouses); Mechanical Finishers (concrete) (Clary, Johnson, Bidwell Bridge Deck or similar types); Mechanical Burm, Curb and/or Curb and Gutter Machine, concrete or asphalt; Portable Crusher; Post Driver (M-1500 and similar); Power Jumbo Operator (setting slip forms, etc. in tunnels); Roller; Screedman (Barber-Greene and similar) (asphaltic concrete paving); Self-propelled Compactor (single engine); Self-propelled Pipeline Wrapping Machine, Perault, CRC, or similar types); Slip Forms Pumps (lifting device for concrete forms); Small Rubber Tired Tractor; Surface Heater

Group 7: Concrete Conveyor or Concrete Pump, Truck or Equipment mounted (boom length to apply); Concrete Conveyor, building site; Deck Engineers; Dual Drum Mixer; Fuller Kenyon Pump and similar types; Gantry Rider (or similar); Hydra-hammer (or similar); Material Hoist (2 or more drums); Mechanical Finishers or Spreader Machine (asphalt, barber-Greene and similar); Mine or Shaft Hoist; Mixermobile; Pavement Breaker with or without Compressor Combination; Pavement Breaker, truck mounted with Compressor Combination; Pipe Bending Machine (pipelines only); Pipe Cleaning Machine (tractor propelled and supported); Pipe Wrapping Machine (tractor propelled and supported); Refrigeration Plant; Roller Operator (finish asphalt); Self-propelled boom type lifting device (center mount) (10 tons or less M.R.C.); Self-propelled Elevating Grade Plane; Slusher Operator; Small Trucator (with boom) Soil Tester; Truck type Loader

POWER EQUIPMENT OPERATORS (Cont'd)
AREAS I and II (Cont'd)

Group 8: Armor-Coater (or similar); Asphalt Plant Engineer; Cast-in-place Pipe Laying Machine; Combination Slusher and Motor Operator; Concrete Batch Plant (multiple units); Dozer; Heading Shield Operator; Heavy Duty Repairman and/or Welder; Ken Seal Machine (or similar); Kolman Loader; Loader (up to 2 yds.); Mechanical Trench Shield; Portable Crushing and Screening Plants; Push Cat; Rubber Tried Earth-moving Equipment (up to and including 45 cu. yds. "struck" m.r.c.) Euclids, T-Pulls, DW-10, 20, 21, and similar; Rubber Tired Dozer; Self-propelled Compactor with Dozer; Sheepfoot; Timber Skidder (rubber tired or similar equipment); Tractor drawn Scraper; Tractor Trenching Machine; Tri-batch Paver; Tunnel Mole Boring Machine; Welder; Woods-mixer (and other similar Pugmill equipment)

Group 9: Canal Finger Drain Digger; Chicago Boom; Combination Mixer and Compressor (gunite); Combination Slurry Mixer and/or Cleaner; Highline Cableway (5 tons and under); Lull Hi-Lift or similar (20 ft. or over); Mucking Machine (rubber tire, rail or track type); Tractor (with boom) (D-6 or larger and similar)

Group 10: Boom-type Backfilling Machine; Bridge Crane; Cary-lift (or similar); Chemical Grouting Machine, truck mounted; Combination Backhoe and Loader (up to and including 1/2 cu. yd. m.r.c.); Derrick (2 operators required when swing engine remote from hoist); Derrick Barges (except excavation work); Do-Mor Loader; Adams Elegrader; Elevating Grader; Heavy Duty Rotary Drill Rig (including Caisson Foundation work and Euclid Loader and similar type; Robbins type drills); Koehring Skooper (or similar); Lift Slab Machine; (Vagtborg and similar types); Loader (2 yds. up to and including 4 yds.): Locomotive 100 tons) (single or multiple units); Multiple Engine Earthmoving Machine (Euclids, Dozers, etc.) (no tandem scraper); Prestress Wire Wrapping Machine; Reservoir-Debris Tug (self-propelled floating); Rubber-tired Scraper, self-loading (paddle wheels, etc.); Shuttle Car (reclaim station); Single engine scraper over 45 yds. Soil stabilizer (P & H or equal); Sub-grader (Gurrier or other automatic type); Tractor, compressor drill combination; Track laying type earth moving machine (single engine with tandem scrapers); Train loading station; Trenching machine, multi-engine with sloping attachment, Jefco or similar; Vacuum cooling plant; Whirley crane (up to and including 25 tons); Chief of party

Group 10-A: Backhoe (hydraulic) (up to and including 1 cu. yd. m.r.c.); Backhoe (cable) (up to and including 1 cu. yd. m.r.c.); Combination Backhoe and loader over 3/4 cu. yd. m.r.c.); Continuous flight tie back auger (up to and including 1 cu. yd.)(crane attached); Cranes (not over 25 tons, Hammerhead and Gantry); Grade-alls (up to and including 1 cu. yd.); Power shovels, clamshells, draglines, (up to and including 1 cu. yd. m.r.c.); Power blade (single engine); Self-propelled boom-type lifting device (centermount)(over 10 tons); Rubber-tired scraper, self-loading (paddle wheel twin engine); CMI dual lane Auto grader SP30 or similar

POWER EQUIPMENT OPERATORS (Cont'd)
(AREAS I and II) (Cont'd)

Group 11: Automatic Concrete Slip Form Paver; Automatic Railroad Car Dumper; Canal Finger Drain Backfiller; Canal Trimmer; Canal Trimmer w/ditching attachments; Cranes (over 25 tons up to and including 125 tons); Continuous Flight Tie Back Auger over 1 cu. yd. (including crane); Drott Travelift 650-A-1 or similar (45 tons or over); Highline Cableway (over 5 tons); Loader (over 4 yds., up to and including 12 cu. yds.); Power Blade (multi-engine); Power Shovels, Clamshells, Draglines, Backhoes, Grade-alls (over 1 yd. and up to and including 7 cu. yds. m.r.c); Rubber-tired earth moving machines (multiple propulsion power units and two or more scrapers (up to and including 75 cu. yds. "struck" m.r.c.); Self-propelled Compactor (with multiple propulsion power units); Single engine Rubber-tired Earthmoving Machines (with tandem scrapers); Slip form Paver (concrete or asphalt); Tandem Cats; Tower Cranes Mobile; Trencher (pulling attached shield); Universal Liebher and Tower Cranes (and similar types); Wheel Excavator (up to and including 750 cu. yd. per hour); Whirley Crane (over 25 tons)

Group 11-A: Band Wagons (in conjunction with Wheel Excavator); Cranes (over 125 tons); Loader (over 12 cu. yds.; up to and including 18 cu. yds.); Power Shovels and Draglines (over 7 cu. yds., m.r.c.); Rubber Tired Multi-purpose Earth Moving Machines (2 units over 75 cu. yds. "struck" m.r.c.); Wheel Excavator (over 750 cu. yds. per hour)

Group 11-B: Loader (over 18 cu. yds.)

Group 11-C: Operator of Helicopter (when used in erection work); Remote Controlled Earthmoving Equipment

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
BULK CEMENT SPREADER (w/wo auger, under 4 yds. water level); Bus or Manhaul driver; Concrete pump machine; Concrete pump truck (when flat rack truck is used appropriate flat rack rate shall apply); Dump (under 4 yds. water level); Dumpcrete truck (under 4 yds. water level); Dumpster (under 4 yds. water level); Escort or pilot car driver; Nipper truck (when flat rack truck is used appropriate flat rack rate shall apply); Pickups; Skids (debris box, under 4 yds. water level); Team drivers; Trucks (dry per-batch concrete mix, under 4 yds. water level); Helper; Warehousemen	$ 10.725	$ 1.395	.75	$1.00	
TEAMSTER Oiler and/or Greaser and/or Service man	10.80	1.395	.75	1.00	
BULK CEMENT SPREADER (w/wo auger, 4 yds. and under 6 yds. water level); Dump (4 yds. and under 6 yds. water level); Dumpcrete (4 yds. and under 6 yds. water level); Dumpster (4 yds. and under 6 yds. water level); Skids (debris box 4 yds. and under 6 yds. water level); Single unit flat rack (2 axle unit); Industrial Lift Truck (mechanical tailgate) Trucks (dry pre-batch concrete mix, 4 yds. and under 6 yds. water level)	10.82	1.395	.75	1.00	
JETTING TRUCK and WATER TRUCK (under 2,500 gallons)	10.825	1.395	.75	1.00	

TRUCK DRIVERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROAD OIL TRUCKS OR BOOT MAN	$ 10.845	$ 1.395	.75	$1.00	
LIFT JITNEYS, Fork Lift	10.855	1.395	.75	1.00	
TRANSIT MIX, AGITATOR (under 6 yds.)	10.875	1.395	.75	1.00	
FUEL AND/OR GREASE TRUCK Driver or Fuelman	10.89	1.395	.75	1.00	
TRUCK REPAIRMAN HELPER	10.895	1.395	.75	1.00	
VACUUM TRUCK under (3,500 gallons)	10.905	1.395	.75	1.00	
SCISSOR TRUCK: Single unit flat rack (3 axle unit); Industrial Lift Truck (mechanical tailgate); Small rubber tired tractor (when used within teamsters' jurisdiction)	10.92	1.395	.75	1.00	
JETTING TRUCK & WATER TRUCK (2,500 gals. under 4,000 gals.)	10.935	1.395	.75	1.00	
COMBINATION WINCH TRUCK WITH HOIST; Transit, Mix Agitator (6 yds. and under 8 yds.)	10.975	1.395	.75	1.00	
VACUUM TRUCK (3,500 gals. and under 5,500 gals.)	10.985	1.395	.75	1.00	
RUBBER-TIRED MUCK CAR (not self-loaded)	10.995	1.395	.75	1.00	

TRUCK DRIVERS: (cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BULK CEMENT SPREADER (W/wo auger, 6 yds. and under 8 yds. water level); Dump (6 yds. and under 8 yds. water level); Dumpcrete (6 yds. and under 8 yds. water level); Dumpster (6 yds. and under 8 yds. water level); Skids (debris box, 6 yds. and under 8 yds. water level); Trucks (dry pre-batch concrete mix, 6 yds. and under 8 yds. water level)	$ 11.02	$ 1.395	.75	$ 1.00	
A-FRAME, WINCH TRUCKS; Buggymobile; Jetting and water truck (4,000 gals. and under 5,000 gals); Rubber tired Jumbo	11.035	1.395	.75	1.00	
HEAVY DUTY TRANSPORT (high bed)	11.04	1.395	.75	1.00	
ROSS HYSTER and SIMILAR STRADDLE CARRIER	11.065	1.395	.75	1.00	
TRANSIT MIX AGITATOR (8 yds. through 10 yds.)	11.075	1.395	.75	1.00	
VACUUM TRUCK (5,500 gals. and under 7,500 gals.)	11.085	1.395	.75	1.00	
JETTING TRUCK & WATER TRUCK (5,000 gals. and under 7,000 gals.)	11.135	1.395	.75	1.00	
COMBINATION BOOTMAN and ROAD OILER	11.165	1.395	.75	1.00	
TRANSIT MIX AGITATOR (over 10 yds. through 12 yds.)	11.175	1.395	.75	1.00	

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BULK CEMENT SPREADER (w/wo Auger, 8 yds. and including 12 yds. water level); Dump (8 yds. and including 12 yds. water level); Dumpcrete (8 yds. and including 12 yds. water level); Self-propelled street sweeper with self-contained refuse bin; Skids (debris box, 8 yds. and including 12 yds. water level); Snow go and/or snow plow; Truck (dry pre-batch concrete mix, 8 yds. and including 12 yds. water level); Dumpster (8 yds. and including 12 yds. water level	$ 11.26	$ 1.395	.75	$1.00	
HEAVY DUTY TRANSPORT (gooseneck lowbed)	11.27	1.395	.75	1.00	
TRANSIT MIX AGITATOR (over 12 yds. through 17 yds.)	11.275	1.395	.75	1.00	
AMMONIA NITRATE DISTRIBUTOR DRIVER and Mixer; Bulk Cement Spreader (w/wo auger, over 12 yds. and including 18 yds. water level); Dump (over 12 yds. and including 18 yds. water level); Dumpcrete (over 12 yds. and including 18 yds. water level); Dumpster (over 12 yds. and including 18 yds. water level); Trucks (dry pre-batch concrete mix, over 12 yds. and including 18 yds. water level)	11.30	1.395	.75	1.00	
DOUBLE GOOSENECK (7 or more axles); Heavy duty transport tiller man	11.32	1.395	.75	1.00	
P.B. OR SIMILAR TYPE SELF-LOADING TRUCK	11.36	1.395	.75	1.00	
TRANSIT MIX AGITATOR (over 14 yds. through 16 yds.)	11.375	1.395	.75	1.00	

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BULK CEMENT SPREADER (w/wo auger, over 18 yds. and including 24 yds. water level); Combination dump and dump trailer; Dump (over 18 yds. and including 24 yds. water level); Dumpcrete (over 18 yds. and including 24 yds. water level); Dumpster (over 18 yds. and including 24 yds. water level); Skid (debris box, over 17 yds. and including 24 yds. water level); Transit mix agitator (over 12 yds. through 16 yds.); Trucks (dry pre-batch concrete mix, over 17 yds. and including 24 yds. water level)	$11.405	$ 1.395	.75	$1.00	
BULK CEMENT SPREADER (w/wo auger, over 14 yds. and including 35 yds. water level; Dump (over 24 yds. and including 35 yds. water level); Dumpcrete (over 24 yds. and including 35 yds. water level); Dumpster (over 24 yds. and including 35 yds. water level; DW 10's, 20's, 21's and other similar cat type, Terra Cobra, LeTourneapulls, Tournarocker, Euclid and similar type equipment when pulling fuel and/or grease tank trailers or other misc. trailers; Skids (debris box, over 24 yds. and including 35 yds. water level); Truck (dry pre-batch concrete mix, over 24 yds. and including 35 yds. water level)	11.46	1.395	.75	1.00	
TRUCK REPAIRMAN	11.395	1.395	.75	1.00	

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BULK CEMENT SPREADER (w/wo auger, over 35 yds. and including 50 yds. water level); Dump (over 35 yds. and including 50 yds. water level); Dumpcrete (over 35 yds. and including 50 yds. water level); Dumpster (over 35 yds. and including 50 yds. water level); Skids (debris box, over 35 yds. and including 50 yds. water level); Trucks (dry pre-batch concrete mix, over 35 yds. and including 50 yds. water level)	$ 11.61	$ 1.395	.75	$1.00	
DW 10's, 20's, 21's and other similar cat type, Terra Cobra, LeTourneau Pulls, Tournorocker, Euclid and similar type equipment whel pulling Aqua/Pak or water tank trailers	11.71	1.395	.75	1.00	
BULK CEMENT SPREADER w/wo auger, over 50 yds. and under 65 yds. water level); Dump (over 50 yds. and under 65 yds. water level); Dumpcrete (over 50 yds. and under 65 yds. water level); Dumpster (over 50 yds. and under 65 yds. water level); Helicopter pilot (when transporting men or materials); Skids (debris box, over 50 yds. and under 65 yds. water level); Trucks (dry pre-batch concrete mix, over 50 yds. and under 65 yds. water level)	11.76	1.395	.75	1.00	

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BULK CEMENT SPREADER (w/wo auger, over 65 yds. and including 80 yds. water level); Dump (65 yds. and including 80yds. water level); Dumpcrete (ober 65 yds. and including 80 yds. water level); Dumpster (65 yds. and including 80 yds. water level); Skids (debris box, 65 yds. and incuding 80 yds. water level); Trucks (dry pre-batch concrete mix, 65 yds. and including 80 yds. water level)	$ 11.91	$ 1.395	.75	$1.00	
BULK CEMENT SPREADER (w/wo auger, over 80 yds. and incuding 95 yds. water level); Dump (over 80 yds. and including 95 yds. water level); Dumpcrete (over 80 yds. and including 95 yds. water level); Dumpster (over 80 yds. and including 95 yds. water level); Skids (debris box, over 80 yds. and including 95 yds. water level); Trucks (dry pre-batch concrete mix over 80 yds. and incuding 95 yds. water level)	12.06	1.395	.75	1.00	

CALIFONRIA
AREA DEFINITIONS for
POWER EQUIPMENT OPERATORS

**AREA 1: All areas included in the description defined below which is based upon township and range lines of Areas 1 and 2.

Commencing in the Pacific Ocean on the extension of the Southerly line of Township 19S.
Thence Easterly along the Soutehrly line of Township 19S, crossing the Mt. Diablo meridian to the S.W. corner of township 19S, range 6E, Mt. Diablo base line and meridian,
Thence Southerly to the S.W. corner of township 20S, range 6E,
Thence Easterly to the S.W. corner of township 20S, range 13E,
Thence Southerly to the S.W. corner of township 21S, range 13E,
Thence Easterly to the S.W. corner of township 21S, range 17E,
Thence Southerly to the S.W. corner of township 22S, range 17E,
Thence Easterly to the S.E. corner of township 22S, range 17E,
Thence Southerly to the S.W. corner of township 23S, range 18E,
Thence Easterly to the S.E. corner of township 23S, range 18E,
Thence Southefly to the S.W. corner of township 24S, range 19E, falling on the Southerly line of Kings County, thence Easterly along the Southerly boundary of Kings County and the Southerly boundray of Tulare County, to the S.E. corner of township 24S, range 29E,
Thence Northerly to the N.E. corner of township 21S, range 29E,
Thence Westerly to the N.W. corner of township 21S, range 29E,
Thence Northerly to the N.E. corner of township 13S, range 28E,
Thence Westerly to the N.W. corner of township 13S, range 28E,
Thence Northerly to the N.E. corner of township 11S, range 27E,
Thence Westerly to the N.W. corner of township 11S, range 27E,
Thence Northerly to the N.E. corner of township 10S, range 26E,
Thence Westerly to the N.W. corner of township 10S, range 26E,
Thence Northelry to the N.E. corner of township 9S, range 25E,
Thence Westerly to the N.W. corner of township 9S, range 25E,
Thence Northerly to the N.E. corner of township 8S, range 24E,
Thence Westerly to the N.W. corner of township 8S, range 24E,
Thence Northerly to the N.E. corner of township 6S, range 23E,
Thence Westerly to the S.E. corner of township 5S, range 19E,
Thence Northerly to the N.E. corner of township 5S, range 19E,
Thence Westerly to the N.W. corner of township 5S, range 19E,
Thence Northerly to the N.E. corner of township 3S, range 18E,
Thence Westerly to the N.W. corner of township 3S, range 18E,
Thence Northerly to the N.E. corner of township 2S, range 17E,
Thence Westerly to the N.W. corner of township 2S, range 17E,
Thence Northerly crossing the Mt. Diablo baseline to the N.E. corner of township 2N, range 16E,
Thence Westerly to the N.W. corner of township 2N, range 16E,
Thence Northerly to the N.E. corner of twonship 3N, range 15E,
Rhence Westerly to the N.W. corner of township 3N, range 15E,
Thence Northerly to the N.E. corner of township 4N, range 14E,

CALIFONRIA
AREA DEFINITONS For POWER EQUIPMENT OPERATORS (Cont'd)

*AREA 1: (Cont'd):

Thence Westerly to the N.W. corner of township 4N, range 14E,
Thence Northerly to the N.E. corner of township 5N, range 13E,
Thence Westerly to the N.E. corne rof townshi 5N, range 13E,
Thence Northerly to the N.E. corner of township 10N, range 12E,
Thence Easterly to the S.E. corner of township 11N, range 14E,
Thence Northerly to the N.E. corner of township 11N, range 14E,
Thence Westerly to the N.E. corner of township 11N, range 10E,
Thence Northerly to the N.E. corner of township 15N, range 10E,
Thence Easterly to the S.E. corner of township 16N, range 11E,
Thence Northerly to the N.E. corner of township 16N, range 11E,
Thence Easterly to the S.E. corner of township 17N, range 14E,
Thence Southerly to the S.W. corner of township 14N, range 15E,
Thence Easterly to the S.E. corner of township 14N, range 15E,
Thence Southerly to the S.W. corner of township 13N, range 16E,
Thence Easterly to the S.E. corner of township 13N, range 16E,
Thence Southerly to the S.W. corner of township 12N, range 17E,
Thence Easterly along the Southern line of township 12N to the Eastern boundary of the State of California,
Thence Northwesterly, thence Northerly along the Eastern boundary of the State of California to the N.E. corner of township 17N, range 18E,
Thence Westerly to the N.W. corner of township 17N, range 11E,
Thence Northerly to the N.E. corner of township 20N, range 10E,
Thence Westerly to the N.W. corner of township 20N, range 10E,
Thence Northerly to the N.E. corner of township 21N, range 9E,
Thence Westerly to the N.W. corner of township 21N, range 9E,
Thence Northerly to the N.E. corner of township 22N, range 8E,
Thence Westerly to the N.W. corner of township 27N, range 8E,
Thence Northerly to the S.W. corner of township 27N, range 8E,
Thence Easterly to the S.E. corner of township 27N, range 8E,
Thence Easterly to the S. E. corner of township 27N, range 8E,
Thence Northerly to the N.E. corner of township 28N, range 8E,
Thence Westerly to the N.W. corner of township 28N, range 7E,
Thence Northerly to the N.E. corner of township 30N, range 6E,
Thence Westerly to the N.W. corner of township 30N, range 1E,
Thence Northerly along the Mt. Diablo meridian to the N.E. corner of township 34N, range 1W,
Thence Westerly to the N.W. corner of township 34N, range 6W,
Thence Southerly to the N.E. corner of township 32N, range 7W,
Thence Westerly to the N.W. corner of township 32N, range 7W,
Thence Southerly to the S.W. corner of township 30N, range 7W,
Thence Easterly to the S.E. corner of township 30N, range 7W,
Thence Southerly to the S.W. corner of township 16N, range 6W,
Thence Easterly to the S.E. corner of township 16N, range 6W,
Thence Southerly to the S.W. corner of township 14N, range 5W,
Thence Westerly to the S.E. corner of township 14N, range 7W,
Thence Northerly to the N.E. corner of township 14N, range 7W,
Thence Westerly to the N.W. corner of township 14N, range 7W,
Thence Northerly to the N.E. corner of township 15N, range 8W,
Thence Westerly to the S.E. corner of township 16N, range 12W,
Thence Northerly to the N.E. corner of township 16N, range 12W,

CALIFORNIA
AREA DEFINITIONS for POWER EQUIPMENT OPERATORS (Cont'd)

*AREA 1: (Cont'd):

Thence Westerly to the N.W. corner of township 16N, range 12W,
Thence Northerly to the N.E. corner of township 18N, range 12W,
Thence Westerly to the N.W. corner of township 18N, range 14W,
Thence Southerly to the S.W. corner of township 18N, range 14W,
Thence Easterly to the S.E. corner of township 18N, range 14W,
Thence Southerly to the S.W. corner of township 16N, range 13W,
Thence Westerly to the N.W. corner to township 15N, range 14W,
Thence Southerly to the S.W. corner of township 14N, range 14W,
Thence Easterly to the S.E. corner of township 14N, range 14W,
Thence Southerly to the S.W. corner of township 13N, range 13W,
Thence Easterly to the S.E. corner of township 13N, range 13W,
Thence Southerly to the S.W. corner of township 11N, range 12W,
Thence Easterly to the S.E. corner of township 11N, range 12W,
Thence Southerly along the Eastern line of range 12W to the Pacific Ocean excluding that portion of Northern Caliofrnia within Santa Clara County included within the following line:
Commencing at the N.W. corner of township 6S, range 3E, Mt. Diablo baseline and Meridian:
Thence in a Southerly direction to the S.W. corner of township 7S, range 3E,
Thence in a Easterly direction to the S.E. corner of township 7S, range 4E,
Thence in a Northerly direction to the N.E. corner of township 6S, range 4E,
Thence in a Westerly direction to the N.W. corner of township 6S, range 3E, to the point of beginning which portion is a part of Area 2.
AREA 1 also includes that portion of Northern California within the following lines:
Commencing in the Pacific Ocean on an extension of the Southerly line of township 2N, Humboldt baseline and meridian:
Thence Easterly along the Southerly line of township 2N, to the S.W. corner of township 2N, range 1W,
Thence Southerly to the S.W. corner of township 1N, range 1W,
Thence Easterly along the Humboldt baseline to the S.W. corner of township 1N, range 2E,
Thence Southerly to the S.W. corner of township 2S, range 2E,
Thence Easterly to the S.E. corner of township 2S, range 2E,
Thence Southerly to the S.W. corner of township 4S, range 3E,
Thence Easterly to the S.E. corner of township 4S, range 3E,
Thence Northerly to the N.E. corner of township 2S, range 3E,
Thence Westerly to the N.W. corner of township 2S, range 3E,
Thence Northerly crossing the Humboldt baseline to the S.W. corner of township 1N, range 3E,
Thence Easterly along the Humboldt baseline to the S.E. corner of township 1N, range 3E,
Thence Northerly to the N.E. corner of township 9N, range 3E,
Thence Westerly to the N.W. corner of township 9N, range 2E,
Thence Northerly to the N.E. corner of township 10N, range 1E,
Thence Westerly along the Northerly line to township 10N, into the Pacific Ocean.

CALIFORNIA

AREA DEFINITIONS for POWER EQUIPMENT OPERATORS (Cont'd)

*AREA 1: (Cont'd)

AREA 1 also includes that portion of Northern California included within the following line:
Commencing at the Northerly boundary of the State of California at the N.W. corner of township 48N, range 7W, Mt. Diablo baseline and meridian:
Thence Southerly to the S.W. corner of township 44N, range 7W,
Thence Easterly to the S.E. corner of township 44N, range 7W,
Tehnce Southerly to the S.W. corner of township 43N, range 6W,
Thence Easterly to the S.E. corner of township 43N, ragne 5W,
Thence Northerly to the N.E. corner of township 48N, range 5W,
on the Northerly boundary of the State of California,
Thence Westerly along the Northerly boundary of the State of California to the point of beginning.

**AREA 2: All areas not included within AREA 1 as defined.

. SUPERSEDEAS DECISION

STATE: North Carolina COUNTY: Statewide
DECISION NUMBER: NC78-1061 DATE: Date of Publication
Supersedes Decision No. NC75-1015 dated January 31, 1975 in 40 FR 4857.
DESCRIPTION OF WORK: Highway Construction (does not include bridges designed to accomodate navigation; tunnels; and building structures in rest area projects).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asphalt Raker	$ 3.76				
Builder - curb & gutter	3.44				
Carpenters	4.76				
Carperters' helper	3.74				
Concrete finishers	4.35				
Electricians	5.59				
Form setters (road)	4.01				
Ironworkers, reinforcing	5.24				
Laborers	3.16				
Luteman	3.21				
Masons	4.83				
Mechanics	4.81				
Mechanics' helpers	3.25				
Oilers	3.72				
Piledriver leadsman	4.86				
Pipelayers	3.60				
Powderman	3.50				
Power Equipment Operators:					
Asphalt distributors	4.11				
Asphalt finisher	5.25				
Asphalt plant	4.00				
Asphalt paver	4.32				
Bulldozers	4.22				
Bulldozers (utility)	3.83				
Concrete finishing machine	4.56				
Concrete paver	5.51				
Concrete saw	5.00				
Concrete spreader	4.82				
Cranes, backhoes, draglines & shovels:					
1 yd. & under	4.43				
Over 1 yd.	4.76				
Curb Machine (concrete)	4.29				
Drill operator	3.86				
Greaseman	3.81				
Hydro seeder	4.10				
Sign Erector	4.75				

Decision No. FL78-1061 Page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators: (cont'd)					
Loader operator	$ 4.01				
Motor grader:					
Fine	4.81				
Rough	3.83				
Power tool operator	4.18				
Rollers:					
Rough	3.29				
Finish	3.90				
Scrapers	3.95				
Screed, asphalt	4.12				
Stone spreader	4.20				
Subgrader machines	4.00				
Sweeper	3.29				
Tractor, crawler	3.89				
Tractor, utility	3.00				
Truck Drivers:					
Single axle (rear)	3.21				
Multi rear axle	3.26				
Concrete	3.58				
Heavy duty	3.00				
Welder	4.55				

SUPERSEDEAS DECISION

STATE: TENNESSEE COUNTIES: *SEE BELOW
DECISION NUMBER: TN78-1058 DATE: DATE OF PUBLICATION
Supersedes Decision Number TN77-1151, dated March 10, 1978, in 43 FR 10269.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION (does not include single family homes and garden type apartments up to and including 4 stories), and HEAVY CONSTRUCTION.
*COUNTIES: Hamilton (Building and Heavy Construction); Marion, Polk, and Rhea (Building Construction ONLY)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.75	.45	.20		.02
BOILERMAKERS	9.95	1.05	1.05		.02
BRICKLAYERS & STONE MASONS:					
Polk County	8.50				
All other Counties	10.50	.45	.30		
CARPENTERS, CARPET LAYERS, & FLOOR LAYERS	9.33	.50	.50		.03
CEMENT MASONS:					
Polk County	8.50				
All other Counties	9.00				
ELECTRICIANS:					
Wiremen	10.05	.70	9%		1%
Cable splicers	10.30	.70	9%		1%
ELEVATOR CONSTRUCTORS:					
Mechanics	9.50	.745	.56	1%+a+b	.025
Helpers	6.65	.745	.56	1%+a+b	.025
GLAZIERS	8.47			1%	
IRONWORKERS	9.16	.55	.50		1%
LATHERS	9.25				
LINE CONSTRUCTION:					
Linemen & Operators of hole digging equipment tractor with winch	10.05	.70	10%		***of 1%
Cable splicers	10.30	.70	10%		***of 1%
Truck without winch	8.94	.70	10%		***of 1%
Groundmen					
MARBLE, TERRAZZO, & TILE WORKERS (All Counties except Polk)	10.50	.45	.30		
MILLWRIGHTS	9.78	.50	.50		.03
PAINTERS:					
Painters	8.15	.45	.35		
Paperhanging, wall covering, & drywall finishing	8.40	.45	.35		
Sandblasting	8.65	.45	.35		
Painters - tanks, steel towers, stacks, bridges, pumping stations	8.40	.45	.35		
PILEDRIVERMEN	9.455	.50	.50		.03

DECISION NO. TN78-1058

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS:					
Polk County	$ 8.50				
All other Counties	9.35				
PLUMBERS & PIPEFITTERS	10.60	.45	.50	c	.08
ROOFERS:					
Composition, damp & water-proofers	8.80		.10		
Kettlemen	8.40		.10		
Slate & tile	9.00		.10		
SHEET METAL WORKERS:					
Hamilton County	9.72	.58	.66		.04
All other Counties	10.22	.58	.66		.04
SPRINKLER FITTERS	10.80	.75	1.05		.08
TRUCK DRIVERS:					
Trucks - up to 3 tons	6.96	.5375	.45		
" - 3 to 5 tons	7.11	.5375	.45		
" - 5 to 7 tons	7.26	.5375	.45		
" - with special equipment	7.46	.5375	.45		
WELDERS - Rate for craft.					

FOOTNOTES:

a. Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day.

b. Employer contributes 1% of the basic hourly rate of employers with 5 years or more service, or 2% of the basic hourly rate of employees with 6 month to 5 years service as Vacation Pay Credit.

c. One Paid Holiday: Labor Day.

DECISION NO. TN78-1058

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	$ 6.25	.20	.30		
GROUP B	6.35	.20	.30		
GROUP C	6.45	.20	.30		
GROUP D	6.55	.20	.30		
GROUP E	6.60	.20	.30		
GROUP F	6.90	.20	.30		
GROUP G	6.95	.20	.30		
GROUP H	6.65	.20	.30		
GROUP I	6.80	.20	.30		

GROUP A: Concrete laborers, general laborers, carpenter tenders, window and floor cleaners, and flagman on road and street crossings, form strippers, handling of rope to clam bucket, grout men, laborers working on demolition work, handling, cleaning, and pulling of nails from materials

GROUP B: Powder man helpers, vibrator operators, tenders to all trowel trades and terrazzo work, carrying reinforced steel, operating motorized wheel barrows, doping and painting of pipe, railroad track laborers, air spade operators, snake men on pipe work.

GROUP C: Sanitary and storm pipe layers or any other pipe outside of foundation, grade checker, yarner and pot man, steel form setters, mortar mixers by hand or machine, power saw operators, jackhammer. operator, pavement breaker operator, air tool operators, regular air tamp operators, wacker tamp operator, chipping hammer operator, hand operated ditching machine operator, concrete grinder, floor sweeping machine operator, concrete buffer and grinder power operator, concrete pumping machine operator.

GROUP D: Asphalt raker, wagon drill operator, sand blasting, track drill operator, concrete saw operator, using cutting torch or burner on demoliton work, flagging of rigs.

GROUP E: Barco tamp operator and specially designed tamp operator, black top or concrete curbing machine operator

GROUP F: Powderman, motorized post hole digger operator and terrazzo machine grinder

GROUP G: Pneumatic concrete gun operator and nozzleman

FREE AIR SHAFTS AND TUNNELS

GROUP H: Tunnel laborers

GROUP I: Chuck Tender; Top lander on shaft work; Tunnel miner, including men required to go down in pier hold drilled by machines.

DECISION NO. TN78-1058

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	$ 8.75	.30	.30		.05
GROUP B	7.95	.30	.30		.05
GROUP C	7.35	.30	.30		.05
GROUP D	7.05	.30	.30		.05

GROUP A: Backhoes; cableways; ross carrier; clamshells; cranes; derricks; draglines; turnapulls; pans; scrapers; scoops; head tower machines; end-loaders; locomotives (over 20 tons); shovels; dozers; fork-lifts (over 8' lift); core drills; foundation drills; graders; mechanics; welders; winch truck with A-Frame; skimmer scoops; locomotive cranes; overhead cranes; skid rigs; piledrivers; side boom tractors; euclid loaders; derrick boat; dredge boats; hoist (any size handling steel or stone); engines used in connection with hoists material; mucking-machines; cherrypickers; tower cranes; skylift; gradall.

GROUP B: Tractors; farm type tractors (with attachments); central compressor plants; elevators (used for hoisting building materials); central mixing plants; hoist; (not handling steel or stone); pump-crete machine; concrete pumps; backfillers (other than cranes); tracmobile; crushing plant; elevating graders; earth augers; forklifts; (8' lift or under); paving machines (Blacktop/concrete); boat operator or engineer (30 tons or over); blacktop rollers; switchman; locomotive (under 20 tons); maintainers.

