

FRIDAY, AUGUST 18, 1978



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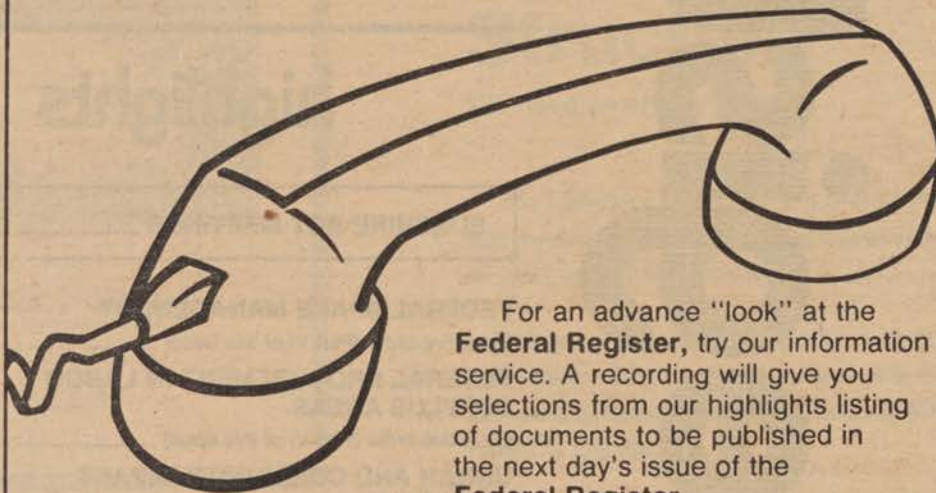
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# rules and regulations

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

[6325-01]

## Title 5—Administrative Personnel

### CHAPTER I—CIVIL SERVICE COMMISSION

#### PART 213—EXCEPTED SERVICE

#### Department of Justice; Department of Agriculture; Department of Health, Education, and Welfare

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment to Schedule C excepts certain positions from competitive status at the Department of Justice, Department of Agriculture, and the Department of Health, Education, and Welfare because they are confidential in nature. Appointments may be made to these positions without examination by the Commission.

EFFECTIVE DATE: June 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3310(s)(8), 213.3313(a)(5) are amended and 213.3313(p)(3) and 213.3316(h)(10) are added as set out below:

§ 213.3310 Department of Justice.

\* \* \*

(s) *Law Enforcement Assistance Administration.* \* \* \*

(8) Two Special Assistants to the Deputy Administrator for Administration.

\* \* \*

§ 213.3313 Department of Agriculture.

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

(5) Six Confidential Assistants to the Secretary.

\* \* \*

(p) *Science and Education.* \* \* \*

(3) One Confidential Assistant to the Director.

\* \* \*

§ 213.3316 Department of Health, Education, and Welfare.

\* \* \*

(h) *Office of the Assistant Secretary for Health.* \* \* \*

(10) One Associate Commissioner for Policy Coordination.

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

UNITED STATES CIVIL SERVICE COMMISSION,

JAMES C. SPRY,

*Executive Assistant to the Commissioners.*

[FR Doc. 78-22990 Filed 8-17-78; 8:45 am]

[6325-01]

#### PART 213—EXCEPTED SERVICE

#### Executive Office of the President, Department of the Interior, Department of Health, Education, and Welfare

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment to Schedule C excepts certain positions from competitive status at the Executive Office of the President, Department of the Interior, and the Department of Health, Education, and Welfare because they are confidential in nature. Appointments may be made to these positions without examination by the Civil Service Commission.

EFFECTIVE DATE: June 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3303(a)(5), 213.3312(f)(2), and 213.3316(c)(21) are added as set out below:

§ 213.3303 Executive Office of the President.

(a) *Office of Management and Budget.* \* \* \*

(5) One Legislative Assistant to the Director for Legislative Affairs.

\* \* \*

§ 213.3312 Department of the Interior.

\* \* \*

(f) *Bureau of Land Management.* \* \* \*

(2) One Special Assistant to the Director, Bureau of Land Management.

\* \* \*

§ 213.3316 Department of Health, Education, and Welfare.

\* \* \*

(c) *Office of Education.* \* \* \*

(21) One Deputy Assistant Secretary for Education Resources.

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

UNITED STATES CIVIL SERVICE COMMISSION,

JAMES C. SPRY,

*Executive Assistant to the Commissioners.*

[FR Doc. 78-22991 Filed 8-17-78; 8:45 am]

[6325-01]

#### PART 213—EXCEPTED SERVICE

#### Federal Home Loan Bank Board; Regional Commissions, Public Works and Economic Development Act of 1965

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment to schedule C excepts certain positions from competitive status at the Federal Home Loan Bank Board and the Regional Commissions, Public Works and Economic Development Act of 1965 because they are confidential in nature. Appointments may be made to these positions without examination by the Civil Service Commission.

EFFECTIVE DATE: July 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3354(n) is amended and 213.3386(g) is added as set out below:



## RULES AND REGULATIONS

## § 213.3354 Federal Home Loan Bank Board.

(n) One Secretary (Steno) and one Staff Assistant to the Congressional Liaison.

## § 213.3386 Regional Commissions, Public Works and Economic Development Act of 1965.

(g) One Special Assistant to the Federal Cochairman of the New England Regional Commission.

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

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

[FR Doc. 78-22992 Filed 8-17-78; 8:45 am]

## [6325-01]

## PART 213—EXCEPTED SERVICE

Department of the Interior, Department of Commerce, Department of Labor

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts certain positions from competitive status at the Department of the Interior and Department of Labor because they are confidential in nature. Appointments may be made to these positions without examination by the Commission. This amendment also changes the title of Director, Office of Congressional and Media Affairs, Department of Commerce to Director, Office of Congressional and Public Affairs to reflect an organizational redesignation.

EFFECTIVE DATES: Department of Labor—July 29, 1978, Department of the Interior, Department of Commerce—August 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3312(a)(27) and 213.3315(f)(3) are added and 213.3314(x)(2) and 213.3315(f)(2) are amended as set out below:

## § 213.3312 Department of the Interior.

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

(27) One assistant to the Director (Natural Programs).

## § 213.3314 Department of Commerce.

(x) *Office of the Assistant Secretary for Communications and Information.* \* \* \*

(2) Director, Office of Congressional and Public Affairs.

## § 213.3315 Department of Labor.

(f) *Women's Bureau.* \* \* \*

(2) Three special assistants, two executive assistants, one secretary (typing) and one confidential assistant to the Director. \* \* \*

(3) Three assistants to the special assistant to the Director.

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

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

[FR Doc. 78-22993 Filed 8-17-78; 8:45 am]

## [6325-01]

## PART 213—EXCEPTED SERVICE

Temporary Boards and Commissions

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment to schedule A excepts all positions at the Marine Mammal Commission from competitive status until September 30, 1978. Appointments may be made to these positions without examination by the Civil Service Commission. Under the regulations dealing with appointments to temporary boards, all positions at the Marine Mammal Commission were excepted from competitive status until June 30. The Civil Service Commission continues this exception because the Marine Mammal Commission will not be dissolved until that time.

EFFECTIVE DATE: August 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3199(o)(1) is amended as set out below:

## § 213.3199 Temporary Boards and Commissions.

(o) *Marine Mammal Commission.* (1) Not to exceed September 30, 1978, all positions on the staff of the Commission.

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

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

[FR Doc. 78-22995 Filed 8-17-78; 8:45 am]

## [6325-01]

## PART 213—EXCEPTED SERVICE

Department of Justice, Department of Agriculture

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment to schedule C excepts certain positions from competitive status at the Department of Justice and the Department of Agriculture because they are confidential in nature. Appointments may be made to these positions without examination by the Commission.

EFFECTIVE DATE: August 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3310(j)(2) is amended and 213.3313(a)(35) is added as set out below:

## § 213.3310 Department of Justice.

(j) *Immigration and Naturalization Service.*

(2) Two confidential assistants and one confidential secretary to the Commissioner.

## § 213.3313 Department of Agriculture.

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

(35) One confidential assistant to the general sales manager.



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

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

[FR Doc. 78-22994 Filed 8-17-78; 8:45 am]

[6325-01]

**PART 213—EXCEPTED SERVICE**

**National Foundation on the Arts and the Humanities**

AGENCY: Civil Service Commission.

ACTION: Final rule.

**SUMMARY:** This amendment to Schedule A corrects the Civil Service Commission's regulations dealing with the number of positions as program director for the National Endowment for the Arts. The Commission amends its regulations because one of these positions, program director for museum programs, was authorized twice in the regulations. In addition, this amendment changes the title of the schedule A NEA position of Director of Developing Arts Programs to Director of Expansion Arts Programs.

**EFFECTIVE DATE:** August 2, 1978.

**FOR FURTHER INFORMATION CONTACT:**

Michael D. Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3182(a)(3) and 5 CFR 213.3182(a)(15) are amended, as follows:

§ 213.3182 National Foundation on the Arts and the Humanities.

(a) *National Endowment for the Arts.* \* \* \*

(3) Until September 30, 1980, seven positions of program director.

\* \* \*

(15) Until September 30, 1980, one position of Director of Expansion Arts Programs.

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

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

[FR Doc. 78-22996 Filed 8-17-78; 8:45 am]

[3410-02]

**Title 7—Agriculture**

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

[Lemon Reg. 159]

**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 August 20-26, 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:** August 20, 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 August 15, 1978, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons continues good, particularly on size 165's and larger.

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.

§ 910.459 Lemon Regulation 159.

**Order.** (a) The quantity of lemons grown in California and Arizona which may be handled during the period August 20, 1978 through August 26, 1978, is established at 270,000 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: August 16, 1978.

FLOYD F. HEDLUND,  
*Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 78-23369 Filed 8-17-78; 8:45 am]

[3410-02]

**PART 981—ALMONDS GROWN IN CALIFORNIA**

**Expenses of the Almond Board of California, and Rate of Assessment for the 1978-79 Crop Year**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** This regulation authorizes expenses and a rate of assessment for the 1978-79 crop year, to be collected from handlers to support activities of the Board which locally administers the Federal marketing order covering almonds grown in California.

**DATES:** Effective July 1, 1978 through June 30, 1979.

**FOR FURTHER INFORMATION CONTACT:**

Charles R. Brader, 202-447-6393.

**SUPPLEMENTARY INFORMATION:**  
*Findings.* Pursuant to Marketing Order No. 981, as amended (7 CFR Part 981), regulating the handling of almonds grown in California, 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 Board, established under this marketing order, and upon other information, it is found that the expenses and rate of assessment, as hereinafter provided, will tend to effectuate the declared policy of the act.

§ 981.328 Expenses and rate of assessment.

(a) Expenses that are reasonable and likely to be incurred by the Board



during the 1978-79 crop year, will amount to \$4,503,943.

(b) The rate of assessment for said year payable by each handler in accordance with § 981.81 is fixed at 2.31 cents per pound of almonds (kernel-weight basis), less any amount credited pursuant to § 981.41 but not to exceed 2 cents per pound of almonds (kernel-weight basis).

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 time until 30 days after publication in the *FEDERAL REGISTER* (5 U.S.C. 553), as the order requires that the rate of assessment for a particular marketing year shall apply to all assessable almonds handled from the beginning of such year which began July 1, 1978. To enable the Board to meet crop year obligations, approval of the expenses and assessment rate is necessary without delay. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open meeting of the Board. It is necessary to effectuate the declared purposes of the act to make these provisions effective as specified.

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

Dated: August 11, 1978.

FLOYD F. HEDLUND,  
Director, Fruit and  
Vegetable Division.

[FR Doc. 78-23205 Filed 8-17-78; 8:45 am]

[3410-07]

## CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

### SUBCHAPTER I—LOAN AND GRANT MAKING

[FmHA Instruction 1945-A]

#### PART 1945—EMERGENCY

##### Subpart A—Disaster Assistance— General

###### REVISION AND REDESIGNATION

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule with comments requested.

SUMMARY: The Farmers Home Administration (FmHA) amends and redesignates regulations pertaining to disaster loans. The intended effect of this action is to redesignate, clarify, consolidate, and revise the regulations concerning disaster loans to prescribe the policies, procedures, and guidelines for making emergency loans

available for establishing and using emergency loan support teams, relationship between FmHA and the Federal Disaster Assistance Administration, and public information functions. These amendments are necessitated by recently enacted legislation.

DATES: Effective on August 18, 1978. Comments must be received on or before September 18, 1978.

ADDRESS: Submit written comments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

##### FOR FURTHER INFORMATION CONTACT:

Jesse Joyner, 202-447-6257.

SUPPLEMENTARY INFORMATION: FmHA amends its regulations to add subpart A to part 1945 of Chapter XVIII, Title 7, Code of Federal Regulations. Subpart A of part 1945 replaces exhibit D of subpart C of part 1904 which is hereby deleted.

Subpart A of part 1945 provides the policies, procedures, and guidelines of FmHA for making Emergency (EM) loans available, the relationship between FmHA and the Federal Disaster Assistance Administration (FDAA), the establishment and use of emergency loan support teams, and disaster public information functions.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These changes, however, are not published for proposed rulemaking since any delay in implementing them would be contrary to the public interest because certain disaster victims might be effectively prevented from obtaining needed assistance on a timely basis. Also, most changes herein are administrative, and the principal substantive changes are made as a result of Pub. L. 95-334 which amended the Consolidated Farm and Rural Development Act.

This subpart is written in a form which should improve the overall administration of the disaster loan program as a result of the consolidation and clarification.

The FmHA is interested in receiving public comments which should be submitted to the address given above.

The major revisions contained in subpart A of part 1945 are:

1. Changes termination date of physical losses from 180 days to 9 months.

2. Provides that EM loans can be made to U.S. citizens in Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

3. Changes the procedure by which EM loans are made available as follows:

(a) Removes designation by the Secretary of Agriculture, after a request is made by the Governor, and authorizations by State director when 25 or less farmers have been substantially affected.

(b) Provides that State directors can make EM loans available in areas where a natural disaster has substantially affected one or more farmers without a designation by the Secretary and a request from the Governor.

(c) Damage assessment report prepared by the USDA County Emergency Board will no longer be required.

(d) Provides for the use of form FmHA 1945-27 "Report of Natural Disaster," prepared by county supervisors.

(e) Declaration by the President (major disaster or emergency declarations) has not been changed except to provide for EM loans being made in adjoining areas.

(f) Provides that EM loans will be made available when a subsequent natural disaster(s) occurs in any area eligible to make EM loans.

(g) Provides that EM loans will be made available when there is a continuation of a disaster(s) in any area eligible to make EM loans.

(h) Provides for extension of termination dates.

(i) Removes designation by the Interagency Drought Emergency Coordinating Committee.

4. Provides for a national office cadre of emergency loan support team leaders.

5. Provides for a public information program.

6. Removes the procedure for reporting natural disasters since EM loans can be made available immediately after the occurrence of a natural disaster.

Accordingly, Exhibit D of subpart C of part 1904 of Chapter XVIII, Title 7, Code of Federal Regulations is deleted and subpart A of part 1945 of Chapter XVIII, Title 7, Code of Federal Regulations is added and reads as follows:

#### PART 1945—EMERGENCY

##### Subpart A—Disaster Assistance—General

Sec.

1945.1 [Reserved.]

1945.2 Purpose.

1945.3-1945.5 [Reserved.]

1945.6 Definitions.

1945.7 Abbreviations.



Sec.

- 1945.8-1945.19 [Reserved.]
- 1945.20 Making EM loans available.
- 1945.21-1945.24 [Reserved.]
- 1945.25 Relationship between FmHA and FDAA.
- 1945.26-1945.29 [Reserved.]
- 1945.30 FmHA Emergency Loan Support Teams (ELST).
- 1945.31-1945.34 [Reserved.]
- 1945.35 Public information function.
- 1945.36-1945.50 [Reserved.]

AUTHORITIES: 7 U.S.C. 1989; 5 U.S.C. 301; sec. 10; Pub. L. 93-357; 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistance Secretary for Rural Development, 7 CFR 2.70.

### Subpart A—Disaster Assistance—General

§ 1945.1 [Reserved]

§ 1945.2 Purpose.

This subpart prescribes the policies, procedures, and guidelines of FmHA for making EM loans available, the relationship between FmHA and Federal Disaster Assistance Administration (FDAA), the method for establishing and using emergency loan support teams (ELST), and the disaster public information functions.

§ 1945.3-1945.5 [Reserved]

§ 1945.6 Definitions.

The following definitions are applicable to the terms used in this Subpart:

(a) *Disasters*.—(1) *Major disaster*. Any disaster in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance above and beyond normal emergency services by the Federal Government to supplement the efforts and available resources of States, local government, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(2) *Natural disaster*. Any disaster caused by a natural phenomenon in any part of the United States such as a hurricane, tornado, cyclone, excessive rainfall, flood, earthquake, blizzard, freeze, electrical storm, snowstorm, drought, excessively high temperatures, and hail; insects where abnormal weather contributed substantially to the spreading and flourishing of such insects; fire resulting from lightning, and fires of other origins which could not be controlled because of abnormal weather; and plant and animal diseases where abnormal weather contributed substantially to such diseases spreading into epidemic stages.

(3) *Presidential emergency*. Any disaster in any part of the United States which is of such magnitude that the President makes a declaration and

which requires certain Federal emergency programs to supplement State and local efforts to save lives and protect property, public health and safety, or to avert or lessen the threat of a disaster.

(b) *Farmers*. Individuals, cooperatives, partnerships or corporations who are farmers, ranchers or aquaculture operators.

(c) *Incidence period*. The specific date or dates during which a disaster occurred.

(d) *National office*. Use of this term means the Director, Emergency Loan Division.

(e) *Substantially affected*. The degree of physical and/or production losses a farmer must have sustained from a disaster to meet the actual loss eligibility requirements for an EM loan. The actual loss must have had such an impact on the farming operation that EM loan assistance is necessary to permit such operator to continue the operation on a sound basis. A farmer will be considered to have been substantially affected if one of the following types of losses due to a disaster has been sustained:

(1) Damage to or destruction of physical property including farmland; structures on the land such as buildings, fences, dams, etc.; machinery; equipment and tools; livestock; crops; and supplies that are essential to the successful operation of the farm and if not repaired or replaced, the farmer would not be able to continue operation on a sound basis, or

(2) A production loss in a single enterprise which constitutes a basic part of the farming operation of at least 20 percent of normal per acre or per animal production.

(f) *Termination dates*. The dates specified in a disaster authorization which establishes the final dates after which EM loan applications may no longer be received. However, applications will be accepted for EM loans after the termination dates have passed if the applicant filed an application for disaster assistance with the Small Business Administration (SBA) during the period SBA would accept applications and not more than 6 months has elapsed since the FmHA's termination date.

(1) For physical losses the termination date will be 9 months from the date loans are made available, for production losses, 12 months from such date.

(2) The 9-month and 12-month periods will commence on the first workday following the date loans are made available. The final day for accepting applications will always be on a workday. Therefore, if the last day falls on a Saturday, Sunday, or Federal holiday, the next workday will be the final day.

(g) *United States or State*. Each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1945.7 Abbreviations.

The following abbreviations are used in this subpart.

(a) ASCS—Agricultural Stabilization and Conservation Service.

(b) CEB—USDA County Emergency Board.

(c) DAR—Damage Assessment Report.

(d) ELST—Emergency Loan Support Team.

(e) EM—Emergency Loans.

(f) EOH—USDA Emergency Operations Handbook.

(g) FCO—Federal Coordinating Officer.

(h) FDAA—Federal Disaster Assistance Administration.

(i) FmHA—Farmers Home Administration.

(j) SBA—Small Business Administration.

(k) SEB—USDA State Emergency Board.

(l) USDA—United States Department of Agriculture.

§ 1945.8-1945.19 [Reserved]

§ 1945.20 Making EM loans available.

EM loans are made available in counties or similar political subdivisions named by FDAA as eligible for Federal assistance under a major disaster or emergency declaration by the President, and in any area where unusual and adverse weather conditions have resulted in severe production and/or physical losses which have substantially affected one or more farmers.

(a) *Natural disaster areas*. (1) Immediately after the occurrence of a natural disaster which has substantially affected one or more farmers, and where production and/or physical losses can readily be determined the following action will be taken.

(i) The county supervisor will immediately:

(A) Advise the State director by telephone of the occurrence of the natural disaster;

(B) Obtain the State director's clearance to make EM loans available; promptly visit the natural disaster area and advise the disaster victims in the area by personal contact that EM loan applications will be accepted in the county office;

(C) Make appropriate public announcements including Indian Tribal Council's news media;

(D) Notify the appropriate county governing body, Indian Tribal Council, and the ASCS county executive direc-



tor and request the information be put in ASCS's news letter;

(E) Explain the assistance available under the EM loan program to agricultural lenders and leaders in the area including Indian agricultural lenders and leaders; and

(F) Prepare and mail to the State director form FmHA 1945-27, "Report of Natural Disaster." Form FmHA 1945-27 will be based on information obtained from personal knowledge, farmers, agricultural and community leaders, representatives of other agricultural agencies, agricultural lenders, and any other reliable source. A DAR prepared by the CEB in accordance with the EOH can be used in lieu of form FmHA 1945-27.

(ii) The State director will immediately take the following action:

(A) Obtain a natural disaster number and termination date from the national office by telephone; and

(B) Immediately advise the county supervisor of the natural disaster number and termination date.

(iii) The national office will immediately take the following action:

(A) Provide the State director when the telephone notice is given with:

(1) Natural disaster number (example: 1048); and

(2) Termination date for receiving EM loan application; and

(B) Notify by a weekly report the Secretary of Agriculture, the FmHA area coordinators, and the director of the finance office of the natural disaster areas.

(2) When conditions such as drought, excessively high temperature, unusually heavy rains, insects where abnormal weather contributed substantially to the spreading and flourishing of such insects, plant and animal diseases where abnormal weather contributed substantially to such diseases spreading into epidemic stages, etc., occur and production and/or physical losses to farmers cannot readily be determined but threaten to develop into significant natural disaster situations, the following action will be taken:

(i) The county supervisor will prepare and mail to the State director, form FmHA 1945-27;

(ii) The State director will advise the county supervisor of the action to take; and

(iii) If inquiries are received in the county office from farmers about assistance before EM loans are made available, the following actions will be taken:

(A) Farmers inquiring at county offices will be advised:

(1) That EM loans are not available at this time but consideration is being given to making them available;

(2) As to what assistance would be available;

(3) That they may file a loan application which may be partially or totally completed. However, they must understand that the application cannot be processed for an EM loan at this time. The credit needs of an individual may be met under regular FmHA farmer programs if EM loans are not made available; and

(B) County governing bodies, Indian Tribal Councils, or other interested individuals inquiring about the making of EM loans in the area will be advised of the procedure for making EM loans available.

(iv) Immediately after it can be determined that production and/or physical losses have occurred which substantially affect one or more farmers, the actions required in paragraph (a)(1) of this section will be taken to make EM loans available.

(3) The action stated in this paragraph (a) will be taken even if the Governor of the State has requested the President to declare the area a major disaster or emergency area.

(b) *Declaration by the President.* When there is a Presidential major disaster or emergency declaration and FDAA has notified the national office, the following actions will be taken:

(1) The national office will immediately:

(i) Notify the State director by telephone, and confirm it by a telegram. The notification will contain:

(A) The date of the declaration;

(B) The name(s) of the county(ies) determined by FDAA eligible for Federal assistance;

(C) The type of disaster;

(D) The termination date; and

(E) The declaration number.

(ii) Notify by a weekly report the Secretary of Agriculture, the FmHA area coordinators, and the director of the finance office of the action taken.

(2) The State director will immediately upon receiving notice:

(i) Notify the appropriate county supervisor(s);

(ii) Make appropriate public announcements, including Indian Tribal Council's news media; and

(iii) Notify the SEB Chairman.

(3) The county supervisor will immediately upon receiving notice:

(i) Make appropriate public announcements including Indian Tribal Council's news media;

(ii) Notify the appropriate county governing body, Indian Tribal Council, and ASCS county executive director and request the information be put in ASCS's news letter; and

(iii) Explain the assistance available under the EM loan program to agricultural lenders and leaders in the area, including Indian agricultural lenders and leaders.

(4) When a county has been determined eligible for Federal assistance by

FDAA under paragraph (b) of this section, all other counties adjoining the eligible county are also authorized to make EM loans to applicants whose operations have been substantially affected by the same disaster(s) without being specifically named. Adjoining areas are those counties, within the same State, touching at some point (having a common boundary) with a county eligible to receive EM loans due to declaration by the President.

(5) If FDAA notifies the State director that an agreement between the State and Federal Government (FDAA) has been made to provide 408 grants in a major disaster area to those suffering damages and losses to housing and personal property who are ineligible for disaster loan assistance through the FmHA and/or SBA, the following actions will be taken:

(i) The State director will notify the appropriate county supervisor(s) of the address and phone number of the nearest FDAA office in the supervisor's area; and

(ii) At the close of business each week, the county supervisor will forward a list of applicants with physical losses who do not qualify and the reason they do not qualify for an EM loan to the FDAA.

(c) *Subsequent natural disasters.* EM loans will be available when subsequent natural disaster(s) occur in any area which had been eligible to receive EM loan applications under paragraphs (a) or (b) of this section during the same crop year which substantially affects the same farming enterprises that suffered damage or loss due to the original disaster(s). When subsequent natural disaster(s) occur, the following actions will be taken:

(1) The county supervisor will advise the State director and provide the State director with Form FmHA 1945-27 and request extension of the termination date and/or incidence period;

(2) After reviewing Form FmHA 1945-27, the State director will advise the county supervisor whether losses from the subsequent natural disaster will be losses covered by the original disaster designation;

(3) The State director will advise the national office by a copy of Form FmHA 1945-27 and request extension of the termination date; and

(4) The national office will provide the State director with a new termination date in accordance with paragraph (e) of this section.

(d) *Continuing disaster conditions.* EM loans will be available when there is a continuation beyond the incidence period originally established for disaster(s) such as drought, flood, etc., in any area eligible to make EM loans under paragraphs (a) or (b) of this section. When a disaster(s) continues, the actions required by paragraph (c) (1),



(2), (3) and (4) of this section will be taken.

(e) *Extension of termination dates.* Termination dates originally established when EM loans are made available will be extended by the national office when necessary due to subsequent disasters, continuing disasters, when losses or damages due to the original disaster which were not readily determinable show up at a later date, or for other justifiable reasons. Such an extension will be for such periods as are determined necessary, usually not over 60 days, by the national office based on the State director's recommendations.

§ 1945.21-1945.24 [Reserved]

§ 1945.25 Relationship between FmHA and FDAA.

(a) *General.* When a major disaster or emergency declaration is made by the President, the FDAA is charged with the responsibility for seeing that disaster assistance is made available to disaster victims. Also, FDAA is responsible for coordinating the actions of other Federal agencies who have programs to provide disaster assistance. A Federal coordinating officer (FCO) is appointed for each major disaster or emergency to coordinate Federal assistance in the disaster area.

(b) *Before the declaration.* (1) After a request for a major disaster or emergency declaration is made by the Governor of a State, FDAA through its regional director is responsible for obtaining necessary information on losses and damages to respond to the request.

(2) If FDAA makes a request for information from FmHA on losses and damages caused by a natural disaster, FDAA will be advised to contact the SEB Chairman. The EOH provides that the CEB will prepare the DAR. State directors and county supervisors should cooperate with SEB and CEB Chairmen in preparing the DAR's.

(c) *After the declaration.* When a State director is advised that a major disaster or emergency has been declared, the following policy will be followed in working with FDAA and FCO's:

(1) The State director will authorize the receiving of EM loan applications in the counties provided by the FCO. However, no EM loan can be approved until the national office makes such notification in accordance with § 1945.20 (b).

(2) The State director or the State director's authorized representative will attend any meeting called by the FCO to discuss Federal assistance under the disaster declaration.

(3) If a request is made by the FCO for FmHA employees to man FDAA's disaster assistance centers, the FCO

will be advised to contact the SEB Chairman. The EOH provides that the SEB Chairman shall select qualified USDA personnel to represent USDA at each center. State directors should cooperate with the SEB Chairman in providing personnel for these centers.

(4) If the FCO requests a report on disaster lending activity, the FCO will be advised that any report will not be given more often than once a week.

§ 1945.26-1945.29 [Reserved]

§ 1945.30 FmHA Emergency Loan Support Teams (ELST).

ELSTs are to be used when a disaster is of such a nature as to warrant immediate attention by FmHA in implementing the EM loan program. Also, ELSTs are used when such unusually large numbers of EM loan applications are received that personnel from other areas are required to be temporarily assigned to assist in rendering prompt service to the affected area.

(a) *State ELST.* Each State director shall form an ELST to be deployed, when needed, in areas affected by a major disaster, presidential emergency, or a natural disaster. ELSTs shall assist the State directors in expediting the making of EM loans to disaster victims.

(1) State directors shall use the ELSTs formed in their State(s) and all other State personnel in making EM loans available. If additional help is needed above that available in the State, including overtime and/or temporary personnel, the State director shall advise the national office of the needs.

(2) Upon request of a State director, the assistant administrator, farmer programs, will consider detailing ELSTs from other States to assist in the making of EM loans.

(3) State ELSTs will consist of a team leader and team members, selected by the State director.

(i) The State ELST can include farmer programs specialists, county and assistant county supervisors, office management assistants, county office assistants, and county office clerks.

(ii) So that no one person or county office unit bears an unfair burden, State team members will be rotated from time to time.

(iii) Team members will provide training in EM loan making to all county office employees.

(iv) District directors are responsible for notifying the State director of any need to change a team member within their district.

(4) State ELSTs will be trained as follows:

(i) The national office will hold training meetings or workshops for ELST leaders as needed.

(ii) State ELST leaders are responsible for training and keeping the State team and all other State personnel currently informed on all phases of EM loans.

(5) Each State director will issue a State supplement establishing an ELST for the State(s). This supplement will name the team leader and all members. A copy of this supplement will be sent to the national office, Attention: Director, Emergency Loan Division.

(b) *National office ELST leaders.* The national office has established a cadre of ELST team leaders.

(1) National office team leaders will be used as follows:

(i) Training of FmHA field personnel, other USDA personnel, and temporary personnel in the making of EM loans;

(ii) Assisting State directors in the organizing, expanding, and expediting assistance to disaster victims; and

(iii) Leading ELSTs in areas with an unusually large volume of EM loan applications.

(2) Upon request of a State director, the assistant administrator, farmer programs, will consider detailing one or more national office team leaders to assist in the training of personnel and processing of EM loans.

§ 1945.31-1945.34 [Reserved]

§ 1945.35 Public information function.

A good public information program is a must in disaster areas. This program should inform farmers and the general public when and where EM loans are available. Also the information will indicate the EM loan objectives, eligibility requirements, and type of assistance available. Public information functions will be performed in accordance with part 2015, subpart B, exhibit A of this chapter.

§ 1945.36-1945.50 [Reserved]

Dated: August 10, 1978.

GORDON CAVANAUGH,  
Administrator,  
Farmers Home Administration.

[FR Doc. 78-23208 Filed 8-17-78; 8:45 am]



[6320-01]

## Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS  
BOARD

## SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-1063, Amdt. No. 15 to Part 207]

PART 207—CHARTER TRIPS AND  
SPECIAL SERVICES

## Public Charter Rule

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

**SUMMARY:** For the reasons set forth in SPR-149, issued contemporaneously, the Board is amending its charter regulations to replace the ABC, OTC, ITC, TGC, and SGC with a new Public Charter (14 CFR Part 380). The general charter regulations are amended to reflect the immediate addition of the Public Charter and the termination of the existing charter types on January 1, 1979.

**DATES:** Adopted: August 14, 1978. Effective: August 15, 1978 and January 1, 1979, as indicated below.

FOR FURTHER INFORMATION  
CONTACT:

Richard B. Dyson, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; 202-673-5444.

**SUPPLEMENTARY INFORMATION:** A full explanation of the issues involved in this rulemaking is set forth in SPR-149, in this issue of the FEDERAL REGISTER. Some of the changes, as noted below, in Part 207 reflecting the issuance of the new part 380, Public Charters, are effective immediately. The Board finds that because these amendments relieve restrictions and public benefit will be derived from putting them into effect without delay, an immediate effective date is in the public interest.

The existing parts 371, 372a, 373, 378, and 378a, which will be superseded by part 380, will be revoked. The revocation is effective January 1, 1979, along with the corresponding amendments to part 207, as indicated below. Charters covered by prospectuses filed under the revoked parts before January 1, 1979, may be operated on and after that date.

## AMENDMENTS

The Board hereby amends 14 CFR Part 207 as follows:

A. The following changes are effective August 15, 1978.

1. In paragraph (b) of § 207.11, Charter flight limitations, a new subparagraph (11) is added, to read:

## § 207.11 Charter flight limitations.

(b) \* \* \*

(11) By a charter operator or foreign charter operator as defined in part 380 of this chapter.

2. In paragraph (c) of § 207.11, Charter flight limitations, a new subparagraph (9) is added, to read:

## § 207.11 Charter flight limitations.

(c) \* \* \*

(9) By a charter operator or foreign charter operator as defined in part 380 of this chapter:

*Provided*, That with respect to subparagraph (9) of paragraph (c) each person engaging less than the entire capacity of an aircraft shall contract and pay for 20 or more seats. With respect to subparagraphs (1), (2), and (4) of paragraph (c) each person engaging less than the entire capacity of an aircraft shall contract and pay for 40 or more seats, except that, if the entire capacity of an aircraft having less than 80 seats is engaged by no more than two persons described in paragraph (c), then either one of such persons may contract and pay for a minimum of 20 seats; *And provided further*, That paragraph (c) shall not be construed to apply to movements of property.

3. The proviso in paragraph (b) of § 207.13, Terms of service, is revised to read:

## § 207.13 Terms of service.

(b) \* \* \* *Provided, however*, That in the case of a charter for less than the entire capacity of an aircraft pursuant to § 207.11(c), the carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, not less than 10 days prior to the commencement of any portion of the transportation, and such payment shall not be refundable unless the charter is canceled by the carrier or unless the carrier accepts a substitute charterer for one which has canceled a charter, in which case the amount paid by the latter shall be refunded. For the purpose of this paragraph payment to the carrier's depository bank, as designated in the charter contract, shall be deemed payment to the carrier.

4. Paragraphs (a) and (b) of § 207.25, Charter trips originating in the United States, are revised to read:

## § 207.25 Charter trips originating in the United States.

(a) In the case of a charter trip originating in the United States which includes foreign air transportation, and where separate charter contracts cover the flight departing from the United States and the flight returning to the United States, the time by which the carrier to perform the returning flight, as well as the carrier to perform the departing flight, must receive full payment of its charter price (or a satisfactory bond for such payment), in compliance with the requirements of § 207.13(b) shall be not less than 10 days prior to the departing flight.

(b) In addition to requiring timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section, the carrier performing the departing flight from the United States shall request in writing from the carrier performing the returning flight for the same chartering group, and the carrier performing the returning flight shall furnish, not later than 10 days prior to scheduled departure, written confirmation that the latter carrier has also received timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section. Both the request and the confirmation shall contain particulars sufficient to identify the charter trip, including such details as the date and point of origin of the departing flight, the date and point of origin of the returning flight, and the name of the chartering group; and both shall be accompanied by a passenger list. The confirmation shall also contain a statement to the effect that the carrier has not previously furnished such confirmation to any other carrier with respect to the same charter trip.

B. The following changes are effective January 1, 1979.

1. In paragraph (b) of § 207.11, Charter flight limitations, subparagraphs (5), (7), (8), (9) and (10) are revoked and reserved.

2. In paragraph (c) of § 207.11, Charter flight limitations, subparagraphs (3), (5), (6), (7) and (8) and the proviso after subparagraph (8) are revoked and reserved.

(Secs. 101(3), 204, 401, 403, 404, 407, 411, 416, 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 758, 760, 766, 769, 771, 788; (49 U.S.C. 1301, 1324, 1371, 1373, 1374, 1377, 1381, 1386, and 1482).)



By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-23161 Filed 8-16-78; 8:45 am]

[6320-01]

[Reg. ER-1064, Amdt. No. 14 to Part 208]

**PART 208—TERMS, CONDITIONS  
AND LIMITATIONS OF CERTIFI-  
CATES TO ENGAGE IN SUPPLE-  
MENTAL AIR TRANSPORTATION**

**Public Charter Rule**

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

**SUMMARY:** For the reasons set forth in SPR-149, issued contemporaneously, the Board is amending its charter regulations to replace the ABC, OTC, ITC, TGC, and SGC with a new Public Charter rule (14 CFR Part 380). The general charter regulations are amended to reflect the immediate addition of the Public Charter and the termination of the existing charter types on January 1, 1979.

**DATES:** Adopted: August 14, 1978. Effective: August 15, 1978, and January 1, 1979, as indicated below.

**FOR FURTHER INFORMATION CONTACT:**

Richard B. Dyson, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5444.

**SUPPLEMENTARY INFORMATION:** A full explanation of the issues involved in this rulemaking is set forth in SPR-149, in this issue of the FEDERAL REGISTER. Some of the changes, as noted below, in part 208 reflecting the issuance of the new part 380, Public Charters, are effective immediately. The Board finds that because these amendments relieve restrictions and public benefit will be derived from putting them into effect without delay, an immediate effective date is in the public interest.

The existing parts 371, 372a, 373, 378, and 378a, which will be superseded by part 380, will be revoked. The revocation is effective January 1, 1979, along with the corresponding amendments to part 208, as indicated below. Charters covered by prospectuses filed under the revoked parts before January 1, 1979, may be operated on and after the date.

**AMENDMENTS**

The Board hereby amends 14 CFR Part 208 as follows:

A. The following changes are effective August 15, 1978.

1. In paragraph (b) of § 208.6, Charter flight limitations, a new subparagraph (10) is added, to read:

§ 208.6 Charter flight limitations.

(b) \* \* \*

(10) By a charter operator or foreign charter operator as defined in part 380 of this chapter.

2. In paragraph (c) of § 208.6, Charter flight limitations, a new subparagraph (9) is added, to read:

§ 208.6 Charter flight limitations.

(c) \* \* \*

(9) By a charter operator or foreign charter operator as defined in part 380 of this chapter:

*Provided*, That with respect to subparagraph (9) of paragraph (c) each person engaging less than the entire capacity of an aircraft shall contract and pay for 20 or more seats. With respect to subparagraphs (1), (2), and (5) of paragraph (c) each person engaging less than the entire capacity of an aircraft shall contract and pay for 40 or more seats, except that, if the entire capacity of an aircraft having less than 80 seats is engaged by no more than two persons described in paragraph (c), then either one of such persons may contract and pay for a minimum of 20 seats: *And provided further*, That paragraph (c) shall not be construed to apply to movements of property.

3. The proviso in paragraph (e) of § 208.32, Tariffs and terms of service, is revised to read:

§ 208.32 Tariffs and terms of service.

(e) \* \* \* *Provided, however*, That in

the case of a charter for less than the entire capacity of an aircraft pursuant to § 208.6(c), the carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, not less than 10 days prior to the commencement of any portion of the transportation, and such payment shall not be refundable unless the charter is canceled by the carrier or unless the carrier accepts a substitute charterer for one which has canceled a charter, in which case the amount paid by the latter shall be refunded. For the purpose of this paragraph, payment to the carrier's depository bank, as desig-

nated in the charter contract, shall be deemed payment to the carrier.

§ 208.202b [Amended]

4. Paragraphs (a) and (b) of § 208.202b, charter trips originating in the United States, are revised to read:

(a) In the case of a charter trip originating in the United States which includes foreign air transportation, and where separate charter contracts cover the flight departing from the United States and the flight returning to the United States, the time by which the carrier to perform the returning flight, as well as the carrier to perform the departing flight, must receive full payment of its charter price (or a satisfactory bond for such payment), in compliance with the requirements of § 208.32(e), shall be no less than 10 days prior to the departing flight.

(b) In addition to requiring timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section, the carrier performing the departing flight from the United States shall request in writing from the carrier performing the returning flight for the same chartering group, and the carrier performing the returning flight shall furnish, no later than 10 days prior to the scheduled departure, written confirmation that the latter carrier has also received timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section. Both the request and the confirmation shall contain particulars sufficient to identify the charter trip, including such details as the date and point of origin of the departing flight, the date and point of origin of the returning group; and both shall be accompanied by a passenger list. The confirmation shall also contain a statement to the effect that the carrier has not previously furnished such confirmation to any other carrier with respect to the same charter trip.

B. The following changes are effective January 1, 1979.

1. In paragraph (b) of § 208.6, Charter flight limitations, subparagraphs (4), (5), (7), (8), and (9) are revoked and reserved.

2. In paragraph (c) of § 208.6, Charter flight limitations, subparagraphs (3), (4), (6), (7), and (8) and the proviso after subparagraph (8) are revoked and reserved.

(Secs. 101(3), 204, 401, 403, 404, 407, 411, 416, 1002; 72 Stat. 737, 743, 754, 758, 760, 766, 769, 771, 788 (49 U.S.C. 1301, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1482).)



By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-23162 Filed 8-16-78; 8:45 am]

[6320-01]

[Reg. ER-1065, Amdt. No. 25 to Part 212]

# **PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS**

## **Public Charter Rule**

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

**SUMMARY:** For the reasons set forth in SPR-149, issued contemporaneously, the Board is amending its charter regulations to replace the ABC, OTC, ITC, TGC, and SGC with a new Public Charter rule (14 CFR Part 380). The general charter regulations are amended to reflect the immediate addition of the Public Charter and the termination of the existing charter types on January 1, 1979.

**DATES:** Adopted: August 14, 1978. Effective: August 15, 1978, and January 1, 1979, as indicated below.

**FOR FURTHER INFORMATION CONTACT:**

Richard B. Dyson, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5444.

**SUPPLEMENTARY INFORMATION:** A full explanation of the issues involved in this rulemaking is set forth in SPR-149, in this issue of the FEDERAL REGISTER. Some of the changes, as noted below, in Part 212 reflecting the issuance of the new Part 380, Public Charters, are effective immediately. The Board finds that because these amendments relieve restrictions and public benefit will be derived from putting them into effect without delay, an immediate effective date is in the public interest.

The existing parts 371, 372a, 373, 378, and 378a, which will be superseded by part 380, will be revoked. The revocation is effective January 1, 1979, along with the corresponding amendments to part 212, as indicated below. Charters covered by prospectuses filed under the revoked parts before January 1, 1979, may be operated on and after that date.

## **AMENDMENTS**

The Board hereby amends 14 CFR Part 212 as follows:

A. The following changes are effective August 15, 1978.

1. In paragraph (a) of § 212.8, Charter flight limitations, a new subparagraph (11) is added, to read:

## **§ 212.8 Charter flight limitations.**

(a) \* \* \*

(11) By a charter operator or foreign charter operator as defined in part 380 of this chapter.

2. In paragraph (b) of § 212.8, Charter flight limitations, a new subparagraph (9) is added, to read:

## **§ 212.8 Charter flight limitations.**

(b) \* \* \*

(9) By a charter operator or foreign charter operator as defined in part 380 of this chapter:

*Provided*, That with respect to subparagraph (9) of paragraph (b) each person engaging less than the entire capacity of an aircraft shall contract and pay for 20 or more seats. With respect to subparagraphs (1), (2), and (4) of paragraph (b) each person engaging less than the entire capacity of an aircraft shall contract and pay for 40 or more seats, except that, if the entire capacity of an aircraft having less than 80 seats is engaged by no more than two persons described in paragraph (c), then either one of such persons may contract and pay for a minimum of 20 seats: *And provided further*, That paragraph (b) shall not be construed to apply to movements of property.

3. The proviso in paragraph (b) of § 212.10, Terms of service, is revised to read:

## **§ 212.10 Terms of service.**

(b) \* \* \* *Provided, however*, That in the case of a charter for less than the entire capacity of an aircraft pursuant to § 212.8(b), the carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, not less than 10 days prior to the commencement of any portion of the transportation, and such payment shall not be refundable unless the charter is canceled by the carrier or unless the carrier accepts a substitute charterer for one which has canceled a charter, in which case the amount paid by the latter shall be refunded. For the purpose of this section, payment to the carrier's depository bank, as designated in the charter contract, shall be deemed payment to the carrier.

4. Paragraphs (a) and (b) of § 212.25, Charter trips originating in the United States, are revised to read:

## **§ 212.25 Charter trips originating in the United States.**

(a) In the case of a charter trip originating in the United States which includes foreign air transportation, and where separate charter contracts cover the flight departing from the United States and the flight returning to the United States, the time by which the carrier to perform the returning flight, as well as the carrier to perform the departing flight, must receive full payment of its charter price (or a satisfactory bond for such payment), in compliance with the requirements of § 212.10(b) shall be not less than 10 days prior to the departing flight.