GROUP C: Asphalt plant; barber-green type loader; engine tender (other than steam); mixers (over 2 bags, not to include central plants); pumps (not more than 3); scrifiers; spreader box (bituminous); asphalt mixers; portable compressors (not more than 3); roller; sub-grader machine; tractors (farm type without attachments); cable head tower engineman; dredge booster pump; boat operator or engineers (under 30 tons); finishing machine; fireman & oiler (Combination); motor crane oiler & driver; welding machines (not more than 3); heaters (stationary or portable, not more than 5); compressors (portable, not more than 3); greaser or fuel truck.

GROUP D: Air compressor (1 portable); fireman; portable crushers; welding machine (1); conveyors; pump (1);oiler; heater (1).

SUPERSEDEAS DECISION

STATE: TENNESSEE

COUNTIES: ANDERSON, GRAINGER, HAMBLEN, JEFFERSON, KNOX, & ROANE

DECISION NUMBER: TN78-1059

DATE: DATE OF PUBLICATION

Supersedes Decision Number TN76-1055, dated July 2, 1976, in 41 FR 27648.

DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION - consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning & Heating mechanics	$ 4.75				
Bricklayers	7.56				
Carpenters	5.47				
Cement masons	6.00				
Electricians	4.65				
Ironworkers	8.34				
Insulation installers	5.25				
Laborers:					
Unskilled	3.50				
Mortar mixer	5.00				
Mason tender	4.00				
Painters	7.75	.40	.40		.03
Plumbers & Pipefitters	6.00				
Roofers	4.81				
Sheet metal workers	4.75				
Soft floor layers	5.47				
Truck drivers	3.50				
Welders - Rate for craft.					
POWER EQUIPMENT OPERATORS:					
Backhoe	5.50				
Bob-cat	4.50				
Bulldozer	6.00				
Crane	6.42				
Fork lift	4.25				
Front end loader	6.97				
High-lift	6.00				
Motor grader	6.00				
Pan	5.50				
Roller	4.50				

SUPERSEDEAS DECISION

STATE: TENNESSEE COUNTY: DAVIDSON
DECISION NUMBER: TN78-1060 DATE: DATE OF PUBLICATION
Supersedes Decision Number TN77-1036, dated March 25, 1977, in 42 FR 16375.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION (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	$11.10	.45	.35		
Boilermakers	9.95	1.05	1.05		.02
Bricklayers	8.40		.25		
Carpenters	7.09				
Cement masons	7.05	.25			
Electricians	10.20	.55	3%		½ of 1%
Elevator Constructors:					
Mechanics	8.945	.745	.56	1%+a+b	.025
Helpers	6.26	.745	.56	1%+a+b	.025
Glaziers	8.05	.50	.50		.02
Ironworkers - Structural, Ornamental & Reinforcing	8.35	.45	.35		.10
Laborers:					
Unskilled	4.24				
Mason tender	5.00				
Lathers	7.90		.20	.40	.01
Millwrights	10.75	.15	.10		.01
Painters - brush	5.35				
Piledrivermen	10.00		.25		.01
Plasterers	7.90	.10	.20		.01
Plumbers & Pipefitters	10.44	.55	.55		.07
Roofers - composition	7.15	.40	.25	.15	
Sheet metal workers	8.60	.44	.31		.02
Sprinkler fitters	10.80	.75	1.05		.08
Tile setters	5.47				
Truck drivers	4.97				
Welders - Rate for craft.					
POWER EQUIPMENT OPERATORS:					
Backhoe	5.93				
Bulldozer	5.55				
Crane, derrick, dragline	8.30	.30	.35		
Driller	5.65				
Front end loader	5.93				
Mixer	5.15				
Oiler	6.12				

DECISION NUMBER TN78-1060

FOOTNOTES:

a. Seven Paid Holidays: New Year's Day;, Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day.

b. Employer contributes 4% of the basic hourly rate of employees with 5 years or more of service, or 2% of the basic hourly rate of employees with 6 months to 5 years of service as Vacation Pay Credit.

Basic Hourly Rates	Fringe Benefits Payments			
	H & W	Pensions	Vacation	Education and/or Appr. Tr.

[FR Doc. 78-18646 Filed 7-6-78; 8:45 am]

federal register

FRIDAY, JULY 7, 1978
PART IV



ENDANGERED SPECIES SCIENTIFIC AUTHORITY

■

EXPORTS OF APPENDIX II SPECIES

Bobcat, Lynx, River Otter, and American Ginseng—Proposed Export Findings for the 1978–79 Season

[4310-55]

ENDANGERED SPECIES SCIENTIFIC AUTHORITY

[50 CFR Part 810]

EXPORTS OF APPENDIX II SPECIES

Bobcat, Lynx, River Otter, and American Ginseng—Proposed Export Findings for the 1978-1979 Season

AGENCY: Endangered Species Scientific Authority.

ACTION: Proposed rulemaking.

SUMMARY: The Endangered Species Scientific Authority (ESSA) proposes findings on a State-by-State basis as to whether export of bobcat, lynx, and river otter pelts harvested in 1978-1979 and American ginseng roots harvested in 1978 will not be detrimental to the survival of the species. These findings are meant to satisfy ESSA's responsibilities under article IV, paragraph 2 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Federal export permits may be issued only for pelts and roots of these species that were harvested in States for which ESSA has found no detriment. The ESSA seeks public comment in order to base such determinations on the best available information.

DATES: Comments are due on or before August 7, 1978.

ADDRESS: Comments should be addressed to the Executive Secretary, Endangered Species Scientific Authority, 18th and C Streets NW., Washington D.C. 20240. Forthcoming comments and comments already received will be available for public inspection at 1612 K Street NW., Washington, D.C., 11th floor, 7:45 a.m. to 4:15 p.m., Mondays through Fridays except Federal holidays.

FOR FURTHER INFORMATION CONCERNING BIOLOGICAL FINDINGS CONTACT:

Dr. William Y. Brown, Executive Secretary, Endangered Species Scientific Authority, 18th and C Streets NW., Washington, D.C. 20240, 202-343-5687.

FOR INFORMATION CONCERNING EXPORT PERMITS CONTACT:

Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, 202-634-1496.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (convention) and its implementing regulations, 50 CFR Part 23, control international trade in animal and plant species included in each of three appendices, listed in § 23.23. The convention appendices are distinct from the list of species issued under the Endangered Species Act of 1973, 16 U.S.C. 1531-1543. Whereas listings under the act include species endangered by any factor, species on the convention appendices must be actually or potentially endangered by international trade. Appendix II includes generally those species not necessarily now threatened with extinction, but which may become so unless trade in them is subject to strict regulation. In addition, appendix II may include species similar in appearance to those species included because of biological jeopardy. The convention required the establishment of a scientific authority whose purpose is to insure the scientific soundness of governmental decisions concerning trade in listed species of plants and animals. Therefore, the Endangered Species Scientific Authority (ESSA) was established by Executive Order 11911 on April 13, 1976 (3 CFR 112-114). On July 11, 1977, the ESSA published an interim charter and other information essential to its operation (42 FR 35799). In that notice, the ESSA requested interested persons to comment on the interim charter as well as to provide biological and trade information on convention species.

The Federal Wildlife Permit Office of the U.S. Fish an Wildlife Service serves as the U.S. Management Authority (MA) for the convention. Before the MA can issue permits for foreign export of appendix II species taken from the wild, the MA must be satisfied that specimens were not taken in violation of State law and in addition the ESSA must advise the MA that the export will not be detrimental to the survival of the species (Convention, Article IV 2). Although this document frequently refers to ESSA "approval" of export, the term indicates that the ESSA has no objection to issuance of export permits by the MA and in no way suggests limitation of the authority of the MA to withhold permits on other grounds. Note also the convention permits are not required for trapping or sale within the United States.

The ESSA has established in its interim charter the following general criteria for determining whether an export (or purpose of import or introduction from the sea) will not be detrimental to the survival of a species:

1. Whether similar export, import, or introduction from the sea has occurred in the past, and has not reduced the numbers or distribution of the species, nor caused signs of ecological or behavioral stress within the species, or in other species of the affected ecosystem.

2. Whether life history parameters of the species and the structure and function of its ecosystem indicate that the present frequencey of export, import, or introduction from the sea will not appreciably reduce the numbers or distribution of the species, nor cause signs of ecological or behavioral stress within the species or in other species of the affected ecosystem.

3. Whether such export, import, or introduction from the sea is expected to increase, decrease, or remain constant in frequency.

(ESSA interim charter, article IV. C., 42 FR 35801.)

The bobcat (*Lynx rufus*, excluding *L.r. escuinapae*), lynx (*Lynx canadensis*), and river otter (*Lutra canadensis*) were included in appendix II effective February 4, 1977. American ginseng was included when the convention became effective on July 1, 1975. The animals were included as members of the entire family *Felidae* and subfamily *Lutrinae*.

In a separate action the U.S. Fish and Wildlife Service is currently reviewing the status of the bobcat, lynx, river otter, and American ginseng to determine whether they should be proposed as endangered or threatened under the Endangered Species Act of 1973. On July 13, 1977, the Service published a notice of review for the bobcat and the lynx (42 FR 35996); on July 28, 1977, the Service published a notice of review for the river otter (42 FR 38935); and on August 11, 1977, the Service published a notice of review for the American ginseng (42 FR 40823). In all three of these notices of review the Service requested interested parties to submit comments concerning the status of these species.

On August 12, 1977, the ESSA and the Service jointly published a notice stating that ESSA findings on commercial international export of these species for the 1977-1978 season will be based on a State-by-State assessment of the status of each species (42 FR 40979).

The variation among the States in Species status indicated that such an individualized approach would best give the ESSA the necessary basis for finding whether export would not be detrimental to the survival of the species. The ESSA reviews many applications on a case-by-case basis, but the large volume of trade in these species calls for general findings. Interested parties were advised in the August 12 notice that the ESSA would publish a subsequent notice indicating the States of origin from which the ESSA was unable to approve commercial international export of subsequently obtained pelts and roots, and indicating authorized level of exports of any species for which commercial export was approved.

On August 30, 1977, the ESSA published notice of its preliminary findings on export of pelts and roots of these four species taken in the 1977-

1978 season. Preliminary findings were made for each species on a State-by-State basis. For its part, the ESSA gave general approval until November 1, 1977, of commercial intenational export of American ginseng roots and bobcat, lynx, and river otter pelts obtained from the wild before August 30, 1977.

In addition, the ESSA approved the commercial international export of river otters and American ginseng taken subsequent to August 30, but only if the applicants could prove that the pelts were obtained from any of 17 States for the river otter or the roots were obtained from Michigan in the case of American ginseng, and only to the extent authorized for each State.

Commercial international export of bobcat and lynx pelts was not approved, pending submission of additional information and management initiatives. For the bobcat, lack of information, rising pelt price and harvest, and needed management innovations were discussed as weighing against ESSA approval of export. Similar circumstances applied to the lynx, except that harvest level had generally declined over the last several years because of normal population cycling.

For the river otter, little information was available but neither price nor harvest had risen dramatically in recent years. Furthermore, State regulation of river otter harvest was found to be greater in scope and degree than for the bobcat.

For American ginseng, the ESSA's withholding of approval stemmed from almost complete lack of State management, coupled with biological information indicating overharvest in many States. Michigan was apparently the only State that allowed but controlled harvest.

In the August 30 notice, the ESSA stated repeatedly that the preliminary findings were based upon data available to it, and that new information could lead it to modify its preliminary findings at any time. The ESSA emphasized in the notice that additional management and regulation of these species in many States would lead the ESSA to many more findings in favor of international commercial export than was then possible. Many of the negative ESSA findings in the notice were stated to be compelled by lack of data and needed regulatory mechanisms, rather than by positive evidence of declining populations.

Following the August 30 notice, many States, nongovernmental organizations and private individuals submitted comments to the ESSA. Based upon information submitted and management commitments made by the States, the ESSA for its part approved export of the three furbearing species from many additional States for 1977-1978. In nearly every case the States of origin agreed to tag a limited number of pelts, and an export quota was assigned based on past harvest and population estimates.

On November 7, the ESSA extended the deadline on export of pelt and root inventories from October 31 to November 30 (42 FR 58019). Export of these was authorized after November 30 only if evidence submitted by applicants left no reasonable doubt that the furs or roots were harvested before that date.

A workshop on the bobcat, lynx, and river otter was held in New Orleans on January 23-25, 1978. The working group was selected by the Executive Secretary of the ESSA, and consisted of 12 professional biologists under the chairmanship of Dr. L. David Mech of the U.S. Fish and Wildlife Service. The group's mandate was to determine as specifically as possible the biological information and management programs needed to ensure that harvests of the three species will not be detrimental to their survival or to the maintenance of the species at levels consistent with their normal roles in the environment.

Several representatives of State wildlife agencies, conservation organizations, and user groups participated in a daylong discussion of a draft report on the third day of the meeting. They were asked to submit comments in writing for incorporation into a final report. The report has been published by the National Science Foundation, and is available to the public from the Office of the Executive Secretary of the ESSA.

On February 8, 1978, the State of Louisiana and several private parties filed litigation in the Federal District Court for the Eastern District of Louisiana. The plaintiffs in that case are seeking, among other things, an injunction against impediments to the exportation of bobcat and river otter lawfully taken in Louisiana, as well as a declaration that the listing of bobcat and river otter is unlawful.

On February 28, 1978, a private party filed suit in the Eastern District of Wisconsin, setting forth virtually the same claims as had the State of Louisiana, but applied to Wisconsin bobcat and river otter.

The ESSA published two notices in the FEDERAL REGISTER on March 16, 1978. One notice (43 FR 11081) summarized the ESSA's export findings on these species for 1977-1978. Export had been approved: For the bobcat, up to 76,000 pelts from 29 States and the Navajo Indian Reservation; for the lynx, up to 285 pelts from four States plus an unlimited number from Alaska; for the river otter, up to 26,935 pelts from 23 States plus an unlimited number from Alaska. By May 2, the ESSA had approved export of bobcat and river otter from two more States (Arkansas and Michigan), for an additional 3,350 bobcat and 1,210 river otter. Every exporting State had agreed to tag pelts.

Also on March 16, the ESSA published notice of a schedule for 1978-1979 export findings (43 FR 11097). A public hearing was set for May 1, 1978. Guidelines were to be published on or about April 10, followed by proposed findings in July and final findings in September, made on a State-by-State basis.

On April 3, 1978, the ESSA published detailed notice of the hearing to be held on May 1, concerning information needed to satisfy the ESSA that export will not be detrimental to the survival of bobcat, lynx, and river otter harvested in 1978-1979, and American ginseng harvested in 1978.

The ESSA published a notice on April 10, entitled: "Guidelines and Information Needs for 1978-1979 Export Findings." This notice discussed the meaning of "not detrimental to survival" as a conservation objective. Useful biological information and management initiatives were enumerated, and reference was made to the recommendations of the New Orlean's working group. Public comment was requested.

The ESSA conducted a public hearing on May 1, as promised in the April 3 notice. Eight witnesses testified, two representing State governments, four representing conservation and animal welfare organizations, one representing a trappers' organization, and one representing major ginseng dealers. Administrative Law Judge David Torbett presided at the hearing. Members of the ESSA and staff were present. A transcript was made, and is available for inspection at the Office of the Executive Secretary of the ESSA.

SUMMARY OF GENERAL COMMENTS

Subsequent to comments summarized in the ESSA's March 16 notice (43 FR 11083), the ESSA has received comments concerning the matter of this proposal from non-governmental associations and individuals and comments from governmental agencies of most of the affected States. Some of these comments pertain to the ESSA's April 10 notice and May 1 hearing. Comments providing specific information on these species have been incorporated into the discussions of particular species below. However, certain more general comments are discussed.

As previously, the most frequent comment urged the ESSA not to allow export of one or more of the furbearing animals, but presented no information. A smaller but substantial number of comments from trappers and hunters opposed any restrictions on export. Our March 16 notice discusses these kinds of comments, and will not be repeated here.

Several comments specifically expressed concern that State wildlife

agencies had inflated reported harvest of the three animal species. We recognize that the harvests reported in our March 16 notice were in several cases substantially higher than those reported in previous years. We also recognize that accuracy in reporting harvest has varied widely from State to State, depending on the census method. used. However, several of the reported harvests given in our March 16 notice are higher than previous reports because this is the first year that the States involved have attempted a comprehensive estimate. For example, river otter harvests reported by Connecticut in previous years were based on harvest only on State-owned lands. The figure reported in the March 16 notice is higher than before, because it estimates harvest on all lands within the State. In several other States, for example, only trapped animals have been reported previously, even though as many or more animals are shot each year by hunters. Also, past harvest records have been based on admittedly incomplete reports from dealers or trappers. Many comments requested that these animal species be carefully censused in each State belfore any export is authorized. We are sensitive to this comment. However, we do not believe that our guidelines, published in the FEDERAL REGISTER on April 10, fall short of legitimate scientific conservations in determining that export will not be detrimental to the survival of these species.

MAY 1 HEARING

Spokespersons for six non-governmental organizations and two States testified at the May 1 hearing. The comments of the States' witnesses are incorporated in the species account below, whereas testimony of the other witnesses is summarized here.

Dr. Faith Campbell testified for the Natural Resources Defense Council (NRDC). Dr. Campbell expressed general support for the ESSA's guidelines of April 10. In particular, NRDC agreed that maintaining a species throughout its range at a level consistent with its role in the ecosystem, as stated by the Convention, is a goal similar to optimum sustainable population (OSP). NRDC also agreed that the ESSA must evaluate biological and management information comprehensively, and must evaluate data compiled by and management programs devised by the States. However, Dr. Campbell expressed concern that the guidelines would not be implemented effectively, for lack of information. She stressed that the ESSA should require detailed study and management before authorizing export, and must exercise independent judgement based solely upon the data. Dr. Campbell directed the remainder of her testimony to the Department of Agriculture's Animal and Plant Health Inspection Service, criticizing that Agency as having failed to enforce the Convention for plants.

Mr. Don Hoyt testified next for the National Trapper's Association. Mr. Hoyt accused the ESSA of having been motivated by the "anti-hunting, trapping, fishing faction in our country." He suggested that actions by the ESSA have hindered Federal/State cooperation. He thanked the ESA for motivating State agencies to implement fur management programs. He concluded by requesting the ESSA to drop its current initiatives and to establish "an ongoing progam for the management techniques and monitoring of appendix II species."

Ms. Ginger Merchant testified for Defenders of Wildlife. Ms. Merchant stated that the ESSA should find in favor of export only if it can determine that harvest is not detrimental. She supported the proposition that "not detrimental to the survival of the species" is conceptually similar to "optimum sustainable populations." She expressed concern over the "minimum biological requirements" referred to in the ESSA's April 10 notice, and recommended that each requirement be preceded with the words "reliable, scientific data concerning". She stated that the ESSA should not rely primarily on past harvest in arriving at its findings, because of the ambiguous meaning of the data. Ms. Merchant concurred with the desirability of the management initiatives discussed in the April 10 notice, but disagreed that such initiatives themselves may be enough for a finding of no detriment when biological data are lacking. Ms. Merchant then expressed dismay over findings in favor of export from several States, indicating that many quotas were not justifiable with available data. She also expressed concern for the possible trapping of lynx incidental to trapping bobcat. She concluded her remarks by commending both the ESSA and the MA for their efforts to implement the Convention.

Mr. William Rollow testified on behalf of certain major exporters and dealers of ginseng. Mr. Rollow stated that his clients believed ginseng did not belong on appendix II, but were anxious to cooperate with the ESSA. He stated that the status of ginseng is difficult to determine and will vary between States. He suggested that the ESSA work with the States to develop State authority to manage the species. In this regard, he pointed out that his clients have developed a model State law and have supported its introduction into various State legislatures. He added, however, that the export of ginseng should not be restricted as these initiatives are being implemented, alluding to the hardship that might be worker on many collectors. Mr. Rollow stated that export levels have increased, and that the species is not in any way threatened. He concluded by asking leave to submit a brief by May 15, 1978.

Ms. Greta Nilsson testified on behalf of the Humane Society of the United States and the Institute for the Study of Animal Problems. Ms. Nilsson criticized the ESSA for basing export quotas on reported State harvest, which she claimed had been inflated. She expressed support for the ESSA's April 10 notice. Ms. Nilsson stated that the river ooter had been trapped out of 14 States, and that trapping intensity is a function of pelt price. She asserted that data on territorial size, natural mortality and other "key" factors are necessary to assure survival of a species. She stated that these data are generally lacking.

Ms. Bianca Beary testified on behalf of the Society for Animal Protective Legislation. Her comments were directed primarily at the fur industry and at the effects of trapping. She pointed out that both reported harvest and pelt price of these species had risen in recent years. She reported that these increases were caused by increased demand for furs. Ms. Beary next discussed several reports of nontarget species being trapped incidentally. She stated that lynx may often be caught in traps set for bobcat, and may be injured even though released. Ms. Beary concluded her remarks with further discussion of rising fur prices, asserting that these species were being affected adversely by harvest.

Ms. Jacque Dean submitted testimony on behalf of the Sierra Club, although was unable to appear personally. Ms. Dean complimented the ESSA for improving the data base on bobcat, lynx, and river otter. She was critical of many State population estimates, however, and offered a maximum population estimate for each State, prepared by Dr. Irven H. Rinard. Ms. Dean stated that the price of bobcat and lynx pelts had dropped after the ESSA's August 30 notice, then rose again when export quotas were authorized. She stated that the ESSA had shown no concern for subspecies of bobcats, even though the species varies widely in status throughout its range. She stated in addition that only Maine had sufficient information on the species to allow the setting of a meaningful export quota. Ms. Dean concluded that the ESSA should be extremely conservative in the setting of export quotas.

The ESSA has considered carefully the comments of these witnesses, and of others who submitted comments on our April 10 notice. We are gratified to see the several statements of support. To the extent that we have been asked to carefully evaluate the reliability of the data we use, we will endeavor to

comply, as we have in the past. We will also continue our efforts to cooperate with State agencies, while recognizing our mandate to arrive at findings independently. We deeply appreciate the support of the ginseng industry in the conservation of that plant. However, we must remind that industry that we are to determine whether export will not be detrimental to the survival of that plant, and have no authority to expand the scope of this determination. We are sensitive to Ms. Dean's comments on the variable status of bobcat subspecies. However, we believe State-by-State determinations for this species should be adequate to account for variations in status between subspecies.

The Fur Resources Committee of the International Association of Fish and Wildlife Agencies (Committee) submitted a lengthy and critical comment on the ESSA's April 10 FEDERAL REGISTER notice. Less detailed comments addressing similar points were submitted by the National Wildlife Federation and the Wildlife Management Institute. Because of the significance of any statement made on behalf of State Fish and Wildlife agencies, and the importance of Federal/State understanding and cooperation, we will address the Committee's comment in detail.

Most of the Committee's comment is critical of the conservation objective set forth in the April 10 notice. The ESSA indicated in that notice that it must concern itself with the ecological consequences of harvest, as is expressly stated in article 4, par. 3 of the Convention. For clarification, the ESSA then discussed the concept of optimum sustainable population (OSP) as used in the Marine Mammal Protection Act (MMPA). Management at OSP requires consideration of the ecosystems in which the species occur, and the MMPA, with the Convention, is one of the few laws with this requirement. The United States has now had several years of experience with OSP, and consequently it was discussed by the ESSA. Because OSP developed, in part, from criticism of the concept of maximum sustainable yield (MSY), some discussion of this controversy was also in order, and the ESSA quoted a relevant passage from the Sixth Annual Report of the Council on Environmental Quality, based upon a series of workshops on the matter.

The Committee's most direct criticism of the ESSA's discussion on OSP and MSY is that MSY:

> * * * involved marine fish stocks and has no application to population management of bobcat, lynx, and river otter. Bobcat, lynx and river otter are not marine species nor do their populations congregate to form stocks as do certain marine species.

To substantiate the above assertion, the Committee quoted passages from two papers published by Dr. Lee Eberhardt, and pointed out that the quote in the April 10 notice from CEQ's Sixth Annual Report was taken from a section on fisheries management. The ESSA cannot agree with the Committee's distinction between "stocks" of marine species and "populations" of terrestrial species. The term "stock" as commonly used in fisheries and for marine mammals is no more than a word for population. As one example, the Marine Mammal Protection Act of 1972 states: "the term 'population stock' or 'stock' means a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature." Sec. 3(11). This is a fairly typical definition of a biological population, and was adopted verbatim in the Endangered Species Act of 1973: "The term 'species' includes any subspecies of fish or wildlife or plant and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature." Sec. 3(11). The phrase in these definitions, "in a common spatial arrangement, that interbreed when mature," refers to the concept that biological populations have physical distributions, whether mountain range, State, or area of ocean, and that significant barriers to gene exchange are lacking within a population's distribution. These concepts are basic to modern ecology and evolutionary biology.

Although the concepts of OSP and MSY have been applied primarily to marine animals, this is more historical than biological. It is clear that marine animals undergo population changes as do terrestrial animals, often seasonal in nature. Marine species, just as terrestrial species, vary enormously in their reproductive potential and in the survival of offspring. We recognize that there are certain differences between terrestrial and marine systems, such as the degree of annual and spatial environmental variations, barriers to movement, and nature of food bases. However, a considerable body of research in population dynamics of a great diversity of organisms indicates that general principles may be applied to both terrestrial and marine organisms.

The two quoted articles by Eberhardt express concern over how ecosystem management can be implemented, a concern echoed by the ESSA in its April 10 notice. However, both articles are basically supportive of such an approach and they attempt to clarify it.

Likewise, the workshops cited in our quotation from CEQ's Sixth Annual Report were concerned with "wild living resources" in general, and not just with fish, as indicated by the Committee.

Undeniably, the concept of MSY has been applied primarily to marine species, and hence criticism of that concept has used those species as examples. However, there is no reason why terrestrial wildlife management, like management of marine mammals, should not be subjected to more comprehensive and potentially rigorous models than the notion of harvesting fall "surplus". This latter approach is often followed for fast-breeding small game and deer, and was suggested as appropriate for these furbearers by the Committee. However, recent research suggests that such an approach is not appropriate for carnivores that are a comparatively low reproductive potential and whose mortality patterns may not hinge on the "adversities of winter." In the cyclic lynx, for example, there may be virtually no juvenile recruitment during the latter years of population decline, and any removal of adults contributes more to that decline (Brand and Keith, Lynx demography during a snowshoe hare decline, unpublished manuscript, submitted to J. Wildl. Mgmt.). For the bobcat, most annual natural mortality (primarily juveniles in low prey years) may occur by the fall, before the winter and before most trapping (Bailey, Ph. D. Thesis, University of Idaho, 1972; Crowe, J. Wildl. Mgmt., 39: 408-415, 1975).

It is important to focus attention on basic objectives with a minimum of assumptions. The more appropriate question is not what is the harvestable surplus, but instead, to quote the New Mexico Game and Fish Department on bobcats, "What population level of bobcats can best accommodate trapping without causing extinction of the bobcat and without significantly altering the ecosystems they occupy?" This involves the "ecosystem" consideration of OSP and of article IV, par. 3 of the Convention. No doubt, the question is "in search of a definition", as the Committee has stated. But we must seek an answer to the question, nevertheless.

We believe that the first step to an answer can be found in the principles quoted from CEQ's report, and in the realization that MSY should be substituted with a more conservative model. We acknowledge the difficulty and uncertainty of this endeavor.

In its concluding remarks, the Committee asked the ESSA to explain why it had rejected recommendations of the New Orleans Working Group, cited in the ESSA's April 10 notice. With regard to automatic approval of export for tagged pelts, the Committee should be aware that actual issuance of export permits is by the Wildlife Permit Office, not the ESSA. Concerning biological and management standards, the ESSA did not reject these recommendations, but developed

them. We do not believe that it would be appropriate to do otherwise. The Working Group's recommendations are a sound outline, but no more than that. The choice of data requested by the ESSA is based on the Working Group's recommendations as well as on the ESSA's experience with data available from the States (see the Summary of Findings for the 1977–1978 Season, March 16, 1978, 42 FR 11081, especially pages 11086–87).

Michael J. Bean of the Environmental Defense Fund (EDF), with the assistance of two professional population ecologists, addressed several of these same issues in a comment on our April 10 notice.

EDF's comment is supportive of the ESSA's endeavors to clarify the conservation objective of the Convention. Although somewhat non-committal as to the ESSA's treatment of OSP and MSY, EDF suggests that a winter carrying capacity model, in the alternative "is of doubtful applicability to carnivores and is of even more doubtful utility in States where the severity of winter is relatively slight, the very States which seem to have the greatest abundance of bobcats."

EDF stated, in addition, that "regardless of the type of wildlife with which one is concerned, the same sorts of information, including age specific survivorship data and age specific fecundity data, are desirable for informed management."

EDF also pointed out that the information needs identified by the ESSA in its April 10 notice are consistent with the recommendations of the New Orleans Working Group. EDF stated that the "ESSA has provided the necessary operational specificity to the general standards recommended by the Working Group."

Wayne H. Matelski, attorney for the Ginseng Committee of the Herb Trade Association, submitted a lengthy comment on the ESSA's FEDERAL REGISTER notices of March 16, April 3, and April 10. As this comment discusses many of the points addressed in comments received by the ESSA since our August 30 FEDERAL REGISTER notice, we will address this comment in detail.

Mr. Matelski prefaced his comment by emphasizing the Committee's concern for the continued survival of American ginseng, although he added that many of the Committee feel:

> * * * that the conclusions concerning the endangered nature of the species, reached by the ESSA, do not have sufficient basis in fact. As such, the members feel the conclusions are in error and simply do not justify the drastic remedies proposed.

The ESSA recognizes that opinions differ as to whether American ginseng is endangered or as to whether the plant is properly included in appendix II to the Convention. The plant's status is under review by Canada, one of the parties to the Convention. In addition, the U.S. Fish and Wildlife Service is reviewing the plant's status to ascertain whether it should be proposed as endangered or threatened under the Endangered Species Act of 1973. However, as emphasized earlier, the ESSA, as the United States Scientific Authority, must make the findings required of it by the Convention before the Management Authority may issue export permits. The fact that a species is listed on appendix II does not necessarily imply restriction of export. Trade in appendix II species only need be limited if the scientific authority of the exporting country cannot find that export will not be detrimental to the survival of the species. Thus evidence on the status of these species in the United States is relevant primarily to the ESSA's responsibility to assure that trade will not be detrimental rather than to the listing of the species on appendix II by the parties to the Convention. The ESSA does not have authority to waive independently the Convention's requirements for appendix II species.

Mr. Matelski contended that all American ginseng dealers and exporters believe that "there are ample quantities of ginseng in existence today, and that, indeed, the supply in many areas is larger than at any previous time in this century." He referred to increases in annual exports over the last 20 years, and inferred that these export data "conclusively demonstrate that the amount of ginseng is actually increasing."

The ESSA recognizes that exports of American ginseng have increased in recent years. This is demonstrated by trade data available to us from the Bureau of Census. These official data do not differentiate between wild and cultivated roots; however, information from dealers and exporters suggests that wild roots comprise about one half the total number of pounds exported. One dealer stated orally that exports of cultivated roots were 145,000 pounds in 1975, 165,000–175,000 pounds in 1976, and 225,000 pounds in 1977. He considered these figures to be accurate within 10 percent. However, the recent increase in exports may only reflect increased demand or growth of the industry, rather than increased abundance of the plant.

To support further his assertion that American ginseng is increasing in abundance, Mr. Matelski referred to certain measures purportedly taken by collectors and dealers to ensure continued yield. The ESSA is aware of these practices. We have received many letters from collectors testifying that they adhere to these practices. However, most of these letters have been form letters, and we know of at least one magazine announcement and one dealer who have solicited specific comments from the collectors. Moreover, we have received many comments stating that diggers will harvest all the plants they can find, any time they find them, without regard to ensuring future yield. Although the ESSA applauds the endeavors of collectors to conserve this species, we have no information establishing that a majority or even a substantial percentage of collectors adhere to the practices referred to by Mr. Matelski. Furthermore, past experience suggests that such independent, voluntary efforts may be inadequate to protect a shared natural resource from over exploitation.

Mr. Matelski then referred to comments received by the ESSA from some State officials and some botanists, recommending that American ginseng be considered an endangered species. He suggested that these evaluations are questionable because of the lack of hard scientific data on the plant's biology. A few Federal officials, several state officials and many botanists have recommended that the plant be considered endangered, threatened, rare or otherwise vulnerable. Few of these comments are supported by any data. The ESSA recognizes that we need to know more about this species' biology.

Mr. Matelski continued by emphasizing that the inherent secrecy of the American ginseng trade contributes to scientific ignorance of the plant's status. He suggested that the alleged rarity of the plant is partially a result of this secrecy. He further noted:

> Once the "endangered" label has become attached to a species, however, no matter upon what basis, the burden of proof apparently passes to the industry to show that the species is not endangered. This involves developing a complete factual and scientific argument which, quite naturally, cannot be done overnight, especially in an industry such as ginseng where so little scientific knowledge exists and where accurate statistical data have never been collected.

As American ginseng is included in appendix II to the Convention, the ESSA must have supporting information before a finding of no detriment can be made. To help obtain such information, the ESSA has contacted numerous botanists, members of the American ginseng industry and State and Federal officials. The ESSA recognizes that it will take time to improve our understanding of American ginseng's biological status. Thus, we have encouraged the various ginseng producing States to develop programs to better establish the status of the species, and to effectively monitor and to appropriately manage its harvest.

Mr. Matelski next discussed efforts made by the Association's members to promote the conservation of the species and to encourage State conserva-

tion programs. He notes that where official State action "has been slow or lacking, the members have instituted, or proposed instituting, voluntary measures on their own." Noting the progress made by the Association members and the progress toward conservation programs in the States, Mr. Matelski suggested that exports should be approved for this fall. He further suggested that future exports should be contingent on action taken by the States next year.

The ESSA has received a petition from William J. Boehner Co., Inc., on behalf of itself and all exporters of wild American ginseng, to remove the plant from appendix II, or to permit export in the alternative. A copy of this petition has been forwarded to the MA.

We will address here those points raised by the petitioner concerning the ESSA's findings, excluding discussion of those points already discussed with Mr. Matelski's comment. The petitioner provided the following grounds for his request:

(1) Wild American ginseng is not endangered or threatened, nor likely to become so, nor is it in need of protection under the Endangered Species Act of 1973; (2) The annual export of said plant at levels of the prior year will not pose any danger to the continued well being of said plant in the United States; (3) Prohibition of exportation of said plant will prevent the orderly conservation of said plant by economically destroying the exporters and dealers who compose, through their efforts with the diggers thereof, the primary force promoting the continued well being of said plant and insuring its future availability; (4) Prohibition of exportation of said plant will cause severe economic injury to the various diggers, who for the most are in an economically depressed group; all of which are more fully set forth in the attached Memorandum.