(b) In addition to requiring timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section, the carrier performing the departing flight from the United States shall request in writing from the carrier performing the returning flight for the same chartering group, and the carrier performing the returning flight shall furnish, not later than 10 days prior to the scheduled departure, written confirmation that the latter carrier has also received timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section. Both the request and the confirmation shall contain particulars sufficient to identify the charter trip, including such details as the date and point of origin of the departing flight, the date and point of origin of the returning flight, and the name of the chartering group; and both shall be accompanied by a passenger list. The confirmation shall also contain a statement to the effect that the carrier has not previously furnished such confirmation to any other carrier with respect to the same charter trip.

B. The following changes are effective January 1, 1979.

1. In § 212.1, Definitions, the definition of "Inclusive tour charter trip" is deleted.

2. In paragraph (a) of § 212.8, Charter flight limitations, subparagraphs (5), (7), (8), (9), and (10) are revoked and reserved.

3. In paragraph (b) of § 212.8, Charter flight limitations, subparagraphs (3), (5), (6), (7), and (8) and the proviso after subparagraph (8) are revoked and reserved.

(Sec. 101(3), 204, 401, 403, 404, 407, 411, 416, 1002; 72 Stat. 737, 743, 754, 758, 760, 766, 769, 771, 788 (49 U.S.C. 1301, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1482).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-23163 Filed 8-16-78; 8:45 am]



[6320-01]

[Reg. ER-1066, Amdt. No. 23 to Part 214]

**PART 214—TERMS, CONDITIONS AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS AUTHORIZING CHARTER TRANSPORTATION ONLY**

**Public Charter Rule**

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

**SUMMARY:** For the reasons set forth in SPR-149, issued contemporaneously, the Board is amending its charter regulations to replace the ABC, OTC, ITC, TGC, and SGC with a new Public Charter rule (14 CFR part 380). The general charter regulations are amended to reflect the immediate addition of the Public Charter and the termination of the existing charter types on January 1, 1979.

**DATES:** Adopted: August 14, 1978. Effective: August 15, 1978 and January 1, 1979, as indicated below.

**FOR FURTHER INFORMATION CONTACT:**

Richard B. Dyson, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5444.

**SUPPLEMENTARY INFORMATION:** A full explanation of the issues involved in this rulemaking is set forth in SPR-149, in this issue of the FEDERAL REGISTER. Some of the changes, as noted below, in part 214 reflecting the issuance of the new part 380, Public Charters, are effective immediately. The Board finds that because these amendments relieve restrictions and public benefit will be derived from putting them into effect without delay, an immediate effective date is in the public interest.

The existing parts 371, 372a, 373, 378, and 378a, which will be superseded by part 380, will be revoked. The revocation is effective January 1, 1979, along with the corresponding amendments to part 214, as indicated below. Charters covered by prospectuses filed under the revoked parts before January 1, 1979, may be operated on and after that date.

**AMENDMENTS**

The Board hereby amends 14 CFR Part 214 as follows:

A. The following changes are effective August 15, 1978.

**§ 214.7 [Amended]**

1. In paragraph (a) of § 214.7, Charter flight limitations, a new subparagraph (8) is added, to read:

(a) \*\*\*

(8) By a charter operator or foreign charter operator as defined in part 380 of this chapter.

\* \* \* \* \*

2. In paragraph (b) of § 214.7, Charter flight limitations, a new subparagraph (8) is added, to read:

\* \* \* \* \*

(b) \*\*\*

(8) By a charter operator or foreign charter operator as defined in part 380 of this chapter:

*Provided*, That paragraph (b) of this section shall not apply with respect to any foreign air carrier to the extent that its permit authorizes it to engage in "planeload" charter foreign air transportation of persons: *And provided further*, That with respect to subparagraph (8) of paragraph (b) each person engaging less than the entire capacity of the aircraft shall contract and pay for 20 or more seats. With respect to subparagraphs (1), (2), and (3), of paragraph (b), each person engaging less than the entire capacity of an aircraft shall contract and pay for 40 seats, except that, if the entire capacity of an aircraft having less than 80 seats is engaged by no more than two persons described in paragraph (b), then either one of such persons may contract and pay for a minimum of 20 seats.

3. The proviso in paragraph (b) of § 214.14, Terms of service, is revised to read:

**§ 214.14 Terms of service.**

\* \* \* \* \*

(b) \*\*\* *Provided, however*, That in the case of a charter for less than the entire capacity of an aircraft pursuant to § 214.7(b), the carrier shall require full payment of a round trip, not less than 10 days prior to the commencement of any portion of the transportation, and such payment shall not be refundable unless the charter is canceled by the carrier or unless the carrier accepts a substitute charterer for one which has canceled a charter, in which case the amount paid by the latter shall be refunded. For the purpose of this section, payment to the carrier's depository bank, as designated in the charter contract, shall be deemed payment to the carrier.

\* \* \* \* \*

4. Paragraphs (a) and (b) of § 214.18, Charter trips originating in the United States, are revised to read:

**§ 214.18 Charter trips originating in the United States.**

(a) In the case of a charter trip originating in the United States which includes foreign air transportation, and where separate charter contracts cover the flight departing from the United States and the flight returning to the United States, the time by which the carrier to perform the returning flight, as well as the carrier to perform the departing flight, must receive full payment of its charter price (or a satisfactory bond for such payment), in compliance with the requirements of § 214.14(b), shall be not less than 10 days prior to the departing flight.

(b) In addition to requiring timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section, the carrier performing the departing flight from the United States shall request in writing from the carrier performing the returning flight for the same chartering group, and the carrier performing the returning flight shall furnish, not later than 10 days prior to the scheduled departure written confirmation that the latter carrier has also received timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section. Both the request and the confirmation shall contain particulars sufficient to identify the charter trip, including such details as the date and point of origin of the departing flight, the date and point of origin of the returning flight, and the name of the chartering group; and both shall be accompanied by a passenger list. The confirmation shall also contain a statement to the effect that the carrier has not previously furnished such confirmation to any other carrier with respect to the same charter trip.

\* \* \* \* \*

B. The following changes are effective January 1, 1979.

1. In paragraph (a) of § 214.7, Charter flight limitations, subparagraphs (3), (5), (6), and (7) are revoked and reserved.

2. In paragraph (b) of § 214.7, Charter flight limitations, subparagraphs (3), (5), (6), and (7) and the proviso after subparagraph (7) are revoked and reserved.

(Secs. 101(3), 204, 401, 403, 404, 407, 411, 416, 1002; 72 Stat. 737, 743, 754, 758, 760, 766, 769, 771, 788 (49 U.S.C. 1301, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1482).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-23164 Filed 8-19-78; 8:45 am]



## [6320-01]

[Reg. ER-1067, Amdt. No. 11 to Part 217]

**PART 217—REPORTING DATA PERTAINING TO CIVIL AIRCRAFT CHARTERS PERFORMED BY FOREIGN AIR CARRIERS****Public Charter Rule**

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: For the reasons set forth in SPR-149, issued contemporaneously, the Board is amending its charter regulations to replace the ABC, OTC, ITC, TGC, and SGC with a new Public Charter rule (14 CFR Part 380). This reporting regulation is amended to reflect the immediate addition of the Public Charter.

DATES: Adopted: August 14, 1978. Effective: August 15, 1978.

**FOR FURTHER INFORMATION CONTACT:**

Richard B. Dyson, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5444.

**SUPPLEMENTARY INFORMATION:** A full explanation of the issues involved in this rulemaking is set forth in SPR-149, in this issue of the FEDERAL REGISTER. The change in part 217 set forth below, reflecting the issuance of the new part 380, Public Charters, is effective immediately. The Board finds that because this amendment relieves restrictions and public benefit will be derived from putting it into effect without delay, an immediate effective date is in the public interest.

Accordingly, the Civil Aeronautics Board amends part 217 of its economic regulations, Reporting Data Pertaining to Civil Aircraft Charters Performed by Foreign Air Carriers (14 CFR Part 217), as follows:

**§ 217.6 [Amended]**

In § 217.6, Reporting instructions, paragraph (f) is amended by adding "PC—Public Charter" to the list of codes, in alphabetical order.

(Secs. 101(3), 204, 401, 403, 404, 407, 411, 416, 1002; 72 Stat. 737, 743, 754, 758, 760, 766, 769, 771, 788 (49 U.S.C. 1301, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1482).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-23165 Filed 8-16-78; 8:45 am]

## [6320-01]

[Reg. ER-1068, Amdt. No. 31 to Part 241]

**PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR CERTIFICATED AIR CARRIERS****Public Charter Rule**

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: For the reasons set forth in SPR-149, issued contemporaneously, the Board is amending its charter regulations to replace the ABC, OTC, ITC, TGC, and SGC with a new Public Charter (14 CFR Part 380). The accounting regulations are amended to reflect the immediate addition of the Public Charter.

DATES: Adopted: August 14, 1978. Effective: August 15, 1978.

**FOR FURTHER INFORMATION CONTACT:**

Richard B. Dyson, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; 202-673-5444.

**SUPPLEMENTARY INFORMATION:** A full explanation of the issues involved in this rulemaking is set forth in SPR-149, in this issue of the FEDERAL REGISTER. The change in part 241 set forth below, reflecting the issuance of the new part 380, Public Charters, is effective immediately. The Board finds that because this amendment relieves restrictions and public benefit will be derived from putting it into effect without delay, an immediate effective date is in the public interest.

Accordingly, the Civil Aeronautics Board amends part 241 of its economic regulations, uniform system of accounts and reports for certificated air carriers (14 CFR Part 241), as follows:

In section 25, traffic and capacity elements, paragraph (g) of schedule T-6 is amended by adding "PC—Public Charter" to the list of codes, in alphabetical order.

(Secs. 101(3), 204, 401, 403, 404, 407, 411, 416, 1002; 72 Stat. 737, 743, 754, 758, 760, 766, 769, 771, 788; (49 U.S.C. 1301, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1482).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-23166 Filed 8-16-78; 8:45 am]

## [6320-01]

[Reg. ER-1069, Amdt. No. 27 to Part 249]

**PART 249—PRESERVATION OF AIR CARRIER ACCOUNTS, RECORDS, AND MEMORANDA****Public Charter Rule**

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: For the reasons set forth in SPR-149, issued contemporaneously, the Board is amending its charter regulations to replace the ABC, OTC, ITC, TGC, and SGC with a new Public Charter rule (14 CFR Part 380). The record retention regulations are amended to reflect the immediate addition of the Public Charter.

DATES: Adopted: August 14, 1978. Effective: August 15, 1978.

**FOR FURTHER INFORMATION CONTACT:**

Richard B. Dyson, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; 202-673-5444.

**SUPPLEMENTARY INFORMATION:** A full explanation of the issues involved in this rulemaking is set forth in SPR-149, in this issue of the FEDERAL REGISTER. The changes in part 249 set forth below, reflecting the issuance of the new part 380, Public Charters, are effective immediately. The Board finds that because these amendments relieve restrictions and public benefit will be derived from putting them into effect without delay, an immediate effective date is in the public interest.

Accordingly, the Civil Aeronautics Board amends part 249 of its economic regulations, preservation of air carrier accounts, records, and memoranda (14 CFR Part 249), as follows:

1. In § 249.2, the definition of "charter operator" is amended to read:

**§ 249.2 Definitions.**

\* \* \* \* \*

"Charter operator" means: (1) Any citizen of the United States, as defined in section 101(13) of the act (other than a direct air carrier) who is authorized under the provisions of part 371 or part 380 to engage in the formation of groups for transportation on Advance Booking Charters or Public Charters; or (2) any person not a citizen of the United States, as defined in section 101(13) of the act (other than a direct foreign air carrier) who is engaged in the formation of groups for transportation on advance booking charters or public charters which originate in the United States in accordance with the provisions of part



371 or part 380, and who holds a permit issued pursuant to section 402 of the act authorizing such transportation.

2. In § 249.9, paragraph (a) is amended in part to read:

§ 249.9 Period of preservation of records by tour operators, study group charterers, overseas military personnel charter operators, and travel group charter operators.

(a) Every tour operator (as defined in § 249.2) conducting a tour or series of tours pursuant to part 378 or part 378a of this chapter and every charter operator (as defined in § 249.2) conducting a charter or series of charters pursuant to part 371 or part 380 of this chapter shall retain for 2 years after completion of a tour or a series of tours, or of a charter or series of charters, true copies of the following documents at its principal or general office in the United States and shall make them available upon request by an authorized representative of the Board: \*

(Secs. 101(3), 204, 401, 403, 404, 407, 411, 416, 1002; 72 Stat. 737, 743, 754, 758, 760, 766, 769, 771, 788 (49 U.S.C. 1301, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1482).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-23167 Filed 8-16-78; 8:45 am]

# [6320-01]

## SUBCHAPTER D—SPECIAL REGULATIONS

[Reg. SPR-150, Amdt. No. 10 to Part 371]

## PART 371—ADVANCE BOOKING CHARTERS

### Revocation

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: For the reasons set forth in SPR-149, issued contemporaneously, the Board is amending its charter regulations to replace the ABC, OTC, ITC, TGC, and SGC with a new Public Charter (14 CFR Part 380). This amendment terminates the Advance Booking Charter (ABC) rule, effective January 1, 1979.

DATES: Adopted: August 14, 1978. Effective: January 1, 1979. Charters covered by prospectuses filed under this part before January 1, 1979, may be operated on and after that date.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Office of the

General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5444.

Accordingly, the Civil Aeronautics Board amends its special regulations by revoking and reserving Part 371, Advance Booking Charters (14 CFR part 371).

(Secs. 101(3), 204, 401, 403, 404, 407, 411, 416, 1002; 72 Stat. 737, 743, 754, 758, 760, 766, 769, 771, 788; (49 U.S.C. 1301, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1482))

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-23168 Filed 8-17-78; 8:45 am]

# [6320-01]

[Reg. SPR-151, Amdt. No. 18 to Part 372a]

## PART 372a—TRAVEL GROUP CHARTERS

### Revocation

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: For the reasons set forth in SPR-149, issued contemporaneously, the Board is amending its charter regulations to replace the ABC, OTC, ITC, TGC, and SGC with a new Public Charter (14 CFR Part 380). This amendment terminates the Travel Group Charter (TGC) rule, effective January 1, 1979.

DATES: Adopted: August 14, 1978. Effective: January 1, 1979. Charters covered by filings made under this part before January 1, 1979, may be operated on and after that date.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5444.

Accordingly, the Civil Aeronautics Board amends its special regulations by revoking and reserving part 372a, Travel Group Charters (14 CFR Part 372a).

(Secs. 101(3), 204, 401, 403, 404, 407, 411, 416, 1002; 72 Stat. 737, 743, 754, 758, 760, 766, 769, 771, 788; (49 U.S.C. 1301, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1482))

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-23169 Filed 8-16-78; 8:45 am]

# [6320-01]

[Reg. SPR-152, Amdt. No. 16 to Part 373]

## PART 373—STUDY GROUP CHARTERS BY DIRECT AIR CARRIERS AND STUDY GROUP CHARTERERS

### Revocation

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: For the reasons set forth in SPR-149, issued contemporaneously, the Board is amending its charter regulations to replace the ABC, OTC, ITC, TGC, and SGC with a new Public Charter rule (14 CFR Part 380). This amendment terminates the Study Group Charter (SGC) rule, effective January 1, 1979.

DATES: Adopted: August 14, 1978. Effective: January 1, 1979. Charters covered by study group statements filed under this part before January 1, 1979, may be operated on and after that date.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; 202-673-5444.

Accordingly, the Civil Aeronautics Board amends its special regulations by revoking and reserving Part 373, Study Group Charters by Direct Air Carriers and Study Group Charterers (14 CFR Part 373).

(Secs. 101(3), 204, 401, 403, 404, 407, 411, 416, 1002; 72 Stat. 737, 743, 754, 758, 760, 766, 769, 771, 788 (49 U.S.C. 1301, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1482).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-23170 Filed 8-16-78; 8:45 am]

# [6320-01]

[Reg. SPR-153, Amdt. No. 22 to Part 378]

## PART 378—INCLUSIVE TOUR CHARTERS

### Revocation

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: For the reasons set forth in SPR-149, issued contemporaneously, the Board is amending its charter regulations to replace the ABC, OTC, ITC, TGC, and SGC with a new Public Charter (14 CFR Part 380). This amendment terminates the Inclusive Tour Charter (ITC) rule, effective January 1, 1979.



**DATES:** Adopted: August 14, 1978. Effective: January 1, 1979. Charters covered by prospectus filed under this part before January 1, 1979, may be operated on and after that date.

**FOR FURTHER INFORMATION CONTACT:**

Richard B. Dyson, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5444.

Accordingly, the Civil Aeronautics Board amends its special regulations by revoking and reserving part 378, Inclusive Tour Charters (14 CFR Part 378).

(Secs. 101(3), 204, 401, 403, 404, 407, 411, 416, 1002; 72 Stat. 737, 743, 754, 758, 760, 766, 769, 771, 788 (49 U.S.C. 1301, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1482).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-23171 Filed 8-16-78; 8:45 am]

**[6320-01]**

[Reg. SPR-154, Amdt. No. 18 to Part 378a]

**PART 378a—ONE-STOP-INCLUSIVE TOUR CHARTERS**

**Revocation**

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Final rule.

**SUMMARY:** For the reasons set forth in SPR-149, issued contemporaneously, the Board is amending its charter regulations to replace the ABC, OTC, ITC, TGC, and SGC with a new Public Charter (14 CFR Part 380). This amendment terminates the One-Stop-Inclusive Tour Charter (OTC) rule, effective January 1, 1979.

**DATES:** Adopted: August 14, 1978. Effective: January 1, 1979. Charters covered by prospectus filed before January 1, 1979, may be operated on and after that date.

**FOR FURTHER INFORMATION CONTACT:**

Richard B. Dyson, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5444.

Accordingly, the Civil Aeronautics Board amends its special regulations by revoking and reserving part 378a, One-Stop-Inclusive Tour Charters (14 CFR Part 378a).

(Secs. 101(3), 204, 401, 403, 404, 407, 411, 416, 1002; 72 Stat. 737, 743, 754, 758, 760, 766, 769, 771, 788 (49 U.S.C. 1301, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1482).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-23172 Filed 8-16-78; 8:45 am]

**[6320-01]**

[Reg. SPR-149, Enactment of Part 380]

**PART 380—PUBLIC CHARTERS**

**Final Rule**

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Final rule.

**SUMMARY:** The Board is replacing several different charter forms with one simplified Public Charter rule that does not require ground accommodations, advance payment for seats, minimum stay, or minimum group size, and allows one-way as well as round-trip travel. The Public Charter must be sold by an independent charter operator, and the rule contains various consumer protection provisions.

**DATES:** Adopted: August 14, 1978. Effective: August 15, 1978, except for § 380.43 and § 380.50(c), effective on October 10, 1978.

**FOR FURTHER INFORMATION CONTACT:**

Richard B. Dyson, Civil Aeronautics Board, Office of the General Counsel, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5444.

**SUPPLEMENTARY INFORMATION:**

**EARLIER ACTIONS**

By notice of proposed rulemaking EDR-348/SPDR-64, 43 FR 11215, March 17, 1978 (hereafter referred to as SPDR-64), the Board proposed amendments to its charter regulations that would replace most of the existing charter modes with a single new "Public Charter" rule. The proposed rules would continue the requirement that charters be arranged and sold by an independent tour operator, but would not require ground accommodations, advance purchase, minimum group, or minimum stay. They would permit the sale of one-way tickets, and allow differential pricing to the extent consistent with the Federal Aviation Act. Comments were requested on certain consumer protection issues, especially in the area of tour operator and participant cancellations.

Earlier, in December 1977, in response to petitions by several tour operators and supplemental carriers,<sup>1</sup> the

<sup>1</sup>The Educational Cooperative (docket 31176), Nationwide Leisure (dockets 31048 and 31483), Trans International Airlines (docket 31092), Duncan Tours (docket 31313), NACA (docket 31317), Council on In-

ternational Education Exchange (dockets 31399 and 31325), and American Institute for Foreign Study and Unitours (docket 30766). Docket 29806, concerning minimum group size on smaller planes, is terminated.

Board had instituted an interim liberalization of charter rules, SPR-142, 43 FR 65487, December 30, 1977. These temporary rules, enacted on an expedited basis, relaxed charter restrictions to help supplemental air carriers compete with new deeply discounted fares initiated by scheduled carriers.<sup>2</sup> Short-term relief in response to further requests by tour operators was expanded on April 19, 1978, when the Board issued a blanket waiver (order 78-4-122) of many of the remaining restrictions on charters. The blanket waiver, which applied to charters whose outbound flights operated between April 19, 1978, and July 18, 1978, eliminated group size requirements and the prohibition of intermingling of passengers on Advance Booking Charters (ABC's), One-Stop-Inclusive Tour Charters (OTC's) and Inclusive Tour Charters (ITC's), while retaining a minimum contract size of 20 seats and allowing discount pricing. Advance payment to direct air carriers for split charters was reduced to 15 days, and direct carriers were authorized to operate a charter flight where less than the entire capacity of the aircraft was under contract.<sup>3</sup>

In contrast to the interim amendments and the blanket waiver, this proceeding is not primarily a response to a commercial "emergency," but an integral element of the Board's policy of making low-cost travel widely available to the consuming public. It is also an important element in our policy of promoting a more competitive air transportation system. Oral argument on the Public Charter was heard on June 30, 1978, when interested parties were given the opportunity to present their views directly to the Board.

**GENERAL POLICY CONSIDERATIONS**

The policy of further liberalization of the charter rules was supported by comments from the Federal Trade Commission and the U.S. Departments of Transportation, Justice, Defense, and Health, Education, and Welfare; the National Air Carrier Association (supplementals) and Capitol International Airways; the Aviation Consumer

ternational Education Exchange (dockets 31399 and 31325), and American Institute for Foreign Study and Unitours (docket 30766). Docket 29806, concerning minimum group size on smaller planes, is terminated.

<sup>2</sup>The interim rules that went into effect on December 15 reduced the advance purchase period for ABC's to 15 days, allowed 15 percent fill-up sales on ABC's, eliminated the minimum-duration restriction on ABC's and OTC's, and reduced the minimum charter group size to 20 on ABC's, OTC's, and ITC's. Judicial review of these amendments is now pending in *American Airlines v. C.A.B.*, C.A.D.C. No. 78-10009, filed January 3, 1978.

<sup>3</sup>Judicial review of the blanket waiver is pending in *American Airlines v. C.A.B.*, C.A.D.C. No. 78-1485, filed June 1, 1978.



Action Project; Las Vegas Parties; and various members of the charter industry.<sup>3</sup>

Several domestic trunklines,<sup>4</sup> foreign governments,<sup>5</sup> and foreign carriers<sup>6</sup> opposed the proposal on the basis that it would have an adverse effect on scheduled services. As the Board has stated previously,<sup>7</sup> only a serious deterioration of scheduled service would be considered material. But the most dramatic changes in the charter rules—much more significant, in their cumulative effect, than the changes proposed here—have taken place already within the last 3 years, with the OTC rule,<sup>8</sup> the ABC rule,<sup>9</sup> and the further liberalizations of those rules that were made through last year.<sup>10</sup> Indeed, the most important changes that have been proposed in this proceeding have actually been in effect since April by way of the blanket waiver.<sup>11</sup> Throughout this period, there has been no sign of deterioration of scheduled service. Actually, the scheduled carriers have responded to these changes by demonstrating their ability to attract large numbers of potential charter customers by innovative discounts on scheduled service. The arguments based on the adverse effect on scheduled service are therefore rejected.

Other commenters, members of the charter industry,<sup>12</sup> took the position

that the segregating effect of the restrictive charter rules worked to the charter industry's advantage, presumably by carving out a limited but protected portion of the travel market within which they could operate, without excessive competition with other forms of travel. ACTOA argued, along this line, that further charter liberalization would cause the scheduled carriers to intensify their efforts to beat off charter competition by still more attractive offerings on scheduled service in the major charter markets, which would ultimately drive the charter industry out of business.

The Board recognizes that intensified competition may be the result of removing restrictions on charters, and that it could make conditions more precarious for some of the businesses involved. It appears, however, that the price competition that has developed over the last year, at least partially as a result of Board policies, has caused a major expansion in overall demand for air travel, with consequent benefits to various parts of the industry. In any event, increased competition among and within various segments of the air transportation industry is the intended effect of the Board's actions, and not something to be avoided. No substantial evidence has been presented that the charter industry soon will permanently and completely disappear. Although there is evidence that the charter mode has in the past year suffered some substantial constriction from the intensified competition of scheduled carriers, that evidence does not logically argue against the steps we take here, all of which will enhance the ability of tour operators to meet that challenge. The traveling public is benefiting from the changes of the last year, and that is our main concern. Should the public interest call for insulating the charter operators from competition, that interest is not properly safeguarded by our refraining from relaxing the restrictions to which they have previously been subjected.

Another policy argument that was made by several commenters in opposition to the proposal was that, as ASTA put it, some foreign governments "find the Board's liberalized charter rules unacceptable or, at least, extremely distasteful," and that "it would be foolish for the Board to forge ahead as if this substantial opposition did not exist." It is true that some foreign governments, including some major charter destinations, have refused to accept the U.S. charter rules on a country-of-origin basis, and have imposed their own rules on charters destined for their airports. This condition has existed for some time, however, and especially since the major liberalizations of the last 3

years, as discussed above. We have previously decided that the Board's charter rules should not be made more restrictive to satisfy the policies of foreign governments. Foreign governments vary in their attitudes toward U.S. charter rules, from full country-of-origin acceptance to outright banning. We hope to achieve in the future a general acceptance of country-of-origin rules. But the former restrictive charter rules did not lead to general acceptance of them by foreign governments, and the recent loosening of them has not caused a universally adverse reaction. We therefore consider the varying positions of foreign governments an insufficient reason to impose restrictive rules on our industry and our citizens. The context in which to resolve differences of opinion about what charter rules should apply is bilateral negotiations with foreign governments—not in deciding what rules should apply generally wherever we have the authority to make them.

#### LEGAL ISSUES

Several commenters questioned the legality of the Board's action,<sup>13</sup> arguing that the Public Charter does not maintain the distinction between charter and scheduled service intended by Congress.<sup>14</sup> They claimed that the requirement that charters be arranged and marketed by an independent entrepreneur, under the Board-supervised financial security provisions, was not an important distinction, because it made little difference to the public and had little relevance to the definition of supplemental air transportation in the act. They maintained that other restrictions set forth in the Public Charter, including penalties for cancellation or forfeiture of participant deposits, possible cancellation for inadequate participation, and prohibition of round trip advance payment without arrangements of a return flight, could be employed by route carriers as conditions on scheduled fares, and therefore that introduction of the public charter would effectively obliterate the distinction between the two types of service. They suggested that the prohibition on open ended round trip tickets is insignificant for the ad-

<sup>3</sup>International Aircoach Association, the Experiment in International Living, Sun-tours Ltd., Hamilton, Miller, Hudson & Payne Travel, Pleasant Hawaiian Holidays, Council on International Education Exchange, American Institute for Foreign Study, and Carefree Travel.

<sup>4</sup>Eastern Air Lines, Northwest Airlines, Trans World Airlines, Western Air Lines, American Airlines, National Airlines, Allegheny Airlines, and Delta Air Lines.

<sup>5</sup>Pan American World Airways did not oppose the Public Charter but encouraged the Board to study further possible problems of its administration and international acceptance. United Air Lines submitted no comment.

<sup>6</sup>European Civil Aviation Conference, and Government agencies of Switzerland, Federal Republic of Germany, Portugal, Ireland, and France.

<sup>7</sup>Aerlinde Eireann Teoranta (Aer Lingus), Lufthansa German Airlines, British Airways, Air Canada, Air India, Japan Air Lines, Scandinavian Airlines System, Swissair, Swiss Air Transport Co., and Air Jamaica.

<sup>8</sup>SPDR-56, 42 FR 12066, Mar. 2, 1977.

<sup>9</sup>SPR-85, effective Sept. 13, 1975, 40 FR 34089, Aug. 14, 1975.

<sup>10</sup>SPR-110, effective Oct. 7, 1976, 41 FR 37763, Sept. 8, 1976.

<sup>11</sup>SPR-139, effective Nov. 3, 1977, 42 FR 58515, Nov. 10, 1977, eliminated the advance purchase requirement for OTC's. SPR-142, effective Dec. 15, 1977, 42 FR 65487, Dec. 30, 1977, made various liberalizing changes in ABC's, OTC's, and ITC's.

<sup>12</sup>Order 78-4-122, adopted Apr. 19, 1978, docket 32397.

<sup>13</sup>International Weekends, Spantax, S.A., Travel Impressions, and Louisiana-Mississippi Travel Association.

<sup>14</sup>Allegheny Airlines, American Airlines, Delta Air Lines, Eastern Air Lines, National Airlines, Northwest Airlines, Trans World Airlines, Western Air Lines, Lufthansa German Airlines, British Airways, Air-India, Scandinavian Airlines System, Swissair, Swiss Air Transport Co., Air Charter Tour Operators of America, and Spantax.

<sup>15</sup>Opponents quoted extensively from the 1962 congressional floor debates regarding the deletion of a definition of "charter service." Senator Cotton said, for example, "The Board has a serious obligation to see that charter services do not become individually ticketed service through subterfuge or abuse." 108 Cong. Rec. 12284 (1962).



ditional reason that the Public Charter rule allows sale of one-way tickets.

The Department of Justice, the Department of Transportation, the Bureau of Competition of the Federal Trade Commission, National Air Carrier Association, and the Aviation Consumer Action Project supported the legality of the Public Charter. They argued that Congress, far from imposing a rigid distinction between charter and scheduled service, gave the Board broad discretion to fashion a flexible definition of "charter trips" that would be adaptable to continuing changes in the aviation industry.<sup>15</sup> Taken as a whole, they asserted, the restrictions included in the Public Charter preserve the distinct quality of charter service and do not amount to the individual ticketing that concerned Congress when it authorized the granting of certificates for supplemental air transportation. The requirement that independent tour operators have complete administrative and commercial responsibility for selling the charters to the public was considered particularly important. Unlike the travel agent selling scheduled seats, under this charter scheme the tour operator must bear the load factor risk. The Department of Justice asserted that the Public Charter is legally sustainable on this ground alone.

The proposed Public Charter contains fewer restrictions than the special regulation charters it will replace, and accordingly, past judicial decisions upholding new charter rules cannot be viewed as binding precedent. We have concluded, however, that we do have the authority to amend the regulations in this way. By taking this action, the Board is satisfying its statutory obligation under section 102 of the act to perform its duties in the "public interest and in accordance with the public convenience and necessity" by making reliable, low-cost air transportation available to the general public. This action will encourage the "development of an air transportation system properly adapted to the present and future needs of the United States," "promote adequate economical and efficient service by air carriers at reasonable charges, without unjust discrimination," and stimulate "competition \* \* \* necessary to assure the sound development of an air transportation system \* \* \*."<sup>16</sup>

A review of the legislative history of the Act and the case law, which has

consistently upheld the Board's charter liberalization efforts, clearly shows that the Board is authorized by the act to fashion a flexible definition of charter service "in accordance with experience and changing circumstances as long as the integrity of scheduled service traffic is not vitiated."<sup>17</sup> The changes that have taken place in air transportation in the last two decades should therefore play a crucial role in any consideration of the validity of these new rules. Traveling in modern, comfortable jet aircraft has been transformed from a novelty to a luxury for businesses and the wealthy, then to a normal aspect of middleclass life, at least for vacations. As this has happened the public has become more price-sensitive and less demanding of luxurious flight amenities. The idea of charters for the general public was originally approached as a cautious experiment, with fear that scheduled service might be harmed. But as demand has vastly increased, charter flights have in recent years become an important low-cost alternative form of air travel that has proved compatible with healthy scheduled operations. With the Board's new emphasis on freer price competition, they are an important competitive spur to the scheduled services, no longer considered fragile.

Scheduled airlines have responded to Board encouragement and charter competition, as expected and intended, with lower prices and innovative service offerings of their own. The Board today places very few restrictions on the fares and conditions of scheduled service. The charter rules, by contrast, have up to now contained many restrictions which have limited the attractiveness of charters. In the Board's judgment, removal of these demand-limiting restrictions is an important factor in maintaining charters as a competitive alternative for scheduled service. Thus, the economic environment for charters has changed drastically in the 12 years since they first became available to the general public, and these "changed circumstances" contribute vitally to the legal validity of a liberalized charter system "adapted to the present and future needs" of the United States.

Courts have looked to the "cumulative effect" of charter restrictions, and have refused to consider any single requirement as indispensable to the charter concept.<sup>18</sup> The Public Charter retains important restrictions which

effectively separate it from scheduled service.

The requirement that Public Charters must be arranged and sold by an independent tour operator is of paramount importance in evaluating their legal sufficiency. This is not just one distinction, but a whole complex of them. The essence of the charter concept is a bilateral contract, and at the center of the contractual relationships is the tour operator.<sup>19</sup> Unlike scheduled service, sold either directly by the route carrier or through a travel agent, the charter operator bears the risk of operating a financially successful flight. His estimate of the potential of a particular market, and his willingness to risk his capital in charter contracts with direct air carriers, generally months before sale to the public, is the essential element in the charter industry today. Before he can sell to the public, however, he must have submitted to the Board a detailed prospectus covering each flight, including his charter contract with the carrier and the contract that will be entered into with participants. The operator must also arrange a surety bond or similar agreement with a financial institution to insure his financial viability, and in most cases a depository escrow to protect participants' funds.<sup>20</sup>

These important distinctions are not limited to behind-the-scenes arrangements; they are of real significance to the traveling public. A person planning to travel by charter flight must deal (either directly or through a travel agent) with flight plans and payment arrangements set up by the tour operator, not an airline. He will have to sign a contract with many detailed provisions concerning the itinerary, conditions, and liabilities associated with the trip. His rights are governed by a special set of Board rules concerning such matters as flight delays, as well as the special rules of foreign countries. These factors may be much more important, in fact, to the individual deciding between charter and scheduled service than restrictions such as advance booking, minimum stay and/or ground package that have characterized charters in the past. The typical vacationer, after all, makes his arrangements in advance, stays for at least a week, and spends money on ground accommodations, regardless of his mode of travel.

We find of little weight the argument made in several opposing comments that distinctions such as participant cancellation penalties and the

<sup>15</sup>The 1962 House report, which excluded the charter definition, stated, " \* \* \* authority to define charter services should be left, as at present, with the Board \* \* \* " H.R. Rept. 1177, 87th Cong., 1st sess. 5 (1951).

<sup>16</sup>49 U.S.C. 1302; *Saturn Airways, Inc. v. C.A.B.*, 483 F. 2d 1284, 1291 (D.C. Cir. 1973); *World Airways, Inc. v. C.A.B.*, 547 F. 2d 695, 698 (D.C. Cir. 1976).

<sup>17</sup>*Trans World Airlines v. C.A.B.*, 545 F. 2d 771, 774 (2d Cir. 1976). A comprehensive review of the legislative history of the Act and the related case law developments are contained in the memorandum on file in docket 32242, "The Board's legal authority to adopt the proposed Public Charter."

<sup>18</sup>*Pan American World Airways, Inc. v. C.A.B.*, 517 F. 2d 734, 742 (2d Cir. 1975).

<sup>19</sup>The tour operator is bound by bilateral contracts with the direct air carrier, the charter participant and the financial institution securing his funds.

<sup>20</sup>This aspect of the operator's responsibilities is the subject of a separate Board proceeding, docket 31735.



possibility of charter cancellation are insufficient because some types of scheduled service could contain similar provisions. Scheduled service discount fares can have a wide variety of special conditions because the Board has historically allowed scheduled carriers to do almost anything they please with them. But when the congressional committee reports and floor spokesmen cautioned against charter service becoming indistinguishable from scheduled service, they were referring to scheduled service as it was normally thought of at the time: Tickets sold over the counter up to flight time, with no restrictions on their sale or use, freely exchangeable for tickets on other flights, and refundable without penalty if not used, even without notice.<sup>21</sup> The legal distinction between the two kinds of service surely does not vary with the current practices of scheduled carriers, least of all with their adoption of charterlike protections and restrictions on fares designed to meet charter competition. In addition to the fact that the Public Charter must be sold by a tour operator, the fact that it may be canceled for inadequate participation or any other contingency set forth in the operator's contract, and that once contractually committed, participants may not change or cancel reservations without risk of charge or forfeiture of deposits, effectively separate it from the kind of individually ticketed walk-on scheduled service contemplated in the Act.

We also reject the contention that the ban on selling a round trip charter without an assigned return flight is negated, as a legal distinction, by allowing one-way charters. The purpose of the prohibition is not to limit flexibility; it is to protect people against the possibility of having paid for a return flight on one side of the ocean, then finding themselves on the other side with no return charter flight and no money to arrange something else. With a one-way charter a person can be presumed to know he must arrange a return, and to have retained the funds to do so.

Taken together with the features discussed, the additional requirement for a minimum contract size of 20 seats strongly reinforces the distinction between charter and scheduled service. It preserves the group-travel characteristic that has traditionally been part of charter service,<sup>22</sup> and

<sup>21</sup>Hearings before the Aviation Subcommittee of the Senate Committee on Commerce on S. 3566, 90th Cong., 2d sess., p. 95 (June 12 and 13, 1968) (statement of Senator Monroney).

<sup>22</sup>*American Airlines v. C.A.B.*, 348 F. 2d 349, 354 (D.D. Cir., 1965). It might appear that our removal of the minimum group size restriction contradicts this assertion.

The group aspect that is critical to the economics of the charter operation is in the

helps to maintain efficient and economical charter operations.<sup>23</sup>

#### AFFINITY CHARTERS

In EDR-348 we proposed, with the issuance of a Public Charter rule, to eliminate the pro rata "affinity" charter. These charters are based on the membership of the travelers in an organization existing primarily for purposes other than travel, and do not involve a tour operator who contracts with the direct air carrier and with the participants, as do the special regulation charters such as the Advance Booking (ABC) or the One-Stop-Inclusive Tour Charters (OTC). The reasons advanced for eliminating this form were that they do not furnish as much protection for the public, and discriminate against persons who are not members of such organizations. Since affinity charters do not allow for an intermediary between the chartering organization and the direct air carrier, other than a travel agent, there are no provisions for bonding or escrow of the charter participants' funds beyond those covering the air carrier and its agents. This has provided an opportunity for "organizers" to put together groups for charter flight purposes that do not meet the specifications of the Board's rules, thus avoiding both submitting a prospectus and other documents for Board review and arranging bonding and escrow arrangements to protect the participants' funds.

The abolition of affinity charters was supported by Pan American, which noted the enforcement difficulties caused by affinity charters in the past. It was opposed, however, by the Department of Transportation, the supplementals, ACTOA, several travel related businesses, and over 80 other organizations and individuals.<sup>24</sup> These

contract between tour operator and direct air carrier: It is the obligation of the former to deliver a group to the latter, along with the contract cancellation penalty that transfers the risk from the direct air carrier, in contrast with the situation in regulating scheduled services. See pp. 15-16 below.

<sup>23</sup>NACA comment, docket 32242.

<sup>24</sup>Colby-Sawyer College; Worldwide Sportsmen's Club; Wayne State University; Northern Illinois University Alumni Association; University of Connecticut Alumni Association; Telephone Pioneers-Southern Bell; North Carolina Merchants Association; Hollins College Alumnae Association; Wesleyan Alumnae Association; Rutgers Alumni Federation; North Carolina State University Alumni Association; University of Pittsburgh; Stevens Alumni Association; the Society of the Alumni of the College of William and Mary; American Legion of Kentucky, Inc.; Kentucky Restaurant Association; Virginia Optometric Association; Saint Louis University Alumni and Special Services; University of Bridgeport; Old Dominion University Alumni Association; University of Vermont; Knights of Columbus; Missouri State Council; Alumni Federation

commenters objected to being forced to abandon a charter form that they had found satisfactory, and either to use an established tour operator or themselves to satisfy the financial security and other administrative requirements of the special regulation charters (including the proposed Public Charter). They pointed out that the financial risk to a legitimate affinity group is minimal, since in dealing with a direct air carrier it is protected both by the carrier's bond or escrow arrangements (required by § 207.17, 208.40, 212.51, or 214.9c, depending on the type of carrier) and by the carrier's ability and desire to meet its legal obligations. They suggested that affinity groups would turn not to the Public Charter, if their charters were eliminated, but to scheduled discount fares. They also noted that affinity charters are widely accepted without restriction by foreign coun-

of New York University, Inc.; Muhlenberg College Alumni Association; Georgia College Alumni Association, Inc.; Lebanon Valley College Alumni Association; Southern Maryland Dental Society, Inc.; University of Richmond Alumni Council; California State College Alumni Association; University of Buffalo Alumni Association; Middlesex South District Medical Society; Fairfield University Alumni Association; Widener College; Margaret Colby, coordinator of Marist adult education programs; International Travel Service, Inc.; Queens College Alumnae Association; La Grange College Alumni Association; Fresh Meadow Jewish Center; B'nai Zion; Henry Weldon; New England Council of the National Association of Accountants; National Association for the Advancement of Colored People; Saint Peter's College Alumni Association; United Leukemia Fund, Inc.; High Point College Alumni Association; Cavaliers Club; Massachusetts Bar Association; Scottish Rite Cathedral Association; John J. Quinn, Goddard Space Flight Center Employees Welfare Association; University of Maryland Alumni Association; Capitol District Kiwanis Foundation; New Jersey Education Association; Central Michigan University Alumni Association; Ohio University Alumni Association; Redevelopment Authority of the City of Philadelphia; Ohio State Council of the Knights of Columbus; Hawaiian Club; Bryant College Alumni Association; Greenbelt Consumer Services, Inc.; Murray State University Alumni Association; Sweet Briar College Alumnae Association; Second District Dental Society; Massachusetts College of Pharmacy; La Salle College; State USIA-IAN Recreation Association; Russell Sage College; Marywood College Alumni Association; Little Flower Boosters Club; Massachusetts Elks Association; North Carolina Association of Professions; Mount Holyoke College Alumnae Association; University of Scranton Alumni Society; B'nai B'rith International; University of Missouri-St. Louis Alumni Association; Boston University; Saint Peter's College Alumni Association. Lawrence Anzivino, Fletcher Eaton, John D. Barbes, Saul Gurvitz, Karen Borak, and George O. Buffington, individual members of organizations, also supported continuation of affinities.



tries, even those that have taken a restrictive position toward the public-oriented charters. They challenged the position that affinity charters are invidiously discriminatory, arguing that there are ample opportunities for virtually any member of the public to join organizations that run charters, and that the Public Charter will offer equivalent convenience to all. Finally, they suggested that the issuance of the Public Charter would reduce the force of the arguments against affinity charters, both by largely eliminating the sale restrictions that have been the main difference between the two forms from the public's standpoint, and by reducing the incentive for would-be organizers to attempt to assemble illegal affinity charters.

We have decided not to eliminate affinity-group pro rata charters. The comments indicate that there is still a large number of groups that use this form for their charter activities. While it may be true that opportunity for abuse exists in the handling of affinity groups' funds, we have no evidence that the proportion of loss is any greater in this area than it has been for Special Regulation Charters. If it should develop, after the industry has fully adjusted to the Public Charter rules, that the affinity charters are creating losses disproportionate to their benefits, we will take steps either to eliminate the form or to change it in whatever way appears desirable. But we intend to observe the effect of the Public Charter rules before taking further action on affinity group charters. That aspect of the proposal is therefore terminated, and no action will be taken without a new proposal.

We also take this occasion to terminate the rulemaking proceedings begun in EDR-237C (39 FR 39289, November 6, 1974, docket 24908), and EDR-261 (39 FR 1865, January 15, 1974, docket 26301). EDR-237C proposed to eliminate the affinity charter rules. EDR-261 proposed amending the Board's regulations to prohibit combining on the same aircraft one or more split charters operated by an indirect air carrier who is also acting as agent with respect to one or more split affinity charters. In light of the changes in Board policy since these proposals were issued, as discussed above, we no longer consider of major importance the problems addressed by these proposals. We are therefore terminating the proceedings in dockets 24908 and 26301.

#### OTHER SPECIAL REGULATION CHARTERS

The proposal was to revoke, and replace by the Public Charter, the existing parts of the special regulations containing civilian charter forms:

Part 371, Advance Booking Charters.  
Part 372a, Travel Group Charters.

Part 373, Study Group Charters.  
Part 378, Inclusive Tour Charters.  
Part 378a, One-Stop-Inclusive Charters.

Special sections of the Public Charter rule were proposed to accommodate the specific advantages of the Study Group Charter and the Special Event Charter (a subcategory within the OTC rule).

Several commenters argued that the existing charter forms should be retained, either permanently or, as DOT suggested, for an extended period such as 2 years. These comments suggested that it would take time for the public to adjust to the new charter rules, and also that foreign governments might be unwilling to accept them, thus cutting off that portion of the supplementals' market, at least with respect to Special Regulation Charters.

The Board finds this position largely without merit, mainly for the reason that the restrictions we adopt here are minimum ones, which leave carriers and tour operators free to establish whatever additional restrictions they wish, for reasons that include satisfying foreign governments. They may, for example, continue to operate charters that conform to the OTC rules (14 CFR Part 378a) as they were originally issued—even labeling them "OTC's" if they so desire. Furthermore, few if any foreign governments accept U.S. charters by title such as ABC's or OTC's, without reservation.

Where they do not accept country-of-origin rules outright, they typically specify their own sets of particular requirements, such as ground package or advance booking. Thus, replacing existing rules with a single more permissive one should make little or no difference in the way foreign governments react to U.S. charters.

We also consider it important to simplify the existing body of charter rules as much as possible. The major changes in the rules have been effected, over the last decade, primarily by adding entire new forms to the existing list. While this has had the advantage of letting the industry adjust at its own pace as a new permissible form is created, it has created a large and unwieldy body of regulations that has been increasingly difficult for even the concerned members of the industry to understand and deal with.

For these reasons, the existing Special Regulation Charter rules will be revoked as proposed. In order to give the public an interim period to adjust to the new regulations, however, the revocation will not be effective until January 1, 1979.

#### MINIMUM GROUP AND CONTRACT SIZE

The notice proposed to eliminate any minimum group size requirement. It was also suggested that even with this requirement removed, a minimum

contract size might be retained. Under such a plan, the tour operator would have to contract with the direct carrier for a minimum number of seats, but could allocate these to various itineraries (different return dates, for example) and different types of charters, as the market demanded.

Even among the commenters who favored liberalization generally, there was little argument specifically directed toward removal of the minimum contract size. NACA, while supporting the elimination of the minimum group size, favored the retention of the minimum contract size. They stated that it was impractical for a carrier to have a large number of contracts for a given payload, so that in practice a carrier would probably not contract for blocks of seats below a minimum number such as 20, in any case. Thus, a minimum contract size of 20 appears to be a meaningful and distinguishing characteristic of charters, which does not impair their flexibility or efficiency. It will therefore be included as a requirement for Public Charters.

The arguments in favor of retaining a minimum group size are based on the historic idea of a charter flight as a form of travel by a cohesive group of people for a common purpose. This was a matter of course when the affinity group and single-entity charters were the only types of charter available to civilians. The advent of the Inclusive Tour Charter reversed the priorities: In place of a group whose cohesiveness preceded the travel, there was substituted a form of travel whereby people who were strangers when they boarded the plane would be made a group, willy-nilly, by the requirement that they pursue an extensive itinerary together. This concept of cohesiveness responded both to the legal and conceptual need to think of charters as a "distinct" form of travel, and to the commercial fear that charters would compete directly with scheduled service for the traveler's dollar.

We have discarded the latter idea, that possible diversion from scheduled service precludes our making charters more accessible to the general public. And with the advent of the TGC and the ABC,<sup>25</sup> the idea of the charter as limited to cohesive groups traveling together has ceased to be a significant aspect of Special Regulation Charters. No specific arguments relating to minimum group size were presented by the opposing comments, other than that eliminating it, along with the other proposed liberalizations, would cause the Public Charter to be insufficiently distinguished, legally, from scheduled service. Retention of the minimum contract size tends further

<sup>25</sup>SPR-61, 37 FR 20808, October 4, 1972; SPR-110, 41 FR 37763, September 8, 1976.



to distinguish charters from scheduled service, as discussed in more detail under the heading of legal issues.

For these reasons Public Charters will, as proposed, have no minimum group size requirement.

#### CANCELLATION PROVISIONS

The proposal was to prohibit any cancellations by the tour operator later than 15 days before the departure date, or by the air carrier later than 30 days before the departure date, except for occurrences entirely beyond their control. The notice also asked for comment on the possibility of not imposing such a requirement, but instead requiring clear disclosure of the operator's cancellation policy.

The Federal Trade Commission opposed the proposed ban on late cancellations, favoring a strong notice provision to warn participants, while the Departments of Justice and Transportation supported the proposal with respect to the tour operator. NACA opposed a restriction on carriers, pointing out that there are many circumstances beyond the control of a carrier that would force it to cancel a flight. ACTOA argued that a prohibition on cancellation during the last 15 days, where there is no advance booking period, presents a painful choice to a tour operator experiencing marginal underparticipation, which could be costly to him either way if his projection of sales during the last 15 days is incorrect.

There was little support for the proposed ban on carrier cancellation, and it does not appear that there would be many cases of carrier cancellation during the last few days before flight time for reasons other than occurrences outside the carrier's control. The rule will therefore contain no such prohibition.

The proposal regarding tour operator cancellations poses a more difficult policy choice. There is no question that last-minute cancellation can create a real hardship for many participants. This is evidenced by the fact that in this area the operator-participant contracts are frequently more consumer-protective than the rule itself, which currently prohibits cancellations within the last 15 days for ABC's and OTC's. On the other hand, there are also costs to the consumer in an overly protective rule. There might well be a significant number of instances in which a tour operator, acting conservatively, cancels a tour at the deadline date that would have been sufficiently filled to operate if he had had the option of waiting. Even cancellations 15 days before flight time are inconvenient to many travelers. Furthermore, the restriction itself imposes a finite cost on some opera-

tors, which must be reflected in the price offered to the public.

Since charters are but one form of low-cost transportation available to the public, the Board is mainly concerned that the public be aware of all aspects of what it is buying, so that it can shop intelligently for its travel services. A consumer-protection proposal that will deal with these matters of proper notice and cancellation periods, among other things, will soon be issued in docket 29165. To establish a core of protection against gross inconvenience, we have decided to retain a prohibition against late cancellation, but to shorten the period from 15 to 10 days before departure.

To express more clearly the intent of the proposal, the exception to the prohibition is reworded as "circumstances that make it physically impossible to perform the charter trip." The essence of the requirement is not the degree of control over the circumstances, but the effect they have on performance. Thus, a severe storm that caused a financial loss to the charter operator would normally be considered an "act of God" beyond his control, but it would not be an excuse for nonperformance unless it prevented the trip from being performed, for example by damaging aircraft that could not be replaced in time by either the direct air carrier or the charter operator.

Comment was requested on the question whether to impose a maximum fee for cancellation by participants. The Government respondents divided on the issue, with FTC and HEW in favor, while the Departments of Transportation and Justice opposed it. All expressed reservations on the subject, however. The travel-related businesses that discussed the question also were divided.

We have decided not to place any limit on the penalty or fee imposed on canceling participants. It is true that changes of plans by participants, for reasons of varying urgency, are not uncommon, and that inability to back out of a charter contract without a substantial penalty can be a hardship. But the bilateral contract is the essence, legally and commercially, of the charter concept. The degree to which the operator depends on stringent penalties to hold his participants varies widely, of course; but the fact that they are bound to some extent is one of the main factors that enables the operator to figure his costs and his load factors closely and offer truly low-priced transportation. For the potential charter travelers who want more protection, trip cancellation insurance is available, and the Board is planning steps to make its availability more widely known. To impose a ceiling on cancellation penalties would be

in effect to require all participants to pay for a sort of cancellation insurance in the form of higher charter prices. We have decided that imposing such protection, which many participants may not feel they need and would therefore prefer not to pay for, is not in the public interest.

As proposed, the rule will require the charter operator to accept any substitutes procured by the participants, and allow the operator to find substitutes for participants who wish to cancel, in both cases requiring a full refund except for an administrative fee of not more than \$25.

#### SUMMARY OF FEATURES

Other than the issues discussed above, little or no comment was received opposing the individual aspects of the proposed changes except as they might affect the legality of the rule. As part of the general decision, therefore, to proceed with the Public Charter, for reasons set forth in the notice of proposed rulemaking and elsewhere in this issuance, the Public Charter rule will have the following features:

- No advance booking requirement.
- No minimum stay.
- No restrictions on differential pricing, other than the general strictures against undue preferences, discriminations, prejudice, etc., contained in the Federal Aviation Act and the parallel provisions in the Board's regulations.
- One-way charters permitted, but not round trips paid for in advance with unspecified return arrangements.
- Cancellation by the charter operator not permitted less than 10 days before the scheduled departure date, except in circumstances that make it physically impossible for the charter to be performed.
- No maximum participant cancellation penalty.
- No minimum group size.
- Contract between charter operator and direct air carrier must be for at least 20 seats per flight.

#### DETAILS

A. The proposal included a section that in effect carried forward the special features of the Study Group Charter (14 CFR Part 373) as they applied to educational institutions, eliminating the need for filing a prospectus and for a bond/escrow fund protection system. No opposition was presented to that proposal. It was pointed out, however, that the proposal appeared to restrict the application of the provisions more than the present part 373, in that it applied to educational institutions the study group requirement of 15 classroom hours per week, which appears now only as part of an alternative test for SGC's that are not run by educational institutions. The anomaly was a drafting error, which is corrected in the rule as issued.



B. The blanket waiver of several of the charter requirements, issued April 19, 1978, order 78-4-122, allows payment for split charters to be made to the direct air carrier 15 days, rather than the previous 30 days, before departure. This change was made on the basis of our judgment that no important purpose was being served by such a long leadtime for payment, and that the cancellation deadline was a more reasonable point at which to require payment. That change was made after the proposal, and so was not included in it. In this rule, we are including a similar provision, with payment required at 10 days before departure for a split charter, to coincide with the new deadline for cancellation. Since this change relieves a restriction and imposes no significant additional burdens, and it is important to specify the rules without undue delay, we find that notice of proposed rulemaking on this point is unnecessary and not in the public interest.

C. Special Event Charters, formerly a subcategory under One-Stop-Inclusive Tour Charters (14 CFR Part 378a), were represented by a section in the proposed Public Charter rule. The purpose of the section is to allow charters to be run on short notice; i.e., without the 15-day leadtime otherwise required for review of the prospectus, for events of a nature such that the 15-day leadtime would cause marketing difficulties. No objections were received to this section, so it will appear as proposed in the new rule.

D. Because of our decision to provide a forward effective date of January 1, 1979, for revocation of the existing Special Regulation Charters, the Public Charter rule will have to appear in a form different from the one proposed, an amendment of part 371, Advance Booking Charters. Public Charters will be in the form of a new part 380 in title 14, Code of Federal Regulations.

E. The final rule continues the provisions permitting reduced-rate or free transportation to travel agents until December 27, 1979, the time originally established for Advance Booking Charters in §371.15 of this chapter. The Public Charter does not, however, include a requirement that tour operators file passenger lists of travel agents traveling at reduced rates. Through an oversight this change from the provisions of part 371 (§371.25a, passenger list for travel agents) was not included in SPDR-64. The list requirement was designed to protect the integrity of the advance purchase period required by some charters (e.g., SPR-136, 42 FR 56722, October 28, 1977), but not by the Public Charter. Under §380.50 of the Public Charter, tour operators must periodically report reduced rate trans-

portation furnished to travel agents. The time of reporting has been clarified in §380.50(c). Since this provision relieves a restriction for which there is no further purpose, we find that notice of proposed rulemaking is unnecessary.

F. Sections 380.30, .31, and .33 are being reserved for consumer-protective provisions soon to be proposed in docket 29165.

G. Because the Public Charter rule contains no advance booking or passenger list requirement, the rulemaking proceeding in docket 29285 (SPDR-48, 41 FR 37342, September 3, 1976), concerning verification of passenger identity for these purposes, is terminated.

H. The language of §380.20, exemption, is reworded slightly to conform to the decision in *U.S. Tour Operator Association v. TWA*, 77-Civ. 911 (S.D.N.Y. 1978), to the effect that the exemption from the certification and related provisions of the act, which allows tour operators to act as indirect air carriers, is conditioned on compliance with the Board regulations.

I. The charter report that has been a part of the other Special Regulation Charters (e.g., §371.50(b)) will not be required for Public Charters, since the Board has not found the report to be sufficiently useful to justify its costs.

J. The provisions of §380.11 concerning notice to participants of cancellation are being elaborated over what was proposed, to specify that for a cancellation less than 10 days before scheduled departure, notice must be given as soon as possible but in any event before the scheduled time of departure.

K. The Department of Defense, Military, and the Davis Agency urged the Board to remove the geographical limitation on the availability of Overseas Military Personnel Charters and to broaden the eligibility requirements for participation in them. This aspect of the Board's regulations, however, is being considered in a separate proceeding, docket 32389, in response to a petition from Military, and action on the petition will be taken in the near future.

#### O'MELIA, MEMBER, SEPARATE STATEMENT

When the Board issued its notice of proposed rulemaking in March of this year I attached to it a separate statement concurring with the effort to see what further liberalizations could be made in our charter regulations. However, I reserved my position, indicating my fear that we might be breaching our statutory duty to maintain a distinction between scheduled and charter services, and urged that in moving to a final rule we should demonstrate sensitivity to the comments

of interested parties, especially those of aviation authorities in key tourism destination countries abroad.<sup>1</sup> I have no assurances that in issuing this final rule we have satisfied either one of my two concerns. The question of the lawfulness of the new charter concept remains an unsettled issue; this irrespective of whether either the courts or the Congress acts to restrain the Board in what many must perceive as a relentless drive to eliminate the charter concept altogether. As to the second concern, those who opposed the proposed change—particularly the foreign governmental officials<sup>2</sup>—can hardly feel that their views were heeded, since the final rule is in all essential respects identical to the proposed model.<sup>3</sup>

Nevertheless, I have concluded that I must support the adoption of the Public Charter mode. The deep-discount fares of scheduled carriers are threatening the viability of supplemental operations; removing unnecessary, arbitrary restrictions on supplemental carriers is in keeping with Board policy and should better enable them to compete with low-fare scheduled operations. Long-run considerations of the air transportation industry give further support to the Board's adoption of the Public Charter, which constitutes a single, simple charter mode flexible enough to meet varying needs.

However, I do not think the Board should abolish the existing ABC, OTC, ITC, TGC, and SGC charter forms on January 1, 1979, as provided in this final rule. Several of the parties commented that existing charter forms should be retained either for a longer specific period of time or for an indefinite period.<sup>4</sup> I am gratified to note

<sup>1</sup>In my concurring statement I also noted my disappointment that the Board had not similarly proposed an equivalent relaxation of restrictions for part 372, Overseas Military Personnel Charters. On April 11, 1978, after the issuance of the NPRM, Military filed a petition to review the OMPC charters. In keeping with the Board's liberalization of charter rules, I urge the Board to proceed without further delay to consider OMPC liberalization.

<sup>2</sup>The following foreign governments, foreign official entities, and foreign carriers (who also represent the views of foreign governments because they are state controlled) unanimously opposed the Public Charter concept: Switzerland, the Federal Republic of Germany, Portugal, Ireland, France, The European Civil Aviation Conference (ECAC), Aer Lingus, Lufthansa, British Airways, Air Canada, Japan Air Lines, SAS, Swissair, Air Jamaica.

<sup>3</sup>I do note that the Board, in response to the overwhelming support in favor of retaining "affinities", has decided to abandon its proposed abolition of this charter form.

<sup>4</sup>See American Automobile Association reply comments on EDR-348, SPDR-64, May 16, 1978, at 7; American Institute for foreign study comments on EDR-348,

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that the Board, in calling for the termination of those other modes next January, drew back from the immediate abolition of existing character modes that had apparently been the intention in March. While a January 1, 1979, abolition date is a step in the right direction, it does not provide sufficient time to adjust to the Public Charter that the Board acknowledges is in the public's interest. I would retain these charter forms for 2 years, as DOT has suggested.

The Board should now take the same common sense approach we took when promulgating the ABC rules. It was then that we decided, "not to eliminate other charter types until it (the Board) undertakes a more thorough-going review of the charter rules and operations, generally, in light of experience gained under the ABC rule."<sup>5</sup> The Board did this so we would have something to fall back on in case of a successful legal challenge and because this allowed as to harmonize more effectively our international bilateral relationships. These same two considerations are similarly applicable here, in light of the realities of the present liberalization.

In our negotiations with foreign governments, U.S. negotiators should make clear that we are seeking full acceptance of the Public Charter concept.<sup>6</sup> However, if one of our goals is to avoid the more restrictive charter rules of foreign governments, then it would be to our advantage to keep existing charter forms on the books. We

would do this in the hope of obtaining country-of-origin provisions as to these charter forms with those countries that cannot or will not immediately accept the Public Charter.<sup>7</sup> The Public Charter lessens the likelihood that country-of-origin agreements will be readily accepted. By obtaining country-of-origin provisions as to existing charter forms, we would still be moving in the direction of a freer charter environment and would then be in a better position after one or two seasons of experience to press again for acceptance of the Public Charter.

It is, of course, true that elimination of existing modes would simplify the existing body of charter rules. However, it should be noted that in a number of bilateral agreements ABC's, OTC's, ITC's, etc. are mentioned by name. I can see foreign governments looking at the understandings they have negotiated with the United States—formal understandings specifying those charter modes—and wondering what those agreements are worth when the Board has unilaterally abolished the named charters. A balancing of considerations leads me to conclude, as it did many of the interested parties, that the desirability of eliminating existing modes, simply to bring about administrative simplification, is outweighed by the benefits to be gained from retaining existing charter modes until such time as we have the opportunity to review the experience we have had under the Public Charter.

As the year progresses we will be able to see the effect of this charter amendment on our bilateral relationships and on air transport operations. I would hope the Board would at that time reevaluate the abolition of existing charter modes, and extend the time or modify it as circumstances may warrant.

RICHARD J. O'MELIA.

Accordingly, the Civil Aeronautics Board adds a new Part 380, Public Charters, to its special regulations in Title 14, Code of Federal Regulations, to read as set forth below. The Board finds that because these amendments relieve restrictions and public benefit will be derived from putting them into effect without delay, an immediate effective date is in the public interest. However, § 380.43 and § 380.50(c) are subject to review by the Comptroller General, and therefore are effective on October 10, 1978.

#### Subpart A—General Provisions

<sup>7</sup>In my concurring and dissenting statement in SPR-142, I expressed my belief that it is important to obtain country-of-origin charter agreements with principal charter destination countries. Chairman Kahn separately expressed his agreement with those views.

- Sec.
- 380.1 Applicability.
- 380.2 Definitions.
- 380.3 Waivers.
- 380.4 Enforcement.
- 380.5 Procedures for imposition of limitations and restrictions on Public Charter operations.
- 380.6 Computation of time.

#### Subpart B—General Conditions and Limitations

- 380.10 Public Charter general requirements.
- 380.11 Payment to direct air carrier(s).
- 380.12 Cancellation by charter operator and notice to participants.
- 380.13 Prohibition on sale of round trips with open returns.
- 380.14 Unused space.
- 380.15 Substitution for charter participants.
- 380.16 Free and reduced-rate transportation for travel agents.
- 380.17 Charters conducted by educational institutions.
- 380.18 Charters for special events.

#### Subpart C—Requirements Applicable to Charter Operators

- 380.20 Exemption.
- 380.21 Approval of certain interlocking relationships.
- 380.22 Effect of exemption on antitrust laws.
- 380.23 Charters that originate in a foreign country.
- 380.24 Suspension of exemption authority.
- 380.25 Operating authorization of charter operators.
- 380.26 Discrimination.
- 380.27 Methods of competition.
- 380.28 Charter prospectus.
- 380.29 Charter contract.
- 380.30 [Reserved.]
- 380.31 [Reserved.]
- 380.32 Contract between charter operator and charter participants.
- 380.33 [Reserved.]
- 380.34 Surety bond and depository agreement.
- 380.35 Disbursements from depository account.
- 380.36 Record retention.

#### Subpart D—Requirements Applicable to Direct Air Carriers

- 380.40 Charter not to be performed unless compliance with part.
- 380.41 Tariffs to be on file for charter trips.
- 380.42 Public Charters operated for foreign charter operators.
- 380.43 Record retention.

#### Subpart E—Charter Trip Reporting Requirements

- 380.50 Charter trip reporting.

Appendix A.

AUTHORITY: Secs. 101(3), 204, 401, 402, 407, 416, and 1102 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, 766, 771, 797; 49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386, and 1502.

#### Subpart A—General Provisions

##### § 380.1 Applicability.

This part establishes the terms and conditions governing the furnishing of

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SPDR-64, April 26, 1978, at 5; Arthur's Travel Center reply comments on EDR-348, SPDR-64, May 16, 1978, at 2; DOT reply comments on EDR-348, SPDR-64, May 10, 1978 at 3; Las Vegas Parties comments on EDR-348, SPDR-64, April 26, 1978, at 3; NACA comments on EDR-348, SPDR-64, April 26, 1978, at 12.

The DOT argued for the retention of charter modes for 2 years. "The status of bilateral air negotiations is in flux, and it is unrealistic to expect overnight familiarity on the part of intermediaries as to which countries will accept public charters and which will not." DOT went on to say, "This [retention of existing charter modes for 2 years] will give government negotiators sufficient time to attempt to obtain the acceptability of public charters at major international destinations without unnecessary delay in obtaining the goal of having one basic charter form." *Id.*

<sup>5</sup>SPR-110, October 7, 1976, at 15.

<sup>6</sup>I agree with the Board that foreign countries' reaction to the Public Charter may not be any different from their reaction to previous U.S. charter liberalizations. The problem facing many foreign countries, in addition to policy considerations, is the requirement their statutes impose on them to preserve the distinction between scheduled and charter operations. They do not view the Public Charter as maintaining this distinction, and seem somewhat more inclined that we are to honor the spirit as well as the letter of that requirement.



Public Charters in air transportation by direct air carriers and foreign air carriers and by Public Charter operators. This part also relieves such charter operators (other than foreign charter operators) from various provisions of title IV of the Federal Aviation Act of 1958, as amended, for the purpose of enabling them to provide Public Charters utilizing aircraft chartered from such direct carriers. It also contains a limited declaration of exercise of jurisdiction over foreign charter operators. The provisions of this regulation over foreign charter operators. The provisions of this regulation shall not be construed as limiting any other authority to engage in air transportation issued by the Board. Nothing contained in this part shall be construed as repealing or amending any provisions of any of the Board's regulations, unless the context so requires.

#### § 380.2 Definitions.

As used in this part, unless the context otherwise requires—

"Act" means the Federal Aviation Act of 1958, as amended.

"Charter" means a Public Charter.

"Charter group" means an aggregate of persons assembled by a charter operator or a foreign charter operator for the purpose of participation on a single itinerary in a Public Charter.

"Charter operator" means a Public Charter operator.

"Charter participant" means a member of a charter group.

"Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States, of which the president and two-thirds or more of the board of directors and other managing officers are such individuals and in which at least 75 percent of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

"Direct air carrier" means (1) an air carrier holding a certificate of public convenience and necessity issued pursuant to section 401 of the act, or (2) a foreign air carrier which holds a permit issued under section 402 of the act authorizing direct air transportation.

"Educational institution" means a bona fide school or college which (1) maintains a full-time salaried faculty on a year-round basis; (2) maintains a permanent educational plant, including classrooms and a library; (3) maintains a greater enrollment of students in noncharter programs than in charter programs; (4) receives no more than 10 percent of its total revenue

from payments for charter flights and related ground accommodations; (5) is empowered to grant college degrees or secondary school diplomas by the government of one of the 50 States, the District of Columbia, or a U.S. territory or possession, and offers a full course of study meeting all the requirements for such degree or diploma; and (6) is so constituted in the utilization of capital, physical plant and personnel as to be primarily engaged in the educational process when viewed against all other activities or businesses.

"Foreign charter operator" means any person not a citizen of the United States, as defined in this section (other than a direct foreign air carrier), who is (1) engaged in the formation of groups for transportation on Public Charters which originate in a foreign country and over whom the Board has declined to exercise its jurisdiction, or (2) engaged in the formation of groups for transportation on Public Charters which originate in the United States and who holds a permit issued pursuant to section 402 of the act authorizing such transportation: *Provided, however,* That with respect to §§ 380.21, 380.24, 380.25(a) (1) and (2), 380.26-36 and 380.50, the definition for "foreign charter operator" is confined to the definition set forth in subparagraph (2) of this definition.

"Foreign educational institution" means an educational institution located in a foreign country that is (1) empowered to grant college degrees or secondary school diplomas by the government of that foreign country, and (2) operated as a school on a year-round basis.

"Itinerary" means all the components of a charter package, as described in the prospectus, including not only the points named therein but also all hotels, and other ground accommodations and services described therein.

"Public Charter" means a one-way or round-trip charter to be performed by one or more direct air carriers, which is arranged and sponsored by a charter operator and which meets the requirements set forth in subpart B of this part.

"Public Charter operator" means (1) any citizen of the United States, as defined in this section (other than a direct air carrier), who is authorized hereunder to engage in the formation of groups for transportation on Public Charters in accordance with the provisions of this part; or (2) a foreign charter operator.

"Round trip" refers to any round, open-jaw, or circle trip which includes an inbound flight returning to a point no more than 50 air miles from the point of origin.

"Travel agent" means a person (a) who is employed full time in a travel

agency, (b) who has been in the continuous employment of such agency at least 12 months, and (c) who devotes his employment time in the agency primarily to the promotion and sale of transportation and related services.

#### § 380.3 Waivers.

A waiver of any of the provisions of this part may be granted by the Board upon its own initiative, or upon the joint submission by a direct air carrier and a charter operator of a written request therefor not less than 30 days prior to the flight to which it relates, provided that such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein. Notwithstanding the foregoing, waiver applications filed less than 30 days prior to a flight may be accepted by the Board in emergency situations in which the circumstances warranting a waiver did not exist 30 days before the flight.

#### § 380.4 Enforcement.

In the case of any violation of the provisions of the act, or of this part, or any other rule, regulation, or order issued under the act, the violator may be subject to a proceeding pursuant to sections 1002 and 1007 of the act before the Board or a U.S. district court, as the case may be, to compel compliance therewith, to civil penalties pursuant to the provisions of section 901(a) of the act, or to criminal penalties pursuant to the provisions of section 902 of the act, or other lawful sanctions.

#### § 380.5 Procedures for imposition of limitations and restrictions on Public Charter operations.

(a) Whenever in the opinion of the Board there are reasonable grounds to believe that the operation of Public Charters to or from any point or in any city-pair or pairs may have a detrimental effect on the public interest, the Board may, on its own initiative or in response to a petition therefor, issue an order directing all interested persons to show cause why the Board should not impose a limitation on the number of Public Charters that may be operated to or from the point or points, or in the city-pair or pairs, or should not impose other or additional restrictions on Public Charter operations in respect to the point or points or city-pair or pairs.

(b) Petitions seeking the issuance of such an order to show cause may be filed by any person. Answers to such petitions are permitted, but a failure to file an answer shall not prejudice anyone. Each such petition and any answer thereto shall conform to the requirements of § 302.3 of the Board's rules of practice. Copies of such peti-



tions and answers shall be served on such persons as the Director, Bureau of Pricing and Domestic Aviation, or his designee, shall direct.

(c) Comments in opposition to or in support of the issuance of an order as proposed in the order to show cause, and reply comments if authorized by the order to show cause, shall be filed with the Board by the date and served upon the persons specified in the order to show cause.

(d) A final order of the Board imposing such limitations or restrictions on the operation of Public Charters as the public interest may require, or, if it would not be in the public interest to impose any limitation or restriction, terminating the proceeding shall thereafter be issued: *Provide, however*, That the Board may from time to time conclude, in its discretion, that a hearing is warranted in order to best determine whether limitations or restrictions should be imposed on the operation of Public Charters to or from any point or points or in any city-pair or pairs: *And provided, further*, That in the event a hearing is ordered, the Board may impose interim limitations or restrictions, *pendente lite*.

(e) Notwithstanding the foregoing, when in the judgment of the Board the public interest so requires, the Board shall by order forthwith impose a limitation on the number of Public Charters that may be operated to or from a point or points, or in a city-pair or pairs, or impose other or additional limitations and restrictions on Public Charter operations in respect to the point or points or city-pair or pairs.

#### § 380.6 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is to be included.

### Subpart B—General Conditions and Limitations

#### § 380.10 Public Charter general requirements.

Public Charters under this part shall meet the following requirements:

(a) The charter shall be arranged and sold by a charter operator as an independent principal with respect to the air transportation included in the charter and not as an agent for a direct air carrier. Such charter may, but need not, include ground accommodations and services.

(b) The charter contract must be for 20 or more seats.

(c) If the charter is on a round-trip basis, the departing flight and returning flight need not be performed by the same direct air carrier.

(d) The air transportation portion of the charter must be performed by direct air carriers which hold a certificate of public convenience and necessity under section 401 of the act or a permit under section 402 of the act.

(e) Passengers transported on the charter flight shall consist solely of charter participants (including travel agents being carried in accordance with § 380.16), and persons authorized to occupy unused space in accordance with § 380.14.

#### § 380.11 Payment to direct air carrier(s).

The direct air carrier(s) shall be paid in full for the cost of the charter transportation (for both legs, if a round-trip charter) prior to the scheduled date of flight departure, as provided for in the basic charter regulations applicable to the direct air carrier(s) under parts 207, 208, 212, and 214 of this chapter, as the case may be.

#### § 380.12 Cancellation by charter operator and notice to participants.

(a) The charter operator may not cancel a charter for any reason (including insufficient participation), except for circumstances that make it physically impossible to perform the charter trip, less than 10 days before the scheduled date of departure of the outbound trip.

(b) If the charter operator cancels a charter 10 or more days before the scheduled date of departure, the operator must so notify each participant in writing within 15 days after the cancellation but in any event not less than 10 days before the departure date of the outbound trip. If a charter is canceled less than 10 days before departure (i.e., for circumstances that make it physically impossible to perform the charter trip), the operator must notify each participant as soon as possible but in any event before the scheduled time of departure.

#### § 380.13 Prohibition on sale of round trips with open returns.

The charter operator shall not accept any participant's payment for return transportation unless the participant has specified a particular return flight.

#### § 380.14 Unused space.

Nothing contained in this part shall preclude a charter operator from utilizing any unused space on an aircraft chartered by it for a Public Charter for the transportation, on a free or reduced basis, of such charter operator's employees, directors, and officers, and parents and immediate families of such persons, subject to the provisions of part 223 of this chapter.

#### § 380.15 Substitution for charter participants.

Substitutes may be arranged for charter participants at any time preceding departure. Participants who provide the charter operator or its sales agent with a substitute participant, or who are substituted for by a participant found by the operator, shall receive a refund of all moneys paid to the operator, except that the operator may reserve the right to retain an administrative fee not to exceed \$25 for effecting the substitution.

#### § 380.16 Free and reduced-rate transportation for travel agents.

Until December 27, 1979, charter operators may provide free or reduced-rate transportation on charters operated pursuant to this part, on a space-available basis or otherwise, to travel agents as defined by § 380.2. If a travel agent replaces a canceling charter participant, the participant shall be given a refund in accordance with § 380.15.

#### § 380.17 Charters conducted by educational institutions.

(a) This section shall apply only to charters conducted by educational institutions for charter groups comprised of bona fide participants in a formal academic course of study abroad which is of at least 4 weeks duration. The charter group may also include a student participant's immediate family (household members who are either married to or minor dependents of the student participant). Except as modified below, all terms and conditions of this part applicable to the operation of Public Charters shall apply to charters conducted by educational institutions.

(b) An educational institution conducting such a charter shall submit to the Board (Special Authorities Division, Bureau of Pricing and Domestic Aviation) a statement, signed by its president, certifying that it meets the definition of "educational institution" set forth in § 380.2.

(c) An educational institution conducting such a charter need not comply with the requirements of §§ 380.25, 380.28, 380.34, and 380.35.

#### § 380.18 Charters for special events.

(a) This section shall apply to charters that cannot reasonably be organized sufficiently far in advance of the date of a special event to be operated in compliance with § 380.25 of this part. "Special event" means a significant specific event, including events of a sporting, social, religious, educational, cultural, or political nature, and is not sponsored by a direct air carrier. In determining whether any given event shall be considered a special event for purposes of



this section, the Board will consider, along with other relevant factors, how long in advance of the date of the event it was publicly known, the participants, could be ascertained, and its significance became publicly recognized.

(b) Except as modified by paragraphs (c), (d), and (e) this section, all terms and conditions of this part applicable to the operation of Public Charters shall apply to operations under this section.

(c) The charter operator shall include with its prospectus a description of the event, including information necessary to determine the eligibility of the event.

(d) The charter group shall be comprised solely of persons having the common purpose of attending the special event.

(e) The 15-day waiting period specified in § 380.25(a)(1) of this part shall not apply to operations under this section to the extent that it would prohibit advertising or sale of the charter after the Board has notified the charter operator that advertising or sale may begin.

#### Subpart C—Requirements Applicable to Charter Operators

##### § 380.20 Exemption.

Charter operators (other than foreign charter operators) are hereby relieved from the following provisions of title IV of the Federal Aviation Act of 1958, as amended, only if and so long as they comply with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit them to organize and arrange Public Charters:

Section 401.

Section 403.

Section 404(a), except the requirement to provide adequate service in connection with Public Charters operated hereunder.

Section 405(b).

Section 407 (b) and (c).

Sections 408(a) and 409, except control of interlocking relationships with direct air carriers.

Section 412.

##### § 380.21 Approval of certain interlocking relationships.

To the extent that any officer or director of a charter operator would be in violation of any of the provisions of section 409(a) (3) and (6) of the Act by participating in interlocking relationships covered by the exemption granted by § 380.20, such participation is hereby approved by the Board.

##### § 380.22 Effect of exemption on antitrust laws.

The relief granted by § 380.20 and § 380.21 from sections 408, 409, and 412 of the Act shall not constitute an order under such sections within the

meaning of section 414 of the Act and shall not confer any immunity or relief from operation of the "antitrust laws" or any other statute (except the Act) with respect to any transaction, interlocking relationship, or agreement otherwise within the purview of such sections.

##### § 380.23 Charters that originate in a foreign country.

(a) The Board declines to exercise jurisdiction over foreign charter operators with respect to Public Charters which originate in a foreign country. The Board reserves the right to exercise its jurisdiction over any foreign charter operator at any time it finds that such action is in the public interest.

(b) Notwithstanding the other provisions of this part, a charter operator who is a citizen of the United States shall not be subject to the following requirements with respect to Public Charters that originate in a foreign country:

Sections 380.25(a) (1) and (2); 380.28; 380.32; 380.34; 380.35.

##### § 380.24 Suspension of exemption authority.

The Board reserves the power to suspend the exemption authority of any charter operator, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public.

##### § 380.25 Operating authorization of charter operators.

A charter operator is authorized hereunder to organize and operate a Public Charter only in accordance with the provisions of this part, and subject to the following conditions:

(a) (1) No charter or series of charters shall be operated, nor shall any charter operator or foreign charter operator sell, or offer to sell, or solicit persons to participate in, or otherwise advertise such charter or charters, or receive any money from any prospective participant in connection therewith, until at least 15 days after he and the direct air carrier have jointly filed with the Board (Special Authorities Division, Bureau of Pricing and Domestic Aviation), in duplicate a Public Charter prospectus satisfying the requirements of § 380.28: *Provided, however*, That if during the 15-day period following filing hereunder the charter operator or foreign charter operator has been notified that the Board has rejected such statement for noncompliance with this part, then he shall not sell, offer to sell, solicit, or advertise such charter until he has subsequently been notified by the Board that such filing has been accepted. If a series of charters is to be performed for one charter opera-

tor or foreign charter operator pursuant to one charter contract the prospectus may cover the entire series, provided the elapsed time between the commencement of the first charter and the departure of the last charter shall not exceed 180 days.

(2) Except as specified in paragraph (a)(3) of this section, no change in the facts reflected in a filed prospectus shall become effective until at least 15 days after the charter operator or foreign charter operator and the direct air carrier have jointly filed with the Board (Special Authorities Division, Bureau of Pricing and Domestic Aviation), in duplicate, an amended prospectus reflecting such change, unless he has been notified by the Board that such change may become effective sooner: *Provided, however*, That if during the 15-day period following filing of an amended prospectus hereunder, the charter operator or foreign charter operator has been notified that the Board has rejected such amended prospectus for noncompliance with this part, then such change shall not become effective until he has subsequently been notified by the Board that such filing has been accepted: *And provided, further*, That the direct air carrier need not join in the filing of an amended prospectus which reflects only such change or changes as do not involve air transportation or services in connection therewith which are to be provided by such direct air carrier. Deviations from the prospectus may not be made except where they are beyond the control of the carrier or the operator, and there is insufficient time to file an amended prospectus.

(3) The 15-day waiting period specified in paragraph (a)(2) this section shall not apply to charter price increases or decreases, changes in hotel accommodations, sightseeing arrangements, meal plans, and the order in which cities are visited, but such changes shall be filed not later than 5 days following such change.

(b) Not later than the scheduled date of departure, the charter operator shall transmit to the direct air carrier(s) a statement of the charter operator affirming that each participant has entered into a contract with the operator as provided in this part.

##### § 380.26 Discrimination.

No charter operator shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever, or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable



prejudice or disadvantage in any respect whatsoever.

**§ 380.27 Methods of competition.**

No charter operator shall engage in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof.

**§ 380.28 Charter prospectus.**

The Prospectus shall be filed in duplicate and shall include two copies of the following: The charter contract, the contract between the charter operator or foreign charter operator and charter participants, the charter operator's or foreign charter operator's surety bond (an original bond and a copy thereof), and, where applicable, two copies of the depository agreement with a bank as provided in § 380.34. It shall also contain the following information:

- (a) Name and address of the charter operator or the foreign charter operator;
- (b) The proposed date and time of each flight;
- (c) Equipment to be used, including the aggregate number of each type of aircraft and capacity;
- (d) The tour itinerary, if any, including hotels (name and length of stay at each), and other ground accommodations and services;
- (e) The charter price per passenger and, if the charter trip includes a tour package, the tour price per passenger;
- (f) The number of persons expected to participate in the charter;
- (g) Charter price of the aircraft; and
- (h) Samples of solicitation material proposed by the charter operator or foreign charter operator (all sales advertising and solicitation materials employed by the charter operator or foreign charter operator shall state the name of the direct air carrier to be utilized).

**§ 380.29 Charter contract.**

The charter contract between the charter operator or foreign charter operator and the direct air carrier shall evidence a binding commitment on the part of the carrier to furnish the air transportation required for the trip or trips covered by the contract.

**§ 380.30 [Reserved]**

**§ 380.31 [Reserved]**

**§ 380.32 Contract between charter operator and charter participants.**

Where each charter participant receives, or is eligible to receive, the same air transportation and ground accommodations and services, the contract between the charter operator and the charter participants shall be the same, except that this paragraph shall not be construed to prohibit dif-

ferences in charter prices that are consistent with § 380.26 of this part. Contracts between charter operators and charter participants shall include provisions specifically stating:

- (a) Method of payment, e.g., installment payments;
- (b) that trip, health, and accident insurance is available and that upon request the charter operator will furnish details thereof;
- (c) That the charter operator may not cancel the charter less than 10 days before the scheduled departure of the trip, except for circumstances that make it physically impossible to perform the charter trip, that if a charter is canceled 10 or more days before departure the operator must notify each participant in writing within 15 days of the cancellation but in any event not less than 10 days before the scheduled departure date; and that if a charter is canceled less than 10 days before departure (i.e., for circumstances that make it physically impossible to perform the charter trip), the operator must notify each participant as soon as possible but in any event before the scheduled time of departure;
- (d) The right to refunds in the event of cancellation of the charter and the procedure for obtaining such refunds;
- (e) The right to refunds in the event of the participant's change of plans and the procedure for obtaining such refunds, including notice that any participant who wishes to cancel will receive a full refund (less any applicable administrative fee, not to exceed \$25) upon providing a substitute participant to the charter operator or its sales agent, or upon being substituted for by a participant found by the charter operator.

(f) The right to refunds in the event of changes in itinerary and the procedure for obtaining such refunds;

(g) The dollar amounts of the direct air carrier's liability limitations for participants' baggage, as set forth in the direct air carrier's tariffs;

(h) Conditions governing aircraft-equipment substitutions;

(i) The name and address of the surety company issuing the surety bond;

(j) That the charter operator is the principal and is responsible to the participants in making arrangements for all services and accommodations offered in connection with the charter; *Provided, however,* That this requirement shall not preclude the charter operator from expressly providing in such contract that, in the absence of negligence on the part of the charter operator, he is not responsible for personal injury or property damage arising out of the act or negligence of any direct air carrier, hotel, or other persons rendering any of the services

being offered in connection with such charter;

(k) That unless the charter participant files a claim with the charter operator or, if he is unavailable, with the surety, within 60 days after termination of the charter, the surety shall be released from all liability under the bond to such participant (see § 380.34(d)); and

(l) That, when the combined surety bond-depository agreement, as provided in § 380.34(b), is used in connection with the charter, all checks and money orders must be made payable to the escrow account at the depository bank (identifying bank) or, when the charter is sold to the participant by a retail travel agent, checks and money orders may be made payable to the agent, who must in turn make his check payable to the escrow account of the depository bank.

**§ 380.33 [Reserved]**

**§ 380.34 Surety bond and depository agreement.**

(a) Except as provided in paragraph (b) of this section, the charter operator or foreign charter operator shall furnish a surety bond in an amount for not less than the charter price for the air transportation, if only air transportation is involved, or, if the charter involves land accommodations in addition to air transportation, a surety bond in one of the following amounts dependent upon the length of the charter or series of charters: (1) For a charter or series of charters of 14 days or less, a bond in an amount of not less than the charter price for the air transportation to be furnished in connection with such charter or series of charters; (2) for a charter or series of charters of more than 14 days but less than 28 days a bond in an amount of not less than twice the charter price; and (3) for a charter or series of charters of 28 days or more, a bond in an amount of not less than three times the charter price; *Provided, however,* That the liability of the surety to any charter participant shall not exceed amounts paid by that participant to the charter operator with respect to the charter.

(b) The direct air carrier and the charter operator or foreign charter operator may elect, in lieu of furnishing a surety bond as provided under paragraph (a) of this section, to comply with the requirements of paragraphs (b)(1) and (b)(2) of this section, as follows:

(1) A surety bond in the following minimum amounts: (i) If the charter is for air transportation only, a bond in the amount of \$5,000 per charter flight, up to a maximum of \$50,000 for a series of 10 or more flights; or (ii) if the charter involves land accommoda-



tions in addition to air transportation, a bond in the amount of \$10,000 per flight, up to a maximum amount of \$100,000 for a series of 10 or more flights: *Provided, however,* That the liability of the surety to any charter participant shall not exceed the amounts paid by such charter participant to the charter operator with respect to the charter; and

(2) The direct air carrier and charter operator or foreign charter operator shall enter into an agreement with a designated bank, the terms of which shall provide that all deposits by charter participants paid to charter operators or foreign charter operators and their retail travel agents shall be deposited with and maintained by the bank subject to the following conditions:

(i) On sales made to charter participants by charter operators or foreign charter operators the participant shall pay by check or money order payable to the bank; on sales made to charter participants by retail travel agents, the retail travel agent may deduct his commission and remit the balance to the designated bank by check or money order: *Provided,* That the travel agent agrees in writing with the charter operator or foreign charter operator that if the charter is canceled the travel agent shall remit to the bank the full amount of the commission previously deducted or received within 10 days after receipt of notification of cancellation of the charter;

(ii) The bank shall pay the direct air carrier the charter price for the transportation not earlier than 60 days (including day of departure) prior to the scheduled day of departure of the originating or returning flight, upon certification of the departure date by the air carrier: *Provided,* That, in the case of a round trip charter contract to be performed by one carrier, the total round trip charter price shall be paid to the carrier not earlier than 60 days prior to the scheduled day of departure of the originating flight;

(iii) The bank shall reimburse the charter operator or foreign charter operator for refunds made by the latter to the charter participant upon written notification from the charter operator or foreign charter operator;

(iv) If the charter operator, foreign charter operator or the direct air carrier notifies the bank that a charter has been canceled, the bank shall make applicable refunds directly to the charter participants;

(v) After the charter price has been paid in full to the direct air carrier, the bank shall pay funds from the account directly to the hotels, sightseeing enterprises, or other persons or companies furnishing ground accommodations and services, if any, in connection with the charter or series of

charters upon presentation to the bank of vendors' bills and upon certification by the charter operator or foreign charter operator of the amounts payable for such ground accommodations and services and the persons or companies to whom payment is to be made: *Provided, however,* That the total amounts paid by the bank pursuant to paragraphs (b)(2) (ii) and (v) of this section shall not exceed either the total cost of the air transportation, or 80 percent of the total deposits received by the bank less any refunds made to charter participants pursuant to paragraphs (b)(2) (ii) and (iv) of this section, whichever is greater;

(vi) As used in this section, the term "bank" includes a bank, savings and loan association, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(vii) The bank shall maintain a separate accounting for each charter group;

(viii) Notwithstanding any provisions above, the amount of total cash deposits required to be maintained in the depository account of the bank may be reduced by one or both of the following: The amount of surety bond in the form prescribed herein in excess of the minimum bond required by subparagraph (1) of this paragraph; an escrow with the designated bank of Federal, State, or municipal bonds or other securities, consisting of certificates of deposit issued by banks having a stated policy of redeeming such certificates before maturity at the request of the holder (subject only to such interest penalties or other conditions as may be required by law), or negotiable securities which are publicly traded on a securities exchange, all such securities to be made payable to the escrow account: *Provided,* That such other securities shall be substituted in an amount no greater than 80 percent of the total market value of the escrow account at the time of such substitution: *And provided, further,* That should the market value of such other securities subsequently decrease, from time to time, then additional cash or securities qualified for investment hereunder shall promptly be added to the escrow account, in an amount equal to the amount of such decreased value; and

(ix) Except as provided in paragraph (b)(2) (i), (iii), (iv), (v), and (viii) of this section, the bank shall not pay out any funds from the account prior to 2 banking days after completion of each charter, when the balance in the account shall be paid the charter operator or foreign charter operator, upon certification of the completion date by the direct air carrier: *Provided, however,* That if the charter involves air

transportation only and the bank has paid the direct air carrier(s) the charter price for the originating flight, and the returning flight if any, and has paid all refunds due to participants, as provided in subdivisions (ii) and (iii), respectively, of this subparagraph, then the bank may pay the balance in the account to the charter operator upon certification by the direct air carrier performing the originating flight that such flight has in fact departed.