In the attached memorandum, the petitioner asserted that there is no substantial evidence suggesting that American ginseng is endangered or likely to become so. As did Mr. Matelski, the petitioner suggested that qualitative information to the contrary are of questionable value, and asserted that export data refute the arguments that the plant is being overharvested or endangered in any way.

The petitioner also asserted that continued exploitation is not detrimental to the survival of American ginseng. The petitioner suggested that, lacking scientific data concerning the plant's status, exports should not be restricted. He asserted, referring to article IV 3 of the convention text, that the plant "is not currently at, nor has it ever been, at any critical level when viewing the United States as a whole." To substantiate this assertion, the petitioner listed the major ginseng producing States and noted that "many authorities" suspect that the plant is more abundant than is commonly thought by those unfamiliar with the plant in the wild. He also referred to certain harvest techniques which he believes have contributed to ensuring future yield. Finally, the petitioner warned that as the plant's phenology varies, "any national program attempting to set one uniform standard for the entire country is doomed to failure." The petitioner further warned that attempts to regulate the States will fail.

The ESSA recognizes that the plant's phenology varies, and also that its status varies from region to region. It is for these reasons, in part, that we have solicited comments and recommendations from the relevant States. Neither the ESSA, nor any other Federal agency, has the authority to regulate the harvest of this plant on private or State lands. Thus the responsibility for conserving the plant lies largely with the States and effective implementation of the Convention will require strong State/Federal cooperation.

The petitioner then suggested that as the exporters and dealers provide the primary impetus for conserving the plant, their business should not be destroyed. The petitioner referred to two elements needed for the conservation of the plant: Habitat and educated collectors. He asserted that available habitat is adequate. The petitioner considered the collectors as a major factor in maintaining the abundance of American ginseng. He suggested that the States should be encouraged to assess the plant's status and to manage the harvest. However, he maintained that an accurate inventory must be based on data gathered by collectors, dealers, and exporters. He then discussed efforts made by the industry to educate the collectors and to encourage State programs designed to conserve the plant. The petitioner suggested that if there is no market, collectors will have no reason to try and ensure continued yields.

The petitioner also suggested that an export embargo will cause undue injury to low income people. Again referring to the purported conservation contribution made by collectors, the petitioner called attention to those collectors whose income, in part, is derived from the harvest and sale of the plant.

Concluding, the petitioner recommended that the plant be deleted from appendix II. Failing that, he requested that exports be allowed at current annual levels, conditioned upon the "bona fide" efforts of the major exporters and dealers to:

(a) Attempt to secure appropriate enactment by the pertinent States (which do not already have conservation programs for Panax q. of enabling legislation);

(b) Disseminate information on the wise method of digging (and replanting) of Panax q. and encourage its conservation;

(c) Voluntarily retain import records revealing the amount shipped, such to be supplied to ESSA;

(d) Impose voluntary program of self-policing with standards to be jointly arrived at between the respective States, ESSA, and the industry; and

(e) Call for a future re-evaluation of this program to be made within 3 years from date."

Noting that the enumerated suggestions are already being pursued by the industry, the petitioner warned that a selective "embargo aimed at the roots dug in certain States in unworkable.

Alternatives and Environmental Impacts

Introduction

This section sets forth proposed standards and evaluates the potential environmental impacts of general ESSA findings on export of those four species in 1978–79. Analysis is made of impacts resulting from standards that would result in essentially no export at present and standards that would potentially result in unlimited export. Given the degree of difficulty in predicting the environmental impacts of any standards and findings on export, an analysis of extremes would appear to be called for, providing the clearest possible resolution of the alternatives. The section closes with a description of the standards proposed.

This section is intended to satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, which directs Federal agencies to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the nation may:

(1) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

(5) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

It is apparent that the ESSA's findings on detriment do not require the same degree of scrutiny under these provisions as do a wide variety of Federal actions that are not taken to ensure environmentally protective goals. As noted above, the ESSA deci-

sion making process focuses on the ecological consequences of export levels. The goal is an environmentally protective one; export is to be restricted to assure the species are maintained at a level consistant with their role in the ecosystems in which they occur. There is sensitivity to environmental amenities in ESSA decisfon making regardless of NEPA requirements. Unlike construction projects, agriculture, and other endeavors intended to serve goals other than environmental, for which NEPA ensures that environmental factors are considered by decisionmakers, findings on detriment are required in order to ensure directly that populations and ecosystems do not suffer from trade. It would be redundant to superimpose a detailed environmental statement onto a finding concerning detriment, that itself requires consideration of environmental factors. Consequently, we have not prepared a separate detailed environmental impact statment, but instead have prepared this analysis as an integral part of our findings.

ECOLOGY

The ecology of all four of these species is poorly understood. The bobcat is a secretive animal, widely distributed across the lower forty-eight States and occupying many habitat types. Population size has been estimated by 22 States, for a total of 616,000 animals. However, with few exceptions, these estimates are not based on recognized scientific census mehtods, and little confidence can be placed in them. There is apparent regional variation in the status of the bobcat across the United States. The species is reported to be common in the South, with highest densities in the Southeast. The animal is generally uncommon or absent in a zone extending west from the Mid-Atlantic region through Iowa and Illinois. Status of the bobcat is variable and somewhat uncertain throughout most of the Northeast, and similar but apparently more secure in the Great Lakes States. Populations in the northwestern States apparently have been significantly impacted by trapping; however all these States but Wyoming have conferred greater protection on the species in response. Besides Wyoming, agencies in only New Mexico and Texas currently lack general legislative authority to conserve the species. More detailed information on State populations is given below and in the ESSA's notice of March 16 (43 FR 11081).

Bobcats may breed at one year and have annual litters of two to three young. Adult mortality was extremenly low in one study, but that was in a population that had been heavily trapped.

Trapping is one of several factors affecting populations. Although bobcats are broad spectrum carnivores, rabbits are the primary prey and population size may vary with the abundance of lagomorphs. Habitat is an important factor in bobcat abundance. The species appears to persist near settlements, but has disappeared from many areas that have been farmed intensively or urbanized.

On the other hand, the species appears to be recovering in areas returning from farmland to forest.

The bobcat's influence on other species is essentially unknown. Bobcat kittens may be taken by coyotes, and several reports have suggested that bobcat numbers increase when coyote abundance drops. Competition for common prey, especially lagomorphs, may play a role in this relationship.

The bobcat sometimes preys on rodents, and may benefit agriculture by this behavior. The bobcat also preys occasionally on poultry and livestock. As a consequence, the species is taken by both Federal and State animal damage control programs in several States. We have little information on State control programs. Reported Federal bobcat take is currently a minor component of total harvest, amounting 1,151 animals in 1977.

The lynx is widely distributed across northern North America, but rare in the United States except for Alaska and a few border States. Populations fluctuate dramatically in the northern part of their range, following fluctuations in abundance of snowshoe hares. There are no population estimates available, however the species is rare in several States where it once was more common. In much of Canada, and presumably in Alaska, harvest apparently has little or no measurable effect on populations during cyclic increase of hares. On the other hand, harvest may contribute to essentially uncompensated decline during hare decrease, when successful juvenile lynx recruitment may be very low. However, trapping and habitat loss are apparently only locally significant in Alaska at this time. The status of the species in the lower 48 States is less certain. Major cyclic immigrations from the North occur in midwestern and western border States, at times of maximum population in Canada. These cyclic influxes apparently are superimposed on small, local breeding populations, that may or may not be cyclic. Harvest of cyclic immigrants is presumably of little ecological significance, but unregulated harvest of local breeding populations, especially at times of low or declining population, might be adverse to the reproduction of the species in its southern range. Habitat loss apparently has contributed to the decline of the species in several States. Other than its relationship to snowshoe hare populations, significant relationships to other species are undescribed.

The river otter is distributed throughtout North America, although in the United States it is absent from much of the southwest and central regions. Only seven States have estimated population size, ranging from an estimated 30-60,000 in Lousiana to an estimated 500 in Nevada. For the same reasons as for the bobcat, these estimates must be considered uncertain. The river otter is now absent or very rare in several States where it was formerly more common. Several of these States are considering means to reintroduce the species, for example Colorado, New Mexico, and West Virginia. Unlike the bobcat and lynx, river otters normally do not reproduce until their second year. Two or three young are typically born per annual litter. Trapping may have been a factor in past declines of river otter in several States. However, available data, albeit limited, generally do not give cause for concern over the impact of current harvest in States where harvest is allowed. The river otter is particularly sensitive to habitat modification, because it is restricted to aquatic ecosystems that are readily and frequently modified. In addition, the river otter is a high trophic level predator and may accumulate chlorocarbons and heavy metals in its tissue when they are present in the environment, possibly affecting these populations adversely. Just as for the bobcat and lynx (excluding interaction with the snowshoe hare), no substantial account is currently possible for river otter interactions with populations of other wild species. Several States have reported that otter populations are increasing because growing beaver populations have created more suitable habitat. In addition, individual river otters reportedly may impact intensively cultured fish populations, such as hatchery stock.

American ginseng is restricted to 32 States in the eastern half of the United States and adjacent Canada. The plant has been gathered for export since the early 18th century. There are numerous conflicting opinions concerning the status of the plant. Many botanists, State and Federal officials, and some collectors and dealers consider the plant endangered, threatened, rare, or otherwise in jeopardy. In contrast, other individuals, such as most collectors and dealers, believe that the plant's status is stable or improving. About 12 States provide a large percentage of the harvest. Exports of both cultivated an wild American ginseng have increased in the last decade to about $26 million in 1977. There are no conclusive data establishing whether the harvest can be sustained.

ALTERNATIVES

The alternative extremes of standards for ESSA findings can be charac-

terized as those that would lead to no export and those that would lead to export without restriction by the ESSA. Although such extremes may not square with the Convention's provisions, discussion of them may best define the limits of the ESSA's discretion in making decisions that impact the environment. As should become evident, this discretion is narrow if not undefined.

No Export. Informal estimates place exports at 95 percent or more for American ginseng and river otter, and 80 to 90 percent for bobcat and lynx. For bobcat, in particular, there may be substantial domestic use or waste, particularly in the South where pelts are less valuable.

Prohibition of export probably would reduce the harvest of all four of these species. An initial question, as yet unanswered, is the extent to which legal prohibition would actually affect exports. If such prohibition were effective, the commercial digging of American ginseng might virtually cease. However, there is a growing market for ginseng within the United States, and our lack of information on the supply function for this commodity leaves this conclusion to be viewed with circumspection. Furthermore, some roots are dug for personal consumption and even to be replanted in plots for aesthetic purposes. Because most river otter pelts are exported, embargoing export would most likely lower wholesale pelt price in the United States. However, many river otters reportedly are taken incidental to beaver trapping, and this proportion of the harvest presumably would be unaffected by an export embargo. Pelt price of bobcat and lynx apparently would also drop if export were embargoed, as seems to have occurred temporarily in the fall of 1977. For none of these species, however, do we know to what extent supply, or harvest, depends on price, nor do we have information on the capacity of our domestic market to expand if export were not possible. In addition, potential exists for domestic stockpiling if export were not possible, but the extent is unknown.

Despite these uncertainties, populations of these species probably would increase in abundance, at least in some areas, if export were not allowed. For American ginseng, particularly, the plant might recover to normal levels in certain areas where it is said to be depleted. Perhaps in the Northwest, and particularly in Wyoming, an export embargo might facilitate recovery of the bobcat in depleted populations. However, all of this region's States, except Wyoming, have taken regulatory action to conserve the species, and the effects of an embargo might be superfluous to their conservation. Export or even harvest embargo during cyclic population increase might have little effect on lynx populations in Alaska. However, such an embargo might substantially decelerate cyclic population decline in those local areas that are significantly exploited. The same may be true of the lynx in the lower 48 States, although the population dynamics of the species there are less understood. Export embargo would appear at most to have a minor effect on river otter populations, for which there is little evidence of current population stress from harvest. It should be kept in mind that many States protect one or more of these species by law, and no exports would be authorized for these States in any event.

It is not possible to describe with any confidence the environmental impacts of an embargo on export of these species, even if population increase were to result. It is also unknown to what extent such increases might affect populations of other species of the affected ecosystems. Because these animal species are carnivores and none of them have the high reproductive rate of certain herbivores, no dramatic fluctuations in their numbers would be likely even if the effects of harvest were removed completely and populations were left to other limiting factors of their environment. Individuals would presumably be seen more frequently, and could be more easily taken. We hnow of no reliable evidence that unexploited densities of these species would lead to a significant increase in the frequency of rabies or other disease. Bobcat depredations of poultry and livestock might increase in some localities, but the overall magnitude of this depredation probably would be minor.

No ESSA restriction on export. The environmental consequences of no export restriction by the ESSA are uncertain. First, there is some internal limitation of harvest of the three animal species within every State in which they occur, except for the bobcat in New Mexico, Texas, and Wyoming. The same cannot be said for American ginseng, whose harvest is regulated in only a few States, most of these in order to satisfy the ESSA's needs.

Second, other Federal decisions may restrict export, independently of the ESSA. In any event, Federal export permits are required for appendix II species. Before such permits are issued, the MA must be satisfied that pelts and roots were not taken in contravention of State law. This finding would presumably preclude export from the States that protect these species, irrespective of ESSA findings. Consequently, and provided that the Convention is enforced effectively, the maximum exports of pelts and roots will be those from States that allow harvest and export, consistent with terms prescribed by those States. Except for ginseng, and the bobcat in the three States referenced, export, and possibly harvest, may be substantially less than would be the case if these Convention restrictions were not present.

Failure of the ESSA to restrict American ginseng export from States without reasonable conservation programs could lead to continued or future depletion of the species, and even to extirpation. The same possibility exists for bobcats in New Mexico, Texas, and Wyoming, although the species apparently remains common in at least the former two States. Any significant effect such declines might have on other species is uncertain. If competition between coyotes and bobcats is significant, as has been hypothesized, coyote populations might increase to some extent. Any significant effect on bobcat prey is purely speculative. However, American ginseng and bobcat may become less visible and less harvestable, if not absent, from local areas of suitable habitat.

Restricting export of these species from States with reasonable conservation programs is likely to contribute little to the conservation of these species, and may hinder development of data necessary to understand the impact of harvest. The information on age structure of furbearers developed by several States and described below, for example, require adequate samples of animals and cooperation with trappers. On the other hand, such programs must be well designed and implemented if the data they gather are to contribute genuinely to the species' continued survival at a level consistent with their role in the ecosystem.

Proposed standards. The ESSA proposes to adopt the guidelines for its findings on detriment as set forth in its notice of April 10 (43 FR 15097). These guidelines are intentionally general; a combination of biological information and management initiatives can potentially satisfy the ESSA that export will not be detrimental to a species' survival, and the ESSA does not want to constrain unnecessarily State agencies in the manner by which they may endeavor to meet our needs.

The ESSA proposes to approve export without Federal quotas for 1978–79 harvest of those State populations of bobcat, lynx, and river otters meeting the following minimum requirements recommended by the New Orleans Working Group, as discussed and construed in the ESSA's notice of April 10:

Minimum requirements for biological information:

1. Population trend information * * * the method of determination to be a matter of State choice.

2. Information on total harvest of the species.

3. Information on distribution of harvest.
4. Habitat evaluation.

Minimum requirements for a management program:

1. There should be a controlled harvest * * * methods and seasons to be a matter of State choice.
2. All pelts should be registered and marked.
3. Harvest level objectives should be determined annually.

Some State wildlife agencies meet these recommendations except for the failure to specify a harvest level objective. Provided that an approximate harvest can be predicted based upon past reported harvest and past and planned harvest controls, the ESSA does not propose to require an explicit harvest level objective for export approval in 1978–79.

The ESSA also proposes to approve export without Federal quotas from certain State populations of bobcat, lynx, and river otter for which one or more recommendations of the Working Group have not been met adequately, if at all. We have made these proposals only because we consider other information sufficient for a finding of no detriment. For example, information on high density from certain southern States, although not rigorous, suggests that less thorough management than in other States may provide as much assurance that export will not be detrimental. However, we look forward to adoption of these recommended minimum requirements by every affected State.

The ESSA proposes to approve export subject to Federal quotas for States whose wildlife agencies lack authority to limit bobcat harvest, where those agencies have implemented substantial programs to evaluate the impact of harvest, and can by these and other means demonstrate that export subject to a quota in 1978–1979 will not be detrimental to the survival of this species in their State. It should be clear that this situation cannot be continued indefinitely. The New Orleans Working Group has recommended:

> No pelt from any of the three species should be allowed into international export if it was taken in a State in which the wildlife management agency does not have the authority to regulate the taking of the species.

However, the ESSA does not believe at this time that an inflexible position on this issue is appropriate. Failure of the ESSA to approve any export from these States might cripple fledgling research programs, where the incentive to obtain tags for export serves as a device for the State agencies to obtain carcasses and to evaluate harvest. Furthermore, at least one such state has produced substantial biological information indicating a viable bobcat population.

Only three States remain whose wildlife agencies do not have authority to limit harvest of bobcat. None apparently will have the opportunity to obtain full legislative authority over the species before our 1978–1979 export findings are made. However, all apparently will have such an opportunity before the 1979–1980 season. Although we propose to approve limited export in 1978–1979 for States in this category, we are concerned about the status of the bobcat in these States, and our proposal to approve limited export in 1978–1979 should not be construed as a precedent for approval in the future.

The ESSA proposes to approve export of American ginseng from those States that have implemented substantial programs to conserve the species, and which available information indicates have populations capable of supporting a sustained commercial yield. Acceptable conservation programs generally must include some form of research and regulation. However, the ESSA recognizes the recency of wild plant management in many States, and the frequent lack of management authority in State agencies. Consequently, we propose to approve export from certain States whose management agencies lack authority to limit harvest, where those States have substantial plans for 1978 under existing authority, and are currently supporting sustained commercial yield of the plant. Several State agencies which lack express authority, but are developing programs to conserve this species, anticipate seeking additional authority from their legislatures. The ESSA wishes to be supportive of new State programs; however, as with the furbearers, our proposal to approve export for roots harvested in 1978 should not be construed as a precedent for approval in the future.

A number of State agencies did not supply the ESSA in time for this proposal with information concerning the past season or their management programs for 1978–1979. We have not proposed to approve export in these instances. However, many of these State agencies have indicated that additional information will be forthcoming, and our final determinations in September will reflect this information and any other comment on our proposal.

The environmental impacts of these proposed standards, if finalized, would fall between the extremes of "no export" and "no ESSA export restrictions," as discussed above. Given the uncertainty in distinguishing impacts of these extremes, it appears superfluous to attempt a separate analysis for the standards. The no detriment finding affects the human environment only in an indirect manner. The environment will be affected by these findings only to the extent they bring about a change in harvest. As indicated above, these indirect environmental impacts are uncertain both in existence and in scope because of various intervening factors. Thus, we are led to the conclusion that this proposal if finalized would not be a major Federal action "significantly affecting the quality of the human environment" within the meaning of section 102(2)(C) of NEPA.

Tables: Bobcats and Otters

The following tables summarize by State the recent information we have received for bobcats and river otters, and present the ESSA's proposed findings concerning export from those States. Lynx are treated separately for those States having an open season; in all other States, lynx either do not occur, are rare, or are protected. The ESSA recently published a summary of State population estimates and past harvest reports for these species in the March 16, 1978 Federal Register. Because there are few changes to report for those data, they are not repeated here. That Federal Register notice should be consulted for data relevant to the current findings.

Description of the table categories follow, along with explanations of abbreviations used.

State classification. The type of management provided by a State wildlife agency is often defined by an official category to which each species is assigned. Because State definitions of the same word may differ, the labels here may not correspond exactly to that found in a State's regulations, but the intent has been retained (e.g., "Protected" is used by some States to indicate species which the agency has authority to regulate, while other States use the word to indicate a species for which there is no open season).

P=Protected: There is no open season for 1978–1979. The species may be on a State list of endangered wildlife, or there may be a temporary moratorium.
X=Not present: The species may never have occurred there, or may have been extirpated in historical times.
F=Furbearer: Taking is allowed under State control and pelts may be sold.
G=Game: Hunting is allowed under State control. In some, but not all States, this may include trapping and sale of pelts.
R=Regulated: The State wildlife agency has authority to regulate taking. This may include furbearer and game as well as other classifications.
U=Unregulated: Authority to manage the species has not been granted to the State wildlife agency by its legislature.

Quota given, 1977–1978. State export quotas listed here represent the maximum number of pelts of that species for which export was approved by the ESSA in the 1977–1978 season, as reported in the March 16 Federal Register notice. Two States provide the additional information or management

initiatives needed for a positive finding subsequent to publication of that notice. These States were given quotas after March 16, and those quotas are indicated by an asterisk(*). Not all States were assigned quotas, and these are indicated by symbols:

P=Protected; X=Not present: As in the State classification column. Assignment of a quota to these States for the season would have been inconsistent with State conditions.

NS=None set: No quota was assigned for that State.

Reported harvest, 1977-1978. The State's reported harvest for the 1977-1978 trapping season. In certain cases (see abbreviations below), more than one reporting system was used, and the differing reports are given with appropriate designations. Problems of comparing harvest reports made by different systems are discussed in the March 16 notice.

NC=Not compiled: State has not finished collection of harvest data. In most cases this is in progress, and the ESSA anticipates receiving these data soon.

TR=Trapper report: Mandatory report by trapper of each kill. In most cases this includes tagging of the pelt by a State official. This is generally considered the most reliable measure of harvest.

HR=Hunter report: Mandatory report by hunter (as for trapper).

DR=Dealer report: Mandatory report by fur dealers in State of all furs bought and sold. Such reports may be misleading when no distinction is made for skins originating in one State and sold in another. Multiple sales of the same pelt can also reduce accuracy of this method.

TS=Trapper survey; HS=Hunter Survey; DS=Dealer Survey: Voluntary survey or reports from a sample of trappers, hunters, or fur dealers. Results of these are commonly extrapolated, with a wide range of reliability, depending on attention to statistical limitations.

ADC=Animal damage control: Report of predator control operations.

ET=Export tag: Prior to setting of export quotas for 1977-1978, States committed themselves to issuing a limited number of tags, numbered and identified by State of origin (exceptions: otters from Maryland, Massachusetts, and Michigan). For a number of reasons, many States either were unable to limit the number of regularly issued tags or were unable to require mandatory tagging for that season. To solve this problem, many issued a limited number of special tags. Reports from several parts of the country indicate that prices offered for pelts bearing valid export tags were markedly higher than for untagged pelts, suggesting a reasonably strong incentive for tagging of pelts even where voluntary.

(##%)=Estimate of completeness of report: A number of States were still in the process of collecting data, and were unable to provide final figures in time for the present proposal. Where a percentage is given, it indicates the State's estimate of the completeness of their report (i.e., percent of trappers or dealers reporting, etc.).

Recent changes in management. Important considerations in the ESSA's proposed decision not to apply quotas to all States for 1978-1979 are the recent changes in many States' management of these species, especially for the bobcat, in areas where problems may have occurred. Most of these changes are seen as ensuring a more conservative harvest or providing better information for management. The list provided here is sure to be incomplete, but provides a summary of many changes described to the ESSA.

Findings and conditions for 1978-1979 season. The ESSA's proposed findings concerning export of pelts from the coming trapping season are given here. The rationale for approving export from certain States without use of quotas, as were used in 1977-1978, has been explained above. These are proposed findings, and the ESSA anticipates changes as further information is received. Publication of final findings is planned for about September 1. The proposed findings are abbreviated as:

A=Approved: Export is approved for pelts legally taken during 1978-1979 season. The ESSA considers that expected harvest under the State's planned management regime will not be detrimental to the survival of the species in that State. Pelts must be clearly identified as to State of origin and season of taking.

Q: ####=Quota: Exports from this State are approved for pelts taken during the 1978-1979 season, on the condition that exports are limited to the specified quota, and pelts are clearly identified to State and season.

NEA=No export approved: Explanation given in "comments" for the State.

NDR=No data received; IDR=Incomplete data received; no export approved: Data for the 1977-1978 season and current management plans not received by the ESSA in time for inclusion here, or are not complete. Proposed finding concerning export will be reconsidered if such data are received during the comment period. In most cases, these data are currently being prepared by State officials and are expected to arrive soon.

P=Protected, or X=Not present; no export approved: As in State classification column. Approval of export for 1978-1979 season would be inconsistent with current State conditions.

Comments. Other information relevant to the finding is given here.

BOBCAT

State	Classification	Past Quota '77-78	Reported Harvest '77-'78 Number	How Reported	Recent Changes In Management	Findings & Conditions for '78-79 Season	Comments
Alabama	R	4,000	NC		5/77-Trapper report required.	NDR	Research in progress. Night hunting and electronic calls prohibited.
Alaska	X	X				X	
Arizona	R	8,000	4,992	ET	'76-'77-Trapping permit required. '78-Substantial increase in trapping fees.	A	Take apparently reduced by weather conditions.
Arkansas	F	3,000*	NC	DR	7/78-Changed from Game to Furbearer status, license required to take (except for landowner and those under 16) or buy, season reduced.	IDR	May require tags '78-'79. Some carcass collection and study.
California	R	6,000	5,111 15,000 208	ET HS (1977) ADC	'76-Season shortened, trapping license required to sell pelts. 11/77-Tags required for export from State. Reports required for take of depredating bobcat.	A	Research in progress, including development of census techniques. Hunter survey based on small sample, may include many of tagged animals.
Colorado	R	4,000	1,300 NC NC	ET TS DR	'75-First restrictive season. 12/77-Management goals changed to emphasize value of resource and de-emphasize predator control.	IDR	Report prey increase since '75. Harvest probably greater than represented by export tags.
Connecticut	P	P				P	
Delaware	X	X				X	
Florida	R	3,500	678 983	DR ET	7/78-Restrictive season for trapping, possession, and sale of pelts. Tagging mandatory for sale. Enforcement of dealer reporting requirement to be strengthened.	A	Steel traps prohibited except for "destructive furbearing animals" under permit. Substantial research planned.
Georgia	R	4,000	2,793	DR(93%)		A	Relatively constant harvest.
Hawaii	X	X				X	
Idaho	F	1,475	776	ET	'77-Furbearer classification. Season reduced from year-round to 1 mo., no exposed baits, license required to take.	A	Research in progress.
Illinois	P	P				P	
Indiana	P	P				P	
Iowa	P	P				P	
Kansas	F	NS	2,145*	TS	'78-'79-Pelts must be registered and tagged before sale.	A	Starting age structure analysis. Preliminary data suggest population is expanding. License required to take; trapping license required to sell.

BOBCAT

State	Classification	Past Quota '77-78	Reported Harvest '77-'78 Number	How Reported	Recent Changes In Management	Findings & Conditions for '78-79 Season	Comments
Kentucky	P	P				P	
Louisiana	F	4,000				NDR	Recent research. Research planned and in progress.
Maine	R	500	389	TR,HR	'75-Detailed management plan. '78-reduced trapping and hunting seasons.	A	New population range estimate: 2,431-5,015. Regulations allow for local closure during season if excessive harvest detected.
Maryland	P	P				P	
Massachusetts	G	50				NDR	
Michigan	F	350*	331	TR,HR	'77-78-Season open only in Upper Peninsula.	A	Severe winter may have reduced harvest. Tagging required.
Minnesota	G	150	103 86	TR,HR ET	'77-Agency given authority to regulate. Season restricted to 2 months, season bag limit set at 5 (combined with lynx).	A	Carcasses collected for research. Other research in progress. Illegal to use snowmobiles or ATV's for running trapline.
Mississippi	F	4,000	NC			IDR	
Missouri	P	P				P	
Montana	F	1,070	636	TR,HR	'77-'78-License and special permit required to take, season, bag limits set, tagging required.	A	Furbearer research to start, '78. Reduced harvest attributed to more conservative management. Severe winter may have contributed locally. Possibly some untagged pelts sold in Canada.
Nebraska	R	400				NDR	
Nevada	R	2,225				NDR	
New Hampshire	P	P			2-year moratorium.	P	
New Jersey	P	P				P	
New Mexico	U	6,000	4,416 4,606	ET TS	'77-Tags made available by agency, although authority not given by legislature.	Q:6,000	Population model suggests slight increase in numbers.
New York	G	225	74 80-90 20	TR,HR TR,HR(ADJ) ET	'77-Tagging and report required. '78-Trapping and hunting season reduced in south. Trapping season substantially reduced in north.	A	HR may be incomplete because first year of tagging. Many apparently taken incidental to deer hunting and retained for taxidermy. Age structure suggests good reproduction and low harvest pressure.
North Carolina	R	800	800 593	ET DR	'77-'78-Tags supplied to dealers. '78-To improve dealer reporting system. Plan to review all game laws.	A	Cold weather may have reduced take. Research planned.

BOBCAT

State	Classification	Past Quota '77-78	Reported Harvest '77-'78 Number	How Reported	Recent Changes In Management	Findings & Conditions for '78-79 Season	Comments
North Dakota	F	165	61	ET	'77-Voluntary tags applied by Departmental personnel for dealers. '78-Will encourage tagging at trapper level rather than dealer.	A	Harvest survey and carcass collection planned.
Ohio	P	P				P	
Oklahoma	F	0	NC	DR	Furbearer study started '77. Reviewing regs.	IDR	
Oregon	F	3,000	2,930 NC	ET TR,HR,DR	10/77-Dept. given reg. authority, E. Oregon closed, season set for W. Oregon, reports required of hunters, trappers, and dealers.	A	
Pennsylvania	P	P				P	
Rhode Island	P	P				P	
South Carolina	G	0				NDR	Not legal to sell pelts in '77-'78 season.
South Dakota	F	500	84	TR,HR	'77-'78-Tagging by Cons. Officer required. Season shortened to restrict take.	A	Biological data being analyzed. Apparent increase in prey. Heavy snow may have contributed to low take.
Tennessee	R	1,000	597 800	ET ET(ADJ)	Hunter limit of 1.	A	Licenses required to take or buy. Dealers required to report.
Texas	U	10,000				IDR	
Utah	P,U	P			6/76-Taking and possession illegal except for predator control.	P	'75-Authority to regulate given to Utah State Agricultural and Wildlife Damage Prevention Board.
Virginia	R	1,500				NDR	
Washington	G,F	6,000				NDR	
West Virginia	F	500	535 150	TR,HR ET	'77-'78-Mandatory reports by hunter/trapper; data and carcasses collected.	A	Research started on carcasses and jaws. Habitat inventory to start.
Wisconsin	F	300	163	TR,HR	'78-79 season to be reduced by 6 weeks.	A	Mandatory reporting since '70. Research being considered.
Wyoming	U	2,000				NDR	
Navajo Nation	G,F	500				NDR	

OTTER

State	Classification	Past Quota '77-78	Reported Harvest '77-'78 Number	How Reported	Recent Changes In Management	Findings & Conditions for '78-79 Season	Comments
Alabama	F	1,500			5/77-Trapper report required.	NDR	Research in progress.
Alaska	F	Open	1,981	TR(90%)	'77-'78-Tag & report required for all otter taken.	A	
Arizona	P	P				P	
Arkansas	F	400*	NC	DR		IDR	May require tags, '78-79. Some carcass collection & study. May study status.
California	P	P				P	
Colorado	P,X	P,X				P	Efforts being made to reintroduce.
Connecticut	F	100	63	ET	'78-'79-Tags required on all otter taken.	A	
Delaware	G	60				NDR	
Florida	R	6,000	1,707 3,326	DR ET	7/78-Possession and sale of pelts restricted to trapping season. Tagging mandatory for sale. Enforcement of dealer reporting to be strengthened.	A	Steel traps prohibited except for "destructive furbearing animals" under permit. Substantial research planned.
Georgia	G	4,000	3,097	DR (93%)		A	Relatively constant harvest.
Hawaii	X	X				X	
Idaho	P	P				P	
Illinois	P	P				P	
Indiana	P,X	P,X				P	
Iowa	R	0				NEA	Very rare; State may protect.
Kansas	P	P				P	
Kentucky	P,X	P,X				P	
Louisiana	F	7,500			'76-'77-State quotas set for certain management areas, certain other areas closed.	NDR	Research in progress.
Maine	R	600	675	TR	'75-Detailed management plan. '78-Season reduced and made identical to land trapping season, reducing trapping opportunity.	A	New population estimate, 7,108. Most otter trapped incidental to beaver trapping.
Maryland	R	165				NDR	

OTTER

State	Classification	Past Quota '77-78	Reported Harvest '77-'78 Number	How Reported	Recent Changes In Management	Findings & Conditions for '78-79 Season	Comments
Massachusetts	R	68				NDR	
Michigan	F	810*	660	TR		A	Severe winter reduced both otter and beaver harvest. Special license and tagging required. Southern third of State closed, as well as other local closures. Bag limit of 1.
Minnesota	R	700	492	ET	'77-Season changed from spring to midwinter. '78-Plan to make tagging mandatory.	A	Bag limit of 3. Research on census techniques in progress. Snowmobiles and ATV's illegal for running traplines.
Mississippi	F	350	NC			IDR	
Missouri	P	P				P	
Montana	F	36	40	TR	Bag limit of 1.	A	Furbearer research starting, '78.
Nebraska	P,X	P,X				P	
Nevada	R	0				NEA	Very few in State, no data to support export, and no request by State for export.
New Hampshire	F	200	NC	TR		IDR	Plan furbearer survey next winter. To hire additional furbearer personnel.
New Jersey	P	P				P	
New Mexico	P	P				P	
New York	F	700	467 500±20	TR TR(ADJ)	'78-Trapping season reduced.	A	No change in age structure over previous. Reduced spring harvest due to heavy snow. High correlation (10-yr.) between otter and beaver harvests. Take per trapper constant over 10 years.
North Carolina	F	1,200	1,200 927	ET DR	'77-'78-tags supplied to dealers. '78-To improve dealer reporting system. Plan to review all game laws.	A	Research planned. Cold weather (ice) probably reduced take.
North Dakota	X	X				X	
Ohio	P	P				P	
Oklahoma	P	P				P	
Oregon	R	335	300	ET		A	
Pennsylvania	P	P				P	

OTTER

State	Classification	Past Quota '77-78	Reported Harvest '77-'78 Number	Reported Harvest '77-'78 How Reported	Recent Changes In Management	Findings & Conditions for '78-79 Season	Comments
Rhode Island	R	15	15+ 8	TR(50%,ADJ) ET	State may tag all pelts before sale, '78-'79.	A	
South Carolina	G,F	650				NDR	
South Dakota	P	P				P	
Tennessee	P	P			On State's threatened list, '74.	P	
Texas	F	0				NEA	No export requested by State, research in progress.
Utah	P	P				P	
Vermont	R	50				NDR	
Virginia	R	585				NDR	
Washington	F	770				NDR	
West Virginia	P,X	P,X				P	
Wisconsin	F	1,200				NDR	5-year research program starting.
Wyoming	P	P				P	
Navajo Nation	X	X				X	

LYNX

Only five States have open seasons for lynx, so their data are summarized here rather than in a complete table. Information for each State is given in the same order as used in the tables for bobcat and river otter. As for bobcat and river otter, the March 16 FEDERAL REGISTER notice should be consulted for further information concerning populations.