(c) The bond required under paragraphs (a) and (b) of this section shall insure the financial responsibility of the charter operator or foreign charter operator and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the charter operator or foreign charter operator and the charter participants, and shall be in the form set forth as appendix A to this part. Such bond shall be issued by a bonding or surety company (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6; or (2) which is listed in Best's insurance reports (fire and casualty) with a general policyholders' rating of "A" or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the charter originates. For purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. The bond shall be specifically identified by the issuing surety with a company bond numbering system so that the Board may identify the bond with the specific charter or charters to which it relates; *Provided, however,* That these data may be set forth in an addendum attached to the bond, which addendum must be signed by the charter operator or foreign charter operator and the surety company. It shall be effective on or before the date the charter prospectus is filed with the Board. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the direct air carrier and the charter operator or foreign charter operator, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set forth in such notification, the subject charters shall in no event be operated.

(d) The bond required by this section shall provide that unless the charter participant files a claim with the charter operator or foreign charter operator, or, if he is unavailable, with the surety, within 60 days after termination of the charter, the surety shall be released from all liability under the bond to such charter



participant. The contract between the charter operator or foreign charter operator and the charter participant shall contain notice of this provision.

**§ 380.35 Disbursements from depository account.**

No charter operator shall cause its agents or the depository bank to make disbursements or payments from deposits except in accordance with the provisions of this part.

**§ 380.36 Record retention.**

Every charter operator conducting a charter pursuant to this part shall comply with the applicable record-retention provisions of part 249 of this chapter.

**Subpart D—Requirements Applicable To Direct Air Carriers**

**§ 380.40 Charter not to be performed unless compliance with part.**

A direct air carrier shall not perform air transportation in connection with a Public Charter unless it has made a reasonable effort to verify that all provisions of this part have been complied with, and that the charter operator's authority under this part has not been suspended by the Board: *Provided, however,* That where a Public Charter is organized by a foreign charter operator over whom the Board has declined to exercise its jurisdiction, pursuant to § 380.23, no direct air carrier may perform air transportation in connection with such Public Charter unless the charter is formed and implemented in accordance with the general conditions and limitations set forth in subpart B and § 380.42 of this part and the charter operator performs all acts and duties which this part requires to be performed by charter operators within the Board's jurisdiction, other than the provisions set forth in §§ 380.25(a) (1) and (2), 380.28, 380.32-380.36, and 380.50.

**§ 380.41 Tariffs to be on file for charter trips.**

No direct air carrier shall perform any charter trips pursuant to this part unless such air carrier shall have on file with the Board a currently effective tariff showing all rates, fares, and charges for such charter trips.

**§ 380.42 Public Charters operated for foreign charter operators.**

At least 45 days in advance of the date of departure of a foreign-originating charter or series of charters to be operated by a U.S. certificated air carrier or foreign air carrier for a foreign charter operator, such carriers shall file with the Board (Special Authorities Division, Bureau of Pricing and Domestic Aviation) a charter prospec-

tus which shall contain the following information:

- (1) The name and address of the foreign charter operator;
- (2) The proposed date and time of each flight;
- (3) The aircraft type to be used for each flight including the number of seats;
- (4) The charter price for the aircraft;
- (5) The duration of each charter and, if applicable, the tour itinerary, including the names of hotels, and any sightseeing or other arrangements included in the tour; and
- (6) The charter price per passenger, and, if the charter trip includes a tour, the tour price per passenger.

**§ 380.43 Record retention.**

A direct air carrier shall retain the statement transmitted to it pursuant to § 380.25(b) at its principal office within the United States for a period of 2 years, except that if the direct air carrier does not maintain an office in the United States, it shall return the statement to the Bureau of Consumer Protection within 7 days of performing the flight to which the statement pertains.

**Subpart E—Charter Trip Reporting Requirements**

**§ 380.50 Charter trip reporting.**

(a) The direct air carrier shall promptly notify the Board (Special Authorities Division, Bureau of Pricing and Domestic Aviation) regarding any charters covered by a prospectus filed under § 380.28 that are later canceled.

(b) [Reserved]

(c) Within 30 days after December 31, 1978, and within 30 days after the end of each 6-month period thereafter, each charter operator which has transported one or more travel agents pursuant to § 380.16 shall file with the Board (Bureau of Accounts and Statistics) a report identifying each charter (including the CAB identification) on which one or more travel agents were so transported. The report shall show, for each such charter, the name of each agent transported, the price which each agent paid, and the percentage relationship between the price paid and the full price of the charter. The report may be in letter form, shall be clearly identified as a "Charter Operator Free and Reduced-Rate Transportation Report," and shall be signed by the charter operator or by an officer or member thereof. If a charter operator has also transported agents on charters conducted pursuant to part 371, 378, or 378a of this chapter, one report covering all agents so transported may be filed.

NOTE.—The Civil Aeronautics Board is submitting this rule to the Comptroller General for such review as may be appropriate under the Federal Reports Act, 44 U.S.C. 3512. The effective date of the reporting and recordkeeping requirements of this rule accordingly reflects the inclusion of the 45-day period which that statute allows for such review. 44 U.S.C. 3512(c)(2).

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

APPENDIX A

**PUBLIC CHARTER OPERATOR'S SURETY BOND UNDER PART 380 OF THE SPECIAL REGULATIONS OF THE CIVIL AERONAUTICS BOARD (14 CFR PART 380)**

Know all men by these presents, that we \_\_\_\_\_ (name of charter operator) of \_\_\_\_\_, (city) \_\_\_\_\_ as (State) Principal (hereinafter called Principal), and \_\_\_\_\_ (name of surety) a corporation created and existing under the laws of the State of \_\_\_\_\_ (State) as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the sum of \_\_\_\_\_ (see § 380.34(f) Part 380) for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the principal intends to become a Public Charter operator pursuant to the provisions of part 380 of the Board's special regulations and other rules and regulations of the Board relating to insurance or other security for the protection of charter participants, and has elected to file with the Civil Aeronautics Board such a bond as will insure financial responsibility with respect to all moneys received from charter participants for services in connection with a Public Charter to be operated subject to part 380 of the Board's special regulations in accordance with contracts, agreements, or arrangements therefor, and

Whereas this bond is written to assure compliance by the Principal as an authorized charter operator with part 380 of the Board's special regulations, and other rules and regulations of the Board relating to insurance or other security for the protection of charter participants, and shall inure to the benefit of any and all charter participants to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to charter participants any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Principal while this bond is in effect with respect to the receipt of moneys from charter participants and proper disbursement thereof pursuant to and in accordance with the provisions of part 380 of the Board's special regulations, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of the Surety with respect to any charter participant shall not exceed the charter price paid by or on behalf of such participant.

The liability of the Surety shall not be discharged by any payment or succession of



payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Civil Aeronautics Board forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond. The bond shall cover the following charters:<sup>1</sup>

Surety company's bond No. \_\_\_\_\_  
Date of flight departure \_\_\_\_\_  
Place of flight departure \_\_\_\_\_

This bond is effective the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice to the Civil Aeronautics Board at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Board. The Surety shall not be liable hereunder for the payment of the damages hereinbefore described which arise as the result of any contract, agreements, undertakings, or arrangements for the supplying of transportation and other services made by the Principal after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such damages arising as the result of contracts, agreements, or arrangements for the supplying of transportation and other services made by the Principal prior to the date such termination becomes effective. Liability of the Surety under this bond shall in all events be limited only to a charter participant or charter participants who shall within sixty (60) days after the termination of the particular charter described herein give written notice of claim to the charter operator or, if he is unavailable, to the Surety, and all liability on this bond shall automatically terminate sixty (60) days after the termination date of the particular charter covered by this bond except for claims filed within the time provided herein.

In witness whereof, the said Principal and Surety have executed this instrument on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

PRINCIPAL

Name \_\_\_\_\_  
By: Signature and title \_\_\_\_\_  
Witness \_\_\_\_\_

SURETY

Name \_\_\_\_\_  
By: Signature and title \_\_\_\_\_  
Witness \_\_\_\_\_

Only corporations may qualify to act as surety and they must meet the requirements set forth in § 380.34(d) of part 380.

[FR Doc. 78-23160 Filed 8-16-78; 8:45 am]

<sup>1</sup>These data may be supplied in an addendum attached to the bond.

[6320-01]

SUBCHAPTER E—ORGANIZATION  
REGULATIONS

[Reg. OR-130; Amdt. No. 25 to Part 389]

PART 389—FEES AND CHARGES FOR  
SPECIAL SERVICES

Public Charter Rule

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: For the reasons set forth in SPR-149, issued contemporaneously, the Board is amending its charter regulations to replace the ABC, OTC, ITC, TGC, and SGC with a new Public Charter rule (14 CFR Part 380). The regulation governing filing fees is amended to reflect the immediate addition of the Public Charter.

DATES: Adopted: August 14, 1978. Effective: August 15, 1978, and January 1, 1979, as indicated.

FOR FURTHER INFORMATION  
CONTACT:

Richard B. Dyson, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, 202-673-5444.

SUPPLEMENTARY INFORMATION: A full explanation of the issues involved in this rulemaking is set forth in SPR-149, in this issue of the FEDERAL REGISTER. Some of the changes in part 389 reflecting the issuance of the new part 380, Public Charters, are effective immediately. The Board finds that because these amendments create no significant additional burden for any member of the public and public benefit will be derived from putting them into effect without delay, an immediate effective date is in the public interest.

The existing parts 371, 372a, 373, 378, and 378a, which will be superseded by part 380, will be revoked. The revocation is effective January 1, 1979, along with the corresponding amendments to part 389, as indicated below.

AMENDMENTS

The Board amends 14 CFR part 389 as follows:

A. The following change is effective August 15, 1978.

In § 389.25, paragraphs (h) and (j) are amended and a new paragraph (y) is added, to read:

§ 389.25 Schedule of filing and license fees.

(h) Exemptions from section 401, waivers of parts 207, 208, 371, 372, 372a, 373, 378, 378a, and 380, and spe-

cial operating authorizations. The filing fee for an application (1) for an exemption under section 416(b) or section 101(3) of the Act from the provisions of section 401 of the Act (except an application dealing with a specific number of charters) or (2) for a waiver of parts 207, 208, 371, 372, 372a, 373, 378, 378a, or 380 (except an application dealing with a specific number of charters), or (3) for a special operating authorization under section 417 of the Act, is \$300.

(j) Exemptions or waivers for the performance of a specific number of charters. The filing fee for an exemption under section 416(b) or section 101(3) of the Act from the provisions of section 401 of the Act, or a request for a waiver of parts 207, 208, 371, 372, 372a, 373, 378, 378a, or 380, for the performance of a specific number of charters (one-way or round trip) is \$100 plus \$10 for each charter (one-way or round trip) described, subject to a maximum fee of \$300.

(y) Public Charters. The filing fee for each Public Charter prospectus filing under § 380.25 of this chapter is \$50.

B. The following change is effective January 1, 1979.

In § 389.25, Schedule of filing and license fees, paragraphs (l), (m), (n), (o), and (x) are revoked and reserved.

(Secs. 101(3), 204, 401, 403, 404, 407, 411, 416, 1002; 72 Stat. 737, 743, 754, 758, 760, 766, 769, 771, 788 (49 U.S.C. 1301, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1482).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR  
Secretary.

[FR Doc. 78-23173 Filed 8-16-78; 8:45 am]

[3510-25]

Title 15—Commerce and Foreign  
Trade

CHAPTER III—INDUSTRY AND TRADE  
ADMINISTRATION, DEPARTMENT  
OF COMMERCE

PART 377—SHORT SUPPLY  
CONTROLS

Establishment of a Temporary Procedure for Licensing Exports of Residual Fuel Oil From the West Coast

AGENCY: Office of Export Administration, Bureau of Trade Regulation, Industry and Trade Administration, Department of Commerce.



**ACTION: Final rule.**

**SUMMARY:** These regulations establish a temporary procedure under which residual fuel oil refined on the west coast from California-origin crude petroleum may be licensed for export from the west coast without regard to the export quotas currently in effect. This temporary program is one of a number of actions announced by the Department of Energy on June 15, 1978, to stimulate the market for heavy, high-sulfur California crude oil and, through increased refinery utilization, to aid west coast refiners in meeting peak demands for gasoline and other light petroleum products.

**EFFECTIVE DATE OF ACTION:** August 16, 1978.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Converse Hettinger, Director, Short Supply Division, Office of Export Administration, Department of Commerce, Washington, D.C. 20230, telephone 202-377-3795.

**SUPPLEMENTARY INFORMATION:** On February 28, 1978, the Department of Energy announced a number of proposed actions to encourage increased production of heavy California crude oil. Included was a program for the export of residual fuel oil refined on the west coast.

The Department of Energy, with Department of Commerce participation, held public hearings on these proposed actions in Huntington Beach, Calif., on March 30 and 31. After reviewing the testimony submitted at these hearings, the Secretary of Energy announced several actions designed to stimulate the market for heavy, high-sulfur crude oil produced in California. These actions include various changes in the Department of Energy's domestic crude oil entitlements program; a new program to expand domestic markets for California crude oil by providing economic incentives for its transport to refineries in other sections of the country; and a temporary Department of Commerce program to authorize exports of residual fuel oil refined on the west coast from California-origin crude petroleum.

In explaining these actions, the Department of Energy made the following observations:

"The California crude oil market has been depressed for the past 2 years or more for a variety of reasons. Much California crude oil is heavy and sour (i.e. high sulfur) and, when refined, produces substantial quantities of high-sulfur residual fuel oil. The latter is difficult to market on the west coast, where demand is greatest for lighter products such as gasoline, due both to the availability of alternative

sources of energy and because stringent environmental controls on sulfur dioxide emissions restrict the use of high-sulfur residual fuel oil.

This problem has been compounded in recent months by a combination of developments. The landing on the west coast of increasing quantities of North Slope Alaskan crude oil has decreased the demand for California crude. The statutorily mandated increase in crude oil production at the Elk Hills Naval Petroleum Reserve has also decreased demand for other California-origin crude. This led to a number of wells being shut in and to a drop in production of California crudes of approximately 30,000 barrels a day between November 1977 and March 1978. Since both North Slope Alaskan and some Elk Hills crudes are also heavy and sour, their refining yields substantial quantities of high-sulfur residual fuel oil.

At the same time, a relatively mild winter, increased supplies of natural gas, and abundant quantities of hydroelectric power in the wake of heavy rains have combined to reduce California utilities' demand for residual fuel oil by more than 50,000 barrels per day in the latter half of 1977 below the levels of the previous year. As a consequence, stocks of both residual fuel oil and crude oil on the west coast reached abnormally high levels early this year.

The inability of California refiners to market all their residual fuel oil output has resulted in a reduction of total crude oil runs, thus contributing to the decline in California crude oil production. The reduction in crude oil runs has also had the effect of depleting inventories of lighter products such as gasoline, thus requiring expensive movements of gasoline into California from the gulf and east coasts.

Based on the above considerations, the Department of Energy has concluded that a temporary program for the export of residual fuel oil refined on the west coast from California-origin crude petroleum would contribute to an increased demand by refiners for heavy California crude oil and also make available the necessary storage capacity to allow California refiners to increase their crude oil runs and thus their output of gasoline and other light products. The Department of Energy has accordingly recommended to the Department of Commerce the establishment of a temporary program to authorize such exports from the west coast outside the present quota system, subject to the following conditions:

(1) The export will likely permit the refiner(s) of the residual fuel oil which will be exported to increase the refiner(s) crude oil runs or, alternatively, will likely contribute to the ob-

jectives of this temporary program by permitting an increase in west coast crude oil runs generally, thus stimulating the market for heavy, high-sulfur California crude oil; and

(2) The refiner(s) of the residual fuel oil will report the export to the Department of Energy for purposes of adjustment of the volume of the refiners' crude oil runs to stills pursuant to 10 CFR 211.67(d)(2), and the export transaction will result in the standard barrel-for-barrel crude oil run adjustment being made under the Department of Energy's domestic crude oil entitlements program for the quantity of residual fuel oil exported.

After studying the Department of Energy recommendations and supporting rationale, and after consultation with other appropriate Federal agencies, the Department of Commerce has concluded that, under current conditions, the recommended temporary program is in the national interest. The Department has further determined that the recommendations are consistent with the Export Administration Act and the purposes of the Energy Policy and Conservation Act. However, the Department intends to keep this temporary program under continuing review. It will periodically reevaluate in consultation with the Department of Energy its effectiveness in achieving the objectives of the program announced by the Department of Energy on June 15. It will also continue to evaluate the need for the continuation of this program in light of the national interest.

Applications for licenses to export residual fuel oil which do not qualify under this temporary program because the fuel oil was not refined from California-origin crude oil or because they do not otherwise meet one or more of the criteria for approval may be submitted under the unique hardship provision of section 377.3 of the Export Administration Regulations. Among the factors which will be considered in reviewing applications submitted under the unique hardship provisions are the extent to which the applicant's asserted hardship has been caused or aggravated by the California crude oil problem and the extent to which the export would contribute to the objectives of the Department of Energy's program to alleviate the current California crude oil situation.

This action is taken without notice of proposed rulemaking and opportunity for comment because section 8 of the Export Administration Act provides an exemption from the notice of proposed rulemaking and opportunity for comment provisions of the Administrative Procedures Act. Also, because the Department of Energy has already invited public comment and, with Department of Commerce participation,



held public hearings on this issue on March 30 and 31, 1978, in Huntington Beach, Calif., further public comment has been determined not to be necessary. Nevertheless, written comments on the regulations announced herein are solicited on a continuing basis. Interested parties are encouraged to submit written comments, views, and data concerning the regulations to the U.S. Department of Commerce, Office of Export Administration, Attention: Short Supply Division, Room 1617A, 14th and Constitution Avenue NW., Washington, D.C. 20230. All such material should be submitted in quintuplicate.

Accordingly, the Export Administration regulations (15 CFR part 368 et seq.) are amended as follows:

**§ 377.6 [Amended]**

1. A new § 377.6(d)(11) is established to read as follows:

(d) \* \* \*

(11) *Residual fuel oil refined on the west coast from California-origin crude petroleum.* (i) In response to a recommendation from the Secretary of Energy for a temporary period of exports of residual fuel oil refined on the west coast from California-origin crude petroleum, applications to export such residual fuel oil will be considered outside the quota system established in this part 377 if they are accompanied by the supporting documentation required by § 377.6(e)(11) and the applicant (whether or not the refiner) establishes to the satisfaction of the Office of Export Administration that all the following conditions are met:

(A) The residual fuel oil was refined in a west coast State (California, Oregon, or Washington) from California-origin crude petroleum (other than crude petroleum originating in the Elk Hills or Buena Vista Naval Petroleum Reserves);

(B) The export will take place from the west coast;

(C) The residual fuel oil has a sulfur content of 1 percent or more;

(D) The export will likely permit the refiner(s) of the residual fuel oil which will be exported to increase the refiner(s) crude oil runs or, alternatively, will likely contribute to the objectives of this temporary program by permitting an increase in west coast crude oil runs generally, thus stimulating the market for heavy high-sulfur California crude oil;

(E) The refiner(s) of the residual fuel oil will report the export to the Department of Energy for purposes of adjustment of the volume of the refiners' crude oil runs to stills pursuant to 10 CFR 211.67(d)(2), and the export transaction will result in the standard

barrel-for-barrel crude oil run adjustment being made under the Department of Energy's domestic crude oil entitlements program for the quantity of residual fuel oil exported pursuant to this § 377.6(d)(11);

(F) There is no demonstrated domestic need for the residual fuel oil within the marketing area usually served by the refiner of the product to be exported; and

(G) The export is not otherwise inconsistent with the objectives of the petroleum export control program and the national interest.

(ii) Applications which do not meet all the foregoing conditions will be considered either under paragraph (d)(2) of this section, if applicable, but only to the extent of the exporters' quota share for petroleum commodity group G or under the unique hardship criteria set forth in § 377.3 above. Among other factors which will be considered in granting export licenses under the unique hardship provisions of § 377.3 are the extent to which the applicant's asserted hardship has been caused or aggravated by the California crude oil problem and the extent to which the export would contribute to the objectives of the Department of Energy's program to alleviate the current California crude oil situation.

(iii) Each applicant for a residual fuel oil export license under this § 377.6(d)(11) who is receiving entitlement relief from the Department of Energy shall simultaneously submit a copy of each export license application he files under this § 377.6(d)(11) with the Office of Export Administration to:

The Office of Hearings and Appeals, Department of Energy, 2000 M Street NW., Washington, D.C. 20461.

2. A new § 377.6(e)(11) is established as follows:

(e) \* \* \*

(11) *Residual fuel oil refined on the west coast from California-origin crude petroleum.* An application for a validated license to export residual fuel oil refined on the west coast from California-origin crude petroleum without regard to quota restrictions, or under the unique hardship criteria of § 377.3, must be accompanied by the following:

(i) The same documentation required by § 377.6(e)(2);

(ii) An independent inspector's certificate of analysis establishing the sulfur content of the residual fuel oil to be exported (With approval of the Office of Export Administration, submission of this certificate may be deferred until after the export has taken place in order to permit the analysis to be conducted after the residual fuel oil

has been loaded aboard the exporting carrier.);

(iii) An affidavit from the refiner of the commodity to be exported naming the refiner(ies) in which the commodity was produced and setting forth the following additional information:

(A) The specific California-origin crude oil feedstocks (other than feedstocks from the Elk Hills or Buena Vista Naval Petroleum Reserves) and quantities thereof run in that refinery, and the residual fuel oil the refiner estimates to have been produced from each during the preceding 90 days, together with an explanation of the refiner's method of allocating his residual production among his different crude feedstocks. (The purpose of this request is to establish that the residual fuel oil to be exported is allocable to California-origin crude oil of non-naval petroleum reserve origin.); and

(B) The total quantity of residual fuel oil produced in that refinery during the preceding 90 days which, to the best of the refiner's knowledge and belief, has already been sold into or for export.

In the event that the residual fuel oil to be exported is taken from a commingled inventory from more than one refinery, affidavits should be submitted from as many refiners of the commodity to be exported as necessary to establish that that portion of the commingled inventory to be exported was refined on the west coast from California-origin crude petroleum (other than crude petroleum from the Elk Hills or Buena Vista Naval Petroleum Reserves).

(iv) A signed statement by the applicant listing and attaching copies of (a) each Department of Energy decision and order applicable specifically to the applicant's or the refiner's treatment under the domestic crude oil entitlements program or to the applicant's or the refiner's production of or trade in residual fuel oil, and (b) each pending application therefor; and

(v) An affidavit sworn to by an authorized representative of the applicant firm stating either that, to the best of his knowledge and belief, there are no domestic buyers within the refiner's usual marketing area prepared to purchase the commodity at the current domestic price therefor adjusted in accordance with usual industry practice for transportation costs or why the applicant believes that, notwithstanding such readiness of a domestic buyer to purchase, the Office of Export Administration should determine that the proposed export would be in the national interest and consistent with national energy policy.



(Sec. 4, Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); sec. 103, Pub. L. 94-163, 89 Stat. 877 (42 U.S.C. 6212); E.O. 11912, 41 FR 15825, 3 CFR 1969 Comp.; 10 U.S.C. 7430; 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).)

RAUER H. MEYER,  
Acting Deputy Assistant  
Secretary for Trade Regulation.

[FR Doc. 78-23246 Filed 8-16-78; 8:45 am]

[8010-01]

**Title 17—Commodity and Securities  
Exchanges**

**CHAPTER II—SECURITIES AND  
EXCHANGE COMMISSION**

[Release No. 34-15028]

**PART 200—ORGANIZATION; CON-  
DUCT AND ETHICS; AND INFOR-  
MATION AND REQUESTS**

**Delegation of Authority to the Director  
of the Division of Enforcement**

AGENCY: Securities and Exchange  
Commission.

ACTION: Final rule.

**SUMMARY:** The Commission is amending its rules of organization to delegate to the Director of the Division of Enforcement authority to approve applications for relief from disqualification by individuals who have previously been allowed to reenter the securities business by the Commission, provided that the conditions of the new employment are substantially similar to those of the previously approved employment. This will facilitate and expedite the processing of such applications.

**EFFECTIVE DATE:** August 3, 1978.

**FOR FURTHER INFORMATION  
CONTACT:**

Michael F. Perlis, Esquire, Assistant  
Director, Division of Enforcement,  
Securities and Exchange Commis-  
sion, 500 North Capitol Street,  
Washington, D.C. 20549, 202-755-  
1650.

**SUPPLEMENTARY INFORMATION:**

In the past, the Commission has at times, in its discretion, granted applications for reentry into the securities business for individuals it has previously barred from such business or some aspects thereof. By doing this, the Commission has recognized that situations may exist where, in light of changed circumstances and after the passage of time, it may appear appro-

priate to the Commission to permit a disqualified individual to have the disqualification lifted if, in general, the applicant can make a showing satisfactory to the Commission that reentry into the securities business would be consistent with the public interest.

In the case of a disqualified individual seeking employment with a broker or dealer, once such relief has been granted by the Commission the bar is removed only so long as the individual remains in the employ of that firm in the capacity and under the conditions of supervision specified in the application which has been approved. In the event the firm seeks to change either the nature of such employment or the conditions of supervision, prior Commission approval must be sought. Moreover, if the individual seeks employment with another broker or dealer, both the individual and the new firm employer must submit a new application and again obtain Commission approval prior to such employment.

The Commission has found that these disqualified individuals who have been conditionally allowed to reenter the securities business by the Commission may seek employment with other brokerage firms in the course of their professional careers, under substantially similar conditions of employment. The Commission is accordingly required to consider at numerous times whether to approve substantially the same conditions of employment, with different firms, for the same individual.

This amendment, delegating the authority to the Director of the Division of Enforcement to approve applications for relief from disqualification by individuals who have previously been allowed to reenter the securities business by the Commission, provided the conditions of employment are substantially similar to those previously approved by it, will greatly facilitate and expedite the processing of such applications. The Commission believes that the factors considered by it in its initial approval of an individual's employment offer sufficiently clear guidance to warrant a delegation of its authority in this regard to the Director of the Division of Enforcement. The instant delegation of authority will not affect rule 19h-1 applications or the role of the Division of Market Regulation thereunder.

Accordingly, the Commission is today amending its rules regarding the delegation of authority in order to permit the Director of the Division of Enforcement to approve such reentry applications where the conditions of the new employment are substantially similar to those applied to the old employment previously approved by it.

The Commission finds that this amendment relates solely to agency organization, procedure, or practice, and that notice and public procedure in accordance with 15 U.S.C. 553 are not necessary, pursuant to subsection (b) thereof and that, in view of the foregoing, good cause exists for dispensing with the normal 30-day delay in effectiveness. Accordingly, 17 CFR 200.30-4 is amended, effective immediately, by adding a new paragraph (5) which reads as follows:

§ 200.30-4 Delegation of authority to Director of Division of Enforcement.

\* \* \*

(a) \* \* \*

(5) To approve applications for relief from disqualification by individuals who have previously been allowed to reenter the securities business by the Commission, provided that the conditions of the new employment are substantially similar to those of the previously approved employment.

\* \* \*

By the Commission.

SHIRLEY E. HOLLIS,  
Assistant Secretary.

AUGUST 3, 1978.

[FR Doc. 78-23116 Filed 8-17-78; 8:45 am]

[4810-22]

**Title 19—Customs Duties**

**CHAPTER I—U.S. CUSTOMS SERVICE,  
DEPARTMENT OF THE TREASURY**

[T.D. 78-291]

**PART 4—VESSELS IN FOREIGN AND  
DOMESTIC TRADES**

**Delay in Effective Date for Mandat-  
ory Use of Cargo Declaration  
Forms in Connection With Vessel  
Arrivals or Departures**

AUGUST 14, 1978.

AGENCY: U.S. Customs Service, De-  
partment of the Treasury.

ACTION: Delay in effective date for  
use of cargo declaration forms.

**SUMMARY:** Treasury Decision 77-255 provided for the mandatory use as of September 1, 1978, of newly-developed cargo declaration forms in connection with vessel arrivals or departures. Because a number of ocean carriers have advised Customs that mandatory use of the forms as of September 1, 1978, would work a hardship on them, Customs has agreed to delay the mandatory effective date until January 1, 1979. This action will give carriers ad-



ditional time to comply with the new requirements.

**EFFECTIVE DATE:** The use of the Cargo Declaration, Customs Form 1302, and the Cargo Declaration Outward with Commercial Forms, Customs Form 1302-A, shall be mandatory as of January 1, 1979.

**FOR FURTHER INFORMATION CONTACT:**

Donald H. Reusch, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW, Washington, D.C. 20229, 202-566-5706.

**SUPPLEMENTARY INFORMATION:** Treasury Decision 77-255, published in the *FEDERAL REGISTER* on October 25, 1977 (42 FR 56317), amended Part 4, Customs Regulations (19 CFR Part 4), to provide for newly-developed cargo declaration forms in connection with vessel arrivals or departures and to establish procedures for their use.

The forms, the Cargo Declaration, Customs Form 1302, and the Cargo Declaration Outward with Commercial Forms, Customs Form 1302-A, follow a format developed by the Intergovernmental Maritime Consultative Organization, as modified by the International Chamber of Shipping. Their development implements an agreement made by the United States when it ratified the Convention on Facilitation of International Maritime Traffic to use standardized international forms in connection with vessel arrivals or departures to the extent that the forms satisfy United States legal requirements. The purpose of the new forms is to simplify paperwork without reducing effective Customs control over vessel movements.

T.D. 77-255 provided for the use of the forms any time after October 25, 1977, and for their mandatory use as of September 1, 1978. However, a number of U.S. ocean carriers have advised Customs that mandatory use of the forms as of September 1, 1978, would impose a hardship on them and have requested that they be given additional time to comply with the new requirements. After consideration of these requests, Customs is delaying the effective date for mandatory use of Customs Form 1302 and Customs Form 1302-A until January 1, 1979.

G. R. DICKERSON,  
Acting Commissioner of Customs.

[FR Doc. 78-23155 Filed 8-17-78; 8:45 am]

**[4110-03]**

**Title 21—Food and Drugs**

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

**SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION**

[Docket No. 77N-01191]

**PART 131—MILK AND CREAM**

**Nonfat Dry Milk, Lowfat Dry Milk, Dry Whole Milk, and Dry Cream; Standards of Identity; Correction**

**AGENCY:** Food and Drug Administration.

**ACTION:** Correction.

**SUMMARY:** This is a second correction of the regulation published in the *FEDERAL REGISTER* of Tuesday, May 9, 1978, at page 19834.

**EFFECTIVE DATE:** May 9, 1978

**FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:** In FR Doc. 78-12513, appearing at page 19834 of the *FEDERAL REGISTER* of May 9, 1978, paragraph (d)(1) of § 131.127 *Nonfat dry milk fortified with vitamins A and D* (21 CFR 131.127) appearing on page 19836 is corrected in the third line by changing "16.131-16.182" to read "16.181-16.182."

In the first correction document published in the *FEDERAL REGISTER* of July 11, 1978 (43 FR 29769), a change to § 131.127 contained an inadvertent error. The corrected form reads as shown above.

Dated: August 10, 1978.

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

[FR Doc. 78-22784 Filed 8-17-78; 8:45 a.m.]

**[4110-03]**

**SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS**

**PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION**

**Sulfachlorpyridazine**

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** This document amends the regulations to establish the prior approval of a new animal drug application (NADA) held by E.R. Squibb & Sons, Inc., providing for use of sulfachlorpyridazine tablets for use in dogs as a broad spectrum antibacterial agent.

**EFFECTIVE DATE:** August 18, 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:** E.R. Squibb & Sons, Inc., P.O. Box 4000, Princeton, N.J. 08540, holds an approved new animal drug application (33-319V), providing for use of sulfachlorpyridazine tablets for oral use in dogs as a broad spectrum antibacterial agent to aid in treating infectious tracheobronchitis, infections caused by *E. coli*, and infection caused by other gram-positive and gram-negative organisms that are susceptible to sulfonamide therapy.

The application was originally approved on April 18, 1967. This document, reflecting a previously approved NADA, neither requires reevaluation of the basic NADA nor constitutes a reaffirmation of the drug's safety and effectiveness. Since the NADA was approved before 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 520 is amended by adding new § 520.2200c to read as follows:

§ 520.2200c Sulfachlorpyridazine tablets.

(a) *Specifications.* Sulfachlorpyridazine tablets contain 250 milligrams of sulfachlorpyridazine per tablet.

(b) *Sponsor.* See No. 000003 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) The drug is used in dogs as a broad spectrum anti-



bacterial agent to aid in the treatment of infectious tracheobronchitis and infections caused by *E. coli*. It can also be used in the treatment of infections caused by other gram-positive and gram-negative organisms that are susceptible to sulfonamide therapy.

(2) It is administered orally at a dosage level of 500 milligrams per 10 to 15 pounds of body weight daily, in two or three divided doses.

(3) The administration of the drug should be discontinued if a response is not noted within 7 to 10 days.

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

**Effective date.** This regulation is effective August 18, 1978.

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

Dated: August 11, 1978.

LESTER M. CRAWFORD,  
Director, Bureau of  
Veterinary Medicine.

[FR Doc. 78-23157 Filed 8-17-78; 8:45 am]

[4510-27]

# Title 29—Labor

## CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

### PART 575—WAIVER OF CHILD LABOR PROVISIONS FOR AGRICULTURAL EMPLOYMENT OF 10- AND 11-YEAR-OLD MINORS IN HAND HARVESTING OF SHORT SEASON CROPS

#### Provisions Governing Application for and Granting of a Waiver; Restrictions on Use of Pesticides and Other Chemicals

**AGENCY:** Wage and Hour Division, Labor.

**ACTION:** Final rules.

**SUMMARY:** Current regulations preclude issuance of waivers permitting employment of 10- and 11-year-old minors if pesticides or other chemicals have been applied to the fields in which such minors would work. This document establishes the minimum preharvest intervals for the use of certain pesticides and other chemicals which would not have an adverse effect on the health or well-being of minors employed under a waiver granted under this part. The issuance of such waivers will permit an increased number of 10- and 11-year-old minors to work in the hand-harvesting of crops, and thus effectuate congressional intent in enacting the recent amendment to the Fair Labor Standards Act.

**EFFECTIVE DATE:** These regulations shall be effective on August 18, 1978.

#### FOR FURTHER INFORMATION CONTACT:

Lucille C. Pinkett, Chief, Branch of Child Labor, Room S3022, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210, 202-523-8412.

#### SUPPLEMENTARY INFORMATION:

Paragraph (d) of § 575.5 of part 575, title 29, provides that an applicant for a waiver to permit employment of 10- and 11-year-old minors in hand-harvesting of short season crops will either have to submit a statement that no pesticides or other chemicals were used on the crop to be harvested or submit data which upon study by the Secretary or the Secretary's designee establishes safe reentry times for 10- and 11-year-olds. If such data, or additional studies conducted by the Secretary or the Secretary's designee, establish safe reentry standards for 10- and 11-year-olds, this section will be amended to include such standards and the applicant will then need only identify the type and level of pesticides or chemicals used and the date of last application of same prior to harvest.

This document sets forth safe reentry times following the use of certain pesticides and other chemicals which the Secretary has determined would not have an adverse effect on the health or well-being of 10- and 11-year-old minors. This determination has been made as a result of studies caused to be conducted by the Secretary. In order to be effective during this year's short season crop harvest, it is necessary that these standards be made effective immediately. I, therefore, find it to be contrary to the public interest to delay issuance in final form of these amendments pending publication of a proposal for comment. For the same reason this amendment shall be effective upon publication.

These regulations have been developed under the direction and control of Donald Elisburg, Assistant Secretary for Employment Standards, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210.

Accordingly, paragraph (d) of § 575.5 of part 575, title 29 of the Code of Federal Regulations is revised as follows:

#### § 575.5 Supporting data to accompany application.

(d)(1) The "level and type of pesticides and other chemicals used would not have an adverse effect on the

health or well-being of" minors employed under the waiver. The safe reentry standards established by the Environmental Protection Agency, and followed by other Federal and State agencies, were established for adult workers and have not been shown to be safe for 10- and 11-year-olds. Therefore, the applicant, in order to satisfy this condition, will either have to submit a statement that no pesticides or other chemicals were used on the crop to be harvested or submit data which upon study by the Secretary or the Secretary's designee establishes safe reentry times for 10- and 11-year-olds. If such data, or additional studies conducted by the Secretary or the Secretary's designee, establish safe reentry standards for 10- and 11-year-olds, this section will be amended to include such standards and the applicant will then need only identify the type and level of pesticides or chemicals used and the date of last application of same prior to harvest.

(2) On the basis of studies conducted at the direction of the Secretary it has been determined that in harvesting strawberries the following pesticides or other chemicals would not have an adverse effect on the health or well-being of 10- and 11-year-old hand-harvesters if applied at not less than the indicated preharvest intervals:

| Pesticide:                     |       | Preharvest interval<br>for 10- and 11-year-<br>olds (days) |
|--------------------------------|-------|------------------------------------------------------------|
| Benomyl (Benlate)              | ..... | 2                                                          |
| Dicofol (Kelthane)             | ..... | 4                                                          |
| Endosulfan (Thiodan)           | ..... | 10                                                         |
| Demeton-methyl (meta-Systox R) | ..... | 28                                                         |
| Demeton (Systox)               | ..... | 42                                                         |
| Captan                         | ..... | 3                                                          |
| Carbaryl (Sevin)               | ..... | 7                                                          |
| Diazinon                       | ..... | 10                                                         |

(3) On the basis of studies conducted at the direction of the Secretary it has been determined that in harvesting potatoes the following pesticides or other chemicals would not have an adverse effect on the health or well-being of 10- and 11-year-old hand-harvesters if applied at not less than the indicated preharvest intervals:

| Pesticide:                     |       | Preharvest interval<br>for 10- and 11-year-<br>olds (days) |
|--------------------------------|-------|------------------------------------------------------------|
| Aldicarb (Temik)               | ..... | 100                                                        |
| Disulfoton (Di Syston)         | ..... | 90                                                         |
| Carbofuran (Furadan)           | ..... | 2                                                          |
| Endosulfan (Thiodan)           | ..... | 4                                                          |
| Demeton (Systox)               | ..... | 42                                                         |
| Carbaryl (Sevin)               | ..... | 5                                                          |
| Demeton-methyl (Meta-Systox R) | ..... | 14                                                         |
| Monitor                        | ..... | 28                                                         |
| Methomyl (Lanate-L)            | ..... | 28                                                         |
| Captan (Difolatan)             | ..... | 2                                                          |
| Chlorothalonil (Bravo)         | ..... | 2                                                          |
| Triphenyltin hydroxide (Duter) | ..... | 16 and *66                                                 |

\*For aerial and ground application.

\*For irrigation application.



## PREHARVEST INTERVALS FOR POTATOES

| Pesticide:               | Preharvest interval<br>for 10- and 11-year-olds (days) |
|--------------------------|--------------------------------------------------------|
| EPTC (Eptam).....        | 90                                                     |
| Alachlor (Lasso).....    | 45                                                     |
| Linuron (Lorax).....     | 45                                                     |
| Metribuzin (Sencor)..... | 45                                                     |
| Dalapon.....             | 45                                                     |

Signed at Washington, D.C. this  
16th day of August 1978.

DONALD ELISBURG,  
Assistant Secretary.

[FR Doc. 78-23345 Filed 8-17-78; 8:45 am]

[4510-26]

## CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINIS- TRATION, DEPARTMENT OF LABOR

### PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

#### Approval of Supplement to Oregon Plan

AGENCY: Occupational Safety and  
Health Administration, U.S. Depart-  
ment of Labor.

ACTION: Final rule.

SUMMARY: This document gives  
notice of the approval of a State ini-  
tiated plan change reflecting the Or-  
egon's lack of authority to regulate ac-  
tivities of the Confederate Tribes of  
the Warm Springs Indian Reservation  
and provides for Federal OSHA regu-  
lation of employment and places of  
employment on the reservation.

EFFECTIVE: August 18, 1978.

#### FOR FURTHER INFORMATION CONTACT:

Daniel C. Hoeschen, Project Officer,  
Office of State Programs, Occu-  
pational Safety and Health Adminis-  
tration, U.S. Department of Labor,  
200 Constitution Avenue NW.,  
Washington, D.C. 20210, 202-653-  
5377.

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

Part 1953 of title 29, Code of Federal  
Regulations, prescribes procedures  
under section 18 of the Occupational  
Safety and Health Act of 1970 (29  
U.S.C. 667) (hereinafter called the act)  
for review of changes and progress in  
the development and implementation  
of State plans which have been ap-  
proved in accordance with section  
18(c) of the act and part 1902 of this  
chapter. On December 28, 1972, a  
notice was published in the FEDERAL  
REGISTER (37 FR 28628) of the approv-

al of the Oregon plan and of the adop-  
tion of subpart D of part 1952 contain-  
ing the decision.

On July 16, 1976, Oregon submitted  
a State-initiated plan change. The  
plan change covered by this notice is  
described below:

##### DESCRIPTION OF SUPPLEMENT

In accordance with 29 CFR 1953.41,  
the State of Oregon has submitted a  
State-initiated plan change which ex-  
cepts wholly owned tribal entities op-  
erating exclusively within the confines  
of the Warm Springs Indian Reserva-  
tion from coverage under the State  
plan. The attorney general of the  
State of Oregon advises that the State  
does not have authority to enforce oc-  
cupational safety and health stand-  
ards against tribal entities operating  
on the Warm Springs Indian Reserva-  
tion. Therefore, the State has submit-  
ted a plan change amending item III,  
B on page 5 of the plan to read:

This State plan, and the safety and health  
code developed in relation to it, apply to all  
employers and employees except wholly  
owned tribal entities operating exclusively  
within the confines of the Warm Springs  
Indian Reservation, those engaged in mari-  
time and longshoring activities, and State  
agencies acting under section 274 of the  
Atomic Energy Act of 1954 as amended (42  
U.S.C. 2021), which exercise statutory au-  
thority to prescribe or enforce standards or  
regulations affecting their own occupational  
safety or health. (See ORS 654.025 (1) and  
(7), appendix B.)

##### LOCATION OF THE PLAN AND ITS SUP- PLEMENTS FOR INSPECTION AND COPY- ING

A copy of the plan and its supple-  
ments may be inspected and copied  
during normal business hours at the  
following locations: Technical Data  
Center, Occupational Safety and  
Health Administration, Room S-6212,  
200 Constitution Avenue NW., Wash-  
ington, D.C. 20210; Office of the Re-  
gional Administrator, Occupational  
Safety and Health Administration,  
Room 6048, Federal Office Building,  
909 First Avenue, Seattle, Wash.  
98174; Workmen's Compensation  
Board, Labor and Industries Building,  
Room 204, Salem, Oreg. 97310.

##### PUBLIC PARTICIPATION

Under § 1953.2(c) of this chapter, the  
Assistant Secretary of Labor for Occu-  
pational Safety and Health (herein-  
after called the Assistant Secretary)  
may prescribe alternative procedures  
to expedite the review process or for  
any other cause which may be consist-  
ent with applicable law. The Assistant  
Secretary finds good cause exists for  
not publishing the plan change as a  
proposed change for the following  
reason: The change was adopted to re-  
flect the requirements of State and

Federal law and further participation  
and notice would be unnecessary.

##### DECISION

After careful consideration, good  
cause is found for accepting this State  
exclusion of coverage under its plan.  
The Oregon plan change described  
above is hereby approved under sub-  
part E of part 1953 of this chapter. In  
accordance with § 1902.2(c) of this  
chapter, Federal standards and en-  
forcement provisions in the act apply  
to the operations of the Confederated  
Tribes of the Warm Springs Indian  
Reservation. To avoid duplication and  
confusion of administration in a specifi-  
cally limited geographic area, the Federal  
standards and enforcement authority  
will be exercised over all employments  
and places of employment on the  
Warm Springs Indian Reservation.  
This decision incorporates the require-  
ments of the act and implementing  
regulations applicable to State plans  
generally.

Accordingly, § 1952.107 of subpart D  
of part 1952 of this chapter is hereby  
amended by inserting the following at  
the end of the first sentence:

The U.S. Department of Labor authority  
will also continue to be exercised with  
regard to employments and places of em-  
ployment on the Warm Springs Indian Res-  
ervation.—

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29  
U.S.C. 667).)

Signed at Washington, D.C., this  
11th day of August 1978.

EULA BINGHAM,  
Assistant Secretary of Labor.

[FR Doc. 78-23232 Filed 8-17-78; 8:45 am]

[6560-01]

#### Title 40—Protection of Environment

### CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

#### SUBCHAPTER C—AIR PROGRAMS

[FRL 951-11]

### PART 52—APPROVAL AND PROMUL- GATION OF IMPLEMENTATION PLANS

#### California Plan Revision: Stanislaus County Air Pollution Control District

AGENCY: Environmental Protection  
Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Pro-  
tection Agency (EPA) takes final  
action to approve and, where appropri-  
ate, disapprove or take no action on  
changes to the Stanislaus County Air  
Pollution Control District (APCD)



portion of the California State implementation plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: September 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, Attention: Wayne A. Blackard, 415-556-7882.

**SUPPLEMENTARY INFORMATION:** On April 19, 1978 EPA published a notice of proposed rulemaking for revisions to the Stanislaus County APCD's rules and regulations submitted on November 4, 1977, by the California Air Resources Board for inclusion in the California SIP.

The changes contained in the above submittal that are acted upon by this notice include the following:

- (a) Establishes sources and pollutants to be monitored and requirements for submission of data,
- (b) Establishes requirements for making public records available,
- (c) Amends the rule concerning transfer of gasoline into vehicle fuel tanks.

The notice of proposed rulemaking for this submittal was published on April 19, 1978 (43 FR 16516). No comments were received during the public comment period.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations submitted as SIP revisions.

It is the purpose of this notice to approve all changes contained in the November 4, 1977 submittal with the exception of those rules not being acted upon and rule 411.1 being disapproved as discussed below. These rules have been evaluated in accordance with 40 CFR Part 51.

No action is being taken on rule 103, confidential information, and the rules concerning emergency episodes, and new source performance standards. These rules will be addressed in separate FEDERAL REGISTER notices.

Rule 411.1, Gasoline Transfer into Vehicle Fuel Tanks, is disapproved because it relaxes the control of pollution emissions without any accompanying analysis demonstrating that the relaxation will not interfere with the attainment and maintenance of the national ambient air quality standards.

Rule 108, Stack Monitoring, is approved since it partially satisfies the requirements of 40 CFR part 51.19(e). However, since the rule does not satisfy

all the requirements, the plan is disapproved in part under 40 CFR 52.234.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)).)

Dated: August 15, 1978,

DOUGLAS M. COSTLE,  
Administrator.

Subpart F of part 52 of chapter I, title 40, of the Code of Federal Regulations is amended as follows:

#### Subpart F—California

1. Section 52.220 is amended by adding paragraph (c)(42)(iv) as follows:

§ 52.220 Identification of plan.

\* \* \*

(c) \* \* \*

(42) \* \* \*

(iv) Stanislaus County APCD.

(A) New or amended rules 103.1, 108, 411.1.

\* \* \*

2. Section 52.234 is amended by adding paragraph (e)(2)(iii) as follows:

§ 52.234 Source surveillance.

\* \* \*

(e) \* \* \*

(2) \* \* \*

(iii) Stanislaus County APCD.

\* \* \*

3. Section 52.269 is amended by adding paragraph (b)(1)(iii) as follows:

§ 52.269 Control strategy: photochemical oxidants (hydrocarbons) and carbon monoxide.

\* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) Stanislaus County APCD.

(A) Rule 411.1, submitted on November 4, 1977, is disapproved. Rule 411.1 submitted on April 21, 1976 remains in effect.

\* \* \*

[FR Doc. 78-23255 Filed 8-17-78; 8:45 am]

[6560-01]

[FRL 937-11]

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Trinity County Air Pollution, Control District (APCD)

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rulemaking.

**SUMMARY:** The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the Trinity County APCD portion of the California State implementation plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: September 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, Attention: Wayne A. Blackard, 415-556-0217.

**SUPPLEMENTARY INFORMATION:** On June 14, 1977 (42 FR 30398) and July 25, 1977 (42 FR 37829), EPA published notices of proposed rulemaking for revisions to the Trinity County Air Pollution Control District's rules and regulations submitted on July 25, 1973; October 23, 1974; July 22, 1975; and November 10, 1976. Since the November 10, 1976 submittal represents the most recent complete set of rules and regulations for the District, only it will be addressed in this notice.

The rules contained in the November 10, 1976 submittal comprise a complete revision of the Trinity County APCD's rules and regulations and are identical for four of the five APCD's in the North Coast Air Basin. All rules have been renumbered, and many have been reworded or reorganized. In addition to those changes, the most significant changes to rules being acted upon by this notice are as follows:

(a) Language changes are made to conform with recodification of the State Health and Safety Code and to accommodate the uniform regulations of the North Coast Air Basin.

(b) Procedures are added regarding public records and trade secrets.



(c) Provisions are added regarding severability, intent of the regulations, and liberal construction.

(d) Monitoring requirements are made more specific.

(e) Exceptions to the visible emissions rule are added.

(f) Specific limits on particulates from steam generating units and Kraft recovery furnaces are established.

(g) Measures to be taken to control fugitive dust are added.

(h) Controls over incineration of animal matter are added.

(i) Procedures for issuing orders for abatement are updated and detailed.

(j) Exemptions from open burning prohibitions are added.

(k) Open burning policies are specified.

(l) Use classifications under which open fires are allowed on "permissive-burn" days are specified.

(m) Procedures for notifying the public of "permissive-burn" and "no-burn" days are specified.

(n) Reporting procedures, exceptions to prohibition of burning on "no-burn" days, and agencies that may issue burning permits are specified.

(o) Conditions under which waste may be burned are specified, and an exception to the rule on drying time is provided.

(p) Penalties for violations of open burning rules are established.

Lists of the rules being considered by this action were published as part of the notices of proposed rulemaking on June 14, 1977 (42 FR 30398) and on July 25, 1977 (42 FR 37829). The notices of proposed rulemaking provided 30 days for public comment. No public comments were received.

Under section 110 of the Clean Air Act, as amended, and 40 CFR part 51, the Administrator is required to approve or disapprove these regulations as State implementation plan revisions.

Rule 150, Public Records, provides for the public availability of emission data. This rule does not, however, require the correlation of emission data with applicable emission limitations as required by 40 CFR 51.10(e). Rule 150 is approved since it partially satisfies the requirements of § 51.10(e). However, since the correlation requirement is not met, paragraph (b)(4) of the federally promulgated regulation, 40 CFR 52.224 General Requirements, is retained as applicable to the Trinity County APCD.

Rule 240(d), Compliance Verification, has been added to provide additional source surveillance requirements. Except for paragraph (3), which is not being acted upon, it is being approved. Because rule 240(d) meets the requirements of 40 CFR 51.19(a), the Trinity County APCD is

being rescinded from the requirements of 40 CFR 52.234(d).

Rule 630, Decisions, is being approved as a procedure for the granting of variances. Each variance, however, must satisfy the requirements of section 110 of the Clean Air Act and 40 CFR part 51 in order to be approved by EPA as a revision to the SIP.

It is the purpose of this notice to approve all changes contained in the November 10, 1976 submittal and to incorporate them into the California SIP, with the exception of the rules discussed below.

EPA is disapproving rules 410(c)(2), 410(c)(7), and 420(e), and the following portions of regulation 2, Open Burning Procedures: general prohibitions (all of page 1) (Open Burning Procedures), paragraphs (e) and (f) of article I (Scope and Policy), paragraphs (f) and (g) of article V (Burning Permits and Reports), and paragraph (f) of article VI (Burning Preparation and Restrictions).

Paragraph (c)(7) of rule 410, Visible Emissions, would exempt from the opacity limit of rule 410(a) "dust and particulate matter released incident to completing and cleaning out a geothermal well and placing it in production." This paragraph is disapproved because no analysis has been submitted to show that the exemption would not interfere with the attainment/maintenance of the NAAQS.

Rule 420(e) Waste Incineration, would exempt the emission limit of rule 420(a) single chamber incinerators "used for the disposal of approved combustibles subject to permit conditions specified by the control officer after a finding that such use is compatible with the county solid waste management program and will not cause a violation of the control strategy." This rule is disapproved because it relaxes emission control, provides an excessive amount of discretion on the part of the control officer, and as such could interfere with the attainment/maintenance of the NAAQS.

Paragraph (c)(2) of Rule 410, Visible Emissions, would exempt from the opacity limit of rule 410(a) "smoke from fires set pursuant to Regulation 2 [Open Burning Procedures] of the North Coast Air Basin." Several provisions of regulation 2 are being disapproved for the reasons given in the four paragraphs immediately following. Rule 410(c)(2) is disapproved for the same reasons.

The general prohibitions (all of page 1) of regulation 2 would permit the burning of specified substances under certain conditions. These general prohibitions (all of page 1) are disapproved because certain controls have been relaxed and no analysis has been submitted to show that such burning

would not interfere with the attainment/maintenance of the NAAQS.

Paragraph (e) of article 1 of regulation 2 would permit open outdoor fires " \* \* \* on those days for which satisfactory meteorological burning conditions and adequate area ventilation are predicted to occur \* \* \* ". This provision is disapproved because it is too vague to be enforceable.

Paragraph (f) of article 1, paragraph (g) of article V, and paragraph (f) of article VI, all of which are contained in regulation 2, are disapproved because each would allow the granting of exceptions from open burning rules if "imminent and substantial economic loss" is threatened by denial of an exception. Economic factors are an impermissible basis upon which to grant such an exception absent a showing that all other requirements of § 110 of the Clean Air Act, as well as the NAAQS, will be met.

Paragraph (f) of article V of regulation 2 would allow, from January 1 until May 31, range improvement or forest management burning on "no-burn" days, provided that more than 50 percent of the land has been "brush treated." This paragraph is disapproved because no analysis has been submitted to show that the allowance would not interfere with the attainment/maintenance of the NAAQS.

No action is being taken at this time on rules concerning emergency episodes, non-criteria pollutants, new source review, mandatory monitoring, nuisance, sulfide emission standards, organic gas emissions, malfunction, and open burning (use classifications). Of these rules, Rule 140, Emergency Conditions; Chapter II, Permits (except rule 240(d)); and Rule 540, Equipment Breakdown, will be or have been acted upon in separate FEDERAL REGISTER notices.

Rule 160, Ambient Air Quality Standards (excluding paragraph (a)), which does not apply to the Trinity County APCD is being approved with the exception of the non-criteria pollutants, which are not appropriate for inclusion in the SIP.

Paragraph (3) of Rule 240(d), Compliance Verification, is not being acted upon because it relies upon Rule 540, Equipment Breakdown, which has been disapproved (43 FR 3275).

Rule 240(e), Mandatory Monitoring Requirements, which concerns the requirements of 40 CFR 51.19(e), has been replaced by a more recent submittal. Therefore, EPA is taking no action on this rule.

Paragraphs (a) and (c) of Rule 400, Public Nuisance, are not appropriate for inclusion in the SIP because they are not specifically directed at the attainment or maintenance of the NAAQS. Therefore, EPA is taking no action on these paragraphs.



Rule 450, Sulfide Emission Standards, is not appropriate for inclusion in the SIP because it would regulate a pollutant for which there is no NAAQS. Therefore, EPA is taking no action on this rule.

Use Classification 6 of Article III of Regulation 2, Open Burning Procedures, is not appropriate for inclusion in the SIP because it expired on January 1, 1977. Therefore, EPA is taking no action on this rule.

Paragraph (j) of Article VI of Regulation 2, Open Burning Procedures, is not being acted on as it refers to use classification 6 of article III.

Paragraph (a) of Rule 160, *Ambient Air Quality Standards*; paragraph (b) of Rule 410, *Visible Emissions*; and Rule 460, *Organic Gas Emissions*, although included in the uniform regulations of the North Coast Air Basin, do not apply to the Trinity County APCD. Therefore, EPA is taking no action on these rules.

The State has submitted rules 490 and 492, and regulations 3 and 4, concerning New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). These rules and regulations implement sections 111 and 112 of the Clean Air Act, and are not appropriate for inclusion in the SIP under section 110 of the Act. Therefore, these regulations will be neither approved nor disapproved by EPA as part of an applicable implementation plan. NSPS and NESHAPS regulations were, however, reviewed under the appropriate provisions of sections 111 and 112, and delegation of authority to implement and enforce the NSPS and NESHAPS standards was made to the State of California, on behalf of the Trinity County APCD, on August 18, 1975. The FEDERAL REGISTER notice for this delegation of authority was published on October 1, 1975 (40 FR 45179).

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act, as amended, 42 U.S.C. 7410 and 7601(a)).

Dated: August 15, 1978.

DOUGLAS M. COSTLE,  
Administrator.

Subpart F of part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**Subpart F—California**

1. Section 52.220, paragraph (c)(35)(xvii)(C) is added as follows:

**§ 52.220 Identification of plan.**

(c) \* \* \*

(35) \* \* \*

(xvii) \* \* \*

(C) New or amended rules 100, 110, 120, 130, 150, 160 (except 160(a) and non-criteria pollutants), 190, 240(d) except paragraph (3)), 300, 310, 320, 340, 400(b), 410(a), 410(c), 420, 430, 440, 470, 480, 482, 500, 510, 520, 600, 610, 620, 630, 640, and 650; and the following portions of regulation 2: general prohibitions (all of page 1), articles I and II, paragraphs A1, A2, A3, A4, 5, 7 and 8 of article III, articles IV and V, paragraphs (a) to (i) of article VI, and article VII.

2. Section 52.224, paragraph (a)(2)(iii)(C) is added as follows:

**§ 52.224 General requirements.**

(a) \* \* \*

(2) \* \* \*

(iii) \* \* \*

(C) Trinity County APCD.

3. Section 52.234, paragraph (a)(1)(v) is added to read as follows:

**§ 52.234 Source surveillance.**

(a) \* \* \*

(1) \* \* \*

(v) Trinity County APCD.

4. In section 52.273, paragraphs (a)(4)(iii) and (b)(3)(iii) are added as follows:

**§ 52.273 Open burning.**

(a) \* \* \*

(4) \* \* \*

(iii) Trinity County APCD.

(A) Rule 410(c)(2) and the following portions of regulation 2: general prohibitions (all of page 1), paragraph (f) of article I, paragraphs (f) and (g) of article V, and paragraph (f) of article VI, submitted on November 10, 1976.

(b) \* \* \*

(3) \* \* \*

(iii) Trinity County APCD.

(A) Paragraph (e) of article I of regulation 2, submitted on November 10, 1976.

5. Section 52.275, paragraph (b)(3)(iii) is added as follows:

**§ 52.275 Particulate matter control.**

(b) \* \* \*

(3) \* \* \*

(iii) Trinity County APCD.

(A) Rules 410(c)(7) and 420(e), *Waste Incineration*, submitted on November 10, 1976.

[FR Doc. 78-23257 Filed 8-17-78; 8:45 am]

[6560-01]

[FRL 939-6]

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

**Dedesignation of the Shreveport AQMA**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule

SUMMARY: This action approves the dedesignation of the Shreveport, La., area as an air quality maintenance area (AQMA) for particulate matter. Results of an air quality maintenance analysis showed that standards could be maintained over a 20-year period through control of stationary sources of particulate matter, and that expected growth will not significantly affect air quality. Consequently, the State requested EPA to dedesignate the area. Dedesignation of the Shreveport AQMA will not interfere with attainment and maintenance of the national air quality standards for particulate matter.

DATES: This rulemaking is effective on August 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Anita B. Turpin, Environmental Protection Agency, Region VI, Air Program Branch, 1201 Elm Street, Dallas, Tex. 75270, 214-767-2742.

SUPPLEMENTARY INFORMATION: On December 9, 1977, after adequate notice and public hearing, the Governor of Louisiana submitted a revision to the State implementation plan (SIP) to dedesignate the Shreveport area as an AQMA for particulate matter. After review of the revision, EPA published a proposed approval of the dedesignation in the FEDERAL REGISTER on April 18, 1978 (43 FR 16351). Interested persons were invited to comment on this proposed approval prior to May 18, 1978. No comments were received.

Results of the air quality maintenance analysis, which supported the dedesignation, were discussed in the proposed approval. This discussion will not be repeated in this rulemaking.



## CURRENT ACTION

No comments on, or objections to the proposed approval were received, and no new information which would conflict with an approval has been received. Therefore, this action approves, as proposed, the dedesignation of the Shreveport AQMA for particulate matter.

This rulemaking is issued under the authority of section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 7410-(a).

Dated: August 15, 1978.

DOUGLAS M. COSTLE,  
Administrator.

Part 52 of chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

## Subpart T—Louisiana

1. In § 52.970, paragraph (c) is amended by adding a new paragraph (9) as follows:

## § 52.970 Identification of plan.

(c) \*\*\*

(9) A proposed dedesignation of the Shreveport area as an AQMA for particulate matter was submitted by the Governor on December 9, 1977.

## § 52.985 [Reserved].

2. Section 52.985 is revoked and reserved.

[FR Doc. 78-23256 Filed 8-17-78; 8:45 am]

[1505-01]

## SUBCHAPTER D—WATER PROGRAM

[FRL 916-11]

## PART 118—DETERMINATIONS OF HARMFUL QUANTITIES FOR HAZARDOUS SUBSTANCES

## Final Rulemaking; Correction

## Corrections

In FR Doc. 78-17767 appearing at page 27533 in the issue for Monday, June 26, 1978, make the following corrections:

1. On page 27534, first column, the insertions for page 10492 FR should be printed as set forth below.

First column: "Page 10492 FR, first column, delete body of table and insert:

|        |                                 |             |
|--------|---------------------------------|-------------|
| A..... | LC50 < 1 mg/l.....              | 1.0(0.454)  |
| B..... | 1 mg/l < LC50 < 10 mg/l.....    | 10(4.54)    |
| C..... | 10 mg/l < LC50 < 100 mg/l.....  | 100(45.4)   |
| D..... | 100 mg/l < LC50 < 500 mg/l..... | 500(227)''. |

Second column: "Page 10492 FR, second column, delete body of table and insert:

|        |                                 |               |
|--------|---------------------------------|---------------|
| X..... | LC50 < 0.1 mg/l.....            | 1.0(0.454)    |
| A..... | 0.1 mg/l < LC50 < 1 mg/l.....   | 10(4.54)      |
| B..... | 1 mg/l < LC50 < 10 mg/l.....    | 100(45.4)     |
| C..... | 10 mg/l < LC50 < 100 mg/l.....  | 1000(454)     |
| D..... | 100 mg/l < LC50 < 500 mg/l..... | 5000(2270)''. |

[1505-01]

[FRL 916-8]

## PART 119—DETERMINATION OF UNITS OF MEASUREMENT AND RATES OF PENALTY FOR HAZARDOUS SUBSTANCES

## Final Rule; Correction

## Correction

In FR Doc. 78-17769 appearing at page 27534 in the issue for Monday, June 26, 1978, in the second column, the insertion for page 10496 FR should be printed as set forth below.

Page 10496 FR, third column, delete body of table and insert:

|        |                 |                            |
|--------|-----------------|----------------------------|
| X..... | 1(0.454).....   | LC50 < 0.1 mg/l            |
| A..... | 10(4.54).....   | 0.1 mg/l < LC50 < 1 mg/l   |
| B..... | 100(45.4).....  | 1 mg/l < LC50 < 10 mg/l    |
| C..... | 1000(454).....  | 10 mg/l < LC50 < 100 mg/l  |
| D..... | 5000(2270)..... | 100 mg/l < LC50 < 500 mg/l |

[6560-01]

## SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 949-8; PP 8E2017/R163]

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

O,O-Diethyl O-(2-Isopropyl-6-Methyl-4-Pyrimidinyl) Phosphorothioate

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

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate on birdsfoot trefoil and birdsfoot trefoil hay. The amendment to the regulations was requested by the Interregional Research Project No. 4. This rule establishes maximum permissible levels for residues of the insecticide on birdsfoot trefoil and birdsfoot trefoil hay.

EFFECTIVE DATE: Effective on August 18, 1978.

## FOR FURTHER INFORMATION CONTACT:

Mrs. Patricia Critchlow, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460, 202-426-2516.

## SUPPLEMENTARY INFORMATION:

On June 15, 1978, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (43 FR 25837) in response to a pesticide petition (pp 8E2017) submitted to the Agency by the 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 IR-4 Technical Committee and the Agricultural Experiment Station of New York. This petition proposed that 40 CFR 180.153 be amended by the establishment of tolerances for residues of the insecticide O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate in or on the raw agricultural commodities birdsfoot trefoil at 40 parts per million (ppm) and birdsfoot trefoil hay at 10 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 180.153 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 September 18, 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 August 18, 1978, part 180, subpart C, § 180.153 is amended by alphabetically inserting tolerances in the table on birdsfoot trefoil at 40 ppm and birdsfoot trefoil hay at 10 ppm as set forth below.

Dated: August 11, 1978.

DOUGLAS D. CAMPT,  
Acting Deputy Assistant Administrator for Pesticide Programs.

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

Part 180, Subpart C, § 180.153 is amended by alphabetically inserting the tolerances of 40 ppm on birdsfoot



trefoil and 10 ppm on birdsfoot trefoil hay in the table to read as follows:

§ 180.153 O,O-Diethyl O-(1-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate; tolerances or residues.

| Commodity:                  | Parts per million |
|-----------------------------|-------------------|
| Birdsfoot trefoil.....      | 40                |
| Birdsfoot trefoil, hay..... | 10                |

[FR Doc. 78-23145 Filed 8-17-78; 8:45 am]

[6560-01]

[FRL 950-1; OPP-300015A]

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

## Exemptions from Requirement of a Tolerance for Certain Inert Ingredients in Pesticide Formulations

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

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for certain additional inert (or occasionally active) ingredients. The exemption requests were submitted by various firms. This amendment to the regulations will permit the use of additional inert (or occasionally active) ingredients in pesticide formulations.

EFFECTIVE DATE: Effective on August 18, 1978.

## FOR FURTHER INFORMATION CONTACT:

Mr. David L. Ritter, Toxicology Branch, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C., 202-426-2680.

SUPPLEMENTARY INFORMATION: On June 14, 1978, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (43 FR 25697) to amend 40 CFR 180.1001 by exempting certain pesticide chemicals which are additional inert (or occasionally

active) ingredients in pesticide formulations from tolerance requirements under provisions of section 408(e) of the Federal Food, Drug, and Cosmetic Act. No comments or requests for referral to an advisory committee were received by the Agency with regard to this notice. It has been concluded that the amendment will protect the public health and, therefore, that the amendment to the regulations should be adopted as proposed.

Any person adversely affected by this regulation may, on or before September 18, 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 triplicate 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 August 18, 1978, part

## § 180.1001 Exemptions from the requirement of a tolerance.

| Inert ingredients                      | Limits | Uses                                         |
|----------------------------------------|--------|----------------------------------------------|
| Calcium hypochlorite.....              |        | Sanitizing and bleaching agent.              |
| Silicon dioxide, fumed, amorphous..... |        | Flow control, anticaking, and carrier agent. |

[FR Doc. 78-23146 Filed 8-17-78; 8:45 am]

[6560-01]

[FRL 948-3; OPP-280003A]

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

## Dioxathion; Codex Tolerances

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

ACTION: Final rule.

SUMMARY: This rule changes certain tolerance levels. The change was proposed by the EPA. This amendment to the regulations conforms dioxathion tolerances to those of the Codex Alimentarius Commission.

180, subpart D, § 180.1001 is amended as set forth below.

Dated: August 11, 1978.

DOUGLAS D. CAMPT,  
Acting Deputy Assistant Administrator for Pesticide Programs.

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

Part 180, Subpart D, § 180.1001 is amended by revising the item "Silica, hydrated silica" in paragraph (c) to read "Silica, hydrated" and by alphabetically inserting new items in the tables in section 180.1001(c) and (d) to read as follows:

1. Section 180.1001 is amended as follows:

## § 180.1001 [Amended]

section 180.1001(c) is amended in the table by revising the words "Silica, hydrated silica" to read "Silica, hydrated."

2. Section 180.1001 (c) and (d) is amended by alphabetically inserting the following new items in the tables:

EFFECTIVE DATE: Effective on August 18, 1978.

## FOR FURTHER INFORMATION CONTACT:

Mr. Timothy Gardner, Product Manager (PM) 15, Registration Division (TS-767), Office of Pesticide Programs, EPA 202-426-9425.

SUPPLEMENTARY INFORMATION: On June 27, 1978, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (43 FR 27866) on the initiative of the Agency that 40 CFR 180.171 be amended by the establishment of tolerances to conform with the Codex Alimentarius Commission's tolerances for residues of the insecticide dioxathion (2,3-p-dioxanediithiol-S,S-bis(O,O-diethylphosphorothioate) in or on the raw agricultural



al commodities apples, pears, and quinces at 5 parts per million (ppm); grapefruit, lemons, limes, oranges, and tangerines 3 ppm; and grapes at 2 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 180.171 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 September 18, 1978, file written objections with the Hearing Clerk, EPA, Rm. 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 August 18, 1978, part 180, subpart C, is amended as set forth below.

Dated: August 10, 1978.

DOUGLAS D. CAMPT,

Acting Deputy Assistant Administrator for Pesticide Programs.

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

Part 180, subpart C, § 180.171 is revised by editorially reformatting the section into an alphabetized columnar listing and revising the tolerances of 4.9 ppm, 2.8 ppm, and 2.1 ppm to read as follows:

**§ 180.171 Dioxathion; tolerances for residues.**

Tolerances are established for residues of dioxathion (2,3-p-dioxanedithiol-S,S-bis(O,O-diethylphosphorodithioate)) incurred from the use of the insecticide composed of a mixture of approximately 70 percent of the *cis* and *trans* isomers of 2,3-p-dioxanedithiol-S,S-bis(O,O-diethylphosphorodithioate) and approximately 30 percent of related compounds in or on the following raw agricultural commodities:

| Commodity:               | Parts per million |
|--------------------------|-------------------|
| Apples.....              | 5                 |
| Cattle, fat of meat..... | 1                 |
| Goats, fat of meat.....  | 1                 |
| Grapefruit.....          | 3                 |
| Grapes.....              | 2                 |
| Hogs, fat of meat.....   | 1                 |
| Horses, fat of meat..... | 1                 |
| Lemons.....              | 3                 |
| Limes.....               | 3                 |
| Milk.....                | 0                 |
| Oranges.....             | 3                 |
| Pears.....               | 5                 |
| Quinces.....             | 5                 |

| Commodity:              | Parts per million |
|-------------------------|-------------------|
| Sheep, fat of meat..... | 1                 |
| Stone fruits.....       | 0.14(N)           |
| Tangerines.....         | 3                 |
| Walnuts.....            | 0.14(N)           |

[FR Doc. 78-23147 Filed 8-17-78; 8:45 am]

**[4110-83]**

**Title 42—Public Health**

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

**PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS, AND STUDENT LOANS**

**Grants for Training U.S. Citizen Foreign Medical Students**

AGENCY: Public Health Service, HEW.

ACTION: Final regulations.

SUMMARY: These regulations set forth requirements for grants to plan, develop, and operate training programs for U.S. citizens who attended foreign medical schools before October 12, 1976.

EFFECTIVE DATE: August 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Daniel N. Masica, M.D., Deputy Director, Division of Medicine, Bureau of Health Manpower, Health Resources Administration, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, 301-436-6424.

**SUPPLEMENTARY INFORMATION:** In the FEDERAL REGISTER of September 16, 1977 (42 FR 46529), the Assistant Secretary for Health, Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, amended part 57 of title 42 of the Code of Federal Regulations by adopting as interim-final regulations a new subpart DD entitled "Grants for Training United States Citizen Foreign Medical Students." The interim-final regulations implemented the Secretary's authority under section 782 of the Public Health Service Act ("Act") (42 U.S.C. 295g-2(a)) to award grants to schools of medicine and osteopathy to plan, develop, and operate training programs for U.S. citizens who were students in foreign medical schools before October 12, 1976, to (1) enable these students to meet the requirements of enrolling in schools of medicine or osteopathy in the States as full-time students with advanced standing; or (2) train the students who

have enrolled in schools of medicine or osteopathy in the States as full-time students with advanced standing.

It was necessary in light of the need to make grants prior to October 1, 1977, for these regulations to have been published as Interim-final regulations without benefit of proposed rulemaking procedures. Notwithstanding the omission of these rulemaking procedures however, interested persons were invited to submit written comments not later than November 15, 1977. All materials received not later than that date were to be considered and following the close of the comment period, the regulations were to be revised as warranted by the public comments. The comments received, the Department's response to the comments, and the revisions made to the regulations based on these comments are indicated below. For clarity, the comments and responses have been arranged according to the section of the interim-final regulations to which they pertain.

**§ 57.2904—Application.** The first commenter recommended that the regulations specify that for the 1978-79 academic year, all training programs must start no later than January or February of 1978. The specific request made by the commenter cannot, of course, at this date be accommodated since the next grants to be made under this authority will not be made until June 1979.

However, the Secretary wishes to point out that while section 782 of the Act does not specify the dates upon which each grantee must begin the training program, § 57.2904(e)(1) of the regulations requires each applicant to submit a detailed timetable for carrying out the overall training project. The Secretary believes that in order to allow flexibility in the development of the foreign medical student training programs, the applicant must be afforded an opportunity to propose a training program, including a timetable, which the applicant feels will adequately provide for the training required under section 782.

**§ 57.2905—Project requirements.** A second commenter expressed the view that there was a lack of specificity in the regulations with respect to the project requirements for training students who have transferred from foreign medical schools and have enrolled in U.S. schools of medicine or osteopathy. This commenter specifically recommended that § 57.2905(f) of the regulations be amended to require that the grantee develop particular types of examinations to assess the foreign medical students' knowledge and skills in the areas of clinical psychiatry and behavioral sciences.

It is the Secretary's view that in light of the requirements of



§ 57.2905(f) and in the interest of allowing the grantee to exercise flexibility in developing a proposed plan for assessing and correcting deficiencies in the foreign medical students' medical education, the regulations should not be amended to specify the particular subject areas in which the foreign medical student's medical skills and knowledge must be assessed.

Finally, there have in addition been a number of technical and editorial changes in order to increase the readability of the regulations. Accordingly, the existing subpart DD of 42 CFR Part 57 is revised and adopted as set forth below.

Dated: June 30, 1978.

JULIUS B. RICHMOND,  
Assistant Secretary for Health.

Approved: August 14, 1978.

JOSEPH A. CALIFANO, Jr.,  
Secretary.

**Subpart DD—Grants for Training United States  
Citizen Foreign Medical Students**

|         |                                  |
|---------|----------------------------------|
| Sec.    |                                  |
| 57.2901 | Applicability.                   |
| 57.2902 | Definitions.                     |
| 57.2903 | Eligibility.                     |
| 57.2904 | Application.                     |
| 57.2905 | Project requirements.            |
| 57.2906 | Evaluation and grant award.      |
| 57.2907 | Grant payments.                  |
| 57.2908 | Expenditure of grant funds.      |
| 57.2909 | Nondiscrimination.               |
| 57.2910 | Grantee accountability.          |
| 57.2911 | Publications and copyright.      |
| 57.2912 | Reports.                         |
| 57.2913 | Applicability of 45 CFR Part 74. |
| 57.2914 | Records, audit, and inspection.  |
| 57.2915 | Additional conditions.           |

**AUTHORITY:** Section 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. § 216); section 782 of the Public Health Service Act, 90 Stat. 2314 (42 U.S.C. 295g-2).

**§ 57.2901 Applicability.**

The regulations of this subpart are applicable to the award of grants under section 782 of the Public Health Service Act (42 U.S.C. 295g-2) to schools of medicine and osteopathy to plan, develop, and operate training programs for U.S. citizens, who were students in foreign medical schools before October 12, 1976, (1) to enable them to meet the requirements for enrolling in schools of medicine or osteopathy in the States as full-time students with advanced standing, or (2) to train those U.S. citizen foreign medical students who have transferred from foreign medical schools and have enrolled in schools of medicine and osteopathy in the States as full-time students with advanced standing.

**§ 57.2902 Definitions.**

As used in this subpart:

"Act" means the Public Health Service Act, as amended.

"Advanced standing" means the level of academic placement beyond the first year of training at a school of medicine or osteopathy in a State.

"Budget period" means the interval of time into which the project period is divided for budgetary and reporting purposes, as specified in the grant award.

"Council" means the National Advisory Council on Health Professions Education (established by section 702 of the Act).

"Foreign medical school" means a school (1) which is not located in a State, (2) which provides a full course of study leading to a medical degree or a diploma, and (3) whose medical degree or diploma is accepted by the country in which the school is located as one of the necessary qualifications for official sanction or licensure to practice medicine as a physician in that country.

"Foreign medical student" means a U.S. citizen who was a student in a foreign medical school before October 12, 1976, and who is either: (1) seeking to transfer to a school of medicine or osteopathy in a State as a full-time student with advanced standing, or (2) has enrolled in a school of medicine or osteopathy in a State as a full-time student with advanced standing.

"Full-time student" means a student who is enrolled in a school in a State on a full-time basis, as determined by the school, and is pursuing a course of study leading to a degree of medicine or osteopathy.

"Nonprofit school" means a school owned and operated by one or more corporations or associations, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

"Project director" means an individual designated by the grantee in the grant application and approved by the Secretary to direct the project being supported under this subpart.

"Project period" means the total time for which support for a project has been approved, including any extensions thereof.

"Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

"School of medicine or school of osteopathy" means a school which provides training leading to a degree of doctor of medicine or a degree of doctor of osteopathy and is accredited as provided in section 772(b) of the Act.

"State" means one of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and

the Trust Territory of the Pacific Islands.

**§ 57.2903 Eligibility.**

(a) *Eligible applicants.* Any public or private nonprofit school of medicine or osteopathy located in a State may apply for a grant under this subpart.

(b) *Eligible projects.* Grants under this subpart may be made to eligible applicants to meet the costs of planning, developing, and operating projects to carry out either one or both of the following purposes:

(1) To train U.S. citizens who were enrolled in foreign medical schools before October 12, 1976, to enable them to meet the requirements for enrolling in schools of medicine or osteopathy in the States as full-time students with advanced standing; or

(2) To train U.S. citizens who were enrolled in foreign medical schools before October 12, 1976, who have transferred from foreign medical schools and have enrolled in schools of medicine or osteopathy in the States as full-time students with advanced standing.

**§ 57.2904 Application.**

(a) Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at the time as the Secretary may require.<sup>1</sup> More than one school may join in the submission of an application for a grant under this subpart.

(b) The application must be signed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award including the regulations of this subpart.

(c) In addition to other pertinent information as the Secretary may require, an application for a grant under this subpart must contain the following:

(1) A description of the proposed project to carry out either one or both of the purposes specified in § 57.2903(b).

(2) A description of any previous similar training activities in which the applicant has engaged.

(3) A description of the resources available for the conduct of the proposed project, including faculty, staff, equipment, facilities, and where applicable, the clinical practice setting or settings.

(4) A description of the background and qualifications of the project staff and any proposed consultants.

(5) A description of the proposed recruitment plans and criteria for admission to the training program.

<sup>1</sup> Applications and instructions may be obtained from the Grants Management Officer, Bureau of Health Manpower, Room 4-22 Center Building, 3700 East-West Highway, Hyattsville, Md. 20782.



(6) An estimate of the number of students to be enrolled in the training program.

(7) A description of the proposed plan and methods of identifying the deficiencies in the foreign medical school education of the foreign medical students participating in the training program as required by § 57.2905 of this subpart.

(8) A description of the proposed training program for correcting deficiencies including the proposed curriculum, the proposed number of hours for classroom instruction, and proposed laboratory demonstrations, lectures, and seminars.

(9) A description of the proposed plan to counsel foreign medical students who have completed a § 57.2903(b)(1) training program with respect to gaining admission as full-time students with advanced standing to schools of medicine or osteopathy located in the States.

(10) A detailed timetable for carrying out the activities of the proposed project.

(11) A detailed method for monitoring and evaluating the performance of the foreign medical student participants, and of the overall project.

(12) A detailed budget for the proposed project and a justification of the amount of grant funds requested.

#### § 57.2905 Project requirements.

A project supported under this subpart must be conducted in accordance with the following requirements:

(a) The project must be conducted in accordance with section 782 of the act, the regulations of this subpart, the terms and conditions of the award, and the approved application.

(b) The project must be conducted under the direction of a project director who must be on the full-time faculty of a school submitting an application under this subpart. If the project director becomes unable to function in this capacity, the Secretary must be notified as soon as possible.

(c) Each training program must have at least four foreign medical student participants.

(d) Each project must systematically evaluate and monitor the progress of the foreign medical student participants during their training.

(e) If the project is designed to carry out the purpose of training foreign medical students to enable them to meet the requirements of enrolling in a school of osteopathy or medicine in a State (§ 57.2903(b)(1)), the project must:

(1) Identify the deficiencies in the foreign medical school education of each foreign medical student, including those subject areas which are lacking because the subjects are not part of the foreign medical school curriculum,

are not taught within a time-frame comparable to the curricula of U.S. schools of medicine or osteopathy or do not correspond sufficiently to subject areas taught in U.S. schools of medicine or osteopathy; and provide training to correct these deficiencies;

(2) Assess by examination or other appropriate mechanisms each foreign medical student's medical knowledge and skills in the basic, clinical, and behavioral sciences and provide, where necessary, supplemental training in these subject areas;

(3) Provide each foreign medical student with an evaluation of his or her overall performance, including examination scores, upon completion of the training program; and

(4) Counsel the foreign medical students who have completed the training program with respect to gaining admission as full-time students with advanced standing in schools of medicine or osteopathy located in the States.

(f) If the project is designed to carry out the purpose of training foreign medical students who have enrolled in a school of medicine or osteopathy in a State (§ 57.2903(b)(2)), the project must:

(1) Assess the medical knowledge and skills of the foreign medical students enrolled in the applicant school of medicine or osteopathy and compare the degree of their knowledge and skills with that possessed by students enrolled and trained in the applicant school of medicine or osteopathy at the same academic level as the foreign medical student; and

(2) Provide supplemental training to each foreign medical student whose medical knowledge and skills are not comparable to the degree of medical knowledge and skills possessed by students enrolled and trained in the applicant school of medicine or osteopathy at the same level as the foreign medical student in order to bring the foreign medical student to a degree of competency equal to these students.

#### § 57.2906 Evaluation and grant award.

(a) Within the limits of funds available under section 782, the Secretary, after consultation with the Council, may award grants to those applicants whose projects will in his or her judgment best promote the purposes of section 782 of the Act, taking into consideration among other pertinent factors:

(1) The potential effectiveness of the proposed project in carrying out the purposes of § 57.2903(b).

(2) The reasonableness of the criteria for selection and enrollment of participants into the training program.

(3) The adequacy of the plan for identifying deficiencies in the medical education of the foreign medical stu-

dents as required by § 57.2905 of this subpart.

(4) The adequacy of the proposed curriculum designed to correct these deficiencies.

(5) The administrative and managerial capability of the applicant to carry out the proposed project.

(6) The availability and adequacy of the resources available to the applicant to carry out the proposed project, including faculty, staff, equipment, and facilities.

(7) The qualifications of the project director.

(8) The reasonableness of the proposed budget in relation to the proposed project.

(9) The adequacy of the methods for monitoring and evaluating the performance of the foreign medical student participants, and of the overall project.

(b) The amount of any award will be determined by the Secretary on the basis of his or her estimate of the sum necessary for all or a designated portion of the direct costs of the project plus an additional amount for indirect costs, if any, which will be calculated by the Secretary either (1) on the basis of his or her estimate of the actual indirect costs reasonably related to the project, or (2) on the basis of a percentage of all, or a portion of, the estimated direct costs of the project when there are reasonable assurances that the use of this percentage will not exceed the approximate actual indirect costs. The award may include an estimated provisional amount for indirect costs or for designated direct costs (such as fringe benefit rates) subject to upward (within the limit of available funds) as well as downward adjustments to actual costs when the amount properly expended by the grantee for provisional items has been determined by the Secretary.

(c) All grant awards will be in writing and will set forth the amount of funds granted and the period for which grant funds will be available for obligation by the grantee. The period of support for any grant under this subpart may not exceed 4 years.

(d) Neither the approval of any project nor the award of any grant commits or obligates the United States in any way to make any additional supplemental, continuation, or other award with respect to any approved project or portion thereof. For continuation support grantees must make separate application at the time and in the form as the Secretary may require.

(e) If a grantee has filed an application for continuation support, and within the limits of funds available for this purpose, the Secretary may make a grant award for an additional budget period for any previously approved



project where the Secretary finds, on the basis of the progress and accounting reports as may be required, that the project's activities during the current budget period justify continued support for an additional budget period. If the Secretary determines to continue support, the amount of grant award will be determined in accordance with paragraph (b) of this section. If the Secretary determines not to continue a project for an additional budget period, The grantee will be notified in writing before the end of the current budget period. In addition if he or she determines that support is necessary, the Secretary may provide financial support for the orderly phase-out of the project.

**§ 57.2907 Grant payments.**

The Secretary will from time to time make payments to the grantee of all or a portion of any grant award, either by way of reimbursement for expenses incurred in the budget period or in advance for expenses to be incurred to the extent he or she determines payments are necessary to promote prompt initiation and advancement of the approved project.

**§ 57.2908 Expenditure of grant funds.**

(a) Funds granted under this subpart may be expended solely for carrying out the approved project in accordance with section 782 of the act the regulations of this subpart and the terms and conditions of the award. However, funds may not be expended for sectarian instruction or for any religious purpose.

(b) Funds granted under this subpart may be used to, among other things, identify deficiencies in the foreign medical education of foreign medical students, develop materials and methodology for correcting these deficiencies, and develop specialized training to prepare foreign medical students for enrollment in schools of medicine or osteopathy in the States as full-time students with advanced standing.

(c) Any unobligated grant funds remaining in the grant account at the close of a budget period may be carried forward and be available for obligation during subsequent budget periods of the project period. The amount of a subsequent award will take into consideration the amount remaining in the grant account. At the end of the last budget period of the project period, any unobligated grant funds remaining in the grant account must be refunded to the Federal Government.

**§ 57.2909 Nondiscrimination.**

(a) recipients of grants under this subpart are advised that in addition to complying with the terms and conditions of these regulations, the follow-

ing laws and regulations are applicable:

(1) Section 704 of the act (42 U.S.C. 292d) and 45 CFR Part 83 (prohibiting discrimination on the basis of sex in the admission of individuals to training programs under title VII of the act);

(2) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and its implementing regulation, 45 CFR Part 80 (prohibiting discrimination in federally assisted programs on the grounds of race, color, or national origin);

(3) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and its implementing regulation, 45 CFR Part 86 (prohibiting discrimination on the basis of sex in federally assisted education programs); and

(4) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulation, 45 CFR Part 84 (prohibiting discrimination in federally assisted programs on the basis of handicap).

(b) The grantee may not discriminate on the basis of religion in the admission of individuals to its training programs.