The following States protect lynx, although not all have resident populations: Colorado, Connecticut, Maine, Michigan, New Hampshire, Utah, Vermont, Wisconsin, and Wyoming.

The following States have a limited open season for lynx, tag all pelts, and have other restrictive regulations:

Alaska: 1977-1978 quota, open. Harvest (TR, HR, 90 percent), 1,620. Mandatory sealing for all lynx pelts started in 1977-1978 season. Finding: A.

Idaho: 1977-1978 quota, 25. Harvest (TR, HR), 21; (ET), 15. State wildlife agency given authority, 1976; season and bag limits set, 1977. Tagging is mandatory. Finding: A.

Minnesota: 1977-1978 quota, 25. Harvest (TR, HR), 21; (ET), 15. Agency given authority to regulate, 1976. Restrictive season, bag limit (with bobcat) of 5, tagging mandatory, 1977. Currently report increasing population. Finding: A.

Montana: 1977-1978 quota, 200. Harvest (TR, HR), 24. License required to take, report and tagging required, bag limit of two (with bobcat), 1977-78. Severe winter and more restrictive regulations contributed to decreased harvest. Finding: A.

Washington: 1977-1978 quota, 35. New information not yet received. Finding: NDR.

TABLES: AMERICAN GINSENG

The following tables summarize by State the information concerning American ginseng received by the U.S. Fish and Wildlife Service and the ESSA. Only those States where the plant has been known to occur are listed. Many States have recently initiated programs to better establish the status of this species, to monitor its harvest, and, in some cases, to manage its harvest. Without such State programs it is doubtful that adequate information would be available to support approval of export by the ESSA.

Description of the table categories follow, along with explanations of abbreviations used. More detailed State-by-State summaries of comments are available from the ESSA.

State classification. Most States have trespass statutes pertaining to the protection of private and public plant resources. At minimum these laws usually require oral permission from private landowners or written permission from State officials before the resources may be removed. Although these statutes may be applied toward conserving American ginseng, they were not considered in determining the State classifications. The State classifications are based on State statutes, regulatory authorities, or initiatives specifically concerned with American ginseng.

C=Conserved: A State agency has implemented or has initiated a program to help conserve American ginseng even though the State agency has no express regulatory authority.

R=Regulated: A State agency has regulatory authority to conserve American ginseng.

U=Unregulated: No State agency has regulatory authority or has initiated a program to conserve American ginseng.

Reported harvest. Few States have even gross estimates of the size of past harvest. The estimates included in the tables are based on voluntary dealer surveys (DS), which may include roots purchased from other dealers as well as those roots purchased from collectors.

State population. A sampling of qualitative opinions concerning American ginseng's abundance and status in the States is provided in the tables. Few of these opinions are supported by data. Missouri is the only State which has estimated the size of its American ginseng population.

As discussed in our August 30, 1977 FEDERAL REGISTER notice (42 FR 43729), qualitative opinions concerning the plant's abundance and status must be viewed critically. Such terms as endangered, rare, and stable are often used imprecisely, without guidelines or criteria. In addition, the plant's status undoubtedly varies with local conditions, further complicating any evaluation of its status and abundance.

In the tables, information concerning American ginseng's status and abundance is followed by a brief explanation as to how those determinations were made. In some cases, no grounds for a qualitative opinion were given so no explanation is provided in the "How Determined" column. When available, grounds are stated with the following abbreviations:

B=Biologists' opinions: Either an opinion expressed by a biologist to U.S. Fish and Wildlife Service or the ESSA, or an opinion expressed by one or more biologists which was cited as a basis for a State comment or a State endangered species list.

CC=Collectors' comments: Comments from collectors received by the U.S. Fish and Wildlife Service or the ESSA.

FO=Field observations: Included when field observations were specifically referred to as a basis for the determination.

HR=Herbarium records: Based on information recorded with herbarium specimens.

LS=Literature survey: Based on information in the literature.

SC=Survey of collectors: State Survey of American ginseng collectors in the affected State.

SD=Survey of dealers: State survey of American ginseng dealers who purchased roots harvested in the affected State.

Findings and conditions for 1978 season. The ESSA's proposed findings concerning export of roots from the 1978 collecting season are given here. As has been indicated for the furbearers, these proposed findings are subject to change as further information is received, and final findings will be published about September 1. The proposed findings are abbreviated as:

A=Approved: Export is approved for roots legally harvested during the 1978 season. The ESSA considers that harvest in the State will not be detrimental to the survival of the species in that State. Roots must be documented as to State of origin and season of collecting.

NEA=No export approved: Several States not approved anticipate providing additional information which may support approval of export of the 1978 harvest.

Comments. Other information relevant to the finding is given here.

AMERICAN GINSENG

State	Classification	Harvest: Reported Harvest/ 1977	Harvest: How Reported	State Population: Estimates of Abundance or Status	State Population: How Determined	Findings	Comments
Alabama	U	--	--	Endangered[1]	--	NEA	No anticipated management program.
				"Good numbers" in North[2]	B		
Arkansas	U	--	--	Depleted but locally abundant[3]	--	NEA	The State anticipates reviewing the status of the species.
				Increased abundance and and distribution[4]	SC (9 responses)		
Connecticut	U	--	--	Rare and local[5]	HR & FO	NEA	Consideration should be given to monitoring native populations.[5]
				Endangered[6]	HR & FO		
Delaware	U	--	--	Rare[7]	--	NEA	Has always been rare.[7] The State supports export restrictions.[8]
Georgia	U	--	--	Endangered[9]	LS & B	NEA	Not included in State endangered species list.
Illinois	U	--	--	Rare[10]	--	NEA	No anticipated management program.
				Decreasing[11]	SC & SD		
				Threatened[12]	LS, HR & B		
				Stable, or Increasing, or Decreasing	CC		
Indiana	U	--	--	Decreasing[13]	FO	NEA	Not included in preliminary State list of endangered plants.[13] State supports export restrictions.[14]
				Not Rare[14]	--		
				Stable or Decreasing	CC		
Iowa	U	--	--	Stable, or Increasing, or Decreasing	CC	NEA	No anticipated management program.
Kentucky	C	52,700 lbs.[15]	DS	Increasing; not Endangered[16]	--	A	American ginseng is not included in the "Endangered Plants and Animals of Kentucky."[20] The State has initiated a program to better establish the species' status, and to monitor the harvest pending express legislative authority in 1980.[15]
				Threatened[17]	--		
				Frequent to Abundant, but Decreasing[18]	--		
				Endangered[19]	--		
				Stable, or Increasing, or Decreasing	CC		
Louisiana	U	--	--	Rare and Local, and Threatened to Endangered[21]	HR	NEA	Louisiana is on the periphery of American ginseng's distribution.

AMERICAN GINSENG

State	Classification	Harvest: Reported Harvest/ 1977	Harvest: How Reported	State Population: Estimates of Abundance or Status	State Population: How Determined	Findings	Comments
Maine	C	--	--	Depleted - 14 stations have been Documented[22]	HR & FO	NEA	Two of the four known extant stands have been designated "Critical Areas" by the State. The designation does not provide any protection.
Maryland	U	--	--	Decreasing[23]	Collectors' Reports	NEA	Maryland anticipates developing a program to monitor and manage the harvest. Not included in State endangered species list.
				Locally Common[24]	--		
				Stable	CC		
Massachusetts	U	--	--	Rare[17]	--	NEA	Considered a minor ginseng producing State.
				Endangered or Threatened[25]	--		
				"Exceedingly Rare and Local"[26]	HR		
Michigan	R	--	--	Threatened	B	A	American ginseng has been designated a Threatened species under the Michigan Endangered Species Act. The State has a program to better establish the species' status, and to monitor and manage its harvest.
Minnesota	U	--	--	Rare and Endangered[17]	--	NEA	Plant should be protected.[27] Harvest should not be allowed in the State.[28] Some collectors support export restrictions.
				"Species of Special Interest"[27]	--		
				Stable	CC		
Mississippi	U	--	--	Rare and Endangered[29]	B	NEA	Considered a minor ginseng producing State.
Missouri	C	6100 lbs[30]	DS (2 major dealers)	1,000,000 plants[31]	Based on 1/acre in available habitat.	A	Not included in "Rare and Endangered Species of Missouri."[32] The State has initiated a program to better establish the species' status, to monitor the harvest, and to promote better management.
				Stable	CC		
Nebraska	U	--	--	Occurs in three eastern counties[33]	HR	NEA	Not known whether American ginseng is commercially harvested in Nebraska.
New Hampshire	U	--	--	Rare and Endangered[34]	LS, HR & FO	NEA	Considered a minor ginseng producing State.
New Jersey	U	--	--	Rare[35]	LS & B	NEA	Considered a minor ginseng producing State.

AMERICAN GINSENG

State	Classification	Harvest: Reported Harvest/ 1977	Harvest: How Reported	State Population: Estimates of Abundance or Status	State Population: How Determined	Findings	Comments
New York	R	--	--	Decreasing and Protected[36]	FO	NEA	American ginseng is currently protected by the State, but they are developing a program to better establish the species' status, and to monitor and manage its harvest.
				Increasing, or Decreasing	CC & DC		
North Carolina	R	16,615 lbs.[37]	DS	Threatened[38]	B	A	The State has initiated a program to better establish the species' status and to monitor and manage its harvest.
				Stable[39]	--		
				Decreasing[40]	Survey of Foresters		
				Increasing[16]	--		
				Decreasing and Threatened[41]	--		
				Threatened[42]	--		
				Increasing, or Decreasing	CC		
Ohio	U	--	--	Rare and Endangered[43]	LS	NEA	Anticipates establishing a management program.
				Locally Common, but Decreasing[44]	--		
				Stable to Decreasing[45]	B		
				Stable	CC		
Oklahoma	U	--	--	Extremely rare[46]	HR	NEA	Oklahoma is on the periphery of American ginseng's distribution.
				Rare 1[47]	--		
Pennsylvania	U	--	--	Stable[48]	--	NEA	Pennsylvania anticipates establishing a management program pending express legislative authority.
				Rare in Western Pennsylvania[49]	--		
				Rare in Perry County, Pennsylvania[50]	FO		
				Rare in Southeastern Pennsylvania[51]	--		
				Not Endangered or Threatened[52]	Because of harvest technique		
				Decreasing[53]	--		
				Decreasing in Northampton County, Pennsylvania[54]	--		
				Stable or Increasing	CC		
Rhode Island	U	--	--	Probably extirpated[55]	Unpublished literature & FO	--	--

AMERICAN GINSENG

State	Classification	Harvest: Reported Harvest/ 1977	Harvest: How Reported	State Population: Estimates of Abundance or Status	State Population: How Determined	Findings	Comments
South Carolina	U	--	--	Threatened[56/]	B	NEA	Considered a minor ginseng producing State.
				Endangered[57/]	FO		
				Endangered[58/]	--		
				Decreasing and Threatened[59/]	FO		
Tennessee	U	--	--	Rare[60/]	--	NEA	State anticipates developing a management program.
				Rare[17/]	--		
				Threatened[61/]	HR & B		
				Decreasing[62/]	HR & FO		
				Stable, or Increasing, or Decreasing	CC		
				Threatened[63/]	B, and other individuals familiar with the plant.		
Vermont	U	--	--	Decreasing[64/]	--	NEA	No anticipated management program. Not included in a State list of protected plants.
Virginia	U	--	--	"endangered in only a few localities if at all"[65/]	B	NEA	The State anticipates developing a management program.
				Endangered[66/]	--		
				Endangered[67/]	--		
				Stable	CC		
West Virginia	R	16,148 lbs., dry 1,073 lbs., green +3,164 lbs.	DS, other sources	Rare to Frequent in occurence in different counties, not Endangered[68/]	B	A	Harvest increased from 1976. The State has initiated a program to monitor and manage the harvest.
				Fairly Common[69/]	--		
				Stable or Increasing	CC		
Wisconsin	R	--	--	Threatened[70/]	HR, LS & FO	NEA	The State has initiated a program to better establish the species' status.
				Rare[71/]	--		
				Stable	CC		

Footnotes for American Ginseng Tables

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2. Letter from Governor George C. Wallace dated October 18, 1977.

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6. Dowhan, J. J. and R. J. Craig. 1976. Rare and Endangerd Species of Connecticut and Their Habitats. Department of Environmental Protection. Report of Investigations, No. 6. The Natural Resources Center. State Geological and Natural History Survey of Connecticut. Hartford, Conn. 137 pp.

7. Oral statement by Dr. C. W. Dunham, University of Delaware.

8. Letter dated March 9, 1978 from H. L. Alexander, Jr., Delaware Department of Natural Resources and Environmental Control.

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11. Letter dated September 7, 1978 from J. Schwegman, Illinois Department of Conservation.

12. Memorandum, semi-final list of Endangered and Threatened Plants, dated January 18, 1978 by C. J. Sheviak, Director, Endangered Plants Project, Illinois Natural Land Institute.

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14. Letter dated October 4, 1977 from J. D. Cloud, Indiana Department of Natural Resources.

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16. Letter dated May 26, 1977 from A. Krochmal, U.S.D.A. Forest Service.

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19. Letter dated September 29, 1977 from W. H. Martin, Eastern Kentucky University.

20. Babcock, J. V. 1977. *Endangered Plants and Animals of Kentucky.* University of Kentucky. Lexington, Ky. 128 pp.

21. Letter dated July 14, 1977 from Mary Curry, VTN Louisiana Inc.

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23. Letter dated October 7, 1977 from W. Jabine II, Maryland Department of Natural Resources.

24. Letter dated November 7, 1977 from W. F. Gimpel, Jr., Maryland Department of Agriculture.

25. Letter dated August 26, 1977 from F. Winthrop, Jr., Massachusetts Department of Food and Agriculture.

26. Letter dated September 6, 1977. B. G. Blodgett. Massachusetts Division of Fisheries and Wildlife.

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28. U.S. Endangered Species Scientific Authority. Transcript of Proceedings. Public Hearing on 1978-1979 Export Findings for Bobcat, Lynx, River Otter and American Ginseng.

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30. Letter dated February 10, 1978 from C. R. Noren, Missouri Department of Conservation.

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37. Data received May 30, 1978 by the ESSA from North Carolina.

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39. Letter dated October 11, 1977 for E. H. McGee, Wilkes County Forester, North Carolina.

40. Correspondence dated September 22, 1977 from B. A. Sanders, USDA Forest Service, NFsNC.

41. Letter dated August 29, 1977 from J. D. Pittillo, Western Carolina University.

42. Letter dated October 29, 1977 from D. M. Dumond, University of North Carolina at Wilmington.

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44. Letter dated August 26, 1977 from R. E. Mosely, J., Ohio Department of Natural Resources.

45. Letter dated July 20, 1977 from D. Anderson, Ohio Natural Heritage Program.

46. Letter dated July 18, 1977 from J. J. Crockett, Oklahoma State University.

47. Rare and Endangered Species of Oklahoma Committee. 1975. "Rare and Endangered Vertebrates and Plants of Oklahoma. USDA Soil Conservation Service. 44 pp.

48. Letter dated August 17, 1977 from M. K. Goddard, Pennsylvania Department of Environmental Resources.

49. Letter dated August 17, 1977 from W. E. Buker, Carnegie Museum.

50. Letter dated August 25, 1977 from J. Adams, Morris Arboretum.

51. Letter dated August 26, 1977 from J. M. Fogg, Arboretum of the Barnes Foundation.

52. Letter dated August 28, 1977 from E. J. Wherry.

53. Letter dated August 29, 1977 from C. L. Bryner Waynesburg College.

54. Letter dated October 26, 1977 from K. A. Friedman, Lehigh Valley Conservancy, Inc.

55. Letters dated August 19, and September 1, 1977 from I. H. Stuckey, University of Rhode Island.

56. Letter dated July 19, 1977 from K. B. Stansell, South Carolina Wildlife and Marine Resources Department.

57. Letter dated September 6, 1977 from S. M. Jones, Clemson University.

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62. Letter dated August 23, 1978 from E. T. Browne, Jr., Memphis State University.

63. Letter dated May 9, 1978 from B. R. Allison, Tennessee Department of Conservation.

64. Seymour, F. C. 1969. *The Flora of Vermont.* Fourth Edition. Agriculture Experiment Station Bulletin 660. The University of Vermont. Burlington, Vt. 393 pp.

65. Letter dated September 6, 1977 from E. J. Shiflet, Virginia Secretary of Commerce and Resources.

66. Letter dated September 15, 1977 from D. M. Porter, Virginia Polytechnic Institute and State University.

67. Letter dated October 12, 1977 from W. M. Lofits, Jr., Shenandoah National Park.

68. Letter dated February 21, 1978 from D. E. Carter, West Virginia Department of Natural Resources.

69. Letter dated September 26, 1977 from F. L. Pogge, U.S.D.A. Forest Service.

70. Read, R. H. 1976. Endangered and Threatened Vascular Plants in Wisconsin. Scientific Areas Preservation Council Technical Bulletin 92. Wisconsin Department of Natural Resources. 58 pp.

71. Letter dated August 26, 1977 from P. J. Salamun, University of Wisconsin, Milwaukee.

Remarks. American ginseng is often protected on Federal and State lands. Hypothetically, this protection should provide population reservoirs and serve as a buffer against overexploitation. Unfortunately, it appears that prohibitions against harvest on public lands are not generally observed, probably because of the small amount of resources devoted to enforcement. In fact, in some areas of the country most of the harvest is reported to take place on public lands.

Publication of these proposed findings has been approved unanimously by the members of the Endangered Species Scientific Authority.

Dated: June 30, 1978.

WILLIAM Y. BROWN,
Executive Secretary, Endangered Species Scientific Authority.

[FR Doc. 78-18697 Filed 7-6-78; 8:45 am]

federal register

FRIDAY, JULY 7, 1978
PART V

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate Land Sales Registration

■

FORMAL PROCEDURES AND RULES OF PRACTICE

Administrative Actions

[4210-01]

Title 24—Housing and Urban Development

CHAPTER IX—OFFICE OF INTERSTATE LAND SALES REGISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-78-446]

PART 1720—FORMAL PROCEDURES AND RULES OF PRACTICE

Administrative Actions

AGENCY: Office of Interstate Land Sales Registration.

ACTION: Final rule.

SUMMARY: The Formal Procedures and Rules of Practice have been revised to streamline the procedures for conducting administrative actions under those rules. The Secretary has been designated as the appeals Officer and the time frame for appeals has been shortened. The rules have been re-ordered to arrange them in a more logical and chronologic sequence. Also, many technical changes have been made to correct syntax, punctuation and other grammatical problems.

EFFECTIVE DATE: September 15, 1978.

ADDRESS: Office of Interstate Land Sales Registration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Samuel B. Rothman, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-7055.

SUPPLEMENTARY INFORMATION: On January 31, 1977, the Assistant Secretary for Consumer Affairs and Regulatory Functions published in the FEDERAL REGISTER a proposed revision of 24 CFR Part 1720, the Formal Procedures and Rules of Practice under the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701). Relatively few comments were received; all comments were given careful consideration, and certain suggestions were adopted, in whole or in part, as reflected in this publication. Proposals that were not commented upon are not discussed in this preamble unless they were changed as a result of further staff evaluation.

There is a change in format, reducing the number of subparts from six to four and integrating and rearranging the provisions of subparts D, E, and F into a revised subpart D. The provisions of those subparts now appear under six categorical headings: General Provisions, Pleadings, Motions, Discovery and Evidence, Hearing and Appeals. Conversion tables appear prior to the table of contents for this part. This change is a technical amendment but was proposed informally as a more logical and chronological sequence of the rules. For the purposes of discussing the changes made in response to comments, however, the existing section designations will be used.

SUBPART B—FILING ASSISTANCE

One commenter suggested that the prefiling assistance that is provided for in § 1720.35 be made available in field offices. Prefiling assistance cannot be handled through field offices at this time. Staffing does not permit decentralization of this function, nor is there any likelihood of a substantial increase in the examination staff in the near future.

The proposal to delete § 1720.40(c) elicited a comment that such a deletion appeared to abrogate the requirement of section 1407(b) of the act that the Secretary notify the developer of deficiencies before 30 days pass. In the Secretary's opinion the existing language is susceptible to the incorrect inference that the regulations require a notice prior to that provided by the act. Consequently, subsection (c) has been retained but rewritten to make clear that the notice of deficiencies in a registration will be given within the time and in the form contemplated by section 1407(b) of the act and implemented in § 1710.45(a) of this chapter.

SUBPART C—FORMAL INVESTIGATIONS

A comment was received with respect to § 1720.70, recommending that a challenge to an administrative subpoena be reviewed by an independent third party such as the Administrative Law Judge. The subpoenas authorized by this section are administrative subpoenas issued for the purposes of gathering information in an investigation rather than in obtaining documents and taking testimony in a court or administrative proceeding. The Secretary believes that it is best to maintain the investigative function separate and apart from the judicial one. For example, an Administrative Law Judge who reviewed challenges to administrative subpoenas might well be disqualified from hearing a case subsequently brought based on information obtained through such a subpoena. Moreover, subpoenas must be enforced in Federal District Courts, where adequate safeguards are available to a respondent. The reason that § 1720.70(b) has been rewritten is to indicate that a reconsideration of an administrative subpoena will not be heard by a disinterested third party, as might be inferred from existing language.

A minor change has been made in § 1720.80(b)(6) by changing the Secretary's authority to exclude an attorney or witnesses from the immediate investigative proceeding rather than "from further participation in the particular investigation" as is presently provided. An objection was lodged with respect to enlarging the Secretary's authority to take action under § 1720.85, which does not exist under the present regulations. The regulation would authorize the enforcement of the subpoena in a U.S. District Court or authorize the issuance of a suspension order for the developer's failure to cooperate in an investigation. This latter power is specifically granted to the Secretary in section 1407(e) of the act (15 U.S.C. 1706(e)). It is, however, limited to examinations to determine whether a suspension order should issue under section 1407(d) of the act (15 U.S.C. 1706(d)). In view of the express authority to issue such a suspension order, the fact that these rules provide a hearing right to the aggrieved party, together with the fact that such an order can be issued only within a limited scope, the Secretary is confident that all due process requirements are met and that the regulation is well within statutory authority.

A similar objection from the same commenter was received with respect to § 1720.85. In contending that the issuance of a suspension order under these circumstances could violate a developer's Constitutional rights the commenter again suggests that an impartial third party be the arbiter at a subpoena return or other investigational proceeding. The commenter states that in the conduct of investigations no suspension power ought to be available. That comment overlooks the explicit statutory authority referred to above. Moreover, this authority, like any other conferred by a federal statute, is subject to Constitutional limitations. Consequently, § 1720.85 has been retained in substance though rewritten to clarify which section numbers apply to the Act and which apply to the regulations.

Section 1720.90(a) has been revised to make clear which section numbers apply to the Act and which apply to the regulations. There was objection to the deletion of § 1720.90(b), which describes the action to be taken when an investigation discloses that corrective action is not necessary or warranted in the public interest or for the protection of purchasers. This comment was accepted, and the provision has been restored as § 1720.90(c). An objection was aimed at § 1720.90(c) as proposed. This subsection is but a part of the existing § 1720.55 and was believed to be more appropriately placed in the context of a concluded investigation. Publication of violations of the Act or regulations at this stage would not and should not indicate that there has

been an adjudication in the matter. Section 1415(b) of the act (15 U.S.C. 1714(b)) provides ample authority for such publication.

A comment regarding § 1720.100 applauded the inclusion of a consent order mechanism but recommended that such a procedure would be more fruitful if specific provision were made to delete from subsequent litigation any failed negotiations or terms that might be related to a consent order. The Secretary agrees that results could be more fruitful with the suggested proviso, and a pertinent provision is added as § 1720.100(c). This section will become § 1720.95 under the revised format; it is the only section outside of subpart D that is affected.

SUBPART D—ADJUDICATORY PROCEEDINGS

Section 1720.131 provides for a hearing after the issuance of a suspension order pursuant to § 1710.45(b)(3). Such a provision was deleted in the regulations that became effective December 1, 1973, and its restoration met with approval.

An objection to § 1720.165 was received because the developer would be put out of business pending the holding of a hearing. Subsection (b) of § 1720.165 inadvertently was drafted to require that a hearing be scheduled within 20 days after receipt of a request for a hearing. This language now requires that a hearing be held within 20 days after request when suspension orders issued pursuant to § 1710.45(b)(2) or § 1710.45(b)(3) have been issued.

It was recommended that § 1720.190 be amended to provide that hearings be presided over by an Administrative Law Judge "designated by the Chief Administative Law Judge," thereby facilitating appointment and notice of the designated judge. The Secretary agrees with the recommendation, but has decided to continue the present structure until the Administrative Law Judge's staff increases.

A comment on § 1720.205, which allows amendment of a notice of proceeding as a matter of course until an answer has been received, complains that no additional time for a developer to prepare an amended answer or request for more definite statement is provided in subsection (a) and that this proposed subsection also removes any discretion in the Administrative Law Judge to rule as to whether the allowance of amendments may prejudice the public interest and the rights of the parties. Additional time in which to answer an amended answer is presently provided in § 1720.140(b). With respect to the deletion of certain conditions upon which the Administrative Law Judge may allow amendments, it is the Secretary's opinion that the Administrative Law Judge must always act to avoid prejudicing the public interest and the rights of the parties whether or not action on amendments is expressly conditioned on those criteria, which were eliminated merely as a word-saving measure.

The proposed appeals procedure and Appeals Officer evoked the most extensive comment. Section 1720.365 was attacked for reducing the amount of time in which to file a petition for appeal from 30 to 10 days; for having a 10 day limit for review of the petition by the Appeals Officer; by having, in effect, to present an argument twice, once in the petition and once in the brief; and to have the appeal from the decision of an independent Administrative Law Judge to the head of the agency which issued the complaint in the first place. The Secretary recognizes the problems of the time period for filing an appeal and the possibilities for duplicating efforts in the petition and the brief. Accordingly, § 1720.365(a) has been revised to indicate that a petition for appeal is contemplated to be a concise document, not expected to contain detailed arguments and exhaustive legal citations. The Secretary is aware that there might be a tendency, nevertheless, to expand the argument in the petition. However, the proposed procedure is not uncommon, and the Secretary believes it is feasible. Section 1720.365(c) has been revised to require filing of the appeal brief within 30 days after service of the Appeals Officer's decision granting a petition rather than within 30 days after service of the decision appealed from. There is no reason to use the Adminstrative Law Judge's decision as a measuring point when it is the Appeals Officer's ruling on the petition for appeal that determines when the appeal must be perfected.

A number of commentors objected to the designation of the Assistant Secretary as the appeals officer. While there is no inherent unfairness to the Assistant Secretary serving as the appeals officer a determination has been made that the Secretary shall be the Appeals Officer to which appeals from Administrative Law Judge's decisions are made. However, the Secretary also has the discretion to designate certain other persons to serve in this capacity. Although in fact an apparatus such as the Interstate Land Sales Board could be created under this provision, the Secretary is given the flexibility to name one or more persons on an ad hoc or regular basis, as well as to hear the appeal personally.

In response to comments that the reduction of length of briefs from 60 to 25 pages is unworkable as proposed to § 1710.385, that section has been revised to maintain the 60-page limit.

A requirement has been added that the Administrative Law Judge and the Appeals Officer shall file their decisions within a 30-day period.

SUBPART F—APPEALS OFFICER

Section 1720.500 identifies the Secretary as the Appeals Officer, and the ramifications of this change have already been discussed under § 1720.365.

CONVERSION TABLE

SUBPART D—ADJUDICATIVE PROCEEDINGS

Old sections	New sections
1720.110	1720.105
1720.115	1720.110
1720.120	1720.205
1720.125	1720.215
1720.130	1720.225
1720.131	1720.235
1720.134	1720.250
1720.135	1720.315
1720.140	1720.240
1720.145	1720.245
1720.150	1720.180
1720.155	1720.210
1720.160	1720.220
1720.165	1720.230
1720.170	1720.175
1720.175	1720.335
1720.190	1720.140
1720.195	1720.260
1720.200	1720.265
1720.205	1720.255
1720.210	1720.125
1720.215	1720.155
1720.220	1720.145
1720.225	1720.150
1720.230	1720.305
1720.235	1720.310
1720.240	1720.320
1720.245	1720.325
1720.250	1720.505
1720.255	1720.425
1720.260	1720.430
1720.265	1720.405
1720.270	1720.410
1720.275	1720.415
1720.280	1720.330
1720.285	1720.420
1720.300	1720.435
1720.320	1720.510
1720.325	1720.515
1720.330	1720.520
1720.345	1720.525
1720.350	1720.530
1720.360	1720.535
1720.365	1720.605
1720.375	1720.610
1720.380	1720.615
1720.385	1720.620
1720.390	1720.625
1720.400	1720.630
1720.410	1720.120
1720.412	1720.115
1720.415	1720.130
1720.425	1720.135
1720.430	1720.160
1720.435	1720.165
1720.440	1720.170
1720.500	1720.635

GENERAL PROVISIONS

1720.105	1720.110
1720.110	1720.115
1720.115	1720.412
1720.120	1720.410
1720.125	1720.210
1720.130	1720.415
1720.135	1720.425
1720.140	1720.190
1720.145	1720.220
1720.150	1720.225
1720.155	1720.215

GENERAL PROVISIONS—Continued

Old sections	New sections
1720.160	1720.430
1720.165	1720.435
1720.170	1720.440
1720.175	1720.170
1720.180	1720.150

PLEADINGS

1720.205	1720.120
1720.210	1720.155
1720.215	1720.125
1720.220	1720.160
1720.225	1720.130
1720.230	1720.165
1720.235	1720.131
1720.240	1720.140
1720.245	1720.145
1720.250	1720.134
1720.255	1720.205
1720.260	1720.195
1720.265	1720.200

MOTIONS

1720.305	1720.230
1720.310	1720.235
1720.315	1720.135
1720.320	1720.240
1720.325	1720.245
1720.330	1720.280
1720.335	1720.175

DISCOVERY AND EVIDENCE

1720.405	1720.265
1720.410	1720.270
1720.415	1720.275
1720.420	1720.285
1720.425	1720.255
1720.430	1720.260
1720.435	1720.300

HEARINGS

1720.505	1720.250
1720.510	1720.320
1720.515	1720.325
1720.520	1720.330
1720.525	1720.345
1720.530	1720.350
1720.535	1720.360

APPEALS

1720.605	1720.365
1720.610	1720.375
1720.615	1720.380
1720.620	1720.385
1720.625	1720.390
1720.630	1720.400
1720.635	1720.500

These regulations constitute rules governing adjudicative and investigative proceedings, and the Department has determined that they do not constitute a major Federal action significantly affecting the quality of the human environment. Accordingly, a finding of inapplicability of environment impact has been prepared and is available for inspection by the public during regular business hours in Room 5218, 451 7th Street SW., Washington, D.C. 20410.

Accordingly, part 1720 of chapter IX of 24 CFR is amended to read as follows:

Subpart A—Rules and Rule Making

Sec.
1720.1 Scope of rules in this subpart.
1720.5 Initiation of rulemaking.
1720.10 Investigations and conferences.
1720.15 Notice.
1720.20 Promulgation of rules and regulations.
1720.25 Effective date of rules and regulations.

Subpart B—Filing Assistance

1720.30 Scope of this subpart.
1720.35 Prefiling assistance.
1720.40 Processing of filings.

Subpart C—Formal Investigations

1720.45 Scope of rules in this subpart.
1720.55 Signed statements in investigations.
1720.70 Subpoenas in investigations.
1720.75 Investigational proceedings.
1720.80 Rights of witnesses in investigations.
1720.85 Noncompliance.
1720.90 Disposition.
1720.95 Settlements and Consent orders.

Subpart D—Adjudicatory Proceedings

GENERAL PROVISIONS

1720.105 Scope of rules in this subpart.
1720.110 Applicability of sections of this subpart.
1720.115 Department representative.
1720.120 Qualifications for appearances.
1720.125 Public nature and timing of hearings.
1720.130 Restrictions on appearances as to former officers and employees.
1720.135 Standards of practice.
1720.140 Administrative law judge, powers and duties.
1720.145 Disqualification of administrative law judge.
1720.150 Failure to comply with administrative law judge's directions.
1720.155 Ex parte communications.
1720.160 Form and filing requirements.
1720.165 Time computation.
1720.170 Service.
1720.175 Intervention by interested persons.
1720.180 Settlements.

PLEADINGS

1720.205 Suspension notice under §1710.45(a) of this chapter.
1720.210 Hearings—suspension notice pursuant to §1710.45(a) of this chapter.
1720.215 Notice of proceedings pursuant to §1710.45(b)(1) of this chapter.
1720.220 Hearings—notice of proceedings pursuant to §1710.45(b)(1) of this chapter.
1720.225 Suspension order under §1710.45(b)(2) of this chapter.
1720.230 Suspension order under §1710.45(b)(3) of this chapter.
1720.235 Hearings—suspension orders issued pursuant to §1710.45(b)(2) and §1710.45(b)(3) of this chapter.
1720.240 Time for filing answer.
1720.245 Content of answer.
1720.250 Presumption of hearing request.
1720.255 Amendments and supplemental pleadings.
1720.260 Prehearing conferences.
1720.265 Reporting—prehearing conferences.

MOTIONS

1720.305 Motions—filing requirement.
1720.310 Answers to motions.
1720.315 Motions for more definite statement.
1720.320 Motions for extension of time.
1720.325 Motions for dismissal.
1720.330 Motions to limit or quash.
1720.335 Consolidation.

DISCOVERY AND EVIDENCE

1720.405 Depositions and discovery.
1720.410 Subpoenas and testificandum.
1720.415 Subpoenas duces tecum.
1720.420 Rulings on applications for compulsory process; appeals.
1720.425 Presentation and admission of evidence.
1720.430 Production of witnesses; statements.
1720.435 Official notice.

HEARINGS

1720.505 Interlocutory review of administrative law judge's decision.
1720.510 Reporting and transcription.
1720.515 Corrections.
1720.520 Proposed findings, conclusions, and order.
1720.525 Decision of administrative law judge.
1720.530 Decision of administrative law judge—content.
1720.535 Reopening of proceeding; termination of jurisdiction.

APPEALS

1720.605 Appeal from decision of administrative law judge.
1720.610 Answering brief.
1720.615 Reply brief.
1720.620 Length and form of briefs.
1720.625 Oral argument.
1720.630 Decision on appeal or review.
1720.635 Appeals officer.