**§ 57.2910 Grantee accountability.**

(a) *Accounting for grant award payments.* The grantee must record all payments made by the Secretary in accounting records separate from the records of all other funds, including funds derived from other grant awards. With respect to each approved project the grantee must account for the sum total of all amounts paid by presenting or otherwise making available evidence satisfactory to the Secretary of expenditures for costs meeting the requirements of this subpart. When the amount awarded for indirect costs was based on a predetermined fixed percentage of estimated direct costs, the amount allowed for indirect costs will be computed on the basis of the predetermined fixed-percentage rates applied to the total or selected elements of the reimbursable direct costs incurred.

(b) *Accounting for copyright royalties.* Royalties received by grantees from copyrights on publications or other works developed under the grant must be accounted for as follows:

(1) Royalties received during the period of grant support may be retained by the grantee and, in accordance with the terms and conditions of the grant, used in either or both of the following ways:

(i) Used by the grantee for any purposes that further the objectives of section 782 of the act.

(ii) Deducted from the total project costs for the purpose of determining the net costs on which the Federal share of costs will be based.

(2) Royalties received after the completion or termination of grant support may be retained by the grantee unless the terms and conditions of the grant or a specific agreement negotiated between the Secretary and the grantee provide otherwise.

(c) *Grant closeout.* (1) *Date of final accounting.* A grantee must submit with respect to each approved project a full account, in accordance with this subpart, as of the date of the termination of grant support. The Secretary may require other special and periodic accounting.

(2) *Final settlement.* The grantee must pay to the Federal Government as final settlement with respect to the approved project the total sum of (i) any amount not accounted for under paragraphs (a) and (b) of this section; and (ii) any other amounts due in accordance with Subparts F, M, and O of 45 CFR Part 74 and the terms and conditions of the grant award. This total sum constitutes a debt owed by the grantee to the Federal Government and is recoverable from the grantee or its successors or assigns by set off or other lawful action.

**§ 57.2911 Publications and copyright.**

The copyright policies set forth in 45 CFR 74.140 apply to grants made under this subpart.

**§ 57.2912 Reports.**

In addition to other reports as the Secretary may require, each school of medicine or osteopathy awarded a grant under this subpart during the fiscal year beginning October 1, 1977, and ending September 30, 1978, must submit to the Secretary before June 30, 1979, a report of any deficiencies identified in the foreign medical school education of foreign medical students who participated in the training project for which the grant was made. A draft copy of this report must be submitted to the Secretary by April 30, 1979.

**§ 57.2913 Applicability of 45 CFR Part 74.**

The relevant provisions of the following subparts of 45 CFR Part 74, establishing uniform administrative requirements and cost principles apply to all grants awarded under this subpart.

- Subpart:  
A General.  
B Cash Depositories.  
C Bonding and Insurance.  
D Retention and Custodial Requirements for Records.  
F Grant-Related Income.  
G Matching and Cost Sharing.  
K Grant Payment Requirements.  
L Budget Revision Procedures.  
M Grant Closeout, Suspension, and Termination.  
O Property.  
Q Cost Principles.



## § 57.2914 Records, audit and inspection.

(a) *Records.* In addition to the applicable requirements of 45 CFR Part 74, the grantee must establish and maintain records as the Secretary may by regulation or order require, including records which completely disclose the amount and disposition of the total amount of funds received by the grantee for the project, the total cost of the project for which a grant was received, the total amount of that portion of the total cost of the project received by or allocated to the grantee from other sources, and other records as will facilitate an audit conducted in accordance with generally accepted auditing standards.

(b) *Audit.* The grantee is responsible for providing and paying for an annual financial audit of its books, accounts, financial records, files and other papers and property in accordance with the requirements of section 705(b) of the act. The audit must be conducted by and certified to be accurate by an independent certified public accountant utilizing generally accepted auditing standards. A report of the audit must be filed with the Secretary at the time and in the manner as the Secretary may require.

(c) *Inspection.* The grantee must make available to the Secretary or the Comptroller General of the United States or any of their duly authorized representatives all books, documents, papers, and records for examination, copying, or mechanical reproduction, on or off the premises of the grantee upon a reasonable request therefor.

## § 57.2915 Additional conditions.

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when in his or her judgment the conditions are necessary to assure or protect advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

[FR Doc. 78-23253 Filed 8-17-78; 8:45 am]

## [4110-02]

## Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION,  
DEPARTMENT OF HEALTH, EDUCATION,  
AND WELFAREPART 121h—RESEARCH IN  
EDUCATION OF THE HANDICAPPED

## Final Regulations

AGENCY: Office of Education, HEW.

ACTION: Final regulations.

SUMMARY: This document amends the regulations and guidelines govern-

ing support for research and related purposes in the education of the handicapped. This amendment is necessary for the following reasons: (1) New legislative authority added a provision for the support of model programs to existing authority for support for research and related purposes; (2) recent changes in general Office of Education regulations and procedures rendered certain aspects of current regulations obsolete; and (3) experience with existing program regulations suggested a number of areas which required clarification.

**EFFECTIVE DATE:** These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the *FEDERAL REGISTER*. The effective date is changed by statute if Congress disapproves the regulations or take certain adjournments. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** (1) W. E. Johnston with issues relating to model programs, or (2) Max Mueller with issues relating to research and development, Bureau of Education for the Handicapped, 400 Maryland Avenue SW., Washington, D.C. 20202, telephone 202-245-9722 (Johnston) or 245-2275 (Mueller).

**SUPPLEMENTARY INFORMATION:** Pub. L. 95-49 (enacted June 17, 1977) authorizes the establishment of model programs for handicapped children under section 641 of part E of the Education of the Handicapped Act. Part G of the Education of the Handicap Act, governing special programs for children with specific learning disabilities, expires October 1, 1978. Until last year, part G was viewed as a means of meeting the immediate needs of learning disabled children since other programs for the handicapped did not include those children. Effective October 1, 1977, the definition of "handicapped children" in the Education of the Handicapped Act was amended to include children with specific learning disabilities. This amendment provided potential grantees with projects concerned with research, training, or model service needs of learning disabled children, an opportunity to apply for funds under any of the discretionary programs authorized by the Education of the Handicapped Act. Thus the need for a separate authority to serve the needs of children with specific learning disabilities no longer existed. The inclusion of authorization for model programs for handicapped children under part E of the Education for the Handicapped Act will insure the availability of discretionary

funds for model programs for different disability groups. This regulation has been expanded to provide criteria for the development and conduct of model programs to meet the special educational needs of handicapped children.

Changes in Office of Education policy regarding the processing of grant applications and contract proposals require certain modifications in current research regulations. As a result, this regulation establishes a numerical system for rating and ranking proposals and applications. Suggestions for preparing an application and operating a project are attached as appendix A.

## SUMMARY OF COMMENTS AND RESPONSES

On February 28, 1978, proposed regulations for this program were published in the *FEDERAL REGISTER*. Interested persons were given until March 30, 1978, to submit written comments, suggestions, or objectives. No written comments were received. Numerous editorial changes have been made to clarify requirements and to simplify language. No substantive changes have been made from the proposed regulation.

**AUTHORITY:** This regulation is issued under the authority of part E of the Education of the Handicapped Act, Pub. L. 91-230, as amended by Pub. L. 95-49 (20 U.S.C. 1441-1444).

(Catalog of Federal Domestic Assistance No. 13.443, Handicapped Research and Demonstration.)

Dated: June 26, 1978.

ERNEST L. BOYER,  
U.S. Commissioner of Education.

Approved: August 5, 1978.

HALE CHAMPION,  
Acting Secretary of Health,  
Education, and Welfare.

Part 121h of title 45 of the Code of Federal Regulations is amended to read as follows:

- Sec.  
121h.1 Scope.  
121h.2 Purpose.  
121h.3 Eligible parties.  
121h.4 Activities supported under research programs.  
121h.5 Activities supported under model programs.  
121h.6 Limitations on costs.  
121h.7 Funding criteria for research programs.  
121h.8 Funding criteria for model programs.  
121h.9 Funding criteria for continuation awards.  
121h.10 Priorities.

**AUTHORITY:** Sec. 641-644, Education of the Handicapped Act, as amended, 84 Stat. 185 (20 U.S.C. 1441-1444), unless otherwise noted.

(20 U.S.C. 1441-1444.)



§ 121h.1 Scope.

(a) This part applies to programs and projects assisted under part E of the Act. Sections 121h.6 and 121h.7 and paragraph (b) of this section apply to research programs and projects assisted under sections 624(a)(1), 651(a)(2)(A), and 652 of the Act.

(b) Assistance provided under this part is subject to parts 100, 100a, and 121 of this chapter, which include definitions and requirements relating to fiscal, administrative, property management and other matters, and all relevant definitions included in part 121a of this chapter. Procurement contracts under this authority are subject to 41 CFR Chapters 1 and 3.

(20 U.S.C. 1401, 1424, 1441, 1442, 1451, 1452.)

§ 121h.2 Purpose.

The Commissioner makes awards to eligible parties for research and related purposes, and to conduct research, surveys, or demonstrations, relating to the education of handicapped children. This may include model programs designed to meet the special educational needs of those children. It may also include research and related purposes, and research, surveys, or demonstrations, relating to physical education and recreation for handicapped children.

(20 U.S.C. 1441, 1442.)

§ 121h.3 Eligible parties.

Parties eligible to receive awards under this part are States, State or local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations. Grants may be awarded only to nonprofit agencies and organizations.

(20 U.S.C. 1441, 1442.)

§ 121h.4 Activities supported under research programs.

(a) Awards for research programs provide support for projects designed to generate knowledge about the education of handicapped children and to translate that knowledge into practical techniques and materials. Research activities may address any issue relating to education of the handicapped.

(b) The following are examples:

(1) *Policy and administration.* This category includes research and development projects relating to both policy and administrative issues in education of the handicapped. It includes such areas as service delivery arrangements, personnel, finance, transportation, and architectural barriers.

(2) *Child/setting studies.* This category includes research activities relating primarily to handicapped subject variables and instructional variables.

(3) *Instructional development.* This category includes development and validation of curricula, instructional materials, educational aids, and instructional devices.

§ 121h.5 Activities supported under model programs.

Awards for model programs provide support for the development and demonstration of educational programs which demonstrate a new or improved approach to educating school-aged handicapped children. A model program must include provision for dissemination and replication of successful project components. For example, a model program could apply a theoretical approach in a new way, apply a proven methodology or approach to a new population, or provide services through new or improved delivery modes.

(20 U.S.C. 1441.)

121h.6 Limitations on costs.

(a) Each recipient of a grant under this part must provide a share of the entire cost of the program or project. However, the amount of contribution by the recipient to the cost of the program or project does not affect the disposition of the application by the Commissioner.

(b) In the case of model programs which include both handicapped and nonhandicapped children Federal funds may be used only for those costs related to serving the handicapped children.

(c) Federal funds provided for a model program may not be used to support an entire program which has operated in the past with funds from other sources. However, Federal funds may be used to add major components to a currently operating project which has only been able to conduct pilot activities.

(Pub. L. 92-48, Title III, Sec. 306, 85 Stat. 106, FMCT3-3 (20 U.S.C. 1441, 1442).)

121h.7 Funding criteria for research programs.

The Commissioner evaluates new applications for research programs under the following weighted criteria (maximum possible score: 100 points): The funding criteria in § 100a.26(b) of this chapter do not apply.

(a) The potential importance of the project to the education of the handicapped (20 points).

(b) The probable impact of proposed research and development products and the extent to which products can be expected to have a direct influence on the handicapped or personnel re-

sponsible for the education of the handicapped (20 points).

(c) Technical soundness of the research and development plan and adequacy of specification of procedures (30 points).

(d) Adequacy of personnel and facilities (20 points).

(e) Cost effectiveness of the proposed project and the extent to which budget items requested are appropriate research expenditures (10 points).

(20 U.S.C. 1441, 1442.)

§ 121h.8 Funding criteria for model programs.

The Commissioner evaluates new applications for model programs under the following weighted criteria (maximum possible score: 100 points): The funding criteria in § 100a.26(b) of this chapter do not apply except where noted.

(a) The importance and relevance of the program to the education of handicapped children (10 points).

(b) The probable impact of proposed services and products (10 points).

(c) The extent to which the program is eligible for consideration as a "model". (See § 121h.5 of this Part.) (15 points.)

(d) Technical soundness of the proposal as judged by § 100a.26(b) (3), (7), (8)(i), and (8)(ii) of this Chapter (20 points).

(e) Technical soundness of the proposal as judged by plans for assessment of a child's progress and appropriateness of program approach (15 points).

(f) The extent to which the program plans for the development and implementation of individualized education programs. (See § 121a.340 of this Chapter (5 points).)

(g) The extent of coordination with other appropriate agencies (5 points).

(h) The feasibility of the project as to adequacy of facilities and other resources and as to the reasonableness of estimated cost in relation to the anticipated results (20 points).

(20 U.S.C. 1441, 1442.)

§ 121h.9 Funding criteria for continuation awards.

In reviewing applications for continuation awards, in addition to the criteria set forth in Sections 121h.7 and 121h.8 of this Part, the Commissioner will consider the extent to which the applicant demonstrates that it has performed satisfactorily with respect to previous awards made under this Part.

(20 U.S.C. 1441, 1442.)



## § 121h.10 Priorities.

*Model Programs.* Primary consideration will be given to applicants that develop educational programs that respond to one or a combination of the following priorities. The order does not indicate preference.

- (a) Career education for handicapped children;
- (b) Children with a single handicapped condition;
- (c) Economically disadvantaged handicapped children;
- (d) Handicapped children residing in rural areas;
- (e) Handicapped children residing in urban areas;
- (f) Multi-handicapped children;
- (g) Programs to serve handicapped children with non-handicapped children;
- (h) Secondary education for handicapped children;
- (i) Seriously emotionally disturbed children;
- (j) Severely-profoundly handicapped children.

(20 U.S.C. 1441.)

## APPENDIX

GUIDELINES—EDUCATION OF THE HANDICAPPED  
ACT—PART E*Handicapped Children's Model Programs*SECTIONS 641-644—RESEARCH IN THE  
EDUCATION OF THE HANDICAPPED

## PART 1—INTRODUCTION

## Sec.

## 1.1 Scope of guidelines.

PART 2—ACTIVITIES APPROPRIATE FOR  
SUPPORT

## 2.1 Authority.

## PART 3—PROJECTS

## 3.1 Initiation of projects.

## 3.2 Preparation of applications.

## PART 1—INTRODUCTION

## § 1.1 Scope of guidelines.

(a) The guidelines contained in this document are recommendations and suggestions for meeting the legal requirements which apply to Federal assistance under the Education of the Handicapped Act, Part E, Sections 641-644. The legal requirements include the Act itself (20 U.S.C. 1441-1444) and the regulations (45 CFR Part 121h). The guidelines are not to be construed as requirements. However, where the guidelines set forth a permissible means of meeting a legal requirement, the guidelines may be relied upon.

(20 U.S.C. 1444, 113 Cong. Rec. 5936, 5939 (daily ed. May 23, 1967); *United States v. Jefferson County Board of Education*, 372 F.2d 836, 857 (1966).)

(b) Where a guideline is issued in connection with or affecting a provision in the regulations, the pertinent regulation will be cited after the citation of legal authority for the guidelines in the parentheses following the guideline. For example, if the legal authority for the guidelines is Section 642 of

the Act (20 U.S.C. 1442 and the guidelines affect § 121h.2 of the regulation (45 CFR 121h.2), the following citation will be placed on the line immediately following the guideline; (20 U.S.C. 1442; 45 CFR 121h.2.) If no particular section of the regulation is affected, no citation to the Code of Federal Regulations (CFR) will be made.

(20 U.S.C. 1232(a).)

PART 2—ACTIVITIES APPROPRIATE FOR  
SUPPORT

## § 2.1 Authority.

(a) The greatest part of the research responsibility of the Bureau of Education for the Handicapped falls under Part E of the Act, but other research activities are authorized under Sections 624(a)(1), 651(a)(2)(A) and 652(b)(5), of the Act.

(b) Legislative authority for the activities described above is included in connection with the following parts of the Education of the Handicapped Act, Pub. L. 91-230:

(1) Part C, Section 624(a)(1): Research in connection with Centers and Services for the Handicapped (20 U.S.C. 1424);

(2) Part E, Section 641: Model Programs and Research and Demonstration Projects in Education of Handicapped Children (20 U.S.C. 1441);

(3) Part E, Section 642: Research and Demonstration Projects in Physical Education and Recreation for Handicapped Children (20 U.S.C. 1442);

(4) Part F, Section 651(a)(2)(A) and 652(b)(5): Instructional Media for the Handicapped (20 U.S.C. 1451-1452).

(c) The research activities in (b)(1) and (4) above are subject to the regulations (45 CFR 121h.1(b), 121h.6 and 121h.7, only) and guidelines for Part E of the Act.

(20 U.S.C. 1424, 1441, 1442, 1451 and 1452; 45 CFR 121h.1.)

## PART 3—PROJECTS

## § 3.1 Initiation of projects.

Participation in this program is initiated by eligible applicants responding to program announcements or requests for proposals generated and distributed by the Office of Education.

(a) Program announcements advertise the programs' interest in receiving applications for various activities appropriate for support under this Part and establishing closing dates for receipt of applications. All program announcements are published in the *FEDERAL REGISTER*. Model programs' applications will cover the full range of activities appropriate under this program.

(b) From time to time specific related tasks are identified by the Bureau as being especially critical and of immediate importance. At such times the Office of Education may elect to issue a request for proposals for accomplishing a particular job. These are advertised in the *Commerce Business Daily* and are available to all qualified offerors upon request.

(20 U.S.C. 1441, 1442.)

## § 3.2 Preparation of applications.

(a) Applications may be jointly sponsored by more than one eligible agency in order to combine resources and coordinate efforts. If joint applications are submitted, the agency that is listed first will be considered the grantee or contractor for administrative purposes.

Model programs applications may describe in detail the services and activities envisioned for the first year and indicate general plans for two subsequent years. It is helpful for the reader or reviewer to be able to visualize the project in action as much as possible. It is suggested that applicants describe plans and the procedures to be used as completely as possible; realizing that readers can make no assumptions and must rely on the information contained in the proposal. It is helpful to those readers who are not familiar with the applicant, for the proposal to contain clear ideas concerning what is planned, how it will be accomplished and who will accomplish it. If planning is incomplete, it is suggested that plans be stated in sufficient detail, or examples be provided, which explain how the applicant intends to develop the incomplete area(s).

(b) It is suggested that applications include the following features:

(1) *Abstract.* It is suggested that a summary abstract of the planned activities be included with the proposal. Its contents may contain such components as objectives, activities and expected outcomes of the project. It may also specify the number and handicapping condition(s) of children to be served, the setting in which the services will be offered, and a description of the applicant. Additional items may be included within the single page limit.

(2) *Model justification.*—(i) *Description of model program.* It is suggested that the general description of the program include a discussion of the theoretical and practical considerations leading to the development of the proposed model, how the services will be integrated into the spectrum of those currently available in the region for handicapped children, and the potential benefits to the handicapped children served by the project and to handicapped children generally.

(ii) *Population to be served.* It is suggested that the applicant provide a description of the population of handicapped children to be served; including the handicapping condition(s), degree of range of severity of handicap(s), age and other relevant demographic characteristics. It is suggested that the minimum number of children to be served during the first year be determined according to the handicapping condition(s). A project may serve one or a variety of types of handicapped children; one or a variety of age groups.

(iii) *Justification for consideration as a model.* It is suggested that the applicant specify the characteristics of the proposed project which make it eligible for consideration as a "Model". (See § 121h.5 of the regulations for this program.) The justification may include, but is not limited to, one or more of the following forms:

(A) A review of the professional literature supporting the proposed project design on a theoretical or practical basis.

(B) A review of other similar/related programs and an analysis of their effectiveness and their applicability to the population to be served.

(C) Legal or legislative citations of need for the proposed program model.

(D) A description of any special demographic, socio-economic or service delivery characteristics which indicates the need for the development of the proposed program model.

(3) *Model planning and development.*—(i) *Program objectives.* It is



suggested that applicants describe the objectives of the model program and the activities which will be undertaken to obtain each objective. Program objectives should be precise statements of measurable outcomes anticipated for each of the years of the funding period, and program activities associated with each objective should form logical, sequential steps leading to the attainment of the objective. Objectives and related activities should give clear indication of the services which will be demonstrated and that those objectives and related activities be consistent with the program description.

(ii) *Timetable.* Applicants are encouraged to construct a timetable of program activities for the funding period. It is suggested that beginning and ending dates be indicated for each of the activities planned for the first year of the project and for the major phases of the project during the second and third years.

(iii) *Staff.* Applicants should describe the staffing plan for the model program. It is suggested that this plan include a list of all personnel positions and the time commitment required to perform the duties associated with the position. If a person is assigned to the project less than full-time, it is suggested that that person's other professional responsibilities be described. Applicants should append to the proposal vitae for all professional personnel, including consultants.

It is suggested that each vita include information about the academic background, relevant experience and competency for the position to which the person will be assigned. Applicants should identify personnel who have agreed to serve on the project. If specific names are not available, procedures and criteria for selection/recruitment and a timetable for recruitment may be provided. Letters of agreement may be appended for consultants.

(iv) *Staff development.* It is suggested that applicants describe a plan for staff development which is clearly related to program objectives. This plan may include a procedure for determining the training needs of the staff and an organized inservice program to meet those needs. The inservice training plan may ensure that training is continuous and coordinated, that staff members are kept aware of new developments in the project and in the field, and that staff members have the opportunity to communicate with each other and with personnel from other agencies who are associated with the project. Inservice training activities may include staff meetings, seminars, workshops, demonstrations, observations, participation in State, regional and national meetings, and college and university courses. Inservice

training plans may be designed to support the central objective of the model program which is the demonstration of effective educational services to handicapped children.

(v) *Record-keeping system.* Applicants should describe the record-keeping system which will be used in the model program. This description may include reference to the types of records which will be kept and how the record-keeping system will be organized and used. The following types of records represent the minimum components of the record-keeping system: The child's individual educational program, changes in the educational program, and data demonstrating changes in a child's performance.

(vi) *Coordination of services.* Applicants should develop a plan for coordinating the services provided through the model program with the services which other agencies provide to the children. This plan may include an exchange of services between the model program and other agencies to ensure that the children receive comprehensive services but that duplication of efforts is avoided. The plan may also include opportunities for interaction between the staff of the model program and the staff of the other agencies offering similar and/or related services. The applicants may describe the relationship of the model program to State and local plans for services to handicapped children. A description of cooperating agencies may be appended to the proposal.

(vii) *Project financial plans.* Applicants should present a long-range plan for financing the model program. This may include a description of non-Federal support to the project during the funding period. It is the intent of the Handicapped Children's Model Programs to provide Federal support for projects which, after 3 years, will be continued and/or replicated through State, local or other support. Therefore, it is suggested that applicants describe how the project will be financed when Federal support is discontinued.

(4) *Model implementation.*—(i) *Identification and assessment of handicapped children.* The applicant should state the criteria used to determine whether a child is handicapped, identify the personnel responsible for the assessment process, and specify the criteria employed to select students for project services. It is suggested that this section discuss the following items:

Approach to initial assessment.

Referral agencies and types of professionals involved in referral process.

Norm-referenced, criterion-referenced, or curriculum-based tests and/or observational procedures used to determine the entering skills or developmental level of the child.

Provisions for direct and frequent on-going assessment of student progress.

Guidelines for making program changes based on the on-going student performance data.

A description of the approximate level of functioning of students to be served by the program.

A description of parental/family involvement in the assessment and/or procedures for explaining the results of the assessment to the parents.

A description of how assessment procedures will take into account cultural or language differences. (Although screening, identification, and assessment of children with handicaps may be a component of the project, the demonstration of educational services is the central focus.)

Procedures for the identification of the handicapped children. (These procedures may, where appropriate, include activities in cooperation with Child Find Programs operated through the State Department of Education.)

(ii) *Instructional intervention.*—(A) *Curriculum.* The applicant is encouraged to specify curriculum content. It is suggested that the selection of the curriculum be justified by reference to appropriate literature citations. It is suggested that any plan for curriculum development and validation be detailed.

(B) *Methodology.* It is suggested that the general approach of the instructional methodology to be used in the project be discussed. This section may focus on the techniques the teachers will be using in the direct instruction of the child. Examples of the approach may be included as part of the narrative.

(C) *Delivery of service.* The applicant is encouraged to describe the service delivery model to be employed by the project. The description may identify the procedures for coordinating input from multiple disciplines and discuss the extent to which program activities interface with regular educational programs, community and home-living programs and/or vocational programs.

(iii) *Individualized Educational Programs (IEPs).* It is suggested that the proposal describe the process that will be used to develop individualized educational programs and the procedures for evaluating them. It is suggested that methods for development of the program conform to guidelines set forth by the State Education Agency. Goals and objectives established in the IEPs should be related to the results of the initial assessment. It is suggested that a sample individualized educational program prepared for a child representative of the students to be served by the program be included.



(iv) *Supplementary services.* The applicant is encouraged to provide a brief description of ancillary and/or supportive services to the target population. The description may include the types of agencies providing these services, specific nature of the services, rationale for the services and financial and administrative responsibility for the services.

(v) *Special facilities, equipment, and materials.* The applicant is encouraged to describe the physical facilities, equipment, and materials which are currently available to support project activities. If special facilities, adaptive equipment, prosthetic devices, and/or educational material will be required to implement the program, they may be specified. There may be a discussion of safety features of the physical facilities, the extent to which facilities meet accessibility standards, and the availability of mobility aids. If extensive equipment is to be purchased by the program funds, the proposal may include a rationale for its selection and a brief discussion of its intended use. The location of schools, bus lines, or other services which affect the project's visibility and accessibility may be noted. If facilities have not been identified, specifications of the desired type of facilities may be presented. For projects which focus on the delivery of educational or vocational services in integrated settings, there may be included a description of the regular educational or vocational environments into which students will be placed.

(vi) *Parent-family participation.* It is suggested that the proposal contain plans for involvement of the parents of the handicapped child and other family members or family surrogates in the services to be provided by the project. It is suggested that the following services be made available by the applicant to parents and other family members or family surrogates as needed:

Assistance in understanding and coping with the child's handicap and associated problems.

Psychological or social work services. Information or training in special education techniques for instruction and management.

Observation and/or work with the children in the project.

Development of activities that can be implemented at home, based on home-related needs.

Assistance in obtaining services from other agencies.

Assistance in follow-up services including school, vocational, or job placement.

(vii) *Advisory committee.* It is suggested that each project establish an advisory committee which will assist actively in the projects: (1) planning, development, and operation; (2) dissemination of information; (3) evaluation of progress and success; and (4) securing of continuation funding. The proposal may describe how the advisory committee will be established, the specific functions it will perform, and the number of scheduled times it will meet annually. The membership may include parents of students to be served by the project and may include local public school personnel experts in the education of handicapped children and adults, persons from related fields such as health, social work, mental health, and medicine, as well as persons with experience in public service. The proposal may identify persons and/or positions of persons who will be available and who are qualified to perform the functions of the advisory committee. The following information may be provided by the project to each member of the advisory committee: (1) A copy of the rules and regulations pertaining to this program; (2) a copy of the project proposal; and (3) additional information relating to the project that will assist the member in performing the functions of the committee.

(5) *Project evaluation.* It is suggested that an evaluation plan be developed to measure the impact and success of the project.

An applicant is encouraged to list the specific areas to be evaluated, the methods and/or instruments to be used, staff responsible for evaluation, and the means by which the results of the evaluation will be fed back into the system to improve project functioning.

It is suggested that the evaluation activities over the award period include measures of:

(i) Accomplishment of program objectives.

(ii) Child progress toward the goals specified in the individualized educational programs.

(iii) The effectiveness of specific program components relating to child progress.

(iv) The effectiveness of project in-service training in improving staff knowledge and/or competency.

(v) The effectiveness of steps taken to ensure parent-family participation.

(vi) The effectiveness of dissemination activities.

(vii) The effectiveness of replication activities.

If measurement devices are to be developed through the project, procedures

for development and validation of the instruments may be described. Results of the evaluation efforts may be reported in continuation applications for multiple-year projects.

(6) *Model extension.*—(i) *Dissemination.* It is suggested that the proposal provide a detailed description of how dissemination of the project will be accomplished. Applicants are encouraged to include information on the following in the dissemination plan:

Kind and number of people to whom dissemination activities will be targeted.

Method(s) by which such audiences will be made aware of the project and encouraged to observe it.

Steps to be taken that will result in organizing and packaging project components and/or materials so they are transportable for use in other communities. Projects planning to package such items as a handbook of project procedures, evaluation manual or parent/family participation materials may indicate the kind of materials they anticipate will result from the project.

The dissemination component may be directly related to the program's justification for consideration as a model.

(ii) *Replication.* It is suggested that the description of the replication activities include the types of agencies that would be receptive to the model program, some evidence of this receptiveness, and an estimate of the number of agencies that may adopt the model during a second and/or third year of the project cycle. It is suggested that the proposal contain a description of all actions to be taken and products to be developed to stimulate target agencies to replicate the model program. Federal funds may be used to initiate components of the strategy. A description of the proposed part of the replication system that could be strengthened or developed with Federal funds to facilitate the development of the model system may be included in the proposal. It is suggested that the application include the approximate cost on a per year basis for the partial support of the replication strategy.

(20 U.S.C. 1441, 1442; 45 CFR 121h.7.)

[FR Doc. 78-22484 Filed 8-17-78; 8:45 am]



[7035-01]

**Title 49—Transportation**

**CHAPTER X—INTERSTATE  
COMMERCE COMMISSION**

**SUBCHAPTER A—GENERAL RULES AND  
REGULATIONS**

[Service Order No. 1267; Amdt. No. 3]

**PART 1033—CAR SERVICE**

**Louisiana & Arkansas Railway Co.  
Authorized To Operate Over  
Tracks of the Atchison, Topeka,  
and Santa Fe Railway Co. and  
Over Tracks of Chicago, Rock  
Island, and Pacific Railroad Co.;  
Decision**

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (amendment No. 3 to service order No. 1267).

SUMMARY: The Louisiana & Arkansas Railway has been required to discontinue use of certain yard facilities in Dallas, Tex., because of congestion in those facilities. Service order No. 1267 authorizes the Louisiana & Arkansas to use similar yard tracks at Dallas owned by the Chicago, Rock Island, and Pacific Railway and to operate over a short segment of line of the Atchison, Topeka, and Santa Fe Railway in order to gain access to those yard tracks. Service order No. 1267 is published in full in volume 42 of the FEDERAL REGISTER at page 26256. Amendment No. 3 to service order No. 1267 extends for an additional 6 months the emergency authority given to the Louisiana & Arkansas Railway to operate over the tracks of these two railroads.

DATES: Effective 11:59 p.m., August 15, 1978. Expires 11:59 p.m., February 15, 1979.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, Telex 89-2742.

Decided: August 11, 1978.

Upon further consideration of service order No. 1267 (42 FR 26256, 41425, and 43 FR 7324), and good cause appearing therefor:

It is ordered, § 1033.1267 Louisiana & Arkansas Railway Co. authorized to operate over tracks of the Atchison, Topeka, and Santa Fe Railway Co. and over tracks of Chicago, Rock Island

and Pacific Railroad Co., service order No. 1267, is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) Expiration date. The provisions of this order shall expire at 11:59 p.m., February 15, 1979, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., August 15, 1978.

(49 U.S.C. 1(10-17).)

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member Robert S. Turkington not participating.

H. G. HOMME, Jr.,  
Acting Secretary.

[FR Doc. 78-23218 Filed 8-17-78; 8:45 am]

[7035-01]

[Service Order No. 1272; Amdt. No. 2]

**PART 1033—CAR SERVICE**

**Goodwin Railroad, Inc. Authorized to  
Operate Over Certain Tracks  
Owned by the State of New  
Hampshire**

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (amendment No. 2 to service order No. 1272).

SUMMARY: Service order No. 1272 authorizes the Goodwin Railroad Inc., to operate a line of railroad formerly operated by the Boston and Maine Railroad and now owned by the State of New Hampshire extending between Concord and Lincoln, N.H. An application for permanent authority is pending. Service order No. 1272 is published in full in volume 42 of the FEDERAL REGISTER at page 44815. Amendment No. 2 to service order No. 1272 extends the order for an additional 6 months.

DATES: Effective 11:59 p.m., August 15, 1978. Expires 11:59 p.m., February 15, 1979.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, Telex 89-2742.

Decided: August 11, 1978.

Upon further consideration of service order No. 1272 (42 FR 44815 and 43 FR 7324), and good cause appearing therefor:

It is ordered, § 1033.1272 Goodwin Railroad, Inc. authorized to operate over certain tracks owned by the State of New Hampshire, service order No. 1272, is amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) Expiration date. The provisions of this order shall expire at 11:59 p.m., February 15, 1979, unless otherwise modified, changed or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., August 15, 1978.

(49 U.S.C. 1(10-17).)

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member Robert S. Turkington not participating.

H. G. HOMME, Jr.,  
Acting Secretary.

[FR Doc. 78-23219 Filed 8-17-78; 8:45 am]

[7035-01]

[Service Order No. 1282; Amdt. No. 2]

**PART 1033—CAR SERVICE**

**American Rail Heritage, Ltd., d.b.a. Crab Orchard and Egyptian Railroad Authorized to Operate Over Tracks Embargoed by Illinois Central Gulf Railroad Co.**

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (amendment No. 2 to service order No. 1282).

SUMMARY: Service order No. 1282 authorizes American Rail Heritage, Ltd., d.b.a. Crab Orchard and Egypt-



tian Railroad (CO&E) to operate over Illinois Central Gulf Railroad Co. (ICG) tracks between Ordill and Mande, Ill. The ICG Railroad has filed for abandonment of this portion of their lines and has placed an embargo against all traffic to and from all stations on the Mande district. Operation by the CO&E over these ICG tracks is necessary to provide rail service to shippers located adjacent to this line. Service order No. 1282 is published in full in volume 42 of the FEDERAL REGISTER at page 56127. Amendment No. 2 extends the expiration date of this order for 6 months.

**DATES:** Effective 11:59 p.m., August 15, 1978. Expires 11:59 p.m., February 15, 1979.

**FOR FURTHER INFORMATION CONTACT:**

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, Telex 89-2742.

**Decided:** August 11, 1978.

Upon further consideration of service order No. 1282 (42 FR 56127, and 43 FR 7325), and good cause appearing therefor:

It is ordered, §1033.1282 American Rail Heritage, Ltd. d.b.a. Crab Orchard and Egyptian Railroad authorized to operate over tracks embargoed by Illinois Central Gulf Railroad Co.,

service order No. 1282, is amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) Expiration date. The provisions of this order shall expire at 11:59 p.m., February 15, 1979, unless otherwise modified, changed or suspended by order of this Commission.

**Effective date.** This order shall become effective at 11:59 p.m., August 15, 1978.

(49 U.S.C. 1(10-17).)

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member Robert S. Turkington not participating.

H. G. HOMME, Jr.,  
Acting Secretary.

[FR Doc. 78-23220 Filed 8-17-78; 8:45 am]

[7035-01]

**SUBCHAPTER B—PRACTICE AND PROCEDURE**

[Ex Parte No. 55 (Sub-No. 22)]

**PART 1106—IMPLEMENTATION OF THE ENERGY POLICY AND CONSERVATION ACT OF 1975**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Change in effective date of final rule.

**SUMMARY:** The Commission adopted a final rule implementing the Energy Policy and Conservation Act of 1975 which was published at 43 FR July 12, 1978, at page 29946. The rule was to take effect on September 1, 1978. However, this rule imposes uniform reporting requirements which must be approved by the General Accounting Office (GAO) under 44 U.S.C. 3512. Since GAO approval is not expected to be received by September 1, 1978, the effective date of the rule will be changed to October 1, 1978.

**EFFECTIVE DATE:** October 1, 1978.

**FOR FURTHER INFORMATION CONTACT:**

Michael J. Falk, Acting Chief, Section of Energy and Environment, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, D.C. 20423, 202-275-7692.

H. G. HOMME, Jr.,  
Acting Secretary.

[FR Doc. 78-23229 Filed 8-17-78; 8:45 am]



# proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-02]

## DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

[7 CFR Part 800]

### GRAIN STANDARDS

#### Study Draft of Regulations, Extension of Comment Period and Notice of Additional Rule-making

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Extension of comment period and notice of additional rule-making.

SUMMARY: The Federal Grain Inspection Service published at page 33612 of the FEDERAL REGISTER for Monday, July 31, 1978, a summary of the study draft to update the regulations under the U.S. Grain Standards Act, as amended. Requests have been received to extend the comment period. Because of the nature and length of the summary, it has been determined to extend the comment period for an additional 30 days.

This summary did not include subpart C which is the "Official Performance Requirements for Grain Inspection Equipment" or subpart D which is the "Official Performance Requirements for Grain Weighing Equipment and Related Grain Handling Systems." It has been concluded that subparts C and D should be included in the summary.

DATE: Written comments on the study draft and the summary should be submitted by October 29, 1978.

ADDRESSES: Written comments should be sent in duplicate to the Hearing Clerk, USDA, Room 1077, South Agriculture Building, Washington, D.C. 20250, where they will be available for public inspection during normal business hours. For copies of the study draft, write to the Compliance Division, Room 2405, Auditors Building, 14th Street and Independence Avenue SW., Washington, D.C. 20250.

#### FOR FURTHER INFORMATION CONTACT:

Leslie E. Malone (Program Operations), FGIS, USDA, Room 1627, 1400 Independence Avenue SW., Washington, D.C. 20250, telephone 202-447-9166.

#### SUPPLEMENTAL INFORMATION:

The U.S. Grain Standards Act (7 U.S.C. 71 et seq.) was amended in 1976 (Pub. L. 94-582), and in 1977 (Pub. L. 95-113).

Summaries of the most of the substantive provisions in the study draft of subparts C and D follow:

#### SUBPART C—OFFICIAL PERFORMANCE REQUIREMENTS FOR GRAIN-INSPECTION EQUIPMENT

Subpart C contains the minimum acceptance and maintenance tolerances for equipment used in the official inspection of grain, including balances, barley pearlers, dockage testers, diverter-type mechanical samplers, moisture meters, protein-testing devices, sieve devices, and test-weight apparatus. The tolerances are based on and are in harmony with the tolerances that have been and are being used by the Service in testing inspection equipment under the Act. Subpart C also contains requirements with respect to the suitability, durability, identification and marking, repeatability, security, and installation of equipment used for official inspection purposes. Summaries of seven of the provisions follow. Please See § 800.951 through § 800.961 for a complete text of the provision and for a definition of terms.

1. The design, construction, and location of grain sampling and inspection equipment, and related sample-handling systems, shall be suitable for the sampling and inspection activities for which the equipment will be used. (800.961(a))

2. The design, the construction, and the materials used in grain sampling and inspection equipment, and related sample-handling systems, shall insure that under normal operating conditions (a) operating parts will remain fully operable, (b) adjustments will remain reasonably constant, and (c) accuracy will be maintained between equipment test periods. (800.961(3))

3. Each item of sampling and inspection equipment for which minimum tolerances have been established shall be permanently marked to show (a) manufacturer's name, initials, or trademark; (b) the serial number of the equipment; (c) the identification of the model, the type, and the design or pattern of the equipment; (d) for diverter-type mechanical samplers, the date the samplers were installed in their present location; (e) for other equipment for which tolerances have been established, the date the equipment was manufactured. (800.961(c))

4. Each unit of inspection equipment shall, within the tolerances prescribed in §§ 800.953 and 800.960, be capable of repeating its recorded results when the equipment is operated in its normal manner. (800.961(d))

5. Each diverter-type sampler and each related sample-handling system shall (a) provide a ready means of sealing to block unauthorized adjustments, or removal or changing of component parts or timing sequences,

without removing or breaking of the seals and (b) otherwise be designed, constructed, and installed in a manner to prevent deception to any person. (800.961(e))

6. Grain sampling and inspection equipment and sample-handling systems shall be installed at a site approved by the Service in accordance with manufacturer's instructions, including any instructions marked on the equipment or systems. (800.961(f)(1))

7. The equipment and systems shall be so installed that neither the operation nor the performance of the sampling or inspection equipment or systems will be adversely affected by the foundation, supports, or any other characteristic of the installation. (800.961(f)(2))

#### SUBPART D—OFFICIAL PERFORMANCE REQUIREMENTS FOR GRAIN WEIGHING EQUIPMENT AND RELATED GRAIN HANDLING SYSTEMS

Subpart D contains requirements for: (a) Technical specifications, (b) tolerances, (c) user requirements, and (d) other technical requirements for official grain weighing scales and associated equipment.\* § 800.1001 includes the definition of technical terms used throughout the subpart. Summaries of the individual §§ 800.1000 through 800.1020 follow.

1. Manufacturers of scale equipment (as well as scale owners) will make use of this section which covers general basic requirements pertaining to all grain scales. (800.1002)

2. Indicating and recording elements, and recorded representations shall be designed and used in accordance with certain generally accepted guidelines. (800.1003)

3. Balance, tare, level damping, and arresting mechanisms shall be designed and used in accordance with certain generally accepted guidelines. (800.1004)

4. Weighbeam normal balance position, weighbeam travel, weighbeam subdivisions, poise stops, poises, pawls, and reading indicator requirements which are generally accepted are covered in this section. (800.1006)

5. Installation of scales shall be done in accordance with certain generally accepted guidelines. Some minor requirements with regard to security of scale pit. (800.1008)

6. Various user requirements are delineated in this section. An effort is made to provide uniformity throughout the country. (800.1009)

7. This section covers maintenance and acceptance tolerances for use in scale testing. These tolerances differ from those in N.B.S. Handbook 44 and from those previously in force by some regulatory agencies. The tolerances as stated are a compilation of var-

\*The requirements are based on (and are in general agreement with) accepted documents published throughout the grain industry such as: N.B.S. Handbook 44, Association of American Railroad's Scale Handbook, Terminal Grain Weighmaster's Handbook and other regulatory agency requirements.



ious tolerances used by regulatory agencies (taking into consideration the mission of the Federal Grain Inspection Service as mandated by the USGSA). (800.1010)

8. Weight indicating and weight recording devices and representations shall meet certain generally accepted requirements. (800.1011)

9. Railroad track scales shall meet certain additional requirements stated in this section. These requirements are generally accepted. (800.1012)

Done in Washington, D.C., August 26, 1978.

D. E. GALLIART,  
Acting Administrator.

[FR Doc. 78-23408 Filed 8-17-78; 9:31 am]

[6750-01]

## FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 772 3042]

MOORE & ASSOCIATES, INC., ET AL., T/A UNI-CHECK, 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 Honolulu, Hawaii, firm engaged in providing various businesses with consumer credit information and other services, to cease furnishing reports containing obsolete, inaccurate, or disputed information; providing such reports for improper purposes; or otherwise failing to comply with statutory requirements.

DATE: Comments must be received on or before October 17, 1978.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, Sixth and Pennsylvania Avenue NW., Washington, D.C. 20580.

### FOR FURTHER INFORMATION CONTACT:

William A. Arbitman, Regional Director, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Avenue, San Francisco, Calif. 94102, 415-556-1270.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the FTC 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 expla-

nation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record 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)).

[File No. —]

MOORE & ASSOCIATES, INC., ET AL., T/A UNI-CHECK, AND RENTCHECK, ET AL.

### AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The Federal Trade Commission having initiated an investigation of certain acts and practices of Moore & Associates, Inc., a corporation doing business as Uni-Check, and Rentcheck, and R. Donald Moore, individually and as an officer of said corporation, and it now appearing that Moore & Associates, Inc., a corporation, and R. Donald Moore, individually and as an officer of said corporation, 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 Moore & Associates, Inc., by its duly authorized officer, and R. Donald Moore, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission, that:

1. Proposed respondent Moore & Associates, Inc., is a Hawaii corporation, with its principal office at 677 Ala Moana Boulevard, Suite 211, Honolulu, Hawaii 96813.

Proposed respondent R. Donald Moore is an individual and an officer of the said corporation. He formulates, directs and controls the acts and practices of said corporation. His address is the same as that of the said corporation.

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 if, comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

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 § 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' addresses 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 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

It is ordered, That respondents Moore & Associates, Inc., a corporation, d.b.a. Uni-Check, Rentcheck, or under any other name, its successors and assigns, and its officers, and R. Donald Moore, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with collecting, preparing, assembling and/or furnishing of consumer reports, as "consumer report" is defined in section 603(d) of the Fair Credit Reporting Act (Pub. L. 91-508, 15 U.S.C. section 1601 et seq.), shall forthwith cease and desist from:

1. Failing to maintain reasonable procedures designed to prevent, in accordance with section 605 of the Fair Credit Reporting Act, the inclusion in consumer reports of obsolete information, as required by section 607(a) of the Fair Credit Reporting Act.

2. Furnishing any consumer report to any person, unless such report is furnished:

a. In response to the order of a court having jurisdiction to issue such order; or

b. In accordance with the written instructions of the consumer to whom the report relates; or

c. To a person whom respondents then have reason to believe intends, at the time the information is furnished, to use the information:

(1) In connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(2) For employment purposes; or



(3) In connection with underwriting of insurance involving the consumer; or

(4) In connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(5) In connection with a business transaction involving the consumer.

*Provided however,* A consumer report may be furnished prior to a time when respondents have reason to believe a person intends to use the information for a purpose enumerated in subsection c, above, if the identity of the consumer(s) to whom the information relates is not disclosed on such consumer report and cannot be determined without the use of a unique identifier, such as a social security number, driver's license number, or bank account number. The identifier used must be provided by the consumer at the time of the transaction with the user. Communication of information pursuant to this proviso does not relieve respondents of responsibility to comply with all other requirements of the order in connection with such transaction.

3. Failing to maintain reasonable procedures necessary to limit the furnishing of consumer reports to the purposes listed under section 604 of the Act, as provided by section 607 of the Act.

4. Failing to require prospective users of consumer reports to certify the purposes for which the information in such reports is sought, and that it will be used for no other purpose, in accordance with section 607(a) of the Fair Credit Reporting Act.

5. Furnishing consumer reports to any user or prospective user of such reports who does not first provide the identification and the certification of purpose for which information in such reports is sought, as required by section 607(a) of the Fair Credit Reporting Act.

6. Failing, when the completeness or accuracy of any item of information contained in the consumer's file is disputed by the consumer, to clearly note, in any subsequent report containing the information in question, that it is disputed by the consumer, and to provide either the consumer's statement or a clear and accurate codification or summary thereof, as required by section 611(c) of the Fair Credit Reporting Act.

7. Failing to comply with all requirements relating to consumer reporting agencies contained in sections 604, 605, 607, 609, 610, 611, 612, 613, and 614 of the Fair Credit Reporting Act.

*It is further ordered,* That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the preparation and/or furnishing of consumer reports, and that respondents secure a signed statement acknowledging receipt of said order from all such personnel.

*It is further ordered,* That the corporate respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent 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 corporation which may affect compliance obligations arising out of the order.

*It is further ordered,* That each individual respondent named herein promptly notify the Commission of the discontinuance of his

present business or employment and of his affiliation with a new business or employment. In addition, for a period of 10 years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities involve consumer reports, as "consumer report" is defined in section 603(d) of the Fair Credit Reporting Act (Pub. L. 91-508, 15 U.S.C. section 1601 et seq.), or of his affiliation with a new business or employment in which his own duties and responsibilities involve consumer reports. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this 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.

[File No. 772 3042]

MOORE & ASSOCIATES, INC.

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Moore & Associates, Inc., a corporation doing business as Uni-Check and Rentcheck, and R. Donald Moore, its president.

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.

Moore & Associates, Inc., a Hawaii corporation, is engaged in offering services to merchants, landlords, banks, and hotels, which services include guaranteeing customers' checks (Uni-Check); guaranteeing against financial loss caused by tenants (Rentcheck); furnishing personal and credit information regarding prospective tenants and applicants for checking accounts; and furnishing the identities of persons who have not paid a hotel charge.

The complaint in this matter makes clear that "check-guarantee" or "rent-guarantee" information is a "consumer report" for purposes of the Fair Credit Reporting Act.

The complaint alleges that respondents violated the Fair Credit Reporting Act and the Federal Trade Commission Act.

1. By failing to maintain procedures designed to prevent the inclusion in consumer reports of information which is more than 7 years' old, with the exception of bankruptcies which may be reported for 14 years.

2. By failing to maintain procedures designed to limit the furnishing of consumer reports to those purposes permitted by the Act.

3. By failing, when a consumer has questioned the accuracy of the information in the file, to note in subsequent reports that

the information is disputed, and to furnish a statement of the consumer's version of the dispute, or a codification thereof.

4. By furnishing, in connection with its hotel-skip service, information regarding consumers to subscribing hotels, which at the time the information is furnished do not have a permissible purpose, in the form of a legitimate business need, to receive the information.

The order requires specifically that respondents comply with Fair Credit Reporting Act requirements relating to obsolete information, furnishing information to persons who do not have a permissible purpose for the information, and permitting the consumer to dispute the accuracy of a consumer report. The order also requires respondents to comply with other provisions of the Act which place obligations on consumer reporting agencies.

The action will benefit consumers by requiring, that the protections afforded to consumers under the Fair Credit Reporting Act relating to the accuracy and privacy of personal information, are afforded to consumers in Hawaii about whom respondents compile information.

The purpose of this analysis is to facilitate public comment on the proposed order and it 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. 78-23210 Filed 8-17-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE  
COMMISSION

[17 CFR Part 270]

[Release No. IC-10358, File No. S7-743]

BEARING OF DISTRIBUTION EXPENSES BY  
MUTUAL FUNDS

Comment Period Extended

AGENCY: Securities and Exchange Commission.

ACTION: Extension of public comment period for advance notice of proposed rulemaking.

SUMMARY: The Securities and Exchange Commission is extending until September 21, 1978, the public comment period with respect to its advance notice of proposed rulemaking on whether there might be conditions under which mutual funds could be permitted to use their assets to pay distribution expenses. (43 FR 23589, May 31, 1978). The comment period was to expire on August 22, 1978. The Commission has determined that it is in the public interest to allow additional time for consideration of the advance notice of proposed rulemaking.

DATES: Comments must be submitted on or before September 21, 1978.



**ADDRESSES:** Send comments in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All communications with respect to this matter should refer to file No. S7-743. Such communications will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street NW., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:**

Richard W. Grant, Esq., 202-755-0242 or Dianne E. O'Donnell, Esq., 202-755-1796, Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:**

In Investment Company Act release No. 10252 (May 23, 1978) [43 FR 23589, May 31, 1978], the Securities and Exchange Commission ("Commission") issued an advance notice of proposed rulemaking, requesting public comment with respect to the question of whether there might be conditions under which mutual funds could be permitted to use their assets to pay expenses incurred in connection with the distribution of their shares. The Commission stated that the public comment period would expire on August 22, 1978.

It has come to the Commission's attention that certain interested members of the public may require more time to complete their consideration of the advance notice of proposed rulemaking in order to respond to the Commission's solicitation of comments. The Commission has determined that it is appropriate in the public interest to allow additional time for the consideration of this advance notice or proposed rulemaking. Accordingly, the Commission hereby extends the period for public comment from August 22, 1978, to September 21, 1978.

By the Commission.

SHIRLEY E. HOLLIS,  
Assistant Secretary.

AUGUST 14, 1978.

[FR Doc. 78-23207 Filed 8-17-78; 8:45 am]

**[4110-03]**

**DEPARTMENT OF HEALTH,  
EDUCATION, AND WELFARE**

Food and Drug Administration

[21 CFR Parts 182 and 186]

[Docket No. 78N-01521]

**HYDROGENATED FISH OIL**

Affirmation of GRAS Status as an Indirect  
Food Ingredient; Correction

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule; correction.

**SUMMARY:** In FR Doc. 78-19420, appearing at page 30300 in the FEDERAL REGISTER of Friday, July 14, 1978, on page 30302, second column, the address in the footnote is changed to read "508 S. Sixth St., Champaign, Ill. 61820."

**FOR FURTHER INFORMATION CONTACT:**

John Richards, Federal Register Writer (HFC-10), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2994.

Dated: August 11, 1978.

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

[FR Doc. 78-23156 Filed 8-17-78; 8:45 am]

**[4110-03]**

Food and Drug Administration

[21 CFR Parts 211 and 221]

[Docket No. 77N-0424]

**ETHYLENE OXIDE, ETHYLENE CHLOROHYDRIN,  
AND ETHYLENE GLYCOL**

Proposed Rulemaking; Extension of comment  
Period

**AGENCY:** Food and Drug Administration.

**ACTION:** Extension of comment period.

**SUMMARY:** This document extends the October 23, 1978, the comment period on the proposal to restrict the use of ethylene oxide in certain drug products and medical devices for human use. The action is being taken to allow more time for the collection and assessment of data on the issue. The original comment period on the proposal would have expired on August 22, 1978.

**DATE:** Written comments by October 23, 1978.

**ADDRESS:** Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

**FOR FURTHER INFORMATION CONTACT:**

Marilyn L. Watson, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3640.

**SUPPLEMENTARY INFORMATION:**

In the FEDERAL REGISTER of June 23, 1978 (43 FR 27474), the Commissioner of Food and Drugs issued a proposal to restrict the use of ethylene oxide as a sterilant for certain drug products and medical devices for human use. The proposal (1) established maximum residue limits for ethylene oxide and its two major reaction products, ethylene chlorohydrin (2-chloroethanol) and ethylene glycol, in drug products and medical devices for human use, and (2) established maximum daily levels of exposure for drug products for ethylene oxide and its two major reaction products. This action was taken in response to data that showed that residues of ethylene oxide in drug products and medical devices for which ethylene oxide was used as a sterilant might produce toxic reactions in patients, and because of the potential risk of mutagenicity from exposure to these residues. Interested persons were given until August 22, 1978 to submit comments on the proposal.

In response to the proposal nine comments were received requesting an extension of the comment period. While one comment requested an extension of 90 days, others requested an extension of at least 60 days. Among those requests presented, it was contended that, due to the highly technical nature of the subject matter, additional time is needed to collect data and adequately assess the overall impact of the proposal. One comment requested extension of the comment period to review relevant data contained in submissions to the Environmental Protection Agency's (EPA) "notice of rebuttable presumption against registration and continued registration of pesticide products containing ethylene oxide," published in the FEDERAL REGISTER of January 27, 1978 (43 FR 3801). It was also contended that because many of the references cited by the Commissioner were not listed in EPA's related proposal, additional time is needed to carefully review these references.

The Commissioner has considered these requests and finds that an extension of the comment period is justified. Because the initial comment period was 60 days, however, and because a safety issue is involved, the Commissioner believes that an extension of 60 days for the submission of comments is sufficient.



Accordingly, the comment period is extended to October 23, 1978. Comments may be seen in the Office of the Hearing Clerk, Food and Drug Administration at the address noted above, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 11, 1978.

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

[FR Doc. 78-23158 Filed 8-17-78; 8:45 am]

[1505-01]

[21 CFR Parts 505, 539, 548]

**BACITRACIN AND BACITRACIN-CONTAINING DRUGS**

Updating and Technical Revision

Corrections

In FR Doc. 78-16252 appearing at page 25444 in the issue for Tuesday, June 13, 1978, and corrected at page 35731 in the issue for Friday, August 11, 1978, second column, the correction for the sentence numbered 1 under technical changes should have read as follows: "added to the dosage-form monographs; (2) lower potency limits be".

[4910-22]

**DEPARTMENT OF TRANSPORTATION**

Federal Highway Administration

[23 CFR Part 635]

[FHWA Docket No. 78-16]

**CONSTRUCTION AND MAINTENANCE**

Contract Procedures

AGENCY: Federal Highway Administration, DOT.

ACTION: Proposed rule.

SUMMARY: The Federal Highway Administration (FHWA) issues these proposed amendments to a final rule which reduce, clarify, and simplify the regulatory requirements pertaining to the contracting for Federal-aid highway construction.

DATE: Comments on this proposal must be submitted by October 17, 1978.

ADDRESS: Written comments should be sent (preferably in triplicate) to: Federal Highway Administration, FHWA Docket No. 78-16, Room 4205, 400 Seventh Street SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between the hours of 7:45 a.m. and 4:15 p.m., e.t., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

K. L. Ziems, Chief, Contract Administration and Safety Branch, Construction and Maintenance Division, Office of Highway Operations, 202-426-4847; Wilbert Baccus, Office of the Chief Counsel, 202-426-0786, 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.t., Monday through Friday.

**SUPPLEMENTARY INFORMATION:** FHWA proposes to clarify and to reduce the existing regulations and to comply with the requirement of the FHWA policy on the minimization of redtape.

The deletion of § 635.118 would remove the prohibition against Federal-aid participation in bonuses paid to contractors for early completion or projects.

The deletion of § 635.119 would permit the use of publicly [State] owned equipment on Federal-aid projects.

Section 635.125 pertaining to safety is proposed to be deleted as the same requirements are contained in clause VIII of the required contract provisions Form FHWA 1496.<sup>1</sup>

The definition of minority business enterprise is included in § 635.102 and is in accordance with the latest DOT order 4000.7A\* issued on March 6, 1978, and published in the FEDERAL REGISTER on Monday, May 15, 1978. The term "minority person" means a person who is black, Hispanic, Asian American, American Indian, Alaskan Native, or a woman regardless of race or ethnicity.

NOTE.—The Federal Highway Administration has determined that this document does not contain a major proposal according to the criteria established by the Department of Transportation pursuant to E.O. 12044.

Issued on August 7, 1978.

KARL S. BOWERS,  
Acting Federal  
Highway Administrator.

Part 635, subpart A of chapter I, title 23 of the Code of Federal Regulations is amended as follows:

**§ 635.110 [Amended]**

1. Delete the word "bids" in the section heading for § 635.110 and insert in lieu thereof the word "projects."

**§ 635.118 [Amended]**

2. Delete from the table of sections "§ 635.118 Bonus payments," "§ 635.119 Use of publicly owned equipment," and "§ 635.125 Health and safety," and delete the corresponding sections within the subpart;

<sup>1</sup> Available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

**§ 635.102 [Amended]**

3. Section 635.102 is amended as follows:

(a) Paragraph "(e)" is revised to read as follows:

\* \* \* \* \*

(e) "Minority Business Enterprise" means a business enterprise that is owned and controlled by one or more minority persons. The term "minority person" means a person who is black, Hispanic, Asian American, American Indian, Alaskan Native, or a woman regardless of race or ethnicity. The phrase "owned and controlled" as used in this definition means a business which is (1) a sole proprietorship legitimately owned by an individual who is a minority person, (2) a partnership or joint venture controlled by minority persons, and in which at least 51 percent of the beneficial ownership interests legitimately are held by minority persons, or (3) a corporation or other entity controlled by minority persons, and in which at least 51 percent of the voting interests and 51 percent of the beneficial ownership interests legitimately are held by minority persons.

(b) By adding a new paragraph "(f)" following paragraph "(e)," to read as follows:

\* \* \* \* \*

(f) "P.S. & E." means plans, specifications, and estimates.

\* \* \* \* \*

4. Section 635.103 is revised to read as follows:

**§ 635.103 Applicability.**

Subject to certain exceptions as provided in § 635.105(d), this subpart applies to all Federal-aid highway projects except certification acceptance projects. Only §§ 635.107(e), 635.108(c), and 635.113(h) apply to certification acceptance projects.

5. Section 635.104 is revised to read as follows:

**§ 635.104 Method of construction.**

(a) Except as otherwise provided in paragraph (b) of this section, actual construction work shall be performed by contract awarded to the lowest responsible bidder. The State highway agency shall assure an opportunity for free, open, and competitive bidding. It shall assure adequate publicity of its advertisements for bids. Its advertising for bids and its awarding of contracts shall comply with the procedures and requirements set forth in § 635.107.

(b) If the Division Administrator finds that it is in the public interest, construction work may be performed by some other method than by con-



tract awarded by competitive bidding pursuant to requirements and procedures prescribed by the Division Administrator. Approval by the Division Administrator for construction by a method other than competitive bidding shall be requested by the State in accordance with 23 CFR 635, Subpart B.

6. Section 635.105 is revised to read as follows:

**§ 635.105 Supervising agency.**

(a) The State highway agency is responsible for the construction of all Federal-aid projects, including those undertaken by or under the supervision of a county, city, or other local public agency.

(b) When the work is to be performed under a contract awarded by a local public agency, all Federal requirements including those prescribed in this subpart shall be met.

(c) The State highway agency and any such city or county shall not be relieved of their responsibilities under Federal law and the regulations when they use the services of an engineering organization.

(d) A Federal agency may perform construction operations on a Federal-aid highway project on behalf of a State highway agency or other public agency. The Federal agency shall perform any such construction operations by contract and under its procedures and operations. The construction operations shall normally be performed under the direct supervision of the State highway agency. Direct supervision may, however, be exercised through the contracting Federal agency by mutual agreement between it and the State highway agency. The right of inspection of the work under these contracts shall be extended to all agencies involved in the project.

**§ 635.107 [Amended]**

7. Section 635.107 is amended as follows:

(a) Paragraphs "(a)" and "(b)" are revised to read as follows:

(a) No project shall be advertised for bids, prior to approval of P.S. & E. by the Division Administrator.

(b) An advertisement for bids shall not be issued by the State highway agency until the provisions of the applicable FHWA regulations and directives covering the administration of the highway relocation assistance program have been met. The advertising shall be done in accordance with the laws, specifications, regulations, and policies of the State in which the project is located. It shall also be done in accordance with the applicable Federal requirements set forth in this subpart and those implementing title VI of the Civil Rights Act of 1964, under

conditions that will assure free and adequate competition.

(b) Paragraph "(c)" is deleted and reserved.

(c) Paragraph "(e)" is revised to read as follows:

(e) Bidding opportunities shall be afforded on a nondiscriminatory basis to all qualified bidders regardless of State boundaries and without regard to race, sex, or national origin. Provisions of State laws, specifications, regulations, or policies which may operate in a manner contrary to Federal requirements, including those relating to title VI of the Civil Rights Act 1964, to prevent submission of a bid, or prohibit consideration of a bid submitted by any responsible contractor appropriately qualified in accordance with § 635.108, shall be inapplicable to Federal-aid projects. Where such inapplicable provisions exist, advertisements, specifications, special provisions, or other governing documents shall include positive statements to advise prospective bidders of those provisions that are not applicable.

(d) Paragraph "(g)" is deleted and reserved.

(e) Paragraph "(h)" is amended by deleting the words "In the event that" in the first sentence and inserting in lieu thereof the words "If conditions in".

(f) Paragraph "(i)" is amended by deleting subparagraph "(i)(2)" and revising subparagraph "(i)(1)" to read as "(i)";

**§ 635.108 [Amended]**

8. Section 635.108 is amended as follows:

(a) The first sentence of paragraph "(a)" is amended by deleting the word "Approved" and inserting in lieu thereof the word "used." The second sentence is amended by deleting the words "he may submit" and "his" and inserting in lieu thereof the words "submitting" and "a", respectively. The fourth sentence is amended by deleting the words "a call" and inserting in lieu thereof the word "advertisement." The fifth sentence is amended by deleting the word "approved" and inserting in lieu thereof the word "used."

(b) Paragraphs "(b)" and "(c)" are revised to read as follows:

(b) The procedures and requirements a State highway agency uses for qualifying and licensing contractors, who may bid for, be awarded, or perform Federal-aid highway contracts,

shall be periodically reviewed by the Division Administrator.

(c) The State highway agency shall establish procedures for determining and recording the minority and non-minority classifications of bidders, contractors, subcontractors, and applicants for prequalification or licensing.

**§ 635.109 [Revised]**

9. Section 635.109 is revised to read as follows:

All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount. The State highway agency shall prepare and forward tabulations of bids to the Division Administrator.

**§ 635.110 [Amended]**

10. The heading for § 635.110 is amended by deleting the word "bids" and inserting in lieu thereof the word "projects"

11. Section 635.110 is amended by:

(a) Revising paragraph "(a)" to read as follows:

(a) Subject to the advance approval of the Division Administrator, the State highway agency may tie two or more Federal-aid projects together for bidding purposes where it appears that by so doing more favorable bids may be received. Where the State highway agency allows bidders to bid for one or more of the tied projects, it shall award the contract for the construction of each project on the basis of the lowest responsive bid submitted for the project by a responsible bidder.

(b) Revising the first sentence of paragraph "(b)" to read as follows:

(b) Subject to the advance approval of the Division Administrator, the State highway agency may tie Federal-aid projects and State-financed construction projects together for bidding where the conditions and size of the projects are so similar that the unit costs on the Federal-aid projects will not be increased by tying the projects \* \* \*.

(c) Revising the first sentence of paragraph "(c)" to read as follows:

(c) Subject to the advance approval of the Division Administrator the State highway agency may tie a Feder-



al-aid project and a State-financed construction project together for bidding purposes where conditions are other than as outlined in § 635.110 (b) \* \* \*.

§ 635.111 [Amended]

12. Section 635.111 is amended by:  
(a) Revising paragraph "(b)" to read as follows:

(b) Contracts shall be awarded by the State highway agency to the lowest responsible bidder subject to the concurrence of the Division Administrator.

(b) Revising paragraph "(c)" to read as follows:

(c) If the State highway agency determines that the lowest bidder is not responsible, it shall so notify and obtain the concurrence of the Division Administrator before making an award to the next lowest responsible bidder if such bid is otherwise acceptable.

(c) Adding as the first word of paragraph "(d)(5)" "If" and decapitalizing the word "Bid" to read "bid";

(d) Adding as the first word of paragraph "(d)(6)" "If" and decapitalizing the word "Bid" to read "bid"; and

(e) Deleting the word "is" in paragraph "(d)(7)";

13. Section 635.113 is revised to read as follows:

§ 635.113 Subcontracting.

(a) Contracts for projects shall require that the contractor's organization be used to perform contract work amounting to not less than 50 percent of the total contract price excluding identified specialty items. For purposes of this paragraph an assignment of contract work is considered synonymous with a subcontract to perform such work.

(b) The State highway agency shall not permit any of the contract work to be performed under a subcontract, unless such arrangement has been authorized by the State highway agency in writing. Prior to authorizing a subcontract, the State highway agency shall assure that the subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. A copy of each such written authorization shall be furnished promptly to the Division Administrator.

14. Section 635.114 is revised to read as follows:

§ 635.114 Participation in progress payments.

(a) Federal funds will participate in the estimated costs to the State highway agencies of construction accomplished as the work progresses, based on claims submitted by State highway agencies. When the contract provisions provide for stockpiling, the amount of the claim upon which participation is based may include the appropriate value of approved specification materials stockpiled by the contractor at the designated location if the Division Administrator determines that:

(1) The material is stockpiled at, or in the vicinity of the project site or that because of required fabrication at an offsite location the materials cannot be stockpiled in the vicinity of the project,

(2) The material has been paid for by the contractor, and

(3) The material conforms with the requirements of the plans and specifications.

(b) The quantity of the stockpiled material eligible for Federal participation in any case shall not exceed the total estimated quantity required to complete the project. The participating value may not exceed the appropriate portion of the value of the contract item or items in which such materials are to be incorporated.

§ 635.120 [Amended]

15. Section 635.120 is amended by deleting in the first sentence the words "the" between "on" and "basis" and "of" between "basis" and "arbitration," and insert in lieu thereof the words "any" and "including" respectively;

§ 635.121 [Amended]

16. Paragraphs (a) and (b) of § 635.121 are revised to read as follows:

(a) Subsequent to authorization by the Division Administrator to proceed with force account or contract work, no major change shall be made which will increase the cost of such work to the Federal Government or alter the termini, character, or scope of the work without prior authorization by the Division Administrator.

(b) The Division Administrator may retroactively authorize minor changes and minor extra work. Such minor changes and minor extra work items would include, but not necessarily be limited to, modifications in construction items within the scope of the plans and contract provisions when such modifications are required during the progress of construction.

§ 635.124 [Amended]

17. Section 635.24 is amended by:  
(a) Deleting the comma punctuation and the words, "as described and defined in the Manual of Highway Accounting Procedures adopted in 1958 by the American Association of State Highway Officials" in the first sentence of paragraph "(a)(2)";  
(b) Adding the article "a" between the words "of" and "contract" in the last sentence of paragraph "(a)(2)";  
(c) Deleting the last sentence in paragraph "(b)";  
(d) Deleting paragraphs "(c)" and "(e)"; and  
(e) Redesignate paragraph "(d)" to read as "(c)".

§ 635.126 [Amended]

18. Section 635.126 is amended by:  
(a) Deleting the words "plans, specifications, and estimates" in the first sentence of paragraph "(b)" and insert in lieu thereof "P.S. & E."; and  
(b) Deleting the word "should" in the last sentence of paragraph "(b)" and insert in lieu thereof the word "shall".

§ 635.127 [Amended]

19. Section 635.127 is amended under "Notice to All Personnel Engaged on Federal-aid Highway Projects" in the first unnumbered paragraph by deleting the word "or" between "Secretary" and "Transportation" and insert in lieu thereof the word "of".

(23 U.S.C. 315; 49 CFR 1.48(b).)

[FR Doc. 78-23209 Filed 8-17-78; 8:45 am]

[4310-02]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 153]

NAVAJO-HOPI JOINT USE AREA GRAZING

Revision of Regulations To Allow for Grazing Permits Pending Relocation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This notice proposes revisions in the grazing regulations that would allow for persons awaiting relocation from lands partitioned to either the Navajo or Hopi Tribes of which they are not a member to graze a limited number of livestock pending their relocation. This rule is being proposed because there have been certain difficulties in the administration of the Navajo-Hopi joint use grazing program.

DATE: Comments must be received by September 18, 1978.



# FOR FURTHER INFORMATION CONTACT:

William Benjamin, Project Officer,  
Bureau of Indian Affairs, P.O. Box  
1839, Flagstaff, Ariz. 86001, 602-774-  
5261.

The principal author is David E. Jones, Indian Affairs Division, Solicitor's Office, Washington, D.C. 20240, 202-343-9331.

## SUPPLEMENTARY INFORMATION:

This notice is published in exercise of authority delegated by the Secretary to the Assistant Secretary for Indian Affairs by 230 DM 2.

On April 26, 1977, the previous regulations in part 153 were revised to reflect the partitioning on February 10, 1977, by the U.S. District Court for the District of Arizona in *Sekaquapewa et al. v. MacDonald, et al.*, Civ. No. 579-PCT-JAW, of the joint use area for which the regulations applied. They were revised principally to reflect that the formerly jointly held lands had been divided equally and added to either the Navajo and Hopi Reservations. The revision also reduced the level of Bureau of Indian Affairs administration over the involved lands. The final rulemaking notice indicated the need for the Secretary of the Interior's continuing involvement with respect to grazing and range restoration matters mandated by statute, Navajo-Hopi Settlement Act, act of December 22, 1974, 85 Stat. 1712, 25 U.S.C. § 640d-6400d-24. The notice also stated that the need for the regulations would exist as long as it took to complete the Settlement Act-mandated tasks.

As the result of statements made by the court in the subsequent supplemental proceeding cited above, the Navajo Tribe on March 8, 1978, submitted a petition which sought a revision in the regulations so as to provide for the issuance of grazing permits to persons awaiting relocation. Those statements by the court involved an interpretation of sections 13(a) and 14(a), 25 U.S.C. §§ 640d-12(a) and -13(a), of the settlement act in light of the provision in section 19(a) of the act directing the Secretary to reduce livestock to the carrying capacity of the lands. The court, in statements made at hearings on December 16, 1977, and March 28, 1978, suggested that persons who are to be relocated may nevertheless under the cited language of the act graze livestock while awaiting relocation.

The Hopi Tribe on March 23, 1978, filed a paper in opposition to the Navajo petition.

The proposed revision of the regulations adds several terms to the definitions, adds a new section, 153.20, which sets out the standards for the issuance of permits to persons await-

ing relocation pending their removal, and revises other sections to be consistent with the new section.

On May 15, 1978, the U.S. Circuit Court of Appeals for the Ninth Circuit vacated the order of partition of February 10, 1977, and remanded to the district court the issue of the exact location of the south and part of the west boundary of the joint use area. The court of appeals in that decision suggested that the district court enter an interim partition decree so that the potential disruption in the relocation and livestock reduction processes be minimized. Voluntary relocation is now in progress. Whether or not the May 15 decision of the ninth circuit court vacating the partition line will extend the final date allowed the Relocation Commission to file its relocation plan (set for February 10, 1979) has not been decided. In any event, voluntary relocation will continue, particularly after the district court has adopted an interim partition line.

The reduction of livestock for the affected persons—virtually all Navajo—has had a traumatic effect and is producing such significant sociopsychological, cultural, and economic effects upon these people as to warrant some measures to minimize these effects. Allowing some persons awaiting relocation whose avocation has been that of stockmen to retain a limited number of livestock in small measure alleviates these effects.

Accordingly, the following sections of 25 CFR Part 153 are proposed to be revised as follows:

Section 153.1, Definitions, is proposed to be revised by adding the following subsections:

### § 153.1 Definitions.

(h) "Person awaiting relocation" means a person meeting each of the following criteria: (1) A resident of the former joint use area who is listed on the Bureau of Indian Affairs enumeration; (2) has a livestock inventory listed with the project officer; and (3) is eligible for relocation under the Settlement Act because they are residing on lands partitioned to the tribe of which they are not a member.

(i) "Carrying capacity" means the maximum stocking rate possible without inducing damage to vegetation or related resources.

(j) "BIA enumeration" means the list of persons living on and improvements located within the former joint use area obtained by door-to-door interviews by the project officer's staff.

(k) "Livestock inventory" means the list maintained by the project officer of livestock owned by persons having customary grazing use in the former joint use area.

(l) "Settlement Act" means the Act of December 22, 1974, 88 Stat. 1712, 25 U.S.C. §§ 640d-6400d-24, in which the U.S. District Court for the District of Arizona was authorized to partition the joint use area lands equally between the Navajo and Hopi Tribes; and in which the Secretary of the Interior is directed to immediately commence the reduction of livestock grazing on the joint use area and to complete reduction to carrying capacity, to restore the range to the maximum extent feasible, and to survey, monument, and fence the partition boundary.

Section 153.6, Grazing on range units authorized by permit, is proposed to be revised by adding references to the new final section. As proposed to be revised, it will provide as follows:

### § 153.6 Grazing on range units authorized by permit.

Grazing use on range units is authorized only by a grazing permit. The project officer shall assign grazing privileges to each tribe for their respective reservation lands within the former joint use area and/or shall allocate grazing in accordance with § 153.20. Grazing use by tribal enterprises will be permitted and permits may be issued in the name of the tribe. The project officer will issue permits to persons or enterprises based on the determination by the respective tribes or pursuant to § 153.20.

Section 153.7, Kind of livestock, is proposed to be revised to add a reference to the new section. It would provide as follows:

### § 153.7 Kind of livestock.

Unless preempted by the project officer's action under § 153.20, each tribe may determine, subject to the carrying capacity, the kind of livestock that may be grazed on the range units within their reservation lands.

Section 153.8, Grazing fees, is also proposed to be revised to add a reference in subsection (a) to the new final section. As revised, it would read as follows:

### § 153.8 Grazing fees.

(a) The respective tribal grazing bodies may determine whether grazing fees will be charged and the rate to be charged for the use, subject to the provisions of § 153.20.

Section 153.9, Duration of grazing permits, is also proposed to be revised to add a reference to the new section. As revised, it would read as follows:



**§ 153.9 Duration of grazing permits.**

Each tribe may determine the maximum duration of grazing permits not to exceed 5 years per permit period and subject to § 153.10(b) and § 153.20.

Section 153.13, Payment of tribal fees, is also proposed to be revised to add a reference to the new section which establishes a limitation on the assessment of fees in certain instances. As revised, it would read as follows:

**§ 153.13 Payment of tribal fees.**

Subject to the provisions of § 153.20, fees and taxes exclusive of annual grazing rental provided for in § 153.8 which may be assessed by the respective tribes in connection with grazing permits shall be billed for by the respective tribe and paid annually in advance to the designated tribal official. Failure to make payments will subject the grazing permit to cancellation and may disqualify the permittee from receiving future permits so long as he is delinquent.

Finally, it is proposed to add a new section to provide for the issuance of grazing permits to persons awaiting relocation. As proposed, the section would provide as follows:

**§ 153.20 Grazing privileges of persons awaiting relocation.**

Any person awaiting relocation, as defined in § 153.1(h), shall be eligible for a grazing permit for lands within the former joint use area under the following terms and conditions.

(a) The project officer shall first verify that an applicant meets the criteria of the definition, § 153.1(h).

(b) Permits will be issued by the project officer directly to persons awaiting relocation. The permits will authorize the grazing of a specific number and kind of livestock. The determination of the number of livestock permitted to a person will be based on an assessment of the following factors:

(1) The number of dependents in the person's household;

(2) The age, education, and income prospects of the applicant.

(c) The permit shall be for a specific number and kind of animal(s) which shall not exceed the number of animal units of the Flagstaff Administrative Office's livestock inventory as of February 10, 1977. No such permits will be issued that exceed one-half the carrying capacity of a range unit.

(d) Grazing fees will be assessed and paid in accordance with the Settlement Act provision for rental of the other tribe's lands by persons who are not members, 25 U.S.C. § 640d-15. The project officer will determine the fair rental value as grazing fees and the respective tribes will be responsible for payment of the fees for their members' use. Other fees and/or taxes may be separately assessed by the tribe on

whose lands the person awaiting relocation is grazing permitted livestock, but such fees and/or taxes shall not be assessed at a rate greater than that charged to members of the tribe on whose reservation lands the person grazes the livestock.

(e) Subject to the provision of § 153.10(b), permits shall expire when the person awaiting relocation is relocated pursuant to the Settlement Act or on the date a final order is entered (and appeals concluded) requiring the person to relocate, whichever is earlier. No permit will be issued for an initial term greater than 5 years. Permits may be reissued upon application and redetermination of eligibility. All permits will expire upon the end of the period provided by the Settlement Act for the completion of relocation, 25 U.S.C. 640d-13(a), unless otherwise extended.

FORREST J. GERARD,  
Assistant Secretary for  
Indian Affairs.

[FR Doc. 78-23233 Filed 8-17-78; 8:45 am]

**[6560.01]**

**ENVIRONMENTAL PROTECTION  
AGENCY**

[40 CFR Part 65]

[FRL 950-5]

**STATE AND FEDERAL ADMINISTRATIVE EN-  
FORCEMENT OF IMPLEMENTATION PLAN RE-  
QUIREMENTS AFTER STATUTORY DEADLINES**

Proposed Approval of an Administrative Order  
Issued by the State of Colorado to Cox  
Grain Co., Brush, Colo.

AGENCY: Environmental Protection  
Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the State of Colorado, through the Air Pollution Variance Board to Cox Grain Co. (Cox) for its grain elevator headhouse vent emissions in Brush, Colo. The order requires Cox to bring its grain elevator into compliance with certain regulations contained in the federally approved Colorado State implementation plan (SIP) by November 15, 1978. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by this order.

The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before September 18, 1978.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colo. 80295. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

**FOR FURTHER INFORMATION  
CONTACT:**

Mr. Gary E. Parish, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colo. 80295, telephone 303-837-2361.

SUPPLEMENTARY INFORMATION: The order under consideration is set forth after the signature line below.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the act. EPA may approve the order only if it satisfies the appropriate requirements of this subsection. EPA has preliminarily determined that the order complies with those requirements, but specifically requests public comment on those matters.

If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the Act against the source for violations of the regulations covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Colorado SIP.

The provisions of 40 CFR Part 65 will be promulgated by EPA soon, and will contain the procedure for EPA's issuance, approval, and disapproval of orders under section 113(d) of the Act. In addition, part 65 will contain sections summarizing orders issued, approved and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 14876 (April 2, 1975), will be withdrawn, and replaced by a notice promulgating these new regulations.

All interested persons are invited to submit written comments of the proposed order. Written comments received by the date specified above will be considered in determining whether



EPA may approve the order. Final approval or disapproval will also be published in the FEDERAL REGISTER.

Dated: August 3, 1978.

ROGER L. WILLIAMS,  
Acting Regional  
Administrator, Region VIII.

BEFORE THE AIR POLLUTION VARIANCE BOARD  
OF THE STATE OF COLORADO

IN THE MATTER OF COX GRAIN CO., INC.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
DECISION

This matter was heard by the Colorado Air Pollution Variance Board (hereinafter "the Board") at this scheduled meeting on May 4, 1978, at the Colorado Department of Health Building, Denver, Colo. The hearing was conducted at the request of Cox Grain Co., Inc., at Brush, Colo. (hereinafter "the Petitioner"), for the purposes of determining whether this Board should grant an order authorizing a specific period of variance from the provisions of regulation No. 1, section I.A.1., of the Air Pollution Control Commission, for the purpose of Petitioner's installation of control equipment. Such installation was to be upon a express timetable and schedule, and was to accomplish compliance of Petitioner's headhouse vent with the above-reference regulation.

A quorum of the Variance Board was present during the entire hearing and participated in deliberation and voting on this matter. Thomas R. Heaton presided over the hearing as Chairman.

#### FINDINGS OF FACT

In accordance with the full and complete agreement of the parties and based upon the evidence presented at and during the hearing on May 4, 1978, a record of the proceedings having been duly recorded and compiled by a certified shorthand reporter (which record is available to any party and for review by any member of the public, in accord with C.R.S. 1973, 25-7-116(3)), the Board has made the following findings of fact in support of its decision:

1. The headhouse vent of the Petitioner's grain elevator, located near the junction of Clifton and Railroad Avenue, Brush, Colo., were in violation of the Commission's regulation No. 1, section I.A.1., as alleged in the cease and desist order issued by the division on February 6, 1978. This finding is supported by Petitioner's stipulation as to the validity and propriety of the division's cease and desist order.

2. Petitioner's headhouse vent is not capable of compliance with applicable emission control regulation without installation of the control equipment proposed for installation (cyclone) or comparable equipment. This finding is supported by Petitioner's stipulation thereto and by inspections and evaluations conducted by the division.

3. Petitioner desires the grant of a variance for the purpose of installing sufficient control equipment at its headhouse vent to accomplish compliance with all applicable rules and regulations of the Colorado Air Pollution Control Commission and further desires to take such steps as may be necessary to assure that this order of the Board is sufficient to meet all requirements of section 113(d) of the Federal Clean Air Act, as amended (42 U.S.C. 7413(d)) ("delayed com-

pliance orders"). This finding is supported by Petitioner's stipulation thereto.

#### CONCLUSIONS OF LAW

In the course of its deliberations and ancillary to its findings and decision in this matter, the Board has made the following Conclusions of Law:

1. That the Colorado Air Pollution Variance Board has authority to accept, review, and grant or deny requests for hearings regarding requested variances and that it has the power to hold such public hearings, receive pertinent and relevant proof, rule on objections and motions, and do such other things as it deems necessary, proper, or desirable in order to effectively discharge its duties and responsibilities under article 7 of title 25, C.R.S. 1973, all in conformity with that statute and with article 4 of title 24, C.R.S. 1973. In the course of such a hearing, the Board has specific authority to determine whether alleged violations of emission control regulations exist or did exist and to consider the granting of variances. (Section 25-7-113 and 25-7-115, C.R.S. 1973, as amended).

2. That in the course of performing duties and exercising responsibilities delegated to this Board, a hearing afforded Petitioner was conducted in accord with the procedural requirements of the procedural rules for proceedings before the Air Pollution Control Commission and the Air Pollution Variance Board, the Colorado Administrative Procedure Act, and all applicable provisions of the Colorado Air Pollution Control Act. The decision of the Board, set forth below, is based upon substantial evidence presented at the hearing.

3. That the provisions of the Commission's regulation No. 1, section I.A.1., have been and are now applicable to Petitioner's headhouse vent, Cox Grain Co., Inc., Brush, Colorado, pursuant to provisions of section 116 of the Federal Clean Air Act, as amended (42 U.S.C. 7416).

4. That as concerns violation alleged by the division, the Petitioner's headhouse vent is subject to the 20 percent opacity standard set forth in the Commission's regulation No. 1, section I.A.1.; Petitioner has alleged no facts upon which this Board could find the 40 percent standard set forth at section I.A.2.(d) of regulation No. 1, applicable to the headhouse vent.

5. That the Board, having determined violations to exist or have existed and having received a specific request for variance from the Petitioner, has authority to grant a variance to the Petitioner with express conditions pursuant to authority granted by C.R.S. 1973, section 25-7-115(4). Petitioner has the burden of proof with regard to the necessity or propriety of any such variance. The determination of this Board is final and effective on the date of the grant or denial of variance to the Petitioner, subject to further action by the Commission pursuant to C.R.S. 1973, 25-7-116(9) or the grant of a rehearing by this Board, either or both of which must occur within thirty (30) days from the date of such grant or denial of variance.

#### DECISION AND ORDER

The Colorado Air Pollution Variance Board hereby grants to the Petitioner a variance from the application of Commission regulation No. 1, section I.A.1. from the enforcement of a cease and desist order issued by the division on February 6, 1978,

which order pertains to the Petitioner's headhouse vent at Brush, Colo. This variance is granted to allow for completion of construction and preliminary testing of a cyclone. Petitioner shall employ its best efforts to achieve final compliance as soon as practical, but in no event shall Petitioner fail to attain compliance by November 15, 1978. This variance shall expire on the date of attainment of compliance, but in any event, not later than November 15, 1978, and shall be subject to the following specific terms and conditions:

1. Petitioner will implement a schedule for construction and final compliance as follows:

Submittal of Control Plan—April 15, 1978.  
Out for Bids—May 15, 1978.  
Contracts Awarded—June 15, 1978.  
Start Construction—August 15, 1978.  
Complete Construction—October 15, 1978.  
Final Compliance—November 15, 1978.

The Board and the division shall be given two (2) weeks' prior notice of any anticipated failure to meet schedule dates.

2. During the interim period prior to the final compliance date, the Petitioner shall take such operational measures as are considered practical and beneficial with respect to minimization of emissions on a continuous basis.

3. Petitioner will comply to the best of its ability with the requirements of all applicable provisions of State and Federal regulations regarding air pollution, and is fully aware that if final compliance is not achieved by July 1, 1979, sanctions will be imposed by USEPA (United States Environmental Protection Agency) pursuant to section 120 of Federal Clean Air Act (42 U.S.C. 7420).

4. For purposes of insuring that this order of the Colorado Air Pollution Variance Board will be acceptable to the USEPA for approval and issuance pursuant to section 113(d) of the Federal Clean Air Act, as amended, (42 U.S.C. 7413(d)), the Petitioner has expressed its desire to and does formally:

(a) Waive any and all of its rights provided under Colorado law for appeal of or challenge to the substantive merits of a cease and desist order issued February 6, 1978 by the Air Pollution Control Division, Colorado Department of Health, and to any and all associated rights and claims for administrative or judicial stay of said order.

(b) Waive any and all of its rights provided under Colorado law for appeal of or challenge to the substantive merits of any order issued by the Colorado Air Pollution Variance Board granting a variance in this matter, and to any and all associated rights for or claims to administrative or judicial stay of such order.

These waivers are entirely voluntary on the part of the Petitioner, but have been specifically relied upon by the Board in the consideration of this variance and are therefore included as specific conditions of such variance.

5. Should the Petitioner, Cox Grain Co., Inc., fail to meet any of the above terms and conditions of this variance, the variance shall forthwith be rendered null and void in accord with the provisions of C.R.S. 1973, 25-7-115(4).

The following members of the Colorado Air Pollution Variance Board voted in favor of this decision:



Thomas R. Heaton, Lewis H. Hoyle, M.D., George F. Wiley, A. George Setter, David B. Hahn, Thomas D. Smart, Jr., Michael L. Gilbert, Jerald J. Devitt.

The following members of the Colorado Air Pollution Variance Board voted against this decision:

None.

Dated this 14th day of July 1978, *nunc pro tunc* to May 4, 1978.

THOMAS R. HEATON,  
Chairman, Air Pollution Variance  
Board of the State of Colorado.

[FR Doc. 70-23180 Filed 8-17-78; 8:45 am]

[6560-01]

[40 CFR Part 65]

[FRL 943-81]

# STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of an Administrative Order  
Issued by Ohio Environmental Protection  
Agency to Gold Bond Building Products

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Ohio Environmental Protection Agency to Gold Bond Building Products. The order requires the company to bring air emissions from its tectum manufacturing process in Newark, Ohio, into compliance with certain regulations contained in the federally-approved Ohio State implementation plan (SIP) by June 30, 1978. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before September 18, 1978.

ADDRESS: Comments should be submitted to Director, Enforcement Division, EPA, Region V, 230 South Dearborn Street, Chicago, Ill. 60604. The State order, supporting material, and public comments received in response to this notice may be inspected and

copied (for appropriate charges) at this address during normal business hours.

## FOR FURTHER INFORMATION CONTACT:

Anne Swofford, Attorney, Enforcement Division, EPA, Region V, Chicago, Ill. 60604, 312-353-2082.