Subpart A—Rules and Rulemaking

§ 1720.1 Scope of rules in this subpart.

The rules in this subpart apply to and govern procedures for the promulgation of rules and regulations under the Act. The rules in this subpart do not apply to interpretative rules, general statements of policy, rules of organization procedure or practice or in any situation in which the Secretary for good cause finds (and incorporates the findings and brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.

§ 1720.5 Initiation of rulemaking.

(a) The issuance, amendment or repeal of any rule or regulation may be proposed upon the initiative of the Secretary or upon the petition of any

interested person showing reasonable grounds therefor.

(b) Petitions for rulemaking by interested persons filed under this section:

(1) Shall be identified as a petition for rulemaking under this subpart;

(2) Shall explain the interest of the petitioner in the action requested;

(3) Shall set forth the text or substance of the rule or amemdment proposed or specify the rule that the petitioner seeks to have repealed, as the case may be;

(4) Shall contain any information and arguments available to the petitioner to support the action sought; and

(5) Shall be filed with the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 5218, 451 7th Street SW., Washington, D.C. 20410.

(c) The Secretary shall respond to a petition submitted under this section within 180 days of receipt thereof, except that this time limit may be exceeded for good cause found and communicated to the petitioner. The Secretary's normal response shall be to grant or deny the petition but alternatively, the Secretary may schedule a public hearing or other appropriate proceeding prior to the granting or denial of a petition. If the Secretary grants the petition, the Secretary shall publish a proposed rule in accordance with the petition and a copy of the proposed rule shall be furnished to the petitioner. If the Secretary denies the petition, the Secretary shall notify the petitioner within 7 days after such denial.

§ 1720.10 Investigations and conferences.

(a) In connection with a rulemaking proceeding, the Secretary may conduct such investigations, make such studies and hold such conferences as are necessary. All or any part of such investigations may be conducted under the provisions of Subpart C of this part.

(b) At any such conferences, interested persons may appear to express views and suggest amendments relative to proposed rules and regulations.

§ 1720.15 Notice.

General notice of proposed rulemaking shall be published in the FEDERAL REGISTER and, to the extent practicable, otherwise made available to interested persons. Such notice shall state the time, place, and nature of public hearings, if any; the authority under which the rule or regulation is proposed; either the terms or substance of the proposed rule or regulation or a description of the subjects and issues involved; and the manner in which interested persons shall be afforded the opportunity to participate in the rulemaking. If the rulemaking was instituted pursuant to petition, a copy of the notice shall be served on the petitioner.

§ 1720.20 Promulgation of rules and regulations.

The Secretary, after consideration of all relevant matters of fact, law, policy, and discretion, including all relevant matters presented by interested persons in the rulemaking proceedings, shall adopt and publish in the FEDERAL REGISTER an appropriate rule or regulation together with a concise general statement of its basis and purpose and any necessary findings; or the Secretary shall give other appropriate public notice of disposition of the rule- making proceeding.

§ 1720.25 Effective date of rules and regulations.

The effective date of any rule or regulation or of an amendment, suspension, or repeal of any rule or regulation shall be specified in a notice published in the FEDERAL REGISTER. Such date shall not be less than 30 days after the date of such publication unless the Secretary specifies an earlier effective date for good cause found and published with the rule or regulation.

Subpart B—Filing Assistance

§ 1720.30 Scope of this subpart.

The rules in this subpart apply to and govern procedures under which developers may obtain prefiling assistance and be notified of and permitted to correct deficiencies in the Statement of Record.

§ 1720.35 Prefiling assistance.

Persons intending to file with the Office of Interstate Land Sales Registration may receive advice of a general nature as to the preparation of the filing including information as to proper format to be used and the scope of the items to be included in the format. Inquiries and requests for informal discussions with staff members should be directed to the Administrator, Office of Interstate Land Sales Registration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20411.

§ 1720.40 Processing of filings.

(a) Statements of Record and accompanying filing fees will be received on behalf of the Secretary by the Administrator, Office of Interstate Land Sales Registration, for determination of (1) Completeness of the statement, (2) Adequacy of the filing fee and (3) Adequacy of disclosure. Where it appears that all three criteria are satisfied and it is otherwise practicable, acceleration of the effectiveness of the Statement of Record will normally be granted.

(b) Filings intended as Statements of Record but which do not comply in form with §§ 1710.105 and 1710.120 of this chapter, whichever is applicable, and Statements of Record accompanied by inadequate filing fees will not be effective to accomplish any purpose under the Act. At the discretion of the Administrator, such filings and any moneys accompanying them may be immediately returned to the sender or after notification may be held pending the sender's appropriate response.

(c) Persons filing incomplete or inaccurate Statements of Record will be notified of the deficiencies therein by the Suspension Notice procedure described in § 1710.45(a) of this chapter.

Subpart C—Formal Investigations

§ 1720.45 Scope of rules in this subpart.

(a) The rules in this subpart apply to and govern procedures for the conduct of formal inquiries and investigations undertaken by the Secretary.

(b) The Secretary may make inquiries and investigations to determine whether any person has violated or is about to violate any provision of the Act or the rules and regulations, or to aid in the enforcement of the Act, or in prescribing rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation. The Secretary shall have the authority to administer oaths and affirmations in any matter under investigation.

§ 1720.55 Signed statements in investigations.

In connection with a formal investigation or inquiry involving an alleged or suspected violation or threatened violation of the Act or rules and regulations, the Secretary may require or permit any person to file a signed statement setting forth facts and circumstances known to such person and relevant to the investigation or inquiry.

§ 1720.70 Subpoenas in investigations.

(a) The Secretary may issue subpoenas relating to any matter under investigation for any or all of the following purposes:

(1) Requiring testimony to be taken by interrogatories.

(2) Requiring the attendance and testimony of witnesses at a specific time and place.

(3) Requiring access to, examination of and the right to copy documents, books, records, and papers.

(4) Requiring the production of documents, books, records, and papers at a specified time and place.

(b) A subpoenaed person may petition the Administrator to modify or wirthdraw a subpoena by filing the petition within 10 days after service of the subpoena. The petition may be in letter form but must set forth the facts and the laws upon which the petition is based.

§ 1720.75 Investigational proceedings.

(a) For the purpose of hearing the testimony of witnesses and receiving documents and other data relating to any subject under investigation, investigational proceedings may be conducted in the course of any investigation including rulemaking proceedings under Subpart A of this part.

(b) Investigational proceedings shall be presided over by the Secretary and shall be stenographically or mechanically reported. A transcript shall be a part of the record of the investigation.

(c) Unless the Secretary determines otherwise, investigational proceedings shall be public.

§ 1720.80 Rights of witnesses in investigations.

(a) Any person compelled to testify or to submit data in connection with any investigational proceedings shall be entitled to retain a copy or, on payment of lawfully prescribed costs, procure copies of any data submitted and testimony as stenographically or mechanically reported, except that in a nonpublic proceeding, the witness may for good cause be limited to inspection of the official transcript of the testimony.

(b) Any witness compelled to appear in person in an investigational proceeding may be accompanied, represented, and advised by counsel as follows:

(1) A witness may be advised by counsel, in confidence, upon the initiative of either the counsel or of the witness, with respect to any question asked of the client; if the witness is advised to refuse to answer a question, counsel may briefly state on the record that the client has been advised not to answer the question and the legal grounds for the refusal.

(2) Where it is claimed that the testimony or other evidence sought from a witness is outside the scope of the investigation, or it is claimed that the witness is privileged to refuse to answer a question or to produce other evidence, counsel for the witness may object on the record to the question or requirement and may state briefly and precisely the grounds therefor.

(3) Objections made under the rules in this subpart will be continuing objections throughout the course of the proceeding, and repetitious or cumulative statement of an objection or of the grounds therefor is unnecessary and impermissible.

(4) Counsel for a witness may not, for any purpose or to any extent not allowed by paragraphs (b)(1) and (2) of this section, interrupt the examination of the witness by making any objections or statements on the record. Petitions challenging the authority of the Secretary to conduct the investigation or the sufficiency or the legality of the subpoena must have been presented to the Secretary pursuant to § 1720.70(b). Copies of such petitions may be filed with the presiding official at the proceeding as part of the investigation record, but no argument in support thereof shall be allowed.

(5) Upon completion of the examination of a witness, counsel for the witness may request that the presiding official permit the witness to clarify on the record any answers in order that specified points of ambiguity, equivocation, or incompleteness may be corrected. The granting or denial of such request in whole or in part, shall be within the sole discretion of the presiding official.

(6) The presiding official shall take all necessary action to regulate the course of the proceeding to avoid delay and to prevent or restrain disorderly, dilatory, obstructionist or contumacious conduct or contemptuous language. Such official shall, for reasons stated on the record, immediately report to the Secretary any instances where an attorney or witness has failed or refused to comply with directions, lawful rules, regulations or orders in the course of the proceedings or has engaged in disorderly, dilatory obstructionist, or contumacious conduct or contemptuous language. The Secretary may exclude the attorney or witness from the proceeding or may take any action deemed appropriate under § 1720.85 of this Part.

§ 1720.85 Noncompliance.

Failure to comply with the Secretary's investigational process may result in action pursuant to § 1407(e) of the Act and § 1710.45(b)(2) of this Chapter or § 1415(d) of the Act.

§ 1720.90 Disposition.

(a) When investigation by the Secretary indicates that further action is warranted, the Secretary may seek an injunction under section 1415(a) of the act, issue a Notice of Proceedings under section 1407(d) of the act and § 1710.45(b)(1) of this chapter or issue a suspension order under section 1407(c) of the act and § 1710.45(b)(3) of this chapter.

(b) The Secretary may publish or otherwise divulge information concerning any violation of the Act or the rules and regulations.

(c) When an investigation discloses that corrective action is not necessary or warranted in the public interest for the protection of purchasers or lessees, the investigational file will be closed. The matter may at any time thereafter be reinvestigated if circumstances so warrant.

§ 1720.95 Settlements and consent orders.

(a) *Offer of Settlement.* At any time during a proceeding, parties may be afforded an opportunity to submit to the Secretary a written proposal for disposition of the matter in the form of a settlement offer.

(b) *Consent Orders.* When the Secretary determines that a violation of the Act or regulations has taken place and the public interest will be fully safeguarded, the Secretary may enter into a consent order. Such order will be in lieu of further administrative proceedings or court actions pursuant to the Secretary's authority. Such orders may provide, among other things, for the holding in abeyance of any further proceedings by the Secretary and the cessation of developer actions, notification to purchasers or other actions which are in the public interest and for the protection of purchasers.

(c) When the Secretary rejects an offer of settlement, or negotiations toward a consent order are unsuccessful, the offer of settlement or any proposed consent order shall be deemed a nullity, and any documents or other terms relating thereto shall not be used in support or denial of any allegations in a subsequent proceeding.

Subpart D—Adjudicatory Proceedings

General Provisions

§ 1720.105 Scope of rules in this subpart.

The rules in this subpart are applicable to adjudicative proceedings which involve a hearing or opportunity for a hearing under the Interstate Land Sales Full Disclosure Act.

§ 1720.110 Applicability of sections of this subpart.

Succeeding sections of this subpart shall apply to all adjudicatory hearings conducted by OILSR unless specifically limited in applicability by a particular section.

§ 1720.115 Department representative.

In each case heard before an administrative law judge pursuant to this part, the Department shall be represented by a Department hearing attorney. The General Counsel shall designate one or more attorneys to act as Department hearing attorneys.

§ 1720.120 Qualification for appearance.

(a) Members of the bar of a Federal Court or of the highest court of any state or of the United States are eligible to practice before the Secretary. No register of attorneys will be maintained.

(b) Any individual or member of a partnership involved in any proceeding or investigation may appear on personal behalf or that of the partnership upon adequate identification. A corporation or association may be represented by a bona fide officer thereof upon a showing of adequate authorization.

(c) A person shall not be represented except as stated in paragraphs (a) and

(b) of this section unless otherwise permitted.

§ 1720.125 Public nature and timing of hearings.

(a) All hearings in adjudicative proceedings shall be public.

(b) Hearings shall proceed with all reasonable speed and insofar as practicable, shall be held at one place and shall continue without recess or suspension until concluded. The administrative law judge shall have the authority to order brief intervals of the sort normally involved in judicial proceedings and, in unusual and exceptional circumstances for good cause stated on the record, shall have the authority to order hearings at more than one place and to order recesses to permit further gathering of evidence or settlement discussions.

§ 1720.130 Restrictions on appearances as to former officers and employees.

(a) Except as specifically authorized by the Secretary, no former officer or employee of the Department of Housing and Urban Development shall appear as attorney or counsel or otherwise participate through any form of professional consultation or assistance in any proceeding or investigation, formal or informal, which was pending in any manner in the Office of Interstate Land Sales Registration while such former officer or employee served with the Department of Housing and Urban Development.

(b) In cases to which paragraph (a) of this section is applicable, a former officer or employee of the Department of Housing and Urban Development may request authorization to appear or participate in a proceeding or investigation by filing with the Secretary a written application disclosing the following relevant information: (1) The nature and extent of the former officer's or employee's participation in, knowledge of, and connection with the proceeding or investigation during service with the Department of Housing and Urban Development; (2) whether the files of the proceeding or investigation came to the former officer or employee's attention; (3) whether the former officer or employee was employed in the same office, division, or administrative unit in which the proceeding or investigation is or has been pending; (4) whether the former officer or employee worked directly or in close association with the Office of Interstate Land Sales Registration personnel assigned to the proceeding or investigation; (5) whether during service with the Department of Housing and Urban Development the former officer or employee was engaged in any matter concerning the individual, company or industry in the proceeding or investigation.

(c) The requested authorization will not be given in any case: (1) Where it appears that the former officer or employee during service with the Department of Housing and Urban Development participated personally and substantially in the proceeding or investigation, or (2) where the application is filed within one (1) year after termination of the former officer's or employee's service with the Department of Housing and Urban Development and it appears that within a period of one (1) year prior to the termination of service the proceeding or investigation was within the official responsibility of the former officer or employee. In other cases, authorization will be given where the Secretary is satisfied that the appearance or participation will not involve any actual conflict of interest or impropriety thereof.

(d) In any case in which a former officer or employee of the Department of Housing and Urban Development is prohibited under this section from appearing or participating in a proceeding or investigation, any partner or legal or business associate of such former officer or employee shall likewise be so prohibited unless: (1) Such partner or legal or business associate files with the Secretary an affidavit that in connection with the matter the services of the disqualified former officer or employee will not be utilized in any respect and the matter will not be discussed with the former officer or employee in any manner, and that the disqualified former officer or employee shall not share, directly or indirectly, in any fees or retainers received for services rendered in connection with such proceeding or investigation; (2) The disqualified former officer or employee files an affidavit agreeing not to participate in the matter in any manner, and not to discuss it with any person involved in the matter; and (3) Upon the basis of such affidavits, the Secretary determines that the appearance or participation by the partner or associate would not involve any actual conflict of interest or impropriety thereof.

§ 1720.135 Standards of practice.

(a) Attorneys shall conform to the standards of professional and ethical conduct required by practitioners in the courts of the United States and by the bars of which the attorneys are members.

(b) The privilege of appearing or practicing may be denied, temporarily or permanently, to any person who is found after notice and opportunity for hearing which at the person's request or in the discretion of the Secretary may be private, and for presentation of oral argument in the matter: (1) Not to possess the requisite qualifications to represent others, or (2) To be lacking in character or integrity, or (3) To have engaged in unethical or improper professional conduct.

(c) Contemptuous conduct at any hearing shall be grounds for summary exclusion from said hearing for the duration of the hearing.

§ 1720.140 Administrative law judge, powers and duties.

(a) Hearings in adjudicative proceedings shall be presided over by a duly qualified administrative law judge who shall be designated by the Secretary in a notice to the parties in the proceeding.

(b) Administrative law judges shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings and to maintain order. They shall have all powers necessary to those ends including all powers granted under 5 U.S.C. 556(c), and also power including but not limited to the following:

(1) To administer oaths and affirmations.

(2) To issue subpoenas and orders requiring access.

(3) To take or to cause depositions to be taken.

(4) To rule upon offers of proof and receive evidence.

(5) To regulate the course of the hearings and the conduct of the parties and their counsel.

(6) To hold conferences for simplification and clarification of the issues or any other purpose.

(7) To consider and rule upon as justice may require, all procedural and other motions appropriate in an adjudicative proceeding, including motions to open defaults.

(8) To make and file decisions.

(9) To certify question to a Departmental appeals officer.

(10) To take any action authorized by the rules in this part or other appropriate action.

§ 1720.145 Disqualification of administrative law judge.

(a) When an administrative law judge feels disqualified from presiding in a particular proceeding, the administrative law judge shall withdraw therefrom by notice on the record and shall notify the Secretary of such withdrawal.

(b) Whenever any party believes that the administrative law judge should be disqualified from presiding, or continuing to preside in a particular proceeding, such party may file with the administrative law judge a motion that the administrative law judge be disqualified and removed. Such motion shall be supported by affidavits setting forth the alleged grounds for disqualification. If the administrative law judge does not agree to disqualification, the hearing shall proceed, and the question of fair hearing and due process may be raised on appeal.

§ 1720.150 Failure to comply with administrative law judge's directions.

Any party who refuses or fails to comply with a lawfully issued order or direction of an administrative law judge may be considered to be in contempt of the Secretary. The circumstances of any such neglect, refusal or failure, together with a recommendation for appropriate action, shall be promptly certified by the administrative law judge to the Secretary who may make such orders in regard thereto as the circumstances may warrant.

§ 1720.155 Ex parte communications.

(a) No person shall communicate with an administrative law judge or an appeals officer either directly or indirectly concerning any pending proceeding unless prior to or simultaneously with such communication its contents are disclosed in detail to all persons interested in the proceeding; nor shall an adminstrative law judge or appeals officer request or consider any such unauthorized ex parte communication. This prohibition shall not apply to a simple request for information respecting the status of the proceeding, nor to any ex parte communication expressly authorized by these rules.

(b) Any administrative law judge or appeals officer, who receives an ex parte communication which the judge knows or has reason to believe is unauthorized, shall promptly place the communication, or its substance, in the public file and shall inform all persons interested in the proceeding of its existence and general contents. Facts or arguments so communicated shall not be taken into account in deciding any matter in issue unless such facts or arguments shall be brought properly before the administrative law judge.

(c) Opportunity to answer allegations or contentions contained in an unauthorized ex parte communication may be afforded any interested person upon motion for leave to do so, wherever such leave will operate to assure a fair hearing or decision.

§ 1720.160 Form and filing requirements.

(a) *Filing.* Except as otherwise permitted, an original and three cópies of all documents shall be filed with the Docket Clerk for Administrative Proceedings, Room 10278, Department of Housing and Urban Development, Washington, D.C. 20410, on official work days between the hours of 8:45 a.m. and 5:15 p.m.

(b) *Title.* Documents shall show clearly the title of the action, the docket number, and OILSR file number in connection with which they are filed.

(c) *Form.* Except as otherwise permitted, all documents shall be printed, typewritten, or otherwise processed in clear legible form and on good unglazed paper.

§ 1720.165 Time computation.

Computation of any period of time prescribed or allowed by the rules and regulations in this part, or by order of the Secretary or of an administrative law judge, shall begin with the first business day following that on which the act, event, development or default initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or national holiday, or other day on which the Department of Housing and Urban Development is closed, the period shall run until the end of the next following business day. Except when any prescribed or allowed period of time is 7 days or less, each of the Saturdays, Sundays, and national holidays shall be included in the computation of the prescribed or allowed period.

§ 1720.170 Service.

Notices, orders, processes, determinations and other documents required or permitted under these rules may be served as follows:

(a) *Upon the Secretary.* By personal delivery at the office, or by registered or certified mail addressed to the office of any of the following officials in the Office of Interstate Land Sales Registration: Administrator; Associate Administrator; Director, Office of Interstate Land Sales Registration: *Provided, however,* That during the pendency of a proceeding before the Secretary all pleadings, motions, notices or other documents shall be served in accordance with the terms of § 1720.160.

(b) *Upon any other person.* By delivery of a copy of the documents to the person to be served wherever the person may be found, or by leaving such copy at the person's office or place of business with a person apparently in charge thereof, or, if there is no one in charge or if the office is closed or if the person has no office, by leaving a copy at the person's residence with some person of suitable age and discretion then residing therein, or sending a copy by registered or certified mail, return receipt requested, addressed to the person at the person's last known residence, or at the person's last known principal office or place of business. If the address of the residence, principal office, or place of business is unknown and cannot with due diligence be ascertained, service may be made by mail to any office at which the person to be served is known to be employed or by publication in the FEDERAL REGISTER.

(c) *Service on corporations, partnerships, associations, other entities.* Service may be made upon any corporation, partnership, business association or other entity by serving any officer, director, partner, trustee, agent for service or managing agent thereof. A managing agent, within the meaning of this subsection, is an agent having the principal managerial responsibility in connection with the regular operation of a distinct office or activity of the enterprise.

(d) *Service through attorney.* When a person other than the Secretary and the Secretary's staff shall have appeared of record in a proceeding, generally or specially, by attorney, all subsequent services of notices, orders, processes, and other documents in connection with such proceeding may be made upon such person by serving the attorney, except that subpoenas and other orders by which such person may be brought in contempt shall be served upon the person by one of the methods described in paragraphs (b) and (c) of this section. In any case, a copy of any document served on a client shall be sent to any attorney who has entered an appearance for that client. In such situations, it shall be sufficient proof of service to show that either the client or the attorney has received a copy of the document.

(e) *Proof of service.* Proof of service shall not be required unless the fact of service is reasonably put in issue by appropriate motion or objection on the part of the person allegedly served or other party. In such cases, service may be established by written admission signed by or on behalf of the person to be served, or may be established prima facie by affidavit or certificate of service or mailing, as appropriate. When service is by registered or certified mail, it is complete upon delivery of the document by the post office.

§ 1720.175 Intervention by interested persons.

(a) The administrative law judge, upon timely petition in writing and for good cause shown, and if deemed to be in the public interest, may permit any person to participate by intervention in the proceeding. The petition shall state (1) The petitioner's relationship to and interest in the matters contained in the proceeding; (2) The petitioner's position with respect to each specific issue upon which the petitioner proposes to intervene, and the facts which the petitioner proposes to adduce in support of each such position; and (3) An assent to exercise of jurisdiction by the Department with respect to the petitioner.

(b) The administrative law judge shall determine the propriety of such intervention and the extent to which such intervener may participate, basing such determination upon applicable law, the directness and substantiality of the petitioner's interest in the proceeding and the effect upon the proceeding of allowing such participation.

§ 1720.180 Settlements.

Parties may propose in writing, at any time during the course of a pro-

ceeding, offers of settlement which shall be submitted to the Secretary. If determined to be appropriate, the party making the offer may be given an opportunity to make an oral presentation in support of such offer. If an offer of settlement is rejected, the party making the offer shall be so notified and the offer shall be deemed withdrawn and shall not constitute a part of the record in the proceeding. Final acceptance by the Secretary of any offer of settlement will terminate any proceeding related thereto upon notification to the administrative law judge or the appeals officer.

PLEADINGS

§ 1720.205 Suspension notice under § 1710.45(a) of this chapter.

A suspension pursuant to § 1710.45(a) of this chapter shall be effected by service of a suspension notice which shall contain:

(a) An identification of the filing to which the notice applies.

(b) A specification of the deficiencies of form, disclosure, accuracy, documentation or fee tender which constitute the grounds under § 1710.45(a) of this chapter, of the suspension, and of the additional or corrective procedure, information, documentation, or tender which will satisfy the Secretary's requirements.

(c) A notice of the hearing rights of the developer under § 1720.210 and of the procedures for invoking those rights.

(d) A notice that, unless otherwise ordered, the suspension shall remain in effect until 30 days after the developer cures the specified deficiencies as required by the notice.

§ 1720.210 Hearings—suspension notice pursuant to § 1710.45(a) of this chapter.

(a) A developer, upon receipt of a suspension notice issued pursuant to § 1710.45(a) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the suspension notice. Such a request must be filed within 15 days of receipt of the suspension notice and must be accompanied by an answer and 3 copies thereof signed by the respondent or the respondent's attorney conforming to the requirements of § 1720.245. Filing of a motion for a more definite statement pursuant to § 1720.315 shall alter the period of time to request a hearing in accordance with § 1720.240.

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 20 days of receipt of the request. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) A request for hearing filed pursuant to paragraph (a) of this section shall not interrupt or annul the effectiveness of the suspension notice, and suspension of the effective date of the Statement or amendment shall continue until vacated by order of the Secretary or administrative law judge. Except in cases in which the developer shall waive or withdraw the request for such hearing, or shall fail to pursue the same by appropriate appearance at a hearing duly scheduled, noticed and convened, the suspended filing shall be reinstated in the event of failure of the Secretary to schedule, give notice of or hold a duly-requested hearing within the time specified in paragraph (b) of this section, or in the event of a finding that the Secretary has failed to support at such hearing the propriety of the suspension with respect to the material issues of law and fact raised by the answer. Such reinstatement shall be effective on the date on which the filing would have become effective had no notice of suspension been issued with respect to it.

(d) If there is an outstanding suspension notice under § 1710.45(a) with respect to the same matter for which a suspension order under § 1710.45(b)(3) is issued, the notice and order shall be consolidated for the purposes of hearing. In the event that allegations upon which the suspension notice and suspension order are based are identical, only one answer need be filed.

§ 1720.215 Notice of proceedings pursuant to § 1710.45(b)(1) of this chapter.

A proceeding pursuant to § 1710.45(b)(1) of this chapter is commenced by issuance and service of a notice which shall contain:

(a) A clear and accurate identification of the filing or filings to which the notice relates.

(b) A clear and concise statement of material facts, sufficient to inform the respondent with reasonable definiteness of the statements, omissions, conduct, circumstances or practices alleged to constitute the grounds for the proposed suspension order under § 1710.45(b)(1) of this chapter.

(c) A notice of hearing rights of the developer under § 1720.220 and of the procedures for invoking those rights.

(d) Designation of the administrative law judge appointed to preside over pre-hearing procedures and over the hearings.

(e) A notice that failure to file an answer or motion as provided under § 1720.240 will result in an order suspending the Statement of Record.

§ 1720.220 Hearings—notice of proceedings pursuant to § 1710.45(b)(1) of this chapter.

(a) A developer, upon receipt of a notice of proceedings issued pursuant to § 1710.45(b)(1) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the notice of proceedings. Such a request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming to the requirements of § 1720.245. Filing of a motion for a more definite statement pursuant to § 1720.315 shall alter the period of time to request a hearing in accordance with § 1720.240.

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 45 days of receipt of the request by the Secretary unless it is determined that it is not in the public interest. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) Failure to answer within the time allowed by § 1720.140 or failure of a developer to appear at a hearing duly scheduled shall result in an appropriate order under § 1710.45(b)(1) of this chapter suspending the statement of record. Such order shall be effective as of the date of service or receipt.

§ 1720.225 Suspension order under § 1710.45(b)(2) of this chapter.

A suspension pursuant to § 1710.45(b)(2) of this chapter shall be effected by service of a suspension order which shall contain:

(a) An identification of the filing to which the order applies.

(b) Bases for issuance of order.

(c) A notice of the hearing rights of the developer under § 1720.235 the procedures for invoking those rights.

(d) A statement that the order shall remain in effect until the developer has complied with the Secretary's requirements.

§ 1720.230 Suspension order under § 1710.45(b)(3).

A suspension pursuant to paragraph (b)(3) of § 1710.45 of this chapter shall be effected by service of a suspension order which shall contain:

(a) An identification of the filing to which the order applies.

(b) An identification of the amendment to the filing which generated the order.

(c) A statement that the issuance of the order is necessary or appropriate in the public interest or for the protection of purchasers.

(d) A statement that the order shall remain in effect until the amendment becomes effective.

(e) A notice of the hearing rights of the developer under § 1720.235 and of the procedure for invoking those rights.

§ 1720.235 Hearings—suspension orders issued pursuant to § 1710.45(b)(2) and § 1710.45(b)(3) of this chapter.

(a) A developer, upon receipt of a suspension order issued pursuant to

§ 1710.45(b)(2) or § 1710.45(b)(3) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the suspension order. Such request must be filed within 15 days of receipt of the suspension order and must be accompanied by an answer and 3 copies thereof signed by the respondent or respondent's attorney conforming to the requirements of § 1720.45. Filing of a motion for a more definite statement pursuant to § 1720.315 shall alter the period of time to request a hearing in accordance with § 1720.240.

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 20 days of receipt of the request. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) A request for hearing filed pursuant to paragraph (a) of this section shall not interrupt or annul the effectiveness of the suspension order.

§ 1720.240 Time for filing answer.

(a) Within 15 days after service of the notice or order, the respondent shall mail or submit to the Docket Clerk for Administrative Proceedings, Rm. 10278, Department of Housing and Urban Development, Washington, D.C. 20410, an answer and three copies thereof signed by the respondent or attorney. Unless a different time is fixed by the Secretary, the filing of a motion for a more definite statement of the allegations shall alter the period of time in which to file an answer as follows:

(1) If the motion is denied, the answer shall be filed within 15 days after service of the denial.

(2) If the motion is granted in whole or in part, the more definite statement of allegations shall be filed after service of the order granting the motion and the answer shall be filed within 15 days after service of the more definite statement of allegations.

(b) If a notice or order is amended pursuant to § 1720.255(a), the respondent shall have 15 days after service of the amended notice or order within which to file an answer.

§ 1720.245 Content of answer.

(a) An answer to a notice or order shall contain: (1) Specific admission, denial or explanation of each fact alleged in the notice or, if the respondent is without knowledge thereof, a statement to that effect; and

(2) A brief statement of the facts constituting each defense.

(b) Allegations not answered in this manner shall be deemed admitted.

§ 1720.250 Presumption of hearing request.

When an answer to a suspension notice, a notice of proceedings, or a suspension order is timely filed but a respondent has failed specifically to request a hearing, the answer shall be deemed to constitute such a request.

§ 1720.255 Amendments and supplemental pleadings.

(a) *Amendments.* Prior to the receipt by the Docket Clerk for Administrative Proceedings of an answer to a notice or order, that notice or order may be amended as a matter of course. After the receipt of an answer, the administrative law judge may allow appropriate amendments to pleadings by motion whenever determination of a controversy on the merits will be facilitated thereby.

(b) *Variances of proof.* When issues not raised by the pleadings but reasonably within the scope of the suspension notice or notice of proceedings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings; and such amendments of the pleadings as may be necessary to make them conform to the evidence and to raise such issues shall be allowed at any time.

(c) *Supplemental pleadings.* The administrative law judge may, upon reasonable notice and such terms as are just, permit service of a supplemental pleading setting forth transactions or events which have occurred since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

§ 1720.260 Prehearing conferences.

(a) Where it will expedite the proceeding, the administrative law judge may direct or allow the parties or their representatives to appear for a conference to consider: (1) Simplification and clarification of the issues; (2) Necessity or desirability of amendments to the pleadings; (3) Stipulations and admissions of fact and the contents and authenticity of documents; (4) Expedition in the discovery and presentation of evidence; (5) Matters of which official or judicial notice will be taken; and (6) Such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of the names of witnesses and of documents or other exhibits which will be introduced in evidence in the course of the proceeding. Prior to the conference, the administrative law judge may direct or allow the parties or their representatives to file memoranda specifying the issues of law and fact to be considered.

(b) If the circumstances are such that a conference is impracticable, the administrative law judge may require the parties to correspond for the purpose of accomplishing any of the objectives set forth in this section.

§ 1720.265 Reporting—prehearing conferences.

Prehearing conferences shall be stenographically or mechanically reported; and the administrative law judge shall prepare and file for the record a written summary of the action taken at the conference, which shall incorporate any written agreements or stipulations made by the parties at the conference or as a result of the conference.

MOTIONS

§ 1720.305 Motions—filing requirements.

During the time a proceeding is before an administrative law judge, all motions therein shall be in writing; and, except as otherwise provided in this part, a copy of each motion shall be served on the other party or parties. Such motions shall be signed, addressed to, filed with and ruled upon by the administrative law judge. The provisions of this section need not apply to motions made during the course of a hearing.

§ 1720.310 Answers to motions.

Within 7 days after service of any written motion, an opposing party shall answer or shall be deemed to consent to the granting of the relief asked for in the motion. The moving party shall have no right to reply except as permitted by the administrative law judge or the appeals officer.

§ 1720.315 Motion for more definite statement.

When a respondent is unable to respond to the allegations in a suspension notice, a notice of proceedings, or a suspension order, because such allegations are vague, unclear or otherwise indefinite, motion may be made requesting a more definite statement of the allegations before filing an answer. Such motion shall indicate specifically in what manner the notice or order is indefinite or defective and shall be mailed or submitted to the Docket Clerk for Administrative Proceedings, Room 10278, Dept. of Housing and Urban Development, Washington, D.C. 20410, within five days after service of the notice or order.

§ 1720.320 Motions for extension of time.

As a matter of discretion, the administrative law judge or the appeals officer may waive the requirements of § 1720.310 as to motions for extension of time, and may rule upon such motions ex parte. Extensions of time or continuances in any proceeding may be ordered on a motion by the administrative law judge or on the motion of either party for sufficient cause after

the policy of the Secretary under § 1720.125 has been considered.

§ 1720.325 Motions for dismissal.

(a) A motion to dismiss may be made at any time until and including the fifth day after the close of the case for the reception of evidence.

(b) When a motion to dismiss, based upon alleged failure to establish a prima facie case, is made at the close of the evidence offered in support of the notice or order, the administrative law judge may defer ruling thereon until the close of the case for the reception of evidence.

(c) When a motion to dismiss is granted so as to terminate entirely the proceeding before the administrative law judge, the administrative law judge shall file a decision in accordance with the provisions of § 1720.525. If such a motion is granted only as to some allegations or as to some respondents, the administrative law judge shall enter this partial determination on the record and take it into account in the decision.

§ 1720.330 Motion to limit or quash.

Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 5 days after the date of service of such subpoena, apply to the administrative law judge to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefor. The administrative law judge shall have the discretion of granting, denying or modifying said motion.

§ 1720.335 Consolidation.

When more than one proceeding involves a common question of law or fact, the administrative law judge may order a joint hearing of any or all of the matters in issue in the proceedings and may make such other orders concerning the proceedings as to avoid unnecessary costs or delay.

DISCOVERY AND EVIDENCE

§ 1720.405 Depositions and discovery.

(a) At any time during the course of a proceeding, the administrative law judge may discretionally order the taking of a deposition and the production of documents by the deponent. Such order may be entered upon a showing that the deposition is necessary for the purpose of discovery or to preserve relevant evidence. Insofar as consistent with considerations of fairness and the requirements of due process and the rules of this subpart, a deposition shall not be ordered when it appears that it will result in undue burden to any other party or in undue delay of the proceeding. Depositions may be taken orally or upon written interrogatories and cross-interrogatories.

(b) Any party desiring to take a deposition shall make application in writing to the administrative law judge setting forth the justification therefor and the time and place proposed for the taking of the deposition. The application shall include also the name and address of each proposed deponent and the subject matter concerning which each is expected to depose and shall be accompanied by an application for any subpoenas desired.

(c) Such order as the administrative law judge may issue for taking a deposition shall state the circumstances warranting its being taken, and shall designate the time and place and shall show the name and address of each person who is expected to appear and the subject matter with regard to which each is expected to depose. The time designated shall allow not less than 5 days from date of service of the order when the deposition is to be taken within the United States, and not less than 15 days when the deposition is to be taken elsewhere.

(d) After an order is served for taking a deposition upon motion timely made by any party or by the person to be deposed and for good cause shown, the administrative law judge may determine the propriety of and issue any of the following orders:

(1) That the deposition shall not be taken.

(2) That it may be taken only at some designated place other than that stated in the order.

(3) That it may be taken only on written interrogatories.

(4) That certain matters shall not be inquired into.

(5) That the examination shall be held with no one present except the parties to the action, their counsel and a person qualified in the designated place to administer oaths and affirmations.

(e) The administrative law judge may make any other order which justice requires to protect the party or deponent from annoyance, embarrassment or oppression, or to prevent the unnecessary disclosure or publication of information contrary to the public interest and beyond the requirements of justice in the particular proceeding.

(f) Each deponent shall be duly sworn, and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds of objections relied upon. The questions and the anwers, together with all objections made, but excluding argument or debate, shall be reduced to writing and certified by the person before whom the deposition was taken. Thereafter such person shall forward the deposition and one copy thereof to the party at whose instance the deposition was taken, and shall forward one copy thereof to the representative of each party who was present or represented at the taking of the deposition.

(g) A deposition taken to preserve relevant evidence which any party intends to offer in evidence may be corrected in the manner provided by § 1720.515. Any such deposition shall, in addition to the other required procedures, be read to or by the deponent and be subscribed by the deponent if the party intending to offer it in evidence so notifies the person before whom the deposition was taken. Subject to appropriate rulings on such objections to the questions and answers as were noted at the time the deposition was taken or as may be valid when it is offered, a deposition taken to preserve relevant evidence, or any part thereof, may be used or offered in evidence as against any party who was present or represented at the taking of the deposition or who had due notice thereof if the administrative law judge finds any of the following:

(1) That the deponent is dead.

(2) That the deponent is out of the United States or is located at such a distance that attendance would be impractical, unless it appears that the absence of the deponent was procured by the party offering the deposition.

(3) That the deponent is unable to attend or testify because of age, sickness, infirmity or imprisonment.

(4) That the party offering the deposition has been unable to procure the attendance of the deponent by subpoena.

(5) That such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

§ 1720.410 Subpoenas ad testificandum.

Application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at an adjudicative hearing shall be make to the administrative law judge who may issue such subpoena.

§ 1720.415 Subpoenas duces tecum.

(a) Application for Issuance of a subpoena requiring a person to appear and depose or testify and to produce specific documents, papers, books, or other physical exhibits at the taking of a deposition, or at a prehearing conference, or at an adjudicative hearing shall be made in writing to the administrative law judge who may issue such subpoena and shall specify as exactly as possible the general relevancy of the material and the reasonableness of the scope of the subpoena.

(b) Subpoenas duces tecum may be used by any party for purposes of discovery or for obtaining documents,

papers, books, or other physical exhibits for use in evidence, or for both purposes. When used for discovery purposes a subpoena may require a person to produce and permit the inspection and copying of nonprivileged documents, papers, books, or other physical exhibits which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody or control of such person.

§ 1720.420 Rulings on applications for compulsory process; appeals.

(a) Applications for orders requiring the production of witnesses' statements pursuant to the provisions of § 1720.430, applications for orders requiring the taking of depositions pursuant to § 1720.405 and applications for the issuance of subpoenas pursuant to §§ 1720.410 and 1720.415 may be made ex parte, and, if so made, such applications and the rulings thereon shall remain ex parte unless otherwise ordered by the administrative law judge. Such applications shall be ruled upon by the administrative law judge assigned to hear the case or, in the event that judge is not available, by another administrative law judge designated by the Secretary.

(b) Appeals to an appeals officer from rulings denying applications within the scope of paragraph (a) of this section, or from rulings on motions to limit or quash process issued pursuant to such applications will be entertained by the appeals officer only upon a showing that the ruling complained of involves substantial rights and will materially affect the final decision, and that a determiniation of its correctness before conclusion of the hearing is essential to serve the interests of justice. Such appeals shall be made on the record, shall briefly state the grounds relied on and shall be filed within 5 days after notice of the ruling complained of. Appeals from denials of ex parte applications shall have annexed thereto copies of the applications and rulings involved. Any answer to such appeal shall not operate to suspend the hearing unless otherwise ordered by the administrative law judge or the appeals officer.

§ 1720.425 Presentation and admission of evidence.

(a) All witnesses at a hearing for the purpose of taking evidence shall testify under oath or affirmation which shall be administered by the administrative law judge. Every party shall have the right to present such oral or documentary evidence and to conduct such cross-examinations as may be required for a full and true disclosure of the facts. The administrative law judge shall receive relevant and material evidence, rule upon offers of proof and exclude all irrelevant, immaterial or unduly repetitious evidence.

(b) Evidence shall not be excluded merely by application of technical rules governing its admissibility, competency, weight or foundation in the record; but evidence lacking any significant probative value, or substantially tending merely to confuse or extend the record, shall be excluded. The administrative law judge may allow arguments on the admissibility of evidence by analogy to the Federal Rules of Evidence currently applicable in the United States District Courts of the United States.

(c) When offered evidence is excluded, the party offering the same shall be permitted to state on the record an offer of proof with respect thereto and rejected exhibits, adequately marked, shall on request of the party offering the same be retained in the record for purposes of review. Evidence may be received subject to deferred ruling on objections to its admissibility.

(d) Objections to evidence shall be timely made and shall specify the particular ground of objection without argument except as argument may be expressly required by the administrative law judge. Formal exception to an adverse ruling is unnecessary.

§ 1720.430 Production of witnesses' statements.

After a witness called by the attorney for the Office of Interstate Land Sales Registration has given direct testimony in a hearing, any other party may request and obtain the production of any statement, or part thereof, of such witness pertaining to the witness' direct testimony in the possession of the Office of Interstate Land Sales Registration, subject, however, to the limitations applicable to the production of witnesses' statements under the Jencks Act, 18 U.S.C. 3500.

§ 1720.435 Official notice.

Official notice may be taken of any material fact which might be judicially noticed by a District Court of the United States, any matter in the public official records of the Office of Interstate Land Sales Registration or any matter which is peculiarly within the knowledge of the administrative law judge. When any decision of an administrative law judge rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely request therefor.

HEARINGS

§ 1720.505 Interlocutory review of administrative law judge's decision.

The appeals officer will not review a ruling of an administrative law judge prior to the appeals officer's consideration of the entire proceeding in the absence of extraordinary circumstances. Except as provided in § 1720.140 an administrative law judge shall not certify a ruling for interlocutory review to an appeals officer unless a party so requests and the administrative law judge is of the opinion and finds either on the record or in writing that (A) a subsequent reversal of the ruling would cause unusual delay or expense, taking into consideration the probability of such reversal, or (B) substantial rights are at stake and the final decision might be materially affected.

The certification by the administrative law judge shall be in writing and shall specify the material relevant to the ruling involved. The appeals officer may decline to consider the ruling certified if the officer determines that interlocutory review is not warranted or appropriate under the circumstances. If the administrative law judge does not certify a matter, a party who had requested certification may apply to the appeals officer for review. An application for review shall be in writing and shall briefly state the grounds relied on and shall be filed within 2 days after notice of the ruling complained of. Review will not be granted unless the appeals officer concludes that the administrative law judge erred in failing to certify the matter. Unless otherwise ordered by the administrative law judge, the hearing shall continue whether or not such certification or application is made. Failure to request certification or to make such application will not waive the right to seek review of the ruling of the administrative law judge after the close of the hearing.

§ 1720.510 Reporting and transcription.

Hearings shall be stenographically or mechanically reported and transcribed under the supervision of the administrative law judge. The original transcript shall be a part of the record and the sole official transcript. Copies of transcripts shall be available from the reporter at rates not to exceed the maximum rates fixed by contract between the Secretary and the reporter.

§ 1720.515 Corrections.

Corrections of the official transcript ordered by the administrative law judge shall be included in the record. Corrections shall not be ordered by the administrative law judge except upon notice and opportunity for the hearing of objections. Such corrections shall be made by the reporter by furnishing substitute pages, under the usual certificate of the reporter, for insertion in the official record.

§ 1720.520 Proposed findings, conclusions, and order.

The administrative law judge may fix a reasonable time, not to exceed 30

days after the close of the evidence, during which any party may file with the administrative law judge proposed findings of fact, conclusions of law and rules or orders together with briefs in support thereof. Such proposals shall be in writing, shall be served upon all parties and shall contain adequate references to the record and to authorities relied on. The record shall show the administrative law judge's ruling on each proposed finding and conclusion, except when the rule or order disposing of the proceeding otherwise informs the parties of the action taken thereon.

§ 1720.525 Decision of administrative law judge.

(a) The administrative law judge shall make and file a decision within 30 days after the close of the taking of evidence in cases in which a hearing is held.

(b) The decision shall be effective 10 days after service upon the parties unless a petition for appeal is filed pursuant to 1720.605 which shall serve to stay the effectiveness of the decision while the appeal procedure is ongoing.

§ 1720.530 Decision of the administrative law judge—content.

The administrative law judge's decision shall include a statement of (a) Findings, with specific references to principal supporting items of evidence in the record and conclusions, as well as the reasons or bases therefor, upon all of the material issues of fact, law or discretion presented on the record, and (b) An appropriate order. The administrative law judge's decision shall be based upon a consideration of the whole record and supported by reliable, probative and substantial evidence.

§ 1720.535 Reopening of proceeding; termination of jurisdiction.

(a) At any time prior to the filing of the decision, the administrative law judge may reopen the proceeding for the reception of further evidence.

(b) The jurisdiction of the administrative law judge is terminated when the decision becomes effective unless and until the proceeding is remanded to the judge by the appeals officer or a court of appropriate jurisdiction. The administrative law judge may *sua sponte* or on motion of a party file corrections of clerical errors.

APPEALS

§ 1720.605 Appeal from decision of administrative law judge.

(a) *Petition for appeal.* The administrative law judge's decision may be appealed by filing a written petition for appeal with the Docket Clerk for Administrative Proceedings within 10 days after service of the decision appealed from. Copies of the petition for appeal shall be served on all interested parties. The petition shall be limited to specifying the findings and conclusions to which exceptions are taken, together with a summary of the reasons in support of such exceptions.

(b) *Denial of petition.* A petition for appeal of the decision of the administrative law judge may be denied by the appeals officer. The petition shall be ruled on by the appeals officer within 10 days after filing. A denial of the petition shall be final agency action and shall render the administrative law judge's decision immediately effective.

(c) *Appeal brief.* If the appeals officer grants the petition, the appeal shall be perfected by filing within 30 days after service of the decision granting the petition a brief conforming to § 1720.620. In addition, the appellant shall submit a proposed order for the consideration of the appeals officer.

§ 1720.610 Answering brief.

Within 20 days after service of an appeal brief upon a party, such party may file an answering brief conforming to the requirements of § 1720.620.

§ 1720.615 Reply brief.

A brief in reply to an answering brief, limited to rebuttal of matters in the answering brief, may be filed and served by a party within 7 days after receipt of the answering brief or the day preceding oral argument whichever is earlier. No answer to a reply brief will be permitted.

§ 1720.620 Length and form of briefs.

No brief shall exceed 60 pages in length except with the permission of the administrative law judge or the appeals officer on the Interstate Land Sales Board and shall contain, in the order indicated, the following:

(1) The title of the proceeding, file number, the name of the party on whose behalf it is submitted and the name and address of the attorney in the matter on the front cover or title page.

(2) Subject index with page references.

(3) Table of cases alphabetically arranged, statutes, texts, and other authorities and materials cited, with page references.

(4) A concise statement of the facts of the case, without argument.

(5) A concise statement of the questions sought to be raised.

(6) The argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question with specific page references to the record so far as available, and to legal authority or other material relied upon in support of statements contained in the argument.

§ 1720.625 Oral argument.

Oral arguments will not be heard in cases on appeal to the appeals officer unless the officer otherwise orders, and stenographic or mechanical record of such oral argument may be made, in the officer's discretion. The purpose of oral argument is to emphasize and clarify the written argument appearing in the briefs and to answer questions.

§ 1720.630 Decision on appeal or review.

(a) Upon appeal from or review of an administrative law judge's decision, the appeals officer will consider such parts of the record as are cited or as may be necessary to resolve the issues and, in addition, to the extent necessary or desirable, will exercise all the powers which could have been exercised had the appeals officer made the initial decision. Unless exceptional circumstances are present, however, all appeals and reviews will be determined upon the record made before the administrative law judge.

(b) The appeals officer may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the administrative law judge's decision. The appellate order shall set forth the reasons upon which the decision is based.

(c) In those cases where the appeals officer believes that further information or additional arguments of the parties are needed as to the form and content of the rule or order to be issued, the appeals officer may withhold final decision pending the receipt of such additional information or argument under procedures specified.

(d) The decision of the appeals officer shall be final 10 days after service upon the parties.

(e) The appeals officer shall render a decision within 30 days after the date of receipt of the reply brief or the taking of additional information and evidence, whichever is later.

§ 1720.635 Appeals officer.

The Secretary shall hear, consider and determine fully and finally all appeals from decisions made pursuant to the rules in this part by the administrative law judge; provided, however, that the Secretary may, upon lawful delegation, designate a staff member or other person to serve as the appeals officer.

(Sec. 7(d), Department of HUD Act. (42 U.S.C. 3535(d)); Sec. 1419, Interstate Land Sales Disclosure Act (15 U.S.C. 1718).)

Issued at Washington, D.C. on June 22, 1978.

PATRICIA ROBERTS HARRIS,
Secretary of Housing and Urban Development.

[FR Doc. 78-18736 Filed 7-6-78; 8:45 am]

federal register

FRIDAY, JULY 7, 1978
PART VI



DEPARTMENT OF LABOR

Office of the Secretary

■

FEDERAL MINE SAFETY AND HEALTH ACT OF 1977

Representatives of Miners; Notification of Legal Identity; Processing Hazardous Conditions Complaints; Petitions for Modification of Mandatory Safety Standards

[4510-43]

Title 30—Mineral Resources

CHAPTER I—MINE SAFETY AND HEALTH ADMINISTRATION

SUBCHAPTER G—FILING AND OTHER ADMINISTRATIVE REQUIREMENTS

PART 40—REPRESENTATIVE OF MINERS

SUBCHAPTER O—COAL MINE HEALTH AND SAFETY

PART 81—PROCEDURES FOR IDENTIFICATION OF REPRESENTATIVES OF MINERS AT MINES

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This rule governs the identification of representatives of miners for all mines and sets forth filing requirements for such representatives. This rule replaces 30 CFR Part 81, which applied only to the representative of miners at coal mines. There was no rule applying to representatives of miners at metal or nonmetal mines.

The Federal Mine Safety and Health Act of 1977 (Mine Act), requires the Secretary of Labor to exercise many of his duties under the act in cooperation with miners' representatives. The Mine Act does not define the term "representative of miners." This rule defines the term, and also incorporates into the definition similar terms used throughout the Mine Act. The rule contains requirements respecting filing of specified identification data, requirements respecting designation of persons to exercise the functions of a representative under provisions of the Mine Act, a requirement that identification data be posted at each mine, and a provision respecting termination of representatives.

EFFECTIVE DATE: July 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank A. White, Office of Standards, Regulations and Variances, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, 703-235-1910.

SUPPLEMENTARY INFORMATION:

I. Background Information

The Mine Act, Pub. L. 91-173 as amended by Pub. L. 95-164 applies to coal, metal, and nonmetal mines. The Secretary has established new Subchapter G of Chapter I of Title 30 CFR containing this new Part 40, and has revoked 30 CFR Part 81. The proposed rule appeared in 43 Federal Register 9108 (Mar. 3, 1978). Interested persons were given until April 3, 1978, to submit comments. By notice in the Federal Register of April 7, 1978, the time for filing such comments was extended to May 3, 1978. Numerous comments have been received and reviewed and the main comments are discussed below.

II. Discussion of Major Comments

(1) Several commenters expressed concern that the definition of "representative of miners" for purposes of § 40.1 of this part was overly broad and would cause a great deal of confusion among the miners in selecting a representative. The commenters felt that this confusion could eventually have a chaotic effect on the entire mining industry. One commenter went so far as to suggest that unless the definition were narrowed, there existed the possibility of every miner becoming a "representative of miners". Other commenters suggested that the National Labor Relations Board (NLRB) definition of representative be applied while others suggested that representatives should be elected by a majority, and should as well be qualified miners from the work force. MSHA is not convinced that a narrower definition is justified.

First, there is no clear statement in the legislative history of the Mine Act defining who is to be a representative of miners for a specific purpose, nevertheless, Congress believed it was vital to have miners freely participate in health and safety matters at the mines. Second, the frequent use of the term "representative" throughout the Mine Act in different contexts suggests that a broad definition would be preferable to a narrow one. Additionally, any attempt to limit the manner in which representatives are selected would be intrusive into labor-management relations at the mine and not in keeping with the spirit of miner participation. Finally, it would be very difficult to put forth a more detailed or restrictive rule which would be applicable to all the varied situations at all mines—large and small, union, multiunion and nonunion, coal and metal/nonmetal, which would still be equitable in all situations.

More specifically, the NLRB definition is inappropriate because the NLRB definition of "Representative" concerns itself with a representative in the context of collective bargaining. The meaning of the word representative under this act is completely different. Additionally the rights of nonunion miners would be severely limited by a definition of "Representative of Miners" based on the collective bargaining concept. Furthermore, the "majority rule" concept is a fundamental component of the NLRB definition of representative, which contemplates only one union miner representative at each mine. The purposes of the Mine Act are better served by allowing multiple representatives to be designated. This insures that all miners have the opportunity to exercise their right to select the representative of their choice for the purpose of performing the various functions of a representative of miners under the act and within the framework of each provision.

Finally, based on experience under the Federal Coal Mine Health and Safety Act of 1969 and Part 81, it is reasonable to expect that miners will choose representatives with a substantial amount of experience, and problems are not anticipated with this broad interpretation of the term representative of miners. If problems do arise MSHA will propose appropriate revisions.

(2) Numerous comments were received concerning the "walkaround rights" of the "representative of miners" under § 103(f) of the Mine Act. The comments suggested that MSHA was attempting to enact mandatory regulations within the framework of § 40.2. It was also suggested that MSHA's subsequent verbal instructions to District Managers and inspectors in the field, as to what procedures should be followed regarding the "walkaround rights" of the representative of miners constitute a rulemaking impropriety on the part of MSHA. Since that time, the status of walkaround rights provided by § 103(f) of the act has been covered at length in a Mine Safety and Health Administration Interpretative Bulletin published in the Federal Register for April 25, 1978 (43 FR 17546). MSHA agrees with the commenters that paragraphs (c), (d), and (e) of § 40.2 deal with walkaround rights during inspections and were inappropriately proposed as part of § 40.2. These paragraphs have been deleted. Commenters should refer to the interpretative bulletin for an explanation of walkaround rights under section 103(f) of the act. However, it should be noted that miners and their representatives do not lose their statutory rights under section 103(f) by their failure to file as representatives of miners under this part.

(3) One commenter suggested that the filing requirements under § 40.2(a)(1) should be modified so that all representatives of miners would be required to submit their own names, rather than just their title or position. When there is no institutional organization representing miners, it is essential to know the name of the individual representative of miners so that he or she may be contacted personally to fulfill his or her duties. When an institutional organization, i.e., a union represents miners, the name of the individual representative is relatively less important, since the duties of the rep-

resentative will usually be assumed by a person holding a designated title or position within the organization. The rule recognizes this difference and attempts to limit the administrative burden.

(4) Several commenters suggested that § 40.2(a) be amended so that it requires the representative of miners to provide to both the operator and the District Manager a copy of the information required by § 40.3. Because the operator is required to post this information and keep it current under § 40.4, the representative of miners must provide the information as promptly as possible to the operator. This suggestion has been adopted in § 40.2(a).

(5) Comments were received suggesting that the requirement for the operator to post the information required under Part 40 should be eliminated. The operator is statutorily required under § 109(a) to maintain a bulletin board for the posting of copies of orders, citations, notices, or decisions required by law to be posted. The act contemplates that this bulletin board be used as the official notification point regarding official documents dealing with the administration of the act at the mine. The posting of "Representative of Miner" information will keep the miners abreast of who their representatives are, and for what purpose under the act their representatives serve. This knowledge will better acquaint the miner with MSHA's health and safety programs which will further promote an awareness among the miners of the importance of health and safety at the mine.

(6) One commenter felt that existing representatives who have been identified under the Coal Act and Part 81 should not have to refile under this rule. MSHA agrees. As long as the District Manager has current information on file of who the "Representative of Miners" is, and as long as the operator has a current copy of this information, the "Representative of Miners" will not be required to refile under this new rule.

(7) One commenter urged that the filing be made with the MSHA national office rather than with the District Manager's office. The argument was made that under Part 81 the identity of the miners selecting a representative could be kept confidential.

The document evidencing the designation of the representative of miners required to be filed by § 40.3 and posted by § 40.4 does not necessarily have to list the names of the miners who are being represented. The signed document may simply state that the representative of miners does in fact represent two or more miners for a particular purpose. Where disputes arise, MSHA may require further evidence of representation.

III. Other Changes

In § 40.3(a)(5) the words "delegates of the" have been deleted. This change clarifies the scope of authority of the representative of miners. A representative may not select another person to serve as representative of miners in his absence unless specifically authorized to do so by the miners. Miners also may choose alternates directly to represent them in the absence of the representative of the miners.

IV. Drafting Information

The principal person responsible for preparation of this final rule is: Manuel R. Lopez, Office of the Solicitor, Division of Mine Safety and Health.

V. Effective Date

Because this rule advises the public of MSHA's procedure and practice, the requirement of 5 U.S.C. 553 that a rule be published 30 days before it becomes effective does not apply. This rule will take effect upon publication since there is a compelling need to implement the Mine Act as expeditiously as possible.

Dated: June 23, 1978.

Robert B. Lagather,
Assistant Secretary for Mine Safety and Health.

1. A new Subchapter G is added to Chapter I of Title 30, CFR, and a new Part 40 is added to Subchapter G, as set forth below:

SUBCHAPTER G—FILING AND OTHER ADMINISTRATIVE REQUIREMENTS

PART 40—REPRESENTATIVE OF MINERS

Sec.
40.1 Definitions.
40.2 Requirements.
40.3 Filing procedures.
40.4 Posting at mine.
40.5 Termination of designation as representative of miners.

Authority: Secs. 5(f), 101(c), 101(e), 103(c), 103(f), 103(g), 104(c), 105(a), 105(b)(1), 105(c), 105(d), 107(b)(1), 107(e)(1), 109(b), 115(a)(1)(2), 302(a), 305(b), 312(b), 505 and 508 of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91-173, as amended by Pub. L. 95-164) and section 307 of the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. 95-164).

§ 40.1 Definitions.

As used in this Part 40:

(a) "act" means the Federal Mine Safety and Health Act of 1977.

(b) "Representative of miners" means:

(1) Any person or organization which represents two or more miners at a coal or other mine for the purposes of the act, and

(2) "Representatives authorized by the miners", "miners or their representative", "authorized miner representative", and other similar terms as they appear in the act.

§ 40.2 Requirements.

(a) A representative of miners shall file with the Mine Safety and Health Administration District Manager for the district in which the mine is located the information required by § 40.3 of this part. Concurrently, a copy of this information shall be provided to the operator of the mine by the representative of miners.

(b) Miners or their representative organization may appoint or designate different persons to represent them under various sections of the act relating to representatives of miners.

(c) All information filed pursuant to this part shall be maintained by the appropriate Mine Safety and Health Administration District Office and shall be made available for public inspection.

§ 40.3 Filing procedures.

(a) The following information shall be filed by a representative of miners with the appropriate District Manager, with copies to the operators of the affected mines. This information shall be kept current:

(1) The name, address, and telephone number of the representative of miners. If the representative is an organization, the name, address, and telephone number of the organization and the title of the official or position, who is to serve as the representative and his or her telephone number.

(2) The name and address of the operator of the mine where the represented miners work and the name, address, and Mine Safety and Health Administration identification number, if known, of the mine.

(3) A copy of the document evidencing the designation of the representative of miners.

(4) A statement that the person or position named as the representative of miners is the representative for all purposes of the act; or if the representative's authority is limited, a statement of the limitation.

(5) The names, addresses, and telephone numbers, of any representative to serve in his absence.

(6) A statement that copies of all information filed pursuant to this section have been delivered to the operator of the affected mine, prior to or concurrently with the filing of this statement.

(7) A statement certifying that all information filed is true and correct followed by the signature of the representative of miners.

(b) The representative of miners shall be responsible for ensuring that the appropriate District Manager and operator have received all of the information required by this part and in-

forming such District Manager and operator of any subsequent changes in the information.

§ 40.4 Posting at mine.

A copy of the information provided the operator pursuant to § 40.3 of this part shall be posted upon receipt by the operator on the mine bulletin board and maintained in a current status.

§ 40.5 Termination of designation as representative of miners.

(a) A representative of miners who becomes unable to comply with the requirements of this part shall file a statement with the appropriate District Manager terminating his or her designation.

(b) The Mine Safety and Health Administration shall terminate and remove from its files all designations of representatives of miners which have been terminated pursuant to paragraph (a) of this section or which are not in compliance with the requirements of this part. The Mine Safety and Health Administration shall notify the operator of such termination.

SUBCHAPTER O—COAL MINE HEALTH AND SAFETY

PART 81—PROCEDURES FOR IDENTIFICATION OF REPRESENTATIVES OF MINERS AT MINES [REVOKED]

1. Part 81 is revoked.

[FR Doc 78-18892 Filed 7-6-78; 8:45 am]

[4510-43]

SUBCHAPTER G—FILING AND OTHER ADMINISTRATIVE REQUIREMENTS

PART 41—NOTIFICATION OF LEGAL IDENTITY

SUBCHAPTER O—COAL MINE HEALTH AND SAFETY

PART 82—NOTIFICATION OF LEGAL IDENTITY

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This rule requires each operator of a coal or other mine to file specified information with the Secretary respecting the operator's legal identity and sets forth the procedures for filing such notification of legal identity. Section 103(h) of the Federal Mine Safety and Health Act of 1977 (act) authorizes the Secretary of Labor to require the operator of a coal or other mine (metal and nonmetal) to provide such information as the Secretary may reasonably require from time to time to enable him to perform his functions under the act.

EFFECTIVE DATE: September 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank A. White, Room 831, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, 703-235-1910.

SUPPLEMENTARY INFORMATION:

I. Background Information

The Federal Mine Safety and Health Amendments Act of 1977, Pub. L. 95-164, amended the Federal Coal Mine Health and Safety Act of 1969, Pub. L. 91-173, and repealed the Metal and Nonmetallic Mine Safety Act, Pub. L. 89-577. The Federal Mine Safety and Health Act of 1977 (act), Pub. L. 91-173 as amended by Pub. L. 95-164, applies to coal, metal and nonmetal mines. Accordingly, this rule applies to the operator of coal, metal and nonmetal mines. The basis of this rule is experience under the Federal Coal Mine Health and Safety Act of 1969 and 30 CFR Part 82. Many of the provisions of Part 82, which is replaced by this part, are retained. This part also requires the operator to file additional information.

II. Summary of Rule Requirements

The term "operator" is defined in section 3(d) of the act and in § 41.1 of this rule. This rule requires each operator to file specified information respecting its status as a sole proprietorship, partnership, corporation, or other type of organization. Each operator is also required to file the name and address of the mine, together with the Federal mine identification number, and the name and address of relevant persons in the partnership, corporation or other organization. If the operator is a corporation, the operator is required to indicate if the corporation is a subsidiary corporation and if so, identify the parent corporation. This information is fundamental to enable the Secretary to properly ascertain the identity of persons chargeable with violations of mandatory safety or health standards and is necessary in the assessment of civil penalties. Also for use in the assessment of civil penalties, this rule requires the operator to file information respecting ownership interests in other mines held by the operator and relevant persons in the partnership, corporation or other organization. Telephone number(s) where the operator can be contacted during normal business hours, if any, are required to be provided the Secretary to aid in administration of the act. To expedite service of documents upon the operator, each operator is required to provide an address of record. Service of documents upon the operator will be considered completed by mailing the documents to this address.

III. Discussion of Major Comments and Changes

The proposed rule appeared in the Federal Register on March 3, 1978 (43 FR 9109). Interested persons were given 30 days within which to submit comments. In response to several requests, the comment period was extended to 60 days by notice published in the Federal Register on April 7, 1978 (43 FR 14691) allowing comments to be submitted through May 3, 1978. Due consideration has been given to all comments received insofar as they relate to matters within the scope of this rule. After reviewing the comments received, it has been determined that the proposed rule shall be adopted with four changes.

(1) *Opening of a new mine.* One commenter suggested that the interpretation of what constitutes "the opening of a new mine" for purposes of § 41.11(a) of this part could cause a problem for operators with traveling portable operations. Generally, the opening of a new mine occurs when the first activity begins with respect to the property, facilities, operations or equipment described by the definition of coal or other mine in section (3)(h)(1) of the act. Mines worked seasonally or on a regular rotation by the same operator, for purposes of this part, generally will not constitute the opening of a new mine each time the operator resumes mining activities. After moving from one location to another the operator should, however, be sure to file notification of changes, if any, in its legal indentity information in accordance with § 41.12 of this part.

(2) *Initial filing by all operators.* Several comments were received which questioned whether coal mine operators already in compliance with the provisions of revoked Part 82 are required to refile legal identity information in accordance with this part. Information in addition to that previously required by Part 82 is necessary for compliance with this part. Also, a new form, form 2000-7, is being developed incorporating the new information requirements and will be supplied each operator for purposes of reporting legal identity in compliance with Subpart C as soon as it is available. To secure accurate and complete legal identity recording by MSHA, each operator of a coal, metal or nonmetal mine must file a completed form 2000-7 for each of the operator's mines.

(3) *Health and safety officer information.* Comments were also received suggesting that filing of health and safety officer information be incorporated into the filing requirements of this part. Designation by the operator of a health and safety officer is required by section 109(d) of the act. Under current practices, health and safety officer information for each mine is submitted on a form separate

from the operator's legal identity report. To reduce duplication of effort by operators and obtain this information in the least burdensome manner, health and safety officer information is incorporated into the legal identity information requirements of this part and will be made part of legal identity report form 2000-7.

(4) *Notification of legal identity by operator.* Some commenters indicated that persons at particular mine sites responsible for preparation of the operator's legal identity report may not have ready access to all of the information required by this rule. For example, one commenter suggested that if the operator is a corporation, and the corporation's headquarters are located a great distance from the actual mine site, the person at the site preparing the legal identity report for the mine may have difficulty ascertaining the names and addresses of officers of the corporation. Where this potential problem exists, particularly in large or diversified businesses, the legal identity report may be completed and filed by the business headquarters. A separate legal identity report, however, must still be filed for each of the operator's mines.

(5) *Address of record.* The comments received evidenced some confusion over the address of record requirement of §41.30 of this rule. An address of record must be filed for each operator. The address of record provided will be the operator's official address for purposes of the act. Notice to an operator of a proposed civil penalty assessment, or service of any other documents upon an operator under the act will be completed by mailing the documents certified mail, return receipt requested, to the operator's address of record. The operator will be treated as having duly received the documents mailed to this address if the post office return receipt indicates that the documents were delivered or that the documents could not be delivered at the address of record because the operator moved without leaving a forwarding address, delivery was not accepted at the address of record, or the address of record filed did not exist.

In addition, the final rule deletes the proposed requirement of a telephone number for the sole proprietor, partners or corporate agent for service of process. In lieu of such a telephone number, the final rule requires an operator telephone number which will be used in connection with civil penalty assessments as provided by 30 CFR Part 100. For example, under §100.5 (procedures for assessment of civil penalty; initial review and conferences) it may be necessary for the office of assessments to contact the operator, or a person designated by the operator, with respect to a conference regarding proposed assessments. The telephone number provided by the operator under this part should be appropriate to serve this purpose and similar purposes.

(6) *Ownership interests in other mines.* Objections were raised concerning the more detailed legal identity information requirements of the proposed rule. Several commenters objected to the requirement that each operator, whether sole proprietorship, partnership, corporation or other organization, state the Federal mine identification numbers of all other mines in which the operator has any ownership interest. Commenters also objected to the related proposed rule requirement that each operator provide the Federal mine identification numbers of all other mines in which each partner, corporation officer or other organization official or member has any ownership interest.

Comments received respecting these ownership interest requirements questioned the Secretary's need under the act for such information. Under the act, the appropriateness of a penalty to the size of the business of the operator charged is to be considered in assessment of the penalty. An operator may operate more than one mine. In turn, such operator may be controlled, either directly or indirectly, by another organization, which also controls several other operators. In order to properly determine the size of the business of the operator charged with a violation, it is necessary to identify the links between such operators and controlling organizations. The ownership interest information requirements of this part are designed to enable the Secretary to properly identify these links and therefore accurately determine the size of the business of the operator charged with a violation. In addition, this information is necessary to the Office of the Solicitor in determining proper parties to actions arising under the act.

Several commenters stated that the ownership interest requirements of the proposed rule would result in reporting of insignificant ownership interests in other mines. For instance, some commenters suggested that under the proposed rule each officer and director of a corporation would have to report even small numbers of shares of stock held in a company which owned a mine. Objections were raised that this type of information would not be pertinent to the Secretary's responsibilities under the act and would be subject to constant change making it burdensome to update. Other commenters questioned whether a stockholder in a diversified company would know if such a company owned a mine and, if so, what Federal mine identification number was assigned to it.

As a result of these and similar comments received, paragraphs (b)(3), (c)(2), (c)(6), (d)(2), (d)(9), (e)(3), and (e)(7) of §41.11 of the proposed rule are changed to require filing of the Federal mine identification number of all other mines in which a 20 percent or greater ownership interest is held.