SUPPLEMENTARY INFORMATION: Gold Bond Building Products operates a tectum manufacturing plant at Newark, Ohio. The order under consideration addresses emissions from the facility, which are subject to OAC-3745-17-07 (formerly AP-3-07) and OAC-3745-17-11 (formerly AP-3-12). The regulations limit the emissions of particulate matter, and is part of the federally-approved Ohio State implementation plan. The order requires final compliance with the regulation by June 30, 1978. The source has agreed to comply with the terms of the order and has waived any and all rights to seek judicial review of the order, or to seek a stay of enforcement of the order in connection with any judicial review of the implementation plan, or portion thereof.

Because this order has been issued to a major source of particulate matter emissions and permits a delay in compliance with the applicable regulations, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Clean Air Act. EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Ohio SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

The provisions of 40 CFR Part 65 will be promulgated by EPA soon and will contain the procedures for EPA's issuance, approval, and disapproval of orders under section 113(d) of the Act. In addition, part 65 will contain sections summarizing orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for

part 65, published at 40 FR 14876 (April 2, 1975), will be withdrawn, and replaced by a notice promulgating these new regulations.

(42 U.S.C. 7413, 7601.)

Dated: July 10, 1978.

VALDAS V. ADAMKUS,  
Acting Regional  
Administrator, Region V.

BEFORE THE OHIO ENVIRONMENTAL  
PROTECTION AGENCY

## ABATEMENT ORDER

In re: Gold Bond Building Products, a Division of National Gypsum Co., 105 South Sixth Street, Newark, Ohio 43055.

This order is issued this date pursuant to Ohio Revised Code § 3704.03(S) and section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. ("the Act"). This order contains a schedule for compliance, interim requirements, and monitoring and reporting requirements. Public notice and opportunity for a public hearing have been provided pursuant to section 113(d)(1) of the Act.

## FINDINGS

Gold Bond Building Products ("Gold Bond") operates a tectum manufacturing plant at 105 South Sixth Street, Newark, Ohio. Particulate matter is emitted from the tectum manufacturing process. 0145020005 P001, in quantities in excess than permitted by OAC 3745-17-07 (AP-3-07) and OAC 3745-17-11 (AP-3-12), which constitute part of Ohio's implementation plan approved pursuant to section 110 of the Clean Air Act.

After a thorough investigation of all relevant facts, including public comment, it is determined that Gold Bond is unable to immediately comply with those portions of the implementation plan specified above, and that the schedule for compliance set forth in this order is as expeditious as practicable, requires use of the best practicable system of emission reduction for the period the order is in effect, and requires compliance with reasonable and practicable interim requirements including those necessary to avoid imminent and substantial endangerment to human health and to comply with the implementation plan, insofar as the source is able.

## ORDERS

Therefore, it is hereby ordered:

I. That Gold Bond will comply with the Ohio implementation plan regulations at its tectum manufacturing plant, 105 South Sixth Street, Newark, Ohio 43055, tectum (fiber board) manufacturing process, in accordance with the following schedule on or before the dates specified.

1. February 1, 1978—Award construction contract(s).

2. May 31, 1978—Complete construction.

3. June 30, 1978—Achieve and demonstrate final compliance with OAC 3745-17-07 and OAC 3745-17-11.

II. That Gold Bond shall comply with the following interim requirements at its Newark, Ohio, tectum manufacturing plant. Said requirements are determined to be the best reasonable and practicable interim system of emission reduction (taking into account the requirements for which compliance is ordered in section I, above), and are



necessary to assure compliance with OAC 3745-17-07 and OAC 3745-17-11 insofar as Gold Bond is able to comply during the period this order is in effect:

1. Tectum II (foam) line and recutting operations will be scheduled on 2nd shift or when main production line (fabricating of Tectum thicknesses from 1" to 3.5") is down except when main line is producing 2" products or thinner.

2. Production operations will be curtailed during air pollution alerts as determined by Ohio EPA.

III. That Gold Bond is not relieved by this order from compliance with any requirements imposed by the implementation plan, EPA, and/or the courts pursuant to section 303 during any period of imminent and substantial endangerment to the health of persons.

IV. That Gold Bond shall comply with the following emission monitoring and reporting requirements on or before the dates specified below:

**A. Emission monitoring:**

1. Opacity reading shall be taken by a certified smoke reader at monthly intervals, commencing 1 month from the effective date of this order. With the exception of the first monthly reading, said readings shall be taken during that phase of the tectum manufacturing process which produces the heaviest emissions, as determined by the smoke reader at the time of the first monthly reading. At the time of the first reading, the smoke reader shall take readings for all phases of the tectum manufacturing process. Readings will be submitted within 5 days to the Central District Office of Ohio EPA.

**B. Reporting requirements:**

1. No later than 5 days after any date for achievement of any incremental step or final compliance, specified in this order, Gold Bond shall notify Ohio EPA in writing of its noncompliance and reasons therefor, with the requirement. If delay is anticipated or unexpectedly experienced in meeting any requirement of this order, Gold Bond shall immediately notify Ohio EPA in writing of the anticipated or actual delay and reasons therefor. Notification to EPA of any anticipated or actual delay does not excuse the delay.

2. All submittals and notifications to Ohio EPA pursuant to this order shall be made to the Central District Office, 369 East Broad Street, Columbus, Ohio 43216, 614-466-6450.

V. Nothing herein shall affect the responsibility of Gold Bond to comply with State or local regulations, except as enumerated herein.

VI. Gold Bond is hereby notified that its failure to achieve final compliance by July 1, 1979 will result in a requirement to pay a noncompliance penalty under section 120 of the act. In the event of such failure, Gold Bond will be formally notified pursuant to section 120(b)(3), and regulations promulgated thereunder, of its noncompliance.

VII. This order shall be terminated in accordance with section 113(d)(8) of the act if the director of the Ohio EPA or the Administrator determines on the record, after notice and hearing, that an inability to comply with OAC 3745-17-07 and OAC 3745-17-11 no longer exists.

VIII. Violation of any requirement of this order shall result in one or more of the following actions:

A. Enforcement of such requirement pursuant to section 113(a), (b), or (c) of the act,

including possible judicial action for an injunction and/or penalties, and in appropriate cases, criminal prosecution.

B. Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of OAC 3745-17-07 and OAC 3745-17-11 in accordance with the preceding paragraph.

C. If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to section 120 of the act.

IX. This order shall be effective upon approval by the Administrator, or his authorized representative, and upon entry upon the journal of the Director.

Dated: April 15, 1978.

NED E. WILLIAMS,  
Director of  
Environmental Protection.

**WAIVER OF RIGHTS TO CHALLENGE ORDER**

Gold Bond, by the duly authorized undersigned, hereby agrees to comply with the foregoing order, and agrees to waive any and all rights it may have under any provision of law to seek judicial review of the order, to seek judicial review of any subsequent EPA approval of the order, and to seek a stay of enforcement of the order in connection with any judicial review of the implementation plan, or portion thereof.

Dated: January 20, 1978.

W. B. HOFFMAN,  
Vice President, Manufacturing and  
Engineering, Gold Bond Building  
Products.

[FR Doc. 78-22447 Filed 8-17-78; 8:45 am]

[6560-01]

[40 CFR Part 65]

[FRL 950-6]

**STATE AND FEDERAL ADMINISTRATIVE  
ORDERS PERMITTING A DELAY IN COMPLIANCE  
WITH STATE IMPLEMENTATION PLAN  
REQUIREMENTS**

Notice of Proposed Approval of an Administrative Order issued by Hammond Air Pollution Control Department to Steel Containers Inc., d.b.a. Calumet Containers

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

**SUMMARY:** EPA proposes to approve an administrative order issued by the Hammond Air Pollution Control Department to Steel Containers Inc., d.b.a. Calumet Containers. The order requires the company to bring air emissions from its pail reclamation incinerator in Hammond, Ind., into compliance with certain regulations contained in the federally approved Indiana State implementation plan (SIP) by December 31, 1978. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance

order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

**DATE:** Written comments must be received on or before September 18, 1978.

**ADDRESS:** Comments should be submitted to Director, Enforcement Division, EPA, Region V, 230 South Dearborn Street, Chicago, Ill. 60604. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

**FOR FURTHER INFORMATION CONTACT:**

Anne Swofford, Attorney, Air Enforcement Branch, Enforcement Division, EPA, Region V, 230 South Dearborn Street, Chicago, Ill. 6064, 312-353-2082.

**SUPPLEMENTARY INFORMATION:** Steel Containers Inc., d.b.a. Calumet Containers operates a pail reclamation incinerator at Hammond, Ind. The order under consideration addresses emissions from the facility, which are subject to State of Indiana Regulations APC-7 and APC-16. The regulations limit the emissions of particulate matter and carbon monoxide and are part of the federally approved Indiana SIP. The order requires final compliance with the regulation by December 31, 1978, through installation of a multichambered incinerator. In the interim, the facility will operate its pail reclamation incinerator at a production maximum of 1,600 pails per day. The source has consented to the terms of the order.

Because this order has been issued to a major source of particulate matter and carbon monoxide emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Act. EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. En-



forcement against the source under the citizen suit provision of the Act (section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Indiana SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

The provisions of 40 CFR Part 65 will be promulgated by EPA soon, and will contain the procedure for EPA's issuance, approval, and disapproval of orders under section 113(d) of the Act. In addition, Part 65 will contain sections summarizing orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 14876 (April 2, 1975), will be withdrawn, and replaced by a notice promulgating these new regulations.

(42 U.S.C. 7413, 7601.)

Dated: July 11, 1978.

VALDAS V. ADAMKUS,  
Acting Regional  
Administrator, Region V.

HAMMOND AIR POLLUTION CONTROL  
DEPARTMENT

[Order No. HAPC 5-1-A]

In the matter of Steel Containers Inc., d.b.a. Calumet Containers. Proceeding under section 113(d) of the Clean Air Act, as amended.

ORDER

The following order is issued this date pursuant to section 113(d) of the Clean Air Act, as amended 42 U.S.C. Section 7401 et seq. (hereinafter referred to as "the Act"). Public notice and an opportunity for public hearing and 30 days notice to the State of Indiana and the U.S. EPA have been provided pursuant to section 113(d)(1) of the Act. This order contains a schedule for compliance, for interim control requirements, and reporting requirements. Final compliance is required as expeditiously as practicable, but not later than December 31, 1978.

On April 27, 1978, the Hammond Air Pollution Control Department approved a compliance program from the Steel Containers Inc., d.b.a. Calumet Containers (hereinafter referred to as "the Company") for the pall reclamation incinerator at the Company's Hammond facility. Such operation is alleged to be in violation of Hammond Air Quality Control Ordinance No. 3522 (as amended), Article VI, Section 6.14 (State of Indiana Regulations APC-7 and APC-16). Such incinerator operation must be multi-chambered and have a direct flame afterburner in order to comply with the above-mentioned regulations.

The Company agreed to commit itself to a compliance schedule through an order issued under section 113(d) of the Act.

The Company has waived its right to a notice of violation under section 113(a)(1) of the Act, and any notice requirements of the State of Indiana and the city of Hammond air pollution control ordinance.

After thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this order is as expeditious as practicable, and that the terms of this order comply with section 113(d) of the Act.

Therefore, it is hereby ordered, That: I. The Company shall:

1. Preliminary design approved, May 19, 1978.
2. Engineer design finalized, June 30, 1978.
3. Obtain permits and open for bids, July 1, 1978.
4. Award bids, August 1, 1978.
5. Start construction, September 1, 1978.
6. Complete construction, November 1, 1978.
7. Final compliance, December 31, 1978.

II. The Company shall achieve final compliance for the above-mentioned unit with all the above-mentioned regulations by December 31, 1978.

III. Pursuant to section 113(d)(7) of the Act, during the period in which this order is in effect, the Company shall use the best practicable system(s) of emission reduction so as to avoid an imminent and substantial endangerment to the health of persons and shall further comply with the requirements of the applicable implementation plan insofar as it is able to.

IV. During the period in which this order is in effect, the Company shall operate its pall reclamation incinerator at a production maximum 1,600 pails per day. The 1,600-pails-per-day production rate is below maximum design and agreed upon to reduce emissions in the interim. The Company shall maintain records throughout the period in which this order is in effect which demonstrates that the provisions of this paragraph are being followed. Such records shall be available for inspection by the U.S. EPA, State of Indiana, and the Hammond Air Pollution Control Department.

V. The Company shall submit reports to the Hammond Air Pollution Control Department detailing progress made with respect to each requirement of this order. Such reports shall be submitted within five (5) days of the completion of any requirements of this order. To enable verification that this order will be achieved as expeditiously as practicable, the Company shall submit its quarterly financial statement to the Hammond Air Pollution Control Department within five (5) days of its receipt. Such quarterly financial statement shall be considered confidential information by this agency. Such quarterly financial statement shall begin with the last quarter of 1977 and shall terminate with the completion of this order. In addition, no later than December 31, 1978, the Company shall certify to the Hammond Air Pollution Control Department that the facility is in final compliance with all applicable regulations.

VI. Failure to meet any of the provisions of this order shall be considered a violation of the order and subject the Company to prosecution.

VII. In the event that the Company has not achieved final compliance as required by this order by December 31, 1978, it shall thereafter be subject to any applicable form of enforcement action for each day of violation beyond date of this order shall be con-

sidered a violation of this order. This order does not preclude the U.S. EPA or the State of Indiana to bring an enforcement action under section 113(b) of the Act for each day of violation beyond December 31, 1978.

VIII. All submissions and notification to the Hammond Air Pollution Control Department pursuant to this order shall be made to the Chief, Hammond Air Pollution Control Department, 5925 Calumet Avenue, Hammond, Ind. 46320.

IX. Nothing in this order shall be construed so as to effect the Company's responsibility to comply with any other Federal, State, or local regulations.

X. Nothing in this order shall be construed as a waiver by the U.S. EPA, State of Indiana, or Hammond Air Pollution Control Department of any rights or remedies under the Clean Air Act, including, but not limited to, section 303 of the Act, 42 U.S.C. Section 7603, and any State statutes, regulations, or local ordinances.

XI. The Company is hereby notified that its failure to achieve final compliance by July 1, 1979, will result in a requirement to pay a noncompliance penalty under section 120 of the Act. In the event of such failure, the Company will be formally notified, pursuant to section 120(b)(3) and any regulations promulgated thereunder, of its non-compliance.

XII. The Department has found that the Company is presently unable to comply with the State of Indiana implementation plan thereby necessitating the promulgation of this order.

XIII. The Department has determined that continuous emission monitoring and reporting is not warranted under this order due to the size of the pall reclamation incinerator, its cost for compliance versus the cost for continuous monitoring of emissions.

XIV. This order shall be terminated in accordance with section 113(d)(8) of the Act if the chief of the Hammond Air Pollution Control Department determines on the record, after notice and hearing, that the Company has brought the pall reclamation incinerator into compliance prior to the final compliance date of this order.

XV. This order will not take effect until receipt of formal approval from U.S. EPA Regional Administrator and such approval will become an addendum to the order.

Dated: June 27, 1978.

RONALD L. NOVAK,  
Chief, Hammond Air Pollution  
Control Department.

The Steel Containers Inc., d.b.a. Calumet Containers has reviewed this order and believes it to be a reasonable means by which it can achieve compliance with Hammond Air Pollution Control Ordinance No. 3522 as amended, Article VI, Section 6.14 (State of Indiana Regulations APC-7 and APC-16), and hereby consents to its requirements. The Company waives its right to a notice of violation under section 113(a)(1) of the Clean Air Act and any notice requirements of the State of Indiana and the city of Hammond air pollution control ordinance.

Dated: June 27, 1978.

JOHN JAGIELLA,  
Steel Containers, Inc.  
d.b.a. Calumet Containers.

[FR Doc. 78-23153 Filed 8-17-78; 8:45 am]



[6560-01]

[40 CFR Part 65]

[FRL 950-2; Docket No. VII-78-DCO-2]

**STATE AND FEDERAL ADMINISTRATIVE  
ORDERS PERMITTING A DELAY IN COMPLIANCE  
WITH STATE IMPLEMENTATION PLAN  
REQUIREMENTS**

Proposed Approval of an Administrative Order  
Issued by Iowa Department of Environmental  
Quality to John Deere Tractor Works,  
Waterloo, Iowa

AGENCY: Environmental Protection  
Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Iowa Department of Environmental Quality to John Deere Tractor Works. The order requires the company to bring air emissions from its boilers Nos. 6, 7, 8, and 9 in Waterloo, Iowa into compliance with certain regulations contained in the federally approved Iowa State implementation plan (SIP) by February 10, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the Federal enforcement or citizen suit provisions of the act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before September 18, 1978.

ADDRESS: Comments should be submitted to and copies of the order may be secured by writing to the Director, Enforcement Division, EPA, Region VII, 1735 Baltimore, Kansas City, Mo. 64108. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

**FOR FURTHER INFORMATION  
CONTACT:**

Peter J. Culver or Henry F. Rompage, Environmental Protection Agency, Region VII, 1735 Baltimore, Kansas City, Mo. 64108, 816-374-2576.

SUPPLEMENTARY INFORMATION: John Deere Tractor Works operates a manufacturing plant at Waterloo,

Iowa. The order under consideration addresses emissions from boilers Nos. 6, 7, 8, and 9 at the facility, which are subject to subrule 400-4.3(2)b Iowa Administrative Code, Combustion for indirect heating. The regulation limits the emissions of particulates, and is part of the federally approved Iowa State implementation plan. The order requires final compliance with the regulation by February 10, 1979, through installation of an electrostatic precipitator. The source has consented to the terms of the order and the source has satisfied increments A 1, 2, 3, 4, and 6 contained in the order. The construction is complete and the company now operates either on gas or with the emission controls operating. The company will conduct emissions tests in December 1978, when the boilers can be operated within 85 percent of the maximum load.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Clean Air Act (the act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection. The Iowa Department of Environmental Quality issued its order following a public hearing which was preceded by thirty (30) days public notice. The Regional Administrator finds the interim requirements contained in the order are reasonable and practicable, provide for use of the best practicable system of emission reduction and assure compliance with subrule 400-4.3(2)b insofar as John Deere Tractor Works is able to comply during the period the Order is in effect. The company will replace its existing monitors with monitors that comply with the requirements of 40 CFR part 60, Appendix B. Environmental Protection Agency proposes to approve the order because it satisfies the appropriate requirements of section 113(d) of the act.

If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the act (section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Iowa SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the

public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR part 65.

The provisions of 40 CFR part 65 will be promulgated by EPA soon, and will contain the procedure for EPA's issuance, approval, and disapproval of orders under section 113(d) of the act. In addition, part 65 will contain sections summarizing orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 14876 (April 2, 1975), will be withdrawn, and replaced by a notice promulgating these new regulations.

(42 U.S.C. 7413, 7601.)

Dated: July 17, 1978.

KATHLEEN Q. CAMIN,  
Regional Administrator,  
Region VII.

[FR Doc. 78-23184 Filed 8-17-78; 8:45 am]

[6560-01]

[40 CFR Part 65]

[FRL950-3; Docket No. VII-78-DCO-4]

**STATE AND FEDERAL ADMINISTRATIVE  
ORDERS PERMITTING A DELAY IN COMPLIANCE  
WITH STATE IMPLEMENTATION PLAN  
REQUIREMENTS**

Proposed Approval of an Administrative Order  
Issued by Iowa Department of Environmental  
Quality to Iowa Public Service Co.,  
George Neal Station

AGENCY: Environmental Protection  
Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Iowa Department of Environmental Quality to Iowa Public Service Co., George Neal Station. The order requires the company to bring air emissions from its boiler No. II in Salix, Iowa into compliance with certain regulations contained in the federally approved Iowa State implementation plan (SIP) by September 26, 1978. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.



**DATE:** Written comments must be received on or before September 18, 1978.

**ADDRESS:** Comments should be submitted to and copies of the order may be secured by writing to the Director, Enforcement Division, EPA, Region VII, 1735 Baltimore, Kansas City, Mo. 64108. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

**FOR FURTHER INFORMATION CONTACT:**

Peter J. Culver or Henry F. Rompage, Environmental Protection Agency, Region VII, 1735 Baltimore, Kansas City, Mo. 64108, 816-374-2576.

**SUPPLEMENTARY INFORMATION:** Iowa Public Service Co. operates an electric power plant at Salix, Iowa. The order under consideration addresses emissions from boiler No. II at the facility, which are subject to subrule 400-4.3(2) b and d I.A.C., Combustion for indirect heating and visible emissions. The regulation limits the emissions of particulates, and is part of the federally approved Iowa State implementation plan. The order requires final compliance with the regulation by September 26, 1978 through replacement of the temporary SO<sub>2</sub> injection system with a permanent SO<sub>2</sub> flue gas conditioning system. The source has consented to the terms of the order. The source has satisfied increments 1, 2, and 3 contained in the order. The company is required to install continuous monitors that meet the requirements of 40 CFR part 60, Appendix B, by January 1979.

Because this order has been issued to a major source of particulates emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Clean Air Act (the act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection. The Iowa Department of Environmental Quality issued its order following a public hearing which was preceded by thirty (30) days public notice. The Regional Administrator finds that the interim requirements contained in the order are reasonable and practicable, provide for use of the best practicable system of emission controls and assure compliance with subrule 400-4.3(2) b and d insofar as Iowa Public Service is able to comply during the period the order is in effect. If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the Act against the source

for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Iowa SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the Federal Register the Agency's final action on the order in 40 CFR Part 65.

The provisions of 40 CFR Part 65 will be promulgated by EPA soon, and will contain the procedure for EPA's issuance, approval, and disapproval of orders under section 113(d) of the Act. In addition, part 65 will contain sections summarizing orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 14876 (April 2, 1975), will be withdrawn, and replaced by a notice promulgating these new regulations.

(42 U.S.C. 7413, 7601.)

Dated: July 17, 1978.

KATHLEEN Q. CAMIN,  
Regional Administrator,  
Region VII.

[FR Doc. 78-23185 Filed 8-17-78; 8:45 am]

[6560-01]

[40 CFR Part 180]

[FRL 951-2; PP 8E2102/P91]

**PESTICIDE PROGRAMS**

**Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities**

**PROPOSED TOLERANCE FOR THE PESTICIDE CHEMICAL N-(MERCAPTOMETHYL) PHTHALIMIDE S-(O,O-DIMETHYL PHOSPHORODITHIOATE)**

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

**ACTION:** Proposed rule.

**SUMMARY:** This notice proposes that a tolerance be established for residues of the insecticide N-(mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate) on kiwi fruit. The proposal was submitted by Stauffer Chemical Co. This regulation would establish a maximum permissible level for residues of the subject insecticide on kiwi fruit.

**DATE:** Comments must be received on or before September 18, 1978.

**ADDRESS:** Send comments to Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, room 401, East Tower, 401 M Street SW., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Timothy Gardner, Product Manager (PM-15), Registration Division (TS-767), Office of Pesticide Programs, EPA, 202-426-9425.

**SUPPLEMENTARY INFORMATION:** Stauffer Chemical Co., 1200 South 47th Street, Richmond, Calif. 94804, has submitted a pesticide petition (PP 8E2102) to the EPA. This petition requests that the Administrator propose that 40 CFR 180.261 be amended by the establishment of a tolerance for the cholinesterase-inhibiting residues of the insecticide N-(mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate) and its oxygen analog N-(mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorothioate) in or on the raw agricultural commodity kiwi fruit at 25 parts per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. No toxicology data accompanied this petition. All toxicology data requirements were referenced in this action. The toxicology data referenced in the petition in support of the proposed tolerance included a 13-week rat feeding study with a 20 ppm no-observable-effect level (NOEL), a 13-week dog feeding study with a 75 ppm NOEL, a three-generation rat reproduction study with a 40 ppm NOEL, a hen demyelination study (negative), a rabbit teratology study (negative at 60 milligrams (mg)/kilogram (kg) of body weight (bw)/day), 2-year dog and rat feeding studies with 40 ppm NOEL's (both based on cholinesterase-inhibition), a Rhesus monkey teratology study (negative at 8 mg/kg bw/day), and a male rat acute oral lethal dose (LD50) study.

Based on the NOEL in the rat 2-year feeding study and using a 10-fold safety factor, the acceptable daily intake (ADI) is 0.2 mg/kg bw/day. The theoretical maximal residue contribution (TMRC) from the tolerances which have been previously established for residues of the insecticide on a variety of raw agricultural commodities at levels ranging from 40 ppm to 0.1 ppm represents about 9 percent of the ADI. The increment in TMRC from the requested tolerance on kiwi fruit is negligible; the ADI will not be exceeded by the existing established and proposed tolerances.

The nature of the residue in kiwi fruit is adequately understood from data on other crops, and an adequate analytical method (gas chromatography-mass spectrometry) is available.



## PROPOSED RULES

graphy using an alkali-flame ionization detector) is available for enforcement purposes. No other petitions for the subject insecticide are pending. There are no feed items involved with this petition so there is no expectation of secondary residues in meat, milk, poultry, or eggs as delineated in 40 CFR 180.6(a)(3).

No desirable data is lacking from the petition, nor are there any actions currently pending against continued registration of the subject pesticide, nor any other considerations involved in establishing the proposed tolerance.

The pesticide is considered useful for the purpose for which a tolerance is being sought, and it is concluded that the tolerance of 25 ppm on kiwi fruit established by amending 40 CFR 180.261 will protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered, or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act which contains any of the ingredients listed herein may request, on or before September 18, 1978, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition document control number, "PP8E2102/P91." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m., Monday through Friday.

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

Dated: August 15, 1978.

DOUGLAS D. CAMPT,  
Acting Director,  
Registration Division.

It is proposed that part 180, subpart C, section 180.261 be revised by editorially reformatting the section into an alphabetized columnar listing and alphabetically inserting kiwi fruit at 25 ppm, as follows:

§ 180.261 N-(Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate) and its oxygen analog; tolerance for residues.

Tolerances are established for the cholinesterase-inhibiting residues of the insecticide N-(mercaptomethyl)phthalimide SO,O-dimethyl phosphorodithioate and its oxygen analog N-(mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorothioate) in or on

the following raw agricultural commodities:

| Commodity:                             | Parts per million |
|----------------------------------------|-------------------|
| Alfalfa.....                           | 40                |
| Almonds, hulls.....                    | 10                |
| Apples.....                            | 10                |
| Apricots.....                          | 5                 |
| Blueberries.....                       | 10                |
| Cattle, fat.....                       | 0.2               |
| Cattle, meat.....                      | 0.2               |
| Cattle, mby.....                       | 0.2               |
| Cherries.....                          | 10                |
| Citrus fruits.....                     | 5                 |
| Corn, fresh (inc. sweet K + CWHF)..... | 0.5               |
| Corn, fodder.....                      | 10                |
| Corn, forage.....                      | 10                |
| Corn, grain.....                       | 0.5               |
| Cranberries.....                       | 10                |
| Goats, fat.....                        | 0.2               |
| Goats, mby.....                        | 0.2               |
| Goats, meat.....                       | 0.2               |
| Grapes.....                            | 10                |
| Hogs, fat.....                         | 0.2               |
| Hogs, mby.....                         | 0.2               |
| Hogs, meat.....                        | 0.2               |
| Horses, fat.....                       | 0.2               |
| Horses, mby.....                       | 0.2               |
| Horses, meat.....                      | 0.2               |
| Kiwi fruit.....                        | 25                |
| Nectarines.....                        | 5                 |
| Nuts.....                              | 0.1 (N)           |
| Peaches.....                           | 10                |
| Pears.....                             | 10                |
| Peas.....                              | 0.5               |
| Peas, forage.....                      | 10                |
| Peas, hay.....                         | 10                |
| Plums (fresh prunes).....              | 5                 |
| Potatoes.....                          | 0.1               |
| Sheep, fat.....                        | 0.2               |
| Sheep, mby.....                        | 0.2               |
| Sheep, meat.....                       | 0.2               |
| Sweet potatoes.....                    | 10                |

[FR Doc. 78-23250 Filed 8-17-78; 8:45 am]

## [4110-35]

DEPARTMENT OF HEALTH,  
EDUCATION AND WELFARE

## Health Care Financing Administration

[42 CFR Part 449]

## MEDICAL ASSISTANCE PROGRAM

## Timely Claims Payment

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Proposed rule.

SUMMARY: This proposed regulation will add new Medicaid State plan requirements for timely processing of certain health care providers' claims for payment. Ninety percent of "clean claims" must be paid within 30 days of receipt; 99 percent, within 90 days. The rule is required by section 2(b) of Pub. L. 95-142, the Medicare-Medicaid Anti-Fraud and Abuse Amendments, enacted on October 25, 1977. The new requirements are intended to improve State program management, increase provider participation in Medicaid, and aid in preventing and detecting fraud. The proposed regulation retains the requirement in the current regulation that all claims must be paid within 24 months after the date medical services were provided, but would not prohibit Federal matching for claims paid after that date.

DATES: Closing date for receipt of comments: September 18, 1978.

ADDRESSES: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, P.O. Box 2366, Washington, D.C. 20013. Please refer to file code MMB-236-P. Agencies and organizations are requested to submit comments in duplicate. Beginning two weeks from today, the public may review the comments on Monday through Friday of each week, from 8:30 a.m. to 5:00 p.m.: Department of Health, Education, and Welfare, Health Care Financing Administration, Room 5231, 330 C Street SW., Washington, D.C., 202-245-0950.

FOR FURTHER INFORMATION  
CONTACT:

Milt Dezube, 202-245-8990.

SUPPLEMENTARY INFORMATION: Section 2(b)(1) of Pub. L. 95-142 requires States to pay individual practitioner claims within specified times, provides that the Secretary may waive the requirements where a State has exercised good faith in trying to meet them, and requires prepayment and postpayment review of claims. The House Ways and Means Committee Report (H. Rept. 95-393, part 1, at 45) indicates that section's legislative purpose: "Your committee received considerable testimony indicating that undue delay in medicaid claims payments contributes to the rise of factoring arrangements as well as discourages physicians from participating in the program. The committee wishes to assure that the ban on factoring arrangements will not impose an undue hardship on medicaid practitioners."

In developing the proposed regulation, we met with State Medicaid officials to review current State practices and to receive suggestions for writing the regulation. We also reviewed HEW Audit Agency and the General Accounting Office reports on States' claims processing practices. Finally, the Medicare claims payment policy was reviewed, since compatibility between Medicare and Medicaid is desirable and may result in saving administrative costs. The major provisions and policy issues in the proposed regulation are discussed below.

## APPLICABILITY TO PROVIDERS

The statute's timely payment requirements are made applicable to claims "furnished by health care practitioners through individual or group practices or through shared health facilities." (Pub. L. 95-142, section 2(b)). Accordingly, the requirements set out below apply to claims from all individual practitioners, including those in group practice, but do not apply to claims from institutional providers.



## DEFINITION OF A CLAIM

Pub. L. 95-142 does not define the term "claim." However, because States have varying understandings of the term, it is important to establish a standard definition. Otherwise, confusion might arise and there would be uncertainty whether States were in compliance with the statutory requirements. The major issue to be resolved in defining "claim" is whether each line item on a bill is to be considered a claim, or whether the entire bill, which may contain several items, is to be considered the claim. We have defined the term to include all the services furnished to a recipient by a practitioner on the same day, except for laboratory tests and drug prescriptions, where it is common practice to treat each item as a separate claim.

UNIVERSE OF CLAIMS AFFECTED BY  
TIMELY PAYMENT REQUIREMENTS

The timely payment requirements of this proposed regulation will apply only to "clean claims". We have defined "clean claims" as meaning those claims which can be processed without obtaining additional information or substantiation from the provider of services or from a third party. We have also excluded from the term "clean claims" those claims which are submitted by practitioners under investigation for possible fraud or abuse in the Medicaid program.

The statute itself specifically applies only to those claims for which no further information or substantiation is required. Although the legislative history gives some indication that "further information" means information from the provider. (H. Rept. 95-393, part 1 at 45), we believe that the underlying purpose of the statute is served by interpreting the term to include further information from third parties who may be liable for payment of the claim. It often happens that this type of information takes longer to obtain than information from the providers themselves. We believe that the exclusion of claims submitted by practitioners under investigation for fraud or abuse is within the purpose of the statute. Most States have special procedures for examining more cautiously claims submitted by those suspected of fraud. Not only are these claims subjected to closer scrutiny, but additional information is often sought for a more complete review. To subject these claims to the timely payment requirements of this proposed regulation might impose excessive burdens on the investigative process.

MEASUREMENT OF THE 30- AND 90- DAY  
REQUIREMENTS

The statute requires that 90 percent of clean claims be paid within 30 days

of the date of receipt and that 99 percent of these claims be paid within 90 days. Some State officials suggested requiring only that the claims be approved for payment during the statutory period; however, the legislation specifically states that claims are to be paid within the designated time period. Further, in order to avoid confusion, we concluded that we should define when payment is made. We decided to use the date on a check as the date of payment.

## WAIVERS

Pub. L. 95-142 provides that the Secretary may waive the provisions for timely payments if he finds that the State has exercised good faith in trying to meet the requirements. In discussing this provision, the House Committee Report states, "Among other things the Secretary should take into account in making a waiver determination is whether the State has received an unusually high volume of claims which are not clean claims (i.e., claims for which no further written information or substantiation is required from the provider)." (H. Rept. 95-393, part 1 at 45). Accordingly, the proposed regulation specifies that the Administrator will consider the volume of claims which are not clean in his evaluation of the State's good faith. It is clear, of course, that "unclean claims" are not subject to the timely payment requirements at all. However, they will be considered in the decision to grant a waiver because the extensive administrative resources necessary to handle these "unclean claims" make it more likely that a State's limited resources will be insufficient to handle clean claims in timely fashion.

Additionally, in deciding whether to grant a waiver the Administrator will consider whether the State is making diligent efforts to implement an automated claims processing and information retrieval system. It is apparent that most States will have difficulty meeting the timely payment requirements of the proposed regulation if they continue to process claims manually. We note that Federal financial participation is available for 90 percent of a State's expenditures for design, development, or installation of an approved mechanized claims processing and information retrieval system, and for 75 percent of its operation (42 CFR 450.90). We encourage States which have not yet planned to install such a system to do so. Diligent efforts to implement such a system will be considered as a sign of good faith.

For each waiver granted, the Administrator will specify the period of time for which the waiver will be effective, and for which, accordingly, the timely payment requirements need not be

met. In determining the length of the waiver period, administrative latitude for States must be weighed against congressional concern that all State Medicaid programs assure the timely payment of claims. In some States, a waiver may be temporarily necessary while the State irones out administrative problems in the processing of claims (e.g., eligibility of recipients is reviewed by one agency, medical necessity is reviewed by a different agency, the State auditor is required to perform a per-audit, and the State Comptroller is required to certify that funds are available for payment). In determining the duration of the waiver period, we will review each case based on the individual State circumstances, giving weight to the State's capability at that time of meeting the timely payment requirements and its perceived effort in that direction.

REQUIREMENTS FOR PREPAYMENT AND  
POSTPAYMENT REVIEW OF CLAIMS

Pub. L. 95-142 requires that the State plan provide for procedures of prepayment and postpayment claims review, including review of appropriate data with respect to the recipient and provider of the service and the nature of the service for which payment is claimed. In our view, the postpayment requirements of section 2(b) of Pub. L. 95-142 already are met by existing regulations. 42 CFR 450.18, utilization control, requires postpayment review processes to determine misutilization practices of recipients, providers, and institutions; and 42 CFR 450.80, Fraud in the medical assistance program, provides for establishing a basis for verifying with recipients whether services billed by the providers were actually received.

The proposed regulation does add new requirements for prepayment review of all claims. This review will be concerned with recipient eligibility, provider authorization, reasonableness of number of visits and services delivered, duplication of claims, reimbursement rates, and possible third party liability. Review of these matters before payment is made should minimize erroneous payments and aid in detecting attempted fraud in its early stages.

For those who are interested in the extent of prepayment and postpayment reviews established under the Medicaid management information system (MMIS), a computer system for processing claims, see volume II of the MMIS General System Design pp. 63-69 and p. 155. This manual may be obtained from the National Technical Information Service, United States Department of Commerce, 5285 Port Royal Road, Springfield, Va. 22161 (current price is \$7.50).



## REPORTING REQUIREMENT

We do not consider it to be necessary that States routinely submit reports on an annual or quarterly basis. However, in order to review the State's compliance with the timely payment requirements, the Secretary may require that reports be submitted from time to time.

## REVISION OF EXISTING REGULATION

The proposed regulation revises 42 CFR 449.81, which prohibits Federal financial participation for State payments to providers made more than 24 months after the date of service. Since Pub. L. 95-142 establishes timely payment requirements which are stricter than the previous 24-month limit, we anticipate that all claims will be paid well before 24 months have elapsed. The timely payment requirements, however, do not cover all medicaid claims. They do not apply to institutional providers, to claims which are not "clean," to the 1 percent remainder of clean claims, and to claims for which a waiver of the timely payment requirements has been granted. Therefore, we think it will be useful to retain the requirement that all claims be paid within 24 months.

We are proposing, however, to delete the authority to withhold FFP for claims paid after 24 months. This requirement, as well as the other requirements of this regulation, would be enforced by finding the State plan out of compliance. Although we believe withholding FFP is a far more effective means of enforcement, in our view we do not presently have statutory authority to do so. Therefore, we plan to seek a legislative amendment giving us the necessary authority.

The proposed rule would not establish any deadlines within which providers must submit claims to the medicaid agency. The establishment of such deadlines would be left to the discretion of each State.

## COMMENT PERIOD FOR THE PROPOSED RULE

Executive Order 12044, published on March 24, 1978, provides for a 60-day comment period, except where the agency determines that this is not possible. Since the timely payment requirements addressed in this proposed rule have a statutory effective date of July 1, 1978, it is important that we expedite the promulgation of the final regulation to the extent possible. We believe that a 30-day comment period will be sufficient for this proposed rule. In our view, the proposed regulation is not complex or likely to become controversial; interested parties are likely to be able to prepare their comments adequately within a 30-day period. Accordingly, the comment

period on this proposed regulation has been set at 30 days.

42 CFR 449.81 is revised to read as follows:

## § 449.81 Timely processing of medicaid claims; prepayment and postpayment review.

(a) *Basis and purpose.* This section implements section 1902(a)(37) of the Social Security Act. It sets forth—

(1) State plan requirements for—  
(i) Timely processing of claims for payment submitted by certain health care providers; and

(ii) Prepayment and postpayment claims review; and

(2) Conditions under which the Administrator may grant waivers of the time requirements.

(b) *Scope.* This section applies to claims for payment for services furnished under the plan by all individual practitioners whether through individual or group practices or through shared health facilities.

(c) *Definitions.* (1) A "claim" includes all the services furnished to a recipient by a practitioner on the same day, except that each laboratory test or drug prescription shall be treated as a separate claim.

(2) A "clean claim" is one which can be processed without obtaining additional information or substantiation from the provider of the service or from a third party. It does not include claims submitted by a practitioner who is under investigation for fraud or abuse in the Medicaid program.

(3) A "shared health facility" means any arrangement in which—

(i) Two or more health care practitioners practice their professions at a common physical location;

(ii) The practitioners share common waiting areas, examining rooms, treatment rooms, or other space, the services of supporting staff, or equipment;

(iii) The practitioners have a person (who may himself be a practitioner)—

(A) Who is in charge of, controls, manages, or supervises substantial aspects of the arrangement or operation for the delivery of health or medical services at the common physical location other than the direct furnishing of professional health care services by the practitioners to their patients; or

(B) Who makes available to the practitioners the services of supporting staff who are not employees of the practitioners; and

(C) Who is compensated in whole or in part, for the use of the common physical location or related support services, on a basis related to amounts charged or collected for the services rendered or ordered at the location or on any basis clearly unrelated to the value of the services provided by the person; and

(iv) At least one of the practitioners received payments on a fee-for-service basis under titles V, XVIII, and XIX in an amount exceeding \$5,000 for any one month during the preceding 12 months or in an aggregate amount exceeding \$40,000 during the preceding 12 months.

The term does not include a provider of services (as defined in § 405.605 of this chapter), a health maintenance organization (as defined in section 1301(a) of the Public Health Service Act), a hospital cooperative shared services organization meeting the requirements of section 501(e) of the Internal Revenue Code of 1954, or any public entity.

(d) *State plan requirements.* A Medicaid State plan must provide that the requirements of paragraphs (e), (g), and (h) of this section are met.

(e) *Timely processing of claims.* (1) Ninety percent of all clean claims must be paid within 30 days of receipt.

(2) Ninety-nine percent of all clean claims must be paid within 90 days of receipt.

(3) All claims must be paid within 24 months after the services for which payment is being claimed were furnished, except for the following circumstances:

(i) This time limitation does not apply to retroactive adjustments made for institutional providers;

(ii) If a claim for payment under Medicare has been filed in a timely manner, the State agency may pay a Medicaid claim relating to the same services within 6 months after the agency or the provider receives notice regarding the disposition of the Medicare claim;

(iii) Payments may be made in accordance with a court order, to carry out hearing decisions, or to extend the benefits of a hearing decision or court order to others in the same situation as those directly affected by the decision or order.

(4) The date of payment is the date of the check or other form of payment.

(f) *Waivers.* (1) The Administrator may waive the requirements of paragraph (e) upon request by a State if he finds that the State has shown good faith in trying to meet them. In deciding whether the State has shown good faith, the Administrator will consider whether the State has received an unusually high volume of claims which are not clean claims, and whether the State is making diligent efforts to implement an automated claims processing and information retrieval system.

(2) The State's request for a waiver must contain a written plan of correction specifying all steps it will take to meet the requirements of this section.

(3) The Administrator will review each case and if he approves a waiver,



will specify the period of time for which the waiver will be effective, based on the State's capability and efforts to meet the requirements of this section.

(g) *Prepayment and postpayment review.* (1) The State must provide for prepayment claims review consisting of verification that:

(i) The recipient was eligible at the time the service was rendered and the provider was authorized to furnish the service;

(ii) The number of visits and the services delivered are consistent with the recipient's characteristics and circumstances;

(iii) The claim does not duplicate or conflict with one reviewed previously;

(iv) Reimbursement rates do not exceed any limits established by the State plan; and

(v) Any third-party liability was properly entered on the claim and that third party reimbursement was obtained.

(2) The State must provide for post-payment claims review that meets the requirements of §§ 450.18 and 450.80 of this chapter, dealing with utilization control and fraud in the medical assistance program.

(h) The State must provide any reports that the Secretary may require to document its compliance with this section.

**AUTHORITY:** Sections 1102 and 1902(a)(37) of the Social Security Act; 49 Stat. 647, 91 Stat. 1176; (42 U.S.C. 1302, 1396a(a)(37)). (catalog of Federal domestic assistance program No. 13.714, medical assistance program).

Dated: June 23, 1978.

ROBERT A. DERZON,  
*Administrator, Health  
Care Financing Administration.*

Approved: August 14, 1978.

JOSEPH A. CALIFANO, Jr.,  
*Secretary.*

[FR Doc. 78-23251 Filed 8-17-78; 8:45 am]

[6712-01]

**FEDERAL COMMUNICATIONS  
COMMISSION**

[47 CFR Part 73]

[BC Docket No. 78-143; RM-3020]

**FM BROADCAST STATION IN EL DORADO,  
ARK.**

**Order Extending Time for Filing Comments and  
Reply Comments**

**AGENCY:** Federal Communications Commission.

**ACTION:** Order extending time.

**SUMMARY:** Action taken herein extends the time for filing reply comments in a proceeding involving an FM

channel assignment to El Dorado, Ark. Additional time is needed so that opposing parties may respond to comments in the proceeding.

**DATE:** Reply comments must be filed on or before August 24, 1978.

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

**FOR FURTHER INFORMATION  
CONTACT:**

Mildred B. Nesterak, Broadcast  
Bureau, 202-632-7792.

**SUPPLEMENTARY INFORMATION:**

**ORDER EXTENDING TIME FOR FILING  
COMMENTS AND REPLY COMMENTS**

Adopted: August 10, 1978.

Released: August 14, 1978.

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (El Dorado, Ark.), BC docket No. 78-143 RM-3020

1. On April 24, 1978, the Commission adopted a notice of proposed rule making, 43 FR 19692, in response to a petition filed by Inspirational Radio Service ("Inspirational"), requesting the assignment of FM channel 240A to El Dorado, Ark. Oppositions to the proposal were filed by Noalmark Broadcasting Corp. and Lowry Broadcasting Co. ("Lowry"). The dates for filing comments and reply comments were June 23 and July 13, 1978, respectively.

2. On July 24, 1978, Inspirational filed comments starting they were being filed well within the 30-day extension of time requested by it on June 22. Through clerical error the request was not brought to the attention of the Broadcast Bureau until August 9. Although Commission records show that the request was not received until after the June 23 deadline for filing comments, in view of the Commission's oversight in handling the matter, we do not think it appropriate to raise an issue about the lateness of the filing. Moreover, since no opposition had been raised to the request for additional time, we will accept these late filed comments.

3. On