These changes in the rule will insure that the ownership interests in other mines required to be stated in the operator's legal identity report will be substantial and less subject to change. Persons with 20 percent or greater ownership interests in diversified companies are likely to have knowledge of whether the company owns mining operations and, if so, the relevant Federal mine identification numbers are reasonably obtainable.

The comments received also evidenced a need to clarify ownership interests in "other mines". If the legal identity report is for the operator of a coal mine, then that operator's legal identity report(s) should reflect only ownership interests in other coal mines. If the legal identity report is for the operator of a metal or nonmetal mine, then that operator's legal identity report(s) should reflect only ownership interests in other metal and nonmetal mines. It should be noted that no distinction is made between ownership interests in metal and nonmetal mines. For example, an ownership interest in a nonmetal mine held by the operator of a metal mine, must be included in the metal mine operator's legal identity report.

(7) *Agent for service of process.* The proposed requirement to list agents for service of process if the operator is a corporation or other organization is duplicative of the address of record requirement of §41.30. Therefore, §§41.11(d)(6) and 41.11(e)(5) of the proposed rule are deleted.

(8) *Comments beyond scope.* Numerous comments were received respecting independent contractors. The status of independent contractors as operators and the attendant responsibilities will be covered by regulations to be promulgated by the Secretary which are separate from this rule. Accordingly, comments received concerning independent contractors are beyond the scope of this rule and will be fully discussed during consideration of that regulation.

IV. Effect on Existing Rules

A new Part 41 is established by this rule, to be contained in a new subchapter G of Chapter I of Title 30, CFR. 30 CFR Part 82, pertaining to notification of legal identity of coal mine operators, is revoked. There is no rule in Title 30 requiring information to establish the legal identity of metal and nonmetal mine operators, and therefore there is no revocation of any rule applicable to the metal and nonmetal mining industry.

DRAFTING INFORMATION

The principal persons responsible for preparation of this final rule are: Edward C. Hugler, Attorney-Advisor, Division of Mine Safety and Health, Office of the Solicitor and Frank A. White, Office of Standards, Regulations and Variances, MSHA.

Dated: June 23, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

1. A new Part 41 is added to Subchapter G, Chapter I, Title 30, CFR, as set forth below:

Subpart A—Definitions

Sec.
41.1 Definitions.

Subpart B—Notification of Legal Identity

41.10 Scope.
41.11 Notification by operator.
41.12 Changes; notification by operator.
41.13 Failure to notify.

Subpart C—Operator's Report to the Mine Safety and Health Administration

41.20 Legal identity report.
41.30 Address of record and telephone number.

AUTHORITY: The provisions of this part 41 are issued under sections 103(h), 109(d), and 508 of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91-173, as amended by Pub. L. 95-164), and under section 307 of the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. 95-164).

Subpart A—Definitions

§ 41.1 Definitions.

As used in this part:

(a) "Operator" means any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any designated independent contractor performing services or construction at such mine.

(b) "Person" means any individual, sole proprietor, partnership, association, corporation, firm, subsidiary of a corporation, or other organization.

(c) "Coal or other mine" means (a) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (b) private ways and roads appurtenant to such area, and (c) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities. In making a determination of what constitutes mineral milling for purposes of this act, the Secretary shall give due consideration to the convenience of administration resulting from the delegation to one Assistant Secretary of all authority with respect to the health and safety of miners employed at one physical establishment.

Subpart B—Notification of Legal Identity

§ 41.10 Scope.

Section 109(d) of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91-173, as amended by Pub. L. 95-164), requires each operator of a coal or other mine to file with the Secretary of Labor the name and address of such mine, the name and address of the person who controls or operates the mine, and any revisions in such names and addresses. Section 103(h) of the act requires the operator of a coal or other mine to provide such information as the Secretary of Labor may reasonably require from time to time to enable the Secretary to perform his functions under the act. The regulations in this subpart B provide for the notification to the Mine Safety and Health Administration of the legal identity of the operator of a coal or other mine and the reporting of all changes in the legal identity of the operator as they occur. The submission of a properly completed Legal Identity Report Form No. 2000-7 required under subpart C of this part will constitute adequate notification of legal identity to the Mine Safety and Health Administration.

§ 41.11 Notification by operator.

(a) Not later than 30 days after (1) the effective date of this part, and (2) the opening of a new mine thereafter, the operator of a coal or other mine shall, in writing, notify the appropriate district manager of the Mine Safety and Health Administration in the district in which the mine is located of the legal identity of the operator in accordance with the applicable provisions of paragraphs (b), (c), (d), or (e) of this section.

(b) If the operator is a sole proprietorship, the operator shall state: (1) His full name and address; (2) the name and address of the mine and the Federal mine identification number; (3) the name and address of the person at the mine in charge of health and safety; (4) the name and address of the person with overall responsibility for a health and safety program at all of the operator's mines, if the operator is not directly involved in the daily operation of the mine; (5) the Federal mine identification numbers of all other mines in which the sole proprietor has a 20 percent or greater ownership interest; and (6) the trade name, if any, and the full name, address of record and telephone number of the proprietorship.

(c) If the operator is a partnership, the operator shall state: (1) The name and address of the mine and the Federal mine identification number; (2) the name and address of the person at the mine in charge of health and safety; (3) the name and address of the person with overall responsibility for a health and safety program at all of the operator's mines, if the operator is not directly involved in the daily operation of the mine; (4) the Federal mine identification numbers of all other mines in which the partnership has a 20 percent or greater ownership interest; (5) the full name and address of all partners; (6) the trade name, if any, and the full name and address of record and telephone number of the partnership; and (7) the Federal mine identification numbers of all other mines in which any partner has a 20 percent or greater ownership interest.

(d) If the operator is a corporation, the operator shall state: (1) The name and address of the mine and the Federal mine identification number; (2) the name and address of the person at the mine in charge of health and safety; (3) the name and address of the person with overall responsibility for a health and safety program at all of the operator's mines, if the operator is not directly involved in the daily operation of the mine; (4) the Federal mine identification numbers of all other mines in which the corporation has a 20 percent or greater ownership interest; (5) the full name, address of record and telephone number of the corporation and the State of incorporation; (6) the full name and address of each officer and director of the corporation; (7) whether such corporation is a domestic or foreign corporation in the State in which the mine is located; (8) if the corporation is a subsidiary corporation, the operator shall state the full name, address, and State of incorporation of the parent corporation; and (9) the Federal mine identification numbers of all other mines in which any corporate officer has a 20 percent or greater ownership interest.

(e) If the operator is any organization other than a sole proprietorship, partnership, or corporation, the operator shall state: (1) The nature and type, or legal identity of the organization; (2) the name and address of the mine and the Federal mine identification number; (3) the name and address of the person at the mine in charge of health and safety; (4) the name and address of the person with overall responsibility for a health and safety program at all of the operator's mines, if the operator is not directly involved in the daily operation of the mine; (5) the Federal mine identification num-

bers of all other mines in which the organization has a 20 percent or greater ownership interest; (6) the full name, address of record and telephone number of the organization; (7) the name and address of each individual who has an ownership interest in the organization; (8) the name and address of the principal organization officials or members; and (9) the Federal mine identification numbers of all other mines in which any official or member has a 20 percent or greater ownership interest.

§ 41.12 Changes; notification by operator.

Within 30 days after the occurrence of any change in the information required by § 41.11, the operator of a coal or other mine shall, in writing, notify the appropriate district manager of the Mine Safety and Health Administration in the district in which the mine is located of such change.

§ 41.13 Failure to notify.

Failure of the operator to notify the Mine Safety and Health Administration, in writing, of the legal identity of the operator or any changes thereof within the time required under this part will be considered to be a violation of section 109(d) of the act and shall be subject to penalties as provided in section 110 of the act.

Subpart C—Operator's Report to the Mine Safety and Health Administration

§ 41.20 Legal identity report.

Each operator of a coal or other mine shall file notification of legal identity and every change thereof with the appropriate district manager of the Mine Safety and Health Administration by properly completing, mailing, or otherwise delivering form 2000-7 "legal identity report" which shall be provided by the Mine Safety and Health Administration for this purpose. If additional space is required, the operator may use a separate sheet or sheets.

§ 41.30 Address of record and telephone number.

The address of record and telephone number required under this part shall be considered the operator's official address and telephone number for purposes of the act. Service of documents upon the operator may be proved by a post office return receipt showing that the documents could not be delivered to such operator at the address of record because the operator had moved without leaving a forwarding address or because delivery was not accepted at that address, or because no such address existed. However, operators may request service by delivery to another appropriate address provided by the operator. The telephone number required under this part will be used in connection with proposed civil penalty assessments as provided in 30 CFR Part 100.

Subchapter O—Coal Mine Health and Safety

PART 82—NOTIFICATION OF LEGAL IDENTITY [REVOKED]

2. Part 82 is revoked.

[FR Doc. 78-18893 Filed 7-6-78; 8:45 am]

[4510-43]

PART 43—PROCEDURES FOR PROCESSING HAZARDOUS CONDITIONS COMPLAINTS

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: These rules provide procedures for filing and responding to notices given by representatives of miners, or by miners at mines where there are no representatives, that violations of the Federal Mine Safety and Health Act of 1977 or of health or safety standards under the act exist or an imminent danger exists. There is a right to a special inspection if an appropriate notice is given to the Secretary of Labor or his authorized representative. In addition, an informal review procedure is established for refusals to issue a citation or order where the Secretary or his authorized representative has been notified that an alleged violation or imminent danger exists. These rules are issued pursuant to the Federal Mine Safety and Health Act of 1977.

EFFECTIVE DATE: July 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank A. White, Mine Safety and Health Administration, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, phone 703-235-1910.

SUPPLEMENTARY INFORMATION:

BACKGROUND INFORMATION

On March 3, 1978, the Secretary of Labor published in the FEDERAL REGISTER (43 FR 9113) proposed procedures governing notices given to the Secretary or his authorized representative under section 103(g) of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91-173, as amended by Pub. L. 95-164) concerning alleged violations of the act or mandatory health or safety standards or imminent dangers. Interested persons were given a period of 30 days within which to submit written comments, data, views, or arguments.

As a result of requests, the comment period was extended until May 3, 1978 (43 FR 14691). Comments were received from a number of individuals and organizations. The Mine Safety and Health Administration has carefully reviewed the comments and the final rules reflect many of the suggested changes.

DISCUSSION OF THE COMMENTS AND CHANGES

The format of the final rules is different from that used for the proposed rule. The revised format more accurately reflects the differences between sections 103(g)(1) and 103(g)(2) and should be easier to understand. Subpart B describes the procedures to be followed by the representative of miners or the miner in giving notice of an alleged hazard and by the Secretary in responding to such a notice under section 103(g)(1) of the act. Subpart C describes the procedure to be followed in requesting and providing informal review of a refusal by an inspector to issue a citation or an order if an inspector has been notified while on mine property prior to or during an inspection that an alleged violation or imminent danger exists under section 103(g)(2) of the act. This informal review procedure is also made available to a person whose request for a special inspection under subpart B is denied.

This format change reflects one significant substantive alteration of the proposed rules. The notice of negative finding will not be issued where an inspector refuses to issue a citation or order as the result of a request made under section 103(g)(2) of the act while the inspector is on the mine premises. The miners' representative or miner may, in this case, invoke the informal review procedures, which will include a written explanation of the denial by the inspector.

Commenters suggested that the term "representative of miners" used throughout the proposed rule be limited to only those representatives who have filed as representatives under the proposed 30 CFR Part 40 (Representative of Miners) (43 FR 9108). The health and safety of miners will be best served by not placing limitations upon the categories of persons who may give notice to the Secretary that hazards may exist. Neither the act nor the legislative history requires or implies any such limitations. MSHA must be able to respond appropriately to all complaints of hazardous conditions both within and outside the context of these particular rules. Even when information is submitted by someone who has not filed as a representative of miners, MSHA will evaluate the information and take the appropriate inspection steps.

The proposed rules stated, using the language of section 103(g)(1) of the act, that where appropriate notice is

given, there is a right to an "immediate" inspection. Commenters suggested that the term "immediate" should be defined more clearly. In the final rule, the term "immediate" is omitted and the term "as soon as possible," also used in section 103(g)(1), has been substituted in §43.5. The time it will take for MSHA to respond to a notice that a violation or danger exists will, as a practical matter, depend on the gravity of the condition reported to the MSHA office. In those cases in which a serious hazard is alleged, an inspector will generally respond immediately. If the condition complained of is of a technical nature, the precise timing of the inspection will depend on a number of factors including the availability of inspectors and competing inspection priorities. There must be some judgment exercised. However, it must be emphasized that MSHA will respond as promptly as necessary to insure the safety and health of miners and will in all cases respond promptly to complaints under this part.

The proposed rule stated that a notice under section 103(g)(1) must be "in writing," whereas the act requires that the notice be "reduced to writing." Commenters requested clarification. Section 43.4(b) of the final rule uses the statutory language. MSHA believes that the intent of Congress was to provide a speedy vehicle for notifying the Secretary of hazards and for responding to those notifications. Accordingly, the initial contact with MSHA need not be in writing, in order to insure that the agency is able to respond as quickly as possible. However, prior to performing the actual inspection, the miners' representative or miner must put his or her oral notification in writing.

The act requires that a copy of this written notice, with the name of any miners omitted, must be provided to the operator no later than "at the time of the inspection." This phrase was incorporated into the proposed rules and commenters suggested that this be clarified to state that the operator will be given a copy no later than "the time the inspection begins." This suggestion has been adopted in §43.3(c).

Commenters also suggested that the notice must contain a statement of the "reasonable grounds" relied on by the person requesting an inspection. The act clearly requires only that the person give notice of the violation or danger itself. In addition, an inspector cannot generally make a judgment of whether there are "reasonable grounds" to believe a hazard exists until he or she can personally view the conditions giving rise to the notification. Therefore, special inspections will be made unless on the face of the notice the condition complained of would clearly not constitute a violation or imminent danger.

Commenters criticized the requirement in the proposed rule that the name of the miners' representative or any miners be omitted from the copy of the notice given to the operator, particularly since section 105(e) of the act prohibits discrimination on account of the exercise of statutory rights. This requirement has been retained in the final rule since the act itself imposes the requirement as an added protection in order to encourage uninhibited miner participation in health and safety matters.

Several comments were received suggesting that the response of the Secretary refusing to conduct an inspection or refusing to issue a citation or order under section 103(g)(1), which was called a "notice of no action taken" in the proposed rules, be renamed a "notice of negative finding" in order not to mislead persons into believing that the Secretary merely ignored the notice. This suggestion has been adopted in §43.6.

The proposed rules did not specify who would receive the notices of negative findings or when such orders would be issued. It was suggested that copies should be served upon operators immediately after a determination is made. The final rules clarify these points. Section 43.6(c) states that the operator will receive a copy of the notice of negative finding. If a determination is made that no inspection is warranted, such notice and copies thereof will be issued "as soon as possible" following such determination under §43.6(a). Under §43.6(b), if an inspection is made, the notice of negative finding and any copies will be issued before the inspector leaves the mine premises.

Commenters suggested that operators should be entitled to receive copies of notifications of alleged violations or imminent danger under section 103(g)(2) as well as under section 103(g)(1). Under section 103(g)(2), the inspector is already on mine property and his investigation of a matter complained of by a miners' representative or miner is merely an extension of his inspection activities already underway at the mine. The purpose served by the writing in these cases is to give the opportunity for later review if no citation or order is issued. Under section 103(g)(1), the inspector would not be on mine property if it were not for the notice given to him and the operator should be made aware of the reason for the inspector's presence.

Under the proposed rules, a request for informal review could be made orally as well as in writing. Commenters stated that oral requests can often be misstated or misunderstood and may later be difficult to verify. MSHA believes that it is not unduly burdensome to require a request to be put in writing and agrees that this is necessary to avoid potential confusion. Therefore, §43.7(b) of the final rule requires requests for informal review to be written.

Commenters also suggested that the 30-day period for requesting review was too lengthy. MSHA agrees that the issues surrounding a complaint of a violation or imminent danger must be quickly resolved and that expeditious action is in the best interests of all parties. Therefore, §43.7(b) requires that the miners' representative or miner send a request for informal review within 10 days of the date the inspector refuses to issue a citation based upon the notice given to the inspector.

Finally, commenters criticized the proposed informal review procedures because they did not make provision for participation by the operator in the review process. Under the proposed procedures, the district manager would have had the authority, based solely on input from the miners' representative or miner, to reverse the inspector's decision not to issue a citation or order. In §43.7(d) of the final rule, it is made clear that the district manager only has the authority to affirm the original decision or to direct another inspection. The district manager may not, on his own, reverse the inspector's original decision not to issue a citation or order. If another inspection is ordered and conducted, the operator will have available to him the same opportunities to discuss the alleged violation or danger with the inspector and to contest any citation or order issued that he has with respect to any other inspection.

Following the final disposition of the request for informal review, a copy of the district manager's written statement of the reasons for that disposition will be served on the operator, pursuant to §43.7(d) of the final rule.

Effective Date

This rule becomes effective immediately upon publication in the Federal Register. It is important to implement, as quickly as possible, procedures for processing and responding to notices of hazardous conditions in order to ensure that miners and their representatives will be aware of and encouraged to exercise the opportunity to report such conditions. This is a vital part of the overall effort of MSHA to promote and enforce health and safety in the Nation's mines.

Drafting Information

The principal persons responsible for drafting this rule are Frank A. White, Office of Standards, Regulations and Variances, MSHA, Department of Labor, and Paul J. Componation and Charles E. Luxmore, Division of Safety, Coal Mine Health and Safety, MSHA, Department of Labor.

Dated: June 23, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

In consideration of the foregoing discussion of comments received, 30 CFR Chapter I is amended by adding a new Part 43 to Subchapter G, as set forth below:

Subpart A—General

Sec.
43.1 Definitions.
43.2 General.
43.3 Purpose and scope of this part.

Subpart B—Special Inspections

43.4 Requirements for giving notice.
43.5 Action by the Secretary.
43.6 Notice of negative finding.

Subpart C—Informal Review

43.7 Informal review upon written notice given to an inspector on the mine premises.
43.8 Informal review upon the issuance of a notice of negative finding.

AUTHORITY: Secs. 103(g) and 508 of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91-173, as amended by Pub. L. 95-164), and sec. 307 of the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. 95-164).

Subpart A—General

§ 43.1 Definitions.

For purposes of this part,

"Act" means the Federal Mine Safety and Health Act of 1977, Pub. L. 91-173, as amended by Pub. L. 95-164, and

"Secretary" Means the Secretary of Labor or his designee.

§ 43.2 General.

(a) Under section 103(g)(1) of the act, a representative of miners, or where there is no such representative, a miner, who has reasonable grounds to believe that a violation of the act or a mandatory health or safety standard exists, or an imminent danger exists, has a right to obtain a special inspection if he or she gives notice of such violation to the Secretary or his duly authorized representative. The notice shall be reduced to writing and signed by the miners' representative or miner, and a copy that does not reveal the name of the person giving the notice must be served on the operator no later than at the time of the inspection. If the Secretary determines that a violation or danger does not exist, he must so notify the miners' representative or miner in writing.

(b) Under section 103(g)(2) of the act, a representative of miners or, if there is no such representative, a miner, may notify in writing an authorized representative of the Secretary who is on mine premises prior to or during an inspection, of any violation or imminent danger which he or she has reason to believe exists in the mine. There shall be procedures for the informal review of any refusal by the Secretary's authorized representative to issue a citation with respect to such alleged violation or danger, including notification to the miners' representative or miner of the reasons for his disposition of the case.

§ 43.3 Purpose and scope of this part.

This part sets forth the procedures for giving notice to the Secretary under section 103(g)(1) of the act, for responding to such notices and for reviewing refusals by authorized representatives of the Secretary to issue citations or orders under section 103 (g)(1) or (g)(2). Specifically, subpart B details the steps to be taken by a representative of miners or a miner in making a request for a special inspection and by the Secretary in processing and taking action on such a request under section 103(g)(1). Subpart C sets forth informal review procedures which a representative of miners or a miner may request under sections 103 (g)(1) and (g)(2) where no citation or order is issued under those sections.

Subpart B—Special Inspections

§ 43.4 Requirements for giving notice.

(a) A representative of miners or, where there is no such representative, a miner, who has reasonable grounds to believe that a violation of the act or a mandatory health or safety standard exists, or that an imminent danger exists, may obtain a special inspection by giving notice to the Secretary or any authorized representative of the Secretary of such violation or danger.

(b) Any such notice shall set forth the alleged violation or imminent danger and the location of such violation or danger and shall be reduced to a writing signed by the representative of miners or miner giving such notice.

(c) A copy of such written notice shall be provided to the operator or his agent by the Secretary or his authorized representative no later than the time that the inspection begins. In addition, if the notice indicates that an imminent danger exists, the operator or his agent shall be notified as quickly as possible of the alleged danger. The name of the person giving such notice and the names of any individual miners referred to therein shall not appear in the copy of the written notice or in a notification provided to the operator.

§ 43.5 Action by the Secretary.

(a) As soon as possible after the receipt of a notice of alleged violation or imminent danger under this subpart, the Secretary or his authorized representative shall make a special inspection to determine if a citation or withdrawal order should be issued, unless on the face of the notice, the condition complained of, even if it were found to exist, would clearly not constitute a violation or imminent danger.

(b) Where the Secretary or his authorized representative makes a special inspection under this subpart and finds a violation or imminent danger, a citation or withdrawal order, as appropriate, shall be issued.

§ 43.6 Notice of negative finding.

(a) If it is determined that a special inspection is not warranted, a written notice of negative finding shall be issued as soon as possible following such determination.

(b) If it is determined that an inspection is warranted and upon such inspection it is determined that neither a citation nor a withdrawal order should be issued for the alleged violation or imminent danger, a written notice of negative finding shall be issued by the authorized representative of the Secretary prior to leaving the mine premises.

(c) Any notice of negative finding issued under this part shall be issued to the representative of miners or miner seeking the special inspection and a copy shall be served upon the operator.

Subpart C—Informal Review

§ 43.7 Informal review upon written notice given to an inspector on the mine premises.

(a) A representative of miners or, where there is no such representative, a miner, who has reason to believe that a violation of the act or a mandatory health or safety standard exists, or an imminent danger exists, may notify an authorized representative of the Secretary in writing prior to or during an inspection conducted by such representative of any violation of the act or mandatory health or safety standard or of any imminent danger which he or she has reason to believe exists in the mine being inspected. Where the authorized representative or the Secretary refuses to issue a citation or order with respect to such alleged violation or imminent danger, the representative of miners or miner may obtain review of such refusal in accordance with paragraphs (b) through (d) of this section.

(b) A request for informal review shall be sent in writing to the appropriate district manager within 10 days of the date of the refusal to issue a citation or order and shall be accompanied by any supporting information the person requesting review wishes to submit.

(c) After receipt of the request for informal review, the district manager or his agent may hold, at his or her discretion, an informal conference

where the person requesting review can present his views.

(d) After review of all written and oral statements submitted, the district manager may either affirm the refusal to issue a citation or order or may direct that a new inspection be conducted with respect to the alleged violation or imminent danger. The district manager shall furnish the person requesting review with a written statement of the reasons for his or her final disposition of the request as soon thereafter as possible. A copy of such statement shall be furnished the operator. The district manager's determination in the matter shall be final.

§ 43.8 Informal review upon issuance of a notice of negative finding.

A person to whom a notice of negative finding has been issued pursuant to section 43.6 of this part may request informal review of such finding in accordance with the provisions of section 43.7(b)-(d) of this subpart.

[FR Doc. 78-18894 Filed 7-6-78; 8:45 am]

[4510-43]

PART 44—RULES OF PRACTICE FOR PETITIONS FOR MODIFICATION OF MANDATORY SAFETY STANDARDS

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: These rules set forth procedures for filing, processing, and deciding petitions filed under § 101(c) of the Federal Mine Safety and Health Act of 1977 (act) for modifying application of any mandatory safety standard to a coal or other mine. The act permits the Secretary to grant petitions for modification if he determines that the result of the modification will meet certain criteria. The Secretary promulgates the rule below to govern the petition and determination procedure.

EFFECTIVE DATE: July 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank A. White, Room 831, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, 703-235-1385.

SUPPLEMENTARY INFORMATION:

I. Discussion of Final Rule

Under this final rule, operators of coal, metal, and nonmetal mines and representatives of miners at these mines may petition the Assistant Secretary for Mine Safety and Health of the Mine Safety and Health Administration (MSHA) to modify the application of a mandatory mine safety standard to one or more mines. The petition may be granted if it is determined that a proposed alternative to a standard will provide equal protection to miners or that application of the standard would result in less safety protection to miners. Upon receipt of a petition, notice that a petition has been filed will be published in the Federal Register, and the appropriate Administrator for Mine Safety and Health will investigate the merits of the petition and issue a proposed decision. A proposed decision will become final within 30 days of its service, unless a hearing is requested on the decision.

If a hearing is requested, the matter will be referred to the Chief Administrative Law Judge, Department of Labor. An administrative law judge of the Department of Labor will preside over any hearing, which will be subject to 5 U.S.C. 554, 556, and 557. The administrative law judge will issue an initial decision on the merits of the petition, which will become final unless appealed to the Assistant Secretary within 30 days of service. Only a decision of the Assistant Secretary is a final agency action for the purposes of judicial review under 5 U.S.C. 701-706.

Under this rule, a petition to revoke a granted petition for modification on the grounds that the bases for the grant no longer exist is filed with the Chief Administrative Law Judge and is subject to the same hearing and appeal procedures as a petition for modification.

II. Applicability

This rule applies to petitions for modification filed on or after March 9, 1978. It also applies to petitions for modification of safety standards pending before the Office of Hearings and Appeals, U.S. Department of the Interior, as of March 9, 1978.

This rule applies only to petitions for modification of mandatory safety standards. The Federal Mine Safety and Health Act of 1977 does not authorize the Secretary to modify the applicability of any mandatory health standard.

III. Replacement and Revocation of Existing Rules; Validity of Granted Modifications and Variances

This rule replaces the provisions of 43 CFR 4.550, 4.551, and 4.552, which governed petitions for modification of mandatory coal mine safety standards, and revokes section .24, 30 CFR Parts 55 and 56, and sections .24 and .25 of 30 CFR Part 57, which governed variances from mandatory metal and nonmetal mine standards.

Section 301(c)(2) of the act states that all orders, decisions, and determinations granted in the exercise of functions transferred to the Secretary of Labor which are in effect on March 9, 1978, remain effective unless modified or revoked as set forth in section 301(c)(2).

Therefore, any petition for modification of the applicability of any mandatory safety standard to a coal mine and any variance from a mandatory safety standard granted by the Secretary of the Interior, Mining Enforcement and Safety Administration (MESA), Department of the Interior, or granted, with MESA's concurrence, by the mine safety and health agency of a State which was a party to a State Plan Agreement under section 16 of the Federal Metal and Nonmetallic Mine Safety Act, Pub. L. 89-577, will remain effective according to its terms unless modified or revoked.

IV. Rulemaking Procedure

Although this rule pertains to agency procedures and is exempt under 5 U.S.C. 553(b)(A) from notice and comment requirements, the Secretary published the proposed rule and gave interested persons an opportunity to comment on it. The proposed rule appeared in the Federal Register of March 3, 1978, at pages 9114-9119. Interested persons were given 30 days to submit comments. As a result of requests, the comment period was extended to May 3, 1978 (43 FR 14691). Numerous comments have been received and reviewed, and the major ones are discussed below.

V. Discussion of Major Comments

Several people suggested that provisions be added for temporary relief before a decision on the petition for modification is rendered. They pointed out, and MSHA agrees, that there may be situations in which enforcement of a safety standard pending consideration of a petition for modification would be likely to diminish the safety of miners. Therefore, provisions for temporary relief have been added, at § 44.16.

The suggestion was made that a procedure be added for expediting consideration of petitions. It was pointed out that particular circumstances might call for speed to protect miners' safety and that provisions for expedited consideration followed under the Federal Coal Mine Health and Safety Act of 1969 (Coal Act) worked well, with no history of abuse. MSHA finds these arguments persuasive and has, therefore, provided for expedited consideration of petitions. Such consideration is obtainable through the provisions for interim relief found in §§ 44.16(i) and 44.50(b)(10).

A number of commenters wanted a requirement added that decisions be rendered within a stated time limit. Petitions for modification are of high priority and will be considered within MSHA as promptly as possible. MSHA acknowledges that there have been delays in the past in the processing of petitions under section 301(c) of the Coal Act and is in the process of estab-

lishing a more efficient system under the new act, which will include specific time frames for investigation and closer monitoring of the progress of each case. However, it is not considered practical, before MSHA has experience with processing petitions under these regulations, to create by regulation binding time limitations for rendering decisions.

Three comments were received asking for a public hearing on the proposed rule. The comments received concerning proposed Part 44 were in most cases very detailed and thorough. The 60-day comment period has provided sufficient time for response by all segments of the mining industry. The Secretary has had to weigh the potential additional advantages of holding a public hearing against the need to implement the process for modification of mandatory safety standards. To hold a public hearing would considerably lengthen the rulemaking process. MSHA has been receiving petitions for modification under the new act since March 9, 1978, and has a backlog of petitions received before the new act went into effect. Until rules are adopted for processing and deciding the petitions, MSHA is unable to reduce the inventory of old petitions or decide new ones. Therefore, on balance, the Secretary has decided not to hold a public hearing.

One commenter would have the Secretary delegate his authority to act on petitions for modification to the Federal Mine Safety and Health Review Commission. Even if such delegation were advisable, the Secretary does not have the power to alter by regulation the procedure legislated by Congress.

The suggestion was made that guidelines be included for determining who may be a party. Since petitions for modification involve important considerations of miner safety, the regulations provide opportunity for participation by all persons interested in the outcome of a petition. Section 44.3 provides that mine operators, representatives of miners, and MSHA shall be parties and that other persons may acquire party status if they are interested in the outcome. The enumeration in § 44.3 of who may be a party is sufficiently clear, and additional guidelines are not necessary.

It was suggested that a "representative of miners" be defined as a person who represents the "majority of miners," rather than "two or more miners," as stated in the proposed regulation. "Representative of miners" is the subject of proposed regulations in 30 CFR Part 40 (43 FR 9108, et seq.). The issue of whether the term should be limited to a person who represents the "majority" is considered at length in the preamble to the final regulations for Part 40. The term has not been changed in these regulations for the reasons expressed in that preamble.

Several people suggested that some retroactive effect be given approved petitions for modification. There may be instances in which operations conducted in good faith have been the subject of sanctions under the act, but have later been approved through the modification procedure. It was pointed out that under some circumstances, e.g., where the operator was unable to comply with the standard, his alternate procedure increased miners' safety, and the procedure was later the subject of a successful petition for modification, it may be inappropriate to penalize the operator without giving consideration to the fact that the petition was approved. Persuaded by this reasoning, MSHA has provided that the granting of a modification is to be considered as a factor in resolution of any enforcement action previously initiated for a claimed violation of the subsequently modified standard.

A suggestion was made that all modifications be reviewed annually by MSHA. Periodic review can be provided in appropriate cases by a requirement in the order of modification that the modification be reviewed on a stated date. Review can also be accomplished by use of procedures for revocation of modification, at § 44.52.

One person pointed out that there was no statement of when service of certain documents was complete. Without such a statement, time for response to all documents after the original petition was ambiguous. Therefore, § 44.6(e) has been added to provide that service is complete upon mailing.

A suggestion that the mine operator be required to post petitions at the mine has been followed for mines that do not have a representative of miners. The posting requirement appears at § 44.9. The requirement is not extended to mines with a representative of miners because the rights of miners at such mines to informed participation is protected under §§ 44.3 and 44.6, which require service of petitions upon the representative. MSHA is reluctant to impose an additional posting requirement when it does not appear necessary.

Some commenters wanted the proposed regulations changed to permit petitioners to include in one petition requests for modification of more than one safety standard. MSHA's experience in handling petitions for modification under the Coal Act has led to the conclusion that issues are better clarified for investigation if a separate petition is submitted for each safety standard. If joint consideration is appropriate, this can be accomplished by consolidation by the Administrator, administrative law judge, or Assistant Secretary.

One commenter suggested that petitioners be permitted to include more than one mine in a single petition if "substantially similar" issues of law and fact exist, instead of if "identical" issues exist, as the proposed regulations required. After consideration of this suggestion, MSHA has concluded that the strict standard of identity of issues of law and fact better serves protection of miners and administrative convenience. The original requirement has, therefore, been retained.

One commenter would forbid petitioners from ever including more than one mine in a single petition. Such a prohibition is not required by the act, and MSHA concludes, based upon its experience with petitions for modification, that such a prohibition would not further ensure miner safety, as long as including more than one mine is limited to instances in which the different mines have identical issues of law and fact.

A number of people suggested that the period for filing a request for hearing on a proposed decision be lengthened. They pointed out that enough time should be allowed for referral of petitions from a company's central office to a mine site that may be distant and dependent upon slow mail delivery. Their suggestion is well taken and, accordingly, the period stated in §§ 44.13 and 44.14 has been lengthened to 30 days.

One commenter, concerned about the short time for filing a request for hearing, suggested that service of a proposed decision be complete upon receipt, rather than upon mailing, as the proposed rule provided. This concern has been addressed by enlarging the time for filing a request for hearing to 30 days.

The suggestion was made that a petitioner be permitted to request a hearing when he files his petition. Since a case may be decided in petitioner's favor, he cannot know at time of filing whether he will need a hearing. Therefore, there is no need for him to request a hearing when he files his petition. Such a request would create unnecessary paper work by presenting a petition to an administrative law judge before it is ripe for consideration.

It was suggested that a provision be added forbidding ex parte communication. The proposed regulation forbade administrative law judges from ex parte consultation. MSHA has concluded that a broader statement is needed, and § 44.9 has been added to forbid administrative law judges and their agents or employees, parties, intervenors, representatives, or other interested persons from engaging in ex parte communication. Proposed § 44.22(b) has been deleted.

A number of people suggested that proposed provisions on depositions be

changed to conform more closely to the Federal Rules of Civil Procedure. Specifically, they suggested that the taking of depositions be a matter of right, not judicial discretion, and that restrictions on use of depositions contained in proposed paragraph 44.25(d) be eliminated. After consideration of these suggestions, MSHA has concluded that the approach to depositions taken by the Federal Rules better serves the goals of economical use of agency resources, speedy discovery, and full and fair disclosure and use of relevant facts than the more restrictive approach that was proposed. Therefore, § 44.25 has been revised to allow taking of depositions by right and to eliminate certain restrictions on use of depositions.

One person suggested that a definition of "unavailability" be added to avoid hearings based primarily on depositions. The discovery rules of the Federal Rules of Civil Procedure apply and sufficiently define "unavailability" to avoid hearings by deposition.

It was suggested that issuance of subpoenas be made automatic, rather than discretionary. This suggestion has been followed for more economical use of agency resources and conformity to the Federal Rules of Civil Procedure. To prevent abuse, however, procedures to quash have been added, and approval by an administrative law judge is required for subpoenas issued 3 days or less before the hearing. These new provisions appear at § 44.26.

It was suggested that 20 days, instead of the proposed 10, be permitted for filing oppositions to motions. Enlargement of the response time would be too likely to lead to long delays. Therefore, no change has been made in the 10-day period.

One person pointed out that proposed § 44.30(b) failed to state what burden of proof is required. To avoid ambiguity, the final regulation states that the petitioner has the burden of proving his case by a preponderance of the evidence.

One person asked that the time for filing proposed findings of fact, conclusions of law, and rule or order be enlarged. The time for such filing is set by the administrative law judge after consultation with the parties. The proposed rule limits the judge's discretion. He cannot give the parties less than 20 days to submit their proposals. There is no indication in MSHA's experience or in the experience of the Office of the Solicitor, Department of Labor, to indicate that a more extensive limitation on the judge's discretion is required.

Several people suggested that a provision be added permitting a petitioner to get a temporary order implementing a decision being appealed. There may be situations in which enforcement of a safety standard pending appeal would be likely to diminish the safety of miners. Therefore, provisions for a temporary order have been added at § 44.50(b).

One person suggested that proposed § 44.51 be changed to state that a decision of an administrative law judge that becomes final for lack of appeal be final agency action for purposes of judicial review. Because the purpose of this section is to require parties to exhaust administrative remedies, including appeal, before appealing to Federal court, the suggestion has not been followed. The language of the section has been clarified to indicate that the only final agency action for purposes of judicial review is the decision of the Assistant Secretary.

VI. Other Changes

Editorial changes have been made, but the only editorial change of note is substitution of "Administrator" wherever "Assistant Administrator" appeared. This reflects changes in MSHA's organizational structure. In § 44.2, two paragraphs have been added to clarify the standard used to evaluate petitions and the time decisions on petitions become effective. Sections 44.32 and 44.33(a) of this part have been changed to provide 30 days for appeal of an administrative law judge's decision, rather than 20 days. The time was enlarged to conform to the time allowed for appeal of an Administrator's proposed decision.

VII. Effective Date

Because this rule advises the public of MSHA's procedure and practice, the requirement that a rule be published 30 days before it becomes effective does not apply. This rule will take effect upon publication, because of the need to begin immediately to reduce the inventory of old petitions and start processing new ones.

VIII. Drafting Information

The principal persons responsible for drafting this rule are: Thomas A. Mascolino, Counsel for Administrative Litigation and Judith N. Macaluso, Attorney-Advisor, Division of Mine Safety and Health, Office of the Solicitor, Department of Labor.

Dated: June 23, 1978.

Robert B. Lagather,
Assistant Secretary for Mine Safety and Health.

1. In 30 CFR, section .24 of Parts 55 and 56 is revoked.

2. In 30 CFR, sections .24 and .25 of Part 57 are revoked.

3. 30 CFR Chapter I is amended by adding a new Part 44 to Subchapter G, as set forth below:

Subpart A—General

Sec.
44.1 Scope and construction.
44.2 Definitions.
44.3 Parties.
44.4 Standard of evaluation of petitions; effect of petitions granted.
44.5 Notice of a granted petition for modification.
44.6 Service.
44.7 Transfer of pending petitions for modification.
44.8 *Ex parte* communication.
44.9 Posting of petition.

Subpart B—Initial Procedure for Petitions for Modification

44.10 Filing of petition; service.
44.11 Contents of petition.
44.12 Procedure for public notice of petition received.
44.13 Proposed decision.
44.14 Request for hearing.
44.15 Referral to Chief Administrative Law Judge.
44.16 Application for interim relief.

Subpart C—Hearings

44.20 Designation of administrative law judge.
44.21 Filing and form of documents.
44.22 Administrative law judges; powers and duties.
44.23 Prehearing conferences.
44.24 Discovery.
44.25 Depositions.
44.26 Subpoenas; witness fees.
44.27 Consent findings and rules or orders.
44.28 Notice of hearing.
44.29 Motions.
44.30 Hearing procedures.
44.31 Proposed findings of fact, conclusions, and orders.
44.32 Initial decision.
44.33 Departmental review.
44.34 Transmission of record.
44.35 Decision of the Assistant Secretary.

Subpart D—Summary Decisions

44.40 Motion for summary decision.
44.41 Summary decision.

Subpart E—Effect of Initial Decision

44.50 Effect of appeal on decision; application for relief pending appeal.
44.51 Finality for purposes of judicial review.
44.52 Revocation of modification.

Authority: This Part 44 is issued under §§ 101(c) and 508 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91-173, as amended by Pub. L. 95-164; and under section 301(c)(3) of the Federal Mine Safety and Health Amendments Act of 1977, Pub. L. 95-164.

Subpart A—General

§ 44.1 Scope and construction.

(a) The procedures and rules of practice set forth in this part shall govern petitions for modification of the application of mandatory safety standards filed under section 101(c) of the act and, to the extent applicable, pending petitions for modification initially filed with the Office of Hearings and Appeals of the Department of the Interior.

(b) These rules shall be liberally construed to carry out the purpose of the Act by assuring adequate protection of miners and to secure just and prompt

determination of all proceedings consistent with adequate consideration of the issues involved.

§ 44.2 Definitions.

As used in this part, unless the context clearly requires otherwise, the term—

(a) "Act" means the Federal Mine Safety and Health Act of 1977, Pub. L. 91-173, as amended by Pub. L. 95-164.

(b) "Secretary," "operator," "agent," "person," "miner," and "coal or other mine," have the meanings set forth in section 3 of the act.

(c) "Assistant Secretary" means the Assistant Secretary of Labor for Mine Safety and Health.

(d) "Administrative law judge" means an administrative law judge of the Department of Labor appointed under section 3105 of title 5 of the United States Code.

(e) "Representative of miners" means a person or organization designated by two or more miners to act as their representative for purposes of the act and who is in compliance with 30 CFR Part 40.

(f) "Pending petitions for modification" means proceedings initially filed with the Department of the Interior under section 301(c) of the Federal Coal Mine Health and Safety Act of 1969 prior to March 9, 1978, and in which there had not been a final departmental decision as of March 9, 1978.

§ 44.3 Parties.

Parties to proceedings under this part shall include the Mine Safety and Health Administration, the operator of the mine, and any representative of the miners in the affected mine. Any other person claiming a right of participation as an interested party in a proceeding may become a party upon application to the Assistant Secretary and the granting of such application. After referral of a petition to the Chief Administrative Law Judge, all applications for status as a party shall be made to the Chief Administrative Law Judge for his disposition.

§ 44.4 Standard of evaluation of petitions; effect of petitions granted.

(a) A petition for modification of application of a mandatory safety standard may be granted upon a determination that—

(1) an alternative method of achieving the result of the standard exists that will at all times guarantee no less than the same measure of protection afforded by the standard, or

(2) application of the standard will result in a diminution of safety to the miners.

(b) Except as may be provided in § 44.50 of this part for relief pending appeal, a decision by an Administrator or an administrative law judge granting or denying a petition for modification shall not be effective until time for appeal has expired under § 44.14 or § 44.33 of this part, as appropriate.

(c) All petitions for modification granted pursuant to this part shall have only future effect; *Provided*, That the granting of the modification under this part shall be considered as a factor in the resolution of any enforcement action previously initiated for claimed violation of the subsequently modified mandatory safety standard. Orders granting petitions for modification may contain special terms and conditions to assure adequate protection to miners. The modification, together with any conditions, shall have the same effect as a mandatory safety standard.

§ 44.5 Notice of a granted petition for modification.

(a) Every final action granting a petition for modification under this part shall be published in the FEDERAL REGISTER. Every such final action published shall specify the statutory grounds upon which the modification is based and a summary of the facts which warranted the modification.

(b) Every final action or a summary thereof granting a petition for modification under this part shall be posted by the operator on the mine bulletin board at the affected mine and shall remain posted as long as the modification is effective. If a summary of the final action is posted on the mine bulletin board, a copy of the full decision shall be kept at the affected mine office and made available to the miners.

§ 44.6 Service.

(a) Copies of all documents filed in any proceeding described in this part and copies of all notices pertinent to such proceeding shall be served by the filing party on all other persons made parties to the proceeding under § 44.3. If a request for hearing has been filed by any party, a copy of all subsequent documents filed shall be served upon the Mine Safety and Health Administration through its representative, the Office of the Solicitor, Department of Labor.

(b) Provisions for service of requests for expedited proceedings are stated in §§ 44.16(i) and 44.50(b) (10) of this part. All other documents filed subsequent to a petition for modification may be served personally or by first-class mail to the last known address of the party.

(c) Whenever a party is represented by an attorney who has signed any document filed on behalf of such party or otherwise entered an appearance on behalf of such party, service thereafter shall be made upon the attorney.

(d) Any party filing a petition for modification under these rules shall file proof of service in the form of a return receipt where service is by registered or certified mail or an acknowledgment by the party served or a verified return where service is made personally. A certificate of service shall accompany all other documents filed by a party under these rules.

(e) Except as otherwise provided in § 44.10 of this part for petitions for modification and in §§ 44.16(i) and 44.50(b)(10) of this part for expedited proceedings, service by mail shall be complete upon mailing.

(f) Whenever a party has the right or is required to do some act within a prescribed period after the service of a document or other material upon him and the document or other material is served upon him by mail, three days shall be added to the prescribed period; *Provided*, That specific provision may, for good cause, be made otherwise by an order of an administrative law judge or the Assistant Secretary in a particular proceeding pending before that person.

§ 44.7 Transfer of pending petitions for modification.

(a) On March 9, 1978, all petitions pending before the Office of Hearings and Appeals of the Department of the Interior are transferred to the Department of Labor as provided herein. All transferred cases shall be subject to the regulations of this part, as applicable.

(b) Where an investigation report and amended answer have been filed, the case is transferred to the docket of the Chief Administrative Law Judge, Department of Labor, for further proceedings.

(c) Where an investigation report has not been filed, the case is transferred to the appropriate Administrator, Mine Safety and Health Administration, for a proposed decision and order pursuant to these regulations.

§ 44.8 Ex parte communication.

There shall be no ex parte communication with respect to the merits of any case not concluded between the administrative law judge, including any employee or agent of the administrative law judge, and any of the parties, intervenors, representatives, or other interested persons.

§ 44.9 Posting of petition.

An operator of a mine for which there is no representative of miners shall post a copy of each petition concerning the mine on the mine bulletin board and shall maintain the posting until a ruling on the petition becomes final.

Subpart B—Initial Procedure for Petitions for Modification

§ 44.10 Filing of petition; service.

A petition under section 101(c) of the act for modification of the applica-

tion of a mandatory safety standard may be filed only by the operator of the affected mine or any representative of the miners at such mine. All petitions must be in writing and must be filed with the Assistant Secretary of Labor for Mine Safety and Health, U.S. Department of Labor, 4015 Wilson Boulevard, Arlington, Va. 22203. If the petition is filed by a mine operator, a copy of the petition shall be served by the mine operator upon a representative of miners at the affected mine. If the petition is filed by a representative of the miners, a copy of the petition shall be served by the representative of miners upon the mine operator. Service shall be accomplished personally or by registered or certified mail, return receipt requested.

§ 44.11 Contents of petition.

(a) A petition for modification filed pursuant to section 44.10 shall contain:

(1) The name and address of the petitioner.

(2) The mailing address and mine identification number of the mine or mines affected.

(3) The mandatory safety standard to which the petition is directed.

(4) A concise statement of the modification requested, and whether the petitioner proposes to establish an alternate method in lieu of the mandatory safety standard or alleges that application of the standard will result in diminution of safety to the miners affected or requests relief based on both grounds.

(5) A detailed statement of the facts the petitioner would show to establish the grounds upon which it is claimed a modification is warranted.

(6) Identification of any representative of the miners at the affected mine, if the petitioner is a mine operator.

(b) A petition for modification shall not include a request for modification of the application of more than one mandatory safety standard. A petition for modification shall not request relief for more than one operator. However, an operator may file a petition for modification pertaining to more than one mine where it can be shown that identical issues of law and fact exist as to the petition for each mine.

§ 44.12 Procedure for public notice of petition received.

(a) Promptly upon receipt of a petition for modification, the Mine Safety and Health Administration will give notice of the petition to each known representative of miners or the operator of the affected mine, as appropriate, and shall publish notice of the petition in the FEDERAL REGISTER.

(b) The FEDERAL REGISTER notice shall contain a statement that the petition has been filed, identify the petitioner and the mine or mines to which the petition relates, cite the mandatory safety standard for which modification is sought, describe the requested relief, and summarize the facts claimed by petitioner to warrant the requested modification.

(c) All such notices shall advise interested parties that they may, within 30 days from the date of publication in the FEDERAL REGISTER, in writing, comment upon or provide information relative to the proposed modification.

§ 44.13 Proposed decision.

Upon receipt of a petition for modification, the Mine Safety and Health Administration shall cause an investigation to be made as to the merits of the petition. As soon thereafter as is practicable, the appropriate Administrator shall make a proposed decision and order based upon all available information, including the results of the investigation. The proposed decision and order shall be served on all parties to the proceeding. The proposed decision shall become final upon the 30th day after service thereof, unless a request for hearing has been filed with the appropriate Administrator, as provided in § 44.14 of this part. Service of the proposed decision is complete upon mailing.

§ 44.14 Request for hearing

A request for hearing filed in accordance with § 44.13 of this part must be filed within 30 days after service of the proposed decision and shall include:

(a) A concise summary of position on the issues of fact or law desired to be raised by the party requesting the hearing, including specific objections to the proposed decision. A party other than petitioner who has requested a hearing shall also comment upon all issues of fact or law presented in the petition, and

(b) An indication of a desired hearing site.

§ 44.15 Referral to Chief Administrative Law Judge.

Upon receipt of a request for hearing as provided in § 44.14 of this part or upon his own initiative, the appropriate Administrator shall refer to the Chief Administrative Law Judge the original petition, the proposed decision and order, all information upon which the proposed decision was based, any written request for a hearing on the petition filed, and any other written comments or information received and considered in making the proposed decision.

§ 44.16 Application for interim relief.

(a) *Time for filing.* An application for interim relief from enforcement of a mandatory safety standard may be filed at any time before a final departmental decision on the petition for modification to which the application relates.

(b) *With whom filed.* If a hearing is pending on the petition for modification, the application shall be filed with and decided by the administrative law judge assigned or the Chief Administrative Law Judge if assignment has not been made. If the petition is pending before an Administrator or the Assistant Secretary, the application shall be filed with and decided by the Administrator or Assistant Secretary, as appropriate.

(c) *Appeal to administrative law judge.* If the application for interim relief is denied by an Administrator, the applicant may request, within 15 days of the denial, a hearing on the application. The request shall be addressed to the Administrator and shall be referred by him to the Chief Administrative Law Judge for hearing and decision by an administrative law judge.

(d) *Contents of application.* An application for interim relief shall comply with applicable general requirements of this part, state the specific relief requested, and state how the applicant meets the criteria set forth in paragraph (e) of this section.

(e) *Criteria.* Before interim relief is granted, the applicant must clearly show that (1) the petition seeking modification has been filed in good faith, and the applicant is not using the proceeding solely to postpone or avoid abatement; (2) the requested relief will not adversely affect the health or safety of miners in the affected mine; and (3) there is a substantial likelihood that the decision on the merits of the petition for modification will be favorable to the applicant.

(f) *Response.* All parties to the proceeding in which the application is filed shall have 3 days from date of receipt of the application to file a written response.

(g) *Evidence.* An application for temporary relief or response thereto may be supported by affidavits or other evidentiary matter.

(h) *Hearing.* The Administrator, Assistant Secretary, or administrative law judge may order that a hearing be held on any of the issues raised in the application.

(i) *Expedited proceedings.* A party may request that the decision on interim relief be expedited. The request shall be in writing, addressed to the person designated in paragraph (b) of this section, and accompanied by supporting documents that establish the party's claim of exigent circumstances warranting expedited proceedings. Service of such requests, where possible, shall be by personal delivery to all parties; otherwise, service shall be by telegram followed by registered or cer-

tified mail. Parties shall have 3 days from receipt of the request to file a response. The official considering the request may order that a hearing be held on any of the issues raised in the request. The official may order expedited proceedings, including expedited schedules for pleadings, prehearing conference, and hearing, as he considers appropriate, provided that a hearing on the merits of the application for modification of a mandatory safety standard shall not be scheduled with less than 5 days' notice to the parties, unless all parties to the proceeding consent to an earlier hearing.

Subpart C—Hearings

§ 44.20 Designation of administrative law judge.

Upon receipt of a request for hearing in a petition for modification proceeding, the Chief Administrative Law Judge shall designate an administrative law judge appointed under section 3105 of title 5 of the United States Code to preside over the hearing.

§ 44.21 Filing and form of documents.

(a) *Where to file.* After a petition has been referred to the Office of the Chief Administrative Law Judge, the parties will be notified of the name and address of the administrative law judge assigned to the case. All further documents shall be filed with the administrative law judge at the address designated or with the Chief Administrative Law Judge, if the assignment has not been made. While the petition is before the Assistant Secretary at any stage of the proceeding, all documents should be filed with the Assistant Secretary of Labor for Mine Safety and Health, 4015 Wilson Boulevard, Arlington, Va. 22203.

(b) *Caption, title and signature.* (1) The documents filed in any proceeding under this part shall be captioned in the name of the operator of the mine to which the proceeding relates and in the name of the mine or mines affected. After a docket number has been assigned to the proceeding by the Office of the Chief Administrative Law Judge, the caption shall contain such docket number.

(2) After the caption each such document shall contain a title which shall be descriptive of the document and which shall identify the party by whom the document is submitted.

(3) The original of all documents filed shall be signed at the end by the party submitting the document or, if the party is represented by an attorney, by such attorney. The address of the party or the attorney shall appear beneath the signature.

§ 44.22 Administrative law judges; powers and duties.

(a) *Powers.* An administrative law judge designated to preside over a hearing shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, including the following:

(1) To administer oaths and affirmations;

(2) To issue subpoenas on his own motion or upon written application of a party;

(3) To rule upon offers of proof and receive relevant evidence;

(4) To take depositions or have depositions taken when the ends of justice would be served;

(5) To provide for discovery and determine its scope;

(6) To regulate the course of the hearing and the conduct of parties and their counsel;

(7) To consider and rule upon procedural requests;

(8) To hold conferences for settlement or simplification of issues by consent of the parties;

(9) To make decisions in accordance with the act, this part, and section 557 of title 5 of the United States Code; and

(10) To take any other appropriate action authorized by this part, section 556 of title 5 of the United States Code, or the act.

(b) *Disqualification.* (1) When an administrative law judge deems himself disqualified to preside over a particular hearing, he shall withdraw therefrom by notice on the record directed to the Chief Administrative Law Judge.

(2) Any party who deems an administrative law judge for any reason to be disqualified to preside or continue to preside over a particular hearing, may file with the Chief Administrative Law Judge of the Department of Labor a motion to be supported by affidavits setting forth the alleged grounds for disqualification. The Chief Administrative Law Judge shall rule upon the motion.

(c) *Contumacious conduct; failure or refusal to appear or obey rulings of a presiding administrative law judge.* (1) contumacious conduct at any hearing before the administrative law judge shall be grounds for exclusion from the hearing.

(2) If a witness or party refuses to answer a question after being directed to do so or refuses to obey an order to provide or permit discovery, the administrative law judge may make such orders with regard to the refusal as are just and appropriate, including an order denying the application of a petitioner or regulating the contents of the record of the hearing.

(d) *Referral to Federal Rules of Civil Procedure and Evidence.* On any procedural question not regulated by this part, the act, or the Administrative Procedure Act, an administrative law judge shall be guided to the extent practicable by any pertinent provisions of the Federal Rules of Civil Procedure or Federal Rules of Evidence, as appropriate.

§ 44.23 Prehearing conferences.

(a) *Convening a conference.* Upon his own motion or the motion of a party, the administrative law judge may direct the parties or their counsel to meet with him for a conference to consider:

(1) Simplification of issues;

(2) Necessity or desirability of amendments to documents for clarification, simplification, or limitation;

(3) Stipulations and admissions of facts;

(4) Limitation of the number of parties and expert witnesses; and

(5) Such other matters as may tend to expedite the disposition of the proceeding and assure a just conclusion thereof.

(b) *Record of conference.* The administrative law judge may, where appropriate, issue an order which recites the action taken at the conference, amendments allowed to any filed documents, and agreements made between the parties as to any of the matters considered. The order shall limit the issues for hearing to those not disposed of by admissions or agreements. Such an order controls the subsequent course of the hearing, unless modified at the hearing to prevent manifest injustice.

§ 44.24 Discovery.

Parties shall be governed in their conduct of discovery by appropriate provisions of the Federal Rules of Civil Procedure, except as provided in § 44.25 of this part.

§ 44.25 Depositions.

(a) *Purpose.* For reasons of unavailability or for purpose of discovery, the testimony of any witness may be taken by deposition.

(b) *Form.* Depositions may be taken before any person having the power to administer oaths. Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. Questions propounded and answers thereto, together with all objections made, shall be reduced to writing, read to or by the witness, subscribed by him, and certified by the officer before whom the deposition is taken. The officer shall send copies by registered mail to the Chief Administrative Law Judge or the presiding administrative law judge.

§ 44.26 Subpoenas; witness fees.

(a) Except as provided in paragraph (b) of this section, the Chief Administrative Law Judge or the presiding administrative law judge, as appropriate, shall issue subpoenas upon written application of a party requiring attend-

ance of witnesses and production of relevant papers, books, documents, or tangible things in their possession and under their control. A subpoena may be served by any person who is not a party and is not less than 18 years of age, and the original subpoena bearing a certificate of service shall be filed with the administrative law judge. A witness may be required to attend a deposition or hearing at a place not more than 100 miles from the place of service.

(b) If a party's written application for subpoena is submitted 3 working days or less before the hearing to which it relates, a subpoena shall issue at the discretion of the Chief Administrative Law Judge or presiding administrative law judge, as appropriate.

(c) Any person served with a subpoena may move in writing to revoke or modify the subpoena. All motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The administrative law judge shall revoke or modify the subpoena if in his opinion the evidence required to be produced does not relate to any matter under investigation or in question in the proceedings; the subpoena does not describe with sufficient particularity the evidence required to be produced; or if for any other reason, sufficent in law, the subpoena is found to be invalid or unreasonable. The administrative law judge shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and any ruling thereon shall become a part of the record.

(d) Witnesses subpoened by any party shall be paid the same fees for attendance and mileage as are paid in the District Courts of the United States. The fees shall be paid by the party at whose instance the witness appears.

§ 44.27 Consent findings and rules or orders.

(a) *General.* At any time before reception of evidence in any hearing or during any hearing, a reasonable opportunity may be afforded to permit negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceedings. Allowance of such opportunity and the duration thereof shall be in the discretion of the Chief Administrative Law Judge, if no administrative law judge has been assigned, or of the presiding administrative law judge. In deciding whether to afford such an opportunity, the administrative law judge shall consider the nature of the proceeding, requirements of the public interest, representations of the parties, and probability of an agreement which will result in a just disposition of the issues involved.

(b) *Contents.* Any agreement containing consent findings and rule or order disposing of a proceeding shall also provide:

(1) That the rule or order shall have the same effect as if made after a full hearing;

(2) That the record on which any rule or order may be based shall consist solely of the petition and agreement;

(3) A waiver of further procedural steps before the administrative law judge and Assistant Secretary; and

(4) A waiver of any right to challenge or contest the validity of the findings and rule or order made in accordance with the agreement.

(c) *Submission.* On or before expiration of the time granted for negotiations, the parties or their counsel may:

(1) Submit the proposed agreement to the Chief Administrative Law Judge or presiding administrative law judge, as appropriate, for his consideration; or

(2) Inform the Chief Administrative Law Judge or presiding administrative law judge, as appropriate, that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and rule or order is submitted within the time allowed, the Chief Administrative Law Judge or presiding administrative law judge, as appropriate, may accept the agreement by issuing his decision based upon the agreed findings.

§ 44.28 Notice of hearing.

(a) The administrative law judge shall fix a place and date for the hearing and notify all parties at least 30 days in advance of the date set, unless at least one party requests and all parties consent to an earlier date, or the hearing date has been otherwise advanced in accordance with this part. The notice shall include:

(1) The time, place, and nature of the hearing; and

(2) The legal authority under which the hearing is to be held.

(b) In accordance with the provisions of section 554 of title 5 of the United States Code, a party may move for transfer of a hearing on the basis of convenience to parties and witnesses. Such motion should be filed with the administrative law judge assigned to the case.

§ 44.29 Motions.

Each motion filed shall be in writing and shall contain a short and plain statement of the grounds upon which it is based. A statement in opposition to the motion may be filed by any party within 10 days after the date of service. The administrative law judge may permit oral motions during proceedings.

§ 44.30 Hearing procedures.

(a) *Order of proceeding.* Except as may be ordered otherwise by the administrative law judge, the petitioner shall proceed first at a hearing.

(b) *Burden of proof.* The petitioner shall have the burden of proving his case by a preponderance of the evidence.

(c) *Evidence.* (1) *Admissibility.* A party shall be entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for full and true disclosure of the facts. Any oral or documentary evidence may be received, but the administrative law judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(2) *Testimony of witnesses.* The testimony of a witness shall be upon oath or affirmation administered by the administrative law judge.

(3) *Objections.* If a party objects to admission or rejection of any evidence, limitation of the scope of any examination or cross-examination, or failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on such objections shall appear in the record.

(4) *Exceptions.* Formal exception to an adverse ruling is not required.

(d) *Official notice.* Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice or concerning which the Department of Labor by reason of its functions is presumed to be expert: *Provided,* That the parties shall be given adequate notice at the hearing or by reference in the presiding administrative law judge's decision of the matters so noticed and shall be given adequate opportunity to show the contrary.

(e) *Transcript.* Copies of the transcript of the hearing may be obtained by the parties upon written application filed with the reporter and payment of fees at the rate provided in the agreement with the reporter.

§ 44.31 Proposed findings of fact, conclusions, and orders.

After consultation with the parties, the administrative law judge may prescribe a time not less than 20 days within which each party may file proposed findings of fact, conclusions of law, and rule or order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all other parties and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

§ 44.32 Initial decision.

(a) As soon as practicable after the time allowed for the filing of proposed

findings of fact and conclusions of law, the administrative law judge shall make and serve upon each party his decision, which shall become final upon the 30th day after service thereof, unless an appeal is filed as provided in § 44.33 of this part. The decision of the administrative law judge shall include:

(1) A statement of numbered findings of fact and conclusions of law, with reasons therefor, upon each material issue of fact, law, or discretion presented on the record, and

(2) The appropriate rule, order, relief, or denial thereof.

(b) The decision of the administrative law judge shall be based upon a consideration of the whole record and shall state all facts officially noticed and relied upon. It shall be made on the basis of a preponderance of reliable and probative evidence.

§ 44.33 Departmental review.

(a) *Notice of appeal.* Any party may appeal from the initial decision of the administrative law judge by filing with the Assistant Secretary a notice of appeal within 30 days after service of the initial decision. The Assistant Secretary may consolidate related appeals. Copies of a notice of appeal shall be served on all parties to the proceeding in accordance with § 44.6 of this part.

(b) *Statement of objections.* Within 20 days after filing the notice of appeal, the appellant shall file his statement of objections to the decision of the administrative law judge and serve copies on all other parties to the proceeding. The statement shall refer to the specific findings of fact, conclusions of law, or terms of the order objected to in the initial decision. Where any objection is based upon evidence of record, the objection need not be considered by the Assistant Secretary if specific record citations to the pertinent evidence are not contained in the statement of objections.

(c) *Responding statements.* Within 20 days after service of the statement of objections, any other party to the proceeding may file a statement in response.

(d) *Existing appeals of pending petitions.* The entire record of each pending petition or appeal within the Department of the Interior shall be transferred to the Assistant Secretary for decision in accordance with the provisions of § 44.35 of this part.

§ 44.34 Transmission of record.

If an appeal is filed, the administrative law judge shall transmit the record of the proceeding to the Assistant Secretary for review. The record shall include: the application; any request for hearing thereon; motions and requests filed in written form; rulings thereon; the transcript of testimony taken at the hearing, together with exhibits admitted in evidence; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclusions of law, rules or orders, and supporting reasons, as may have been filed; and the administrative law judge's decision.

§ 44.35 Decision of the Assistant Secretary.

Appeals from a decision rendered pursuant to § 44.32 of this part or appeals pursuant to § 44.33(d) of this part shall be decided by the Assistant Secretary based upon consideration of the entire record of the proceedings transmitted, together with the statements submitted by the parties. The decision may affirm, modify, or set aside, in whole or part, the findings, conclusions, and rule or order contained in the decision of the presiding administrative law judge and shall include a statement of reasons for the action taken.

Subpart D—Summary Decisions

§ 44.40 Motion for summary decision.

(a) Any party may, at least 20 days before the date fixed for any hearing under Subpart C of this part, move with or without supporting affidavits for a summary decision on all or any part of the proceeding. Any other party may, within 10 days after service of the motion, serve opposing affidavits or countermove for summary decision. The administrative law judge may set the matter for argument and call for submission of briefs.

(b) Filing of any documents under paragraph (a) of this section shall be with the administrative law judge, and copies of such documents shall be served in accordance with § 44.6 of this part.

(c) Any affidavits submitted with the motion shall set forth such facts as would be admissible in evidence in a proceeding subject to 5 U.S.C. 556 and 557 and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of such pleading. Such response must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(d) The administrative law judge may grant the motion if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and a party is entitled to summary decision. The administrative law judge may deny the motion whenever the moving party denies access to information by means of discovery to a party opposing the motion.

(e) The denial of all or part of a motion for summary decision by the administrative law judge shall not be subject to interlocutory appeal to the Assistant Secretary unless the administrative law judge certifies in writing that (1) the ruling involves an important question of law or policy as to which there are substantial grounds for difference of opinion, and (2) an immediate appeal from the ruling may materially advance termination of the proceeding. The allowance of an interlocutory appeal shall not stay the proceedings before the administrative law judge unless ordered by the Assistant Secretary.

§ 44.41 Summary decision.

(a) *No genuine issue of material fact.* (1) Where no genuine issue of a material fact is found to have been raised, the administrative law judge may issue an initial decision to become final 30 days after service thereof, unless, within such time, any party has filed an appeal with the Assistant Secretary. Thereafter, the Assistant Secretary, after consideration of the entire record, may issue a final decision.

(2) An initial decision and a final decision made under this paragraph shall include a statement of—

(i) findings and conclusions, and the reasons therefor, on all issues presented; and

(ii) any terms and conditions of the rule or order.

(3) A copy of an initial decision and final decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine question of material fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing in accordance with Subpart C of this part.

Subpart E—Effect of Initial Decision

§ 44.50 Effect of appeal on decision; application for relief pending appeal.

(a) Except as may result from procedures set forth in paragraph (b) of this section, a proposed decision of an Administrator is not operative pending appeal to an administrative law judge, and a decision of an administrative law judge is not operative pending appeal to the Assistant Secretary.

(b) *Application for relief pending appeal.* (1) *Purpose.* The purpose of an application for relief pending appeal is to give effect to a decision of an Administrator or administrative law judge until the decision is affirmed or reversed on appeal.

(2) *Time for filing.* An application for relief pending appeal shall be filed within 10 days of the decision sought to be effectuated.

(3) *With whom filed.* If an Administrator's decision is the subject of the application, it shall be filed with and decided by the administrative law judge assigned or the Chief Administrative Law Judge if assignment has not been made. If an administrative law judge's decision is the subject of the application, it shall be filed with the Assistant Secretary and shall be decided by him.

(4) *Appeal.* A decision on the application for relief pending appeal is not subject to appeal, unless the administrative law judge or Assistant Secretary certifies in writing that (1) the ruling involves an important question of law or policy as to which there are substantial grounds for difference of opinion, and (2) an immediate appeal from the ruling may materially advance termination of the proceeding. The allowance of an interlocutory appeal shall not stay the proceeding unless ordered by the Assistant Secretary.

(5) *Contents of application.* An application for relief pending appeal shall comply with applicable general requirements of this part, state the specific relief requested, and state how the applicant meets the criteria set forth in paragraph (b)(6) of this section.

(6) *Criteria.* Before relief is granted, the applicant must clearly show that (1) the requested relief will not adversely affect the health or safety of miners in the affected mine, and (2) there is a substantial likelihood that the decision on appeal will be favorable to the applicant.

(7) *Response.* All parties to the proceeding in which the application is filed shall have 3 days from date of receipt of the application to file a written response.

(8) *Evidence.* An application for relief pending appeal or response thereto shall ordinarily be decided solely by reference to the record as it exists at the time the application and response thereto are timely filed.

(9) *Hearing.* The Assistant Secretary or administrative law judge may order that a hearing be held on any of the issues raised in the application.

(10) *Expedited proceedings.* A party may request that the decision on relief pending appeal be expedited. The request shall be in writing, addressed to the person designated in paragraph (b)(3) of this section, and accompanied by supporting documents that establish the party's claim of exigent circumstances warranting expedited proceedings. Service of such requests, where possible, shall be by personal delivery to all parties; otherwise, service shall be by telegram followed by registered or certified mail. Parties shall have 3 days from receipt of the request to file a response. The official considering the request may order that a hearing be held on any of the issues raised in the request. The official may order expedited proceedings, including expedited schedules for briefs and hearing, as he considers appropriate, *provided* that oral argument of the appeal shall not be scheduled with less than 5 days' notice to the parties, unless all parties to the proceeding consent to an earlier hearing.

§ 44.51 Finality for purposes of judicial review.

Only a decision by the Assistant Secretary shall be deemed final agency action for purposes of judicial review. A decision by an Administrator or administrative law judge which becomes final for lack of appeal is not deemed final agency action for purposes of 5 U.S.C. 704.

§ 44.52 Revocation of modification.

Any party to a proceeding under this part in which a petition for modification of a mandatory safety standard was granted may petition that the relief granted be revoked due to a change in circumstances, because findings which justified the relief are no longer valid. Such petition to revoke shall be filed with the Chief Administrative Law Judge for his disposition and shall be subject to all procedures of subparts C–E as if it were a petition filed under § 44.10 of this part.

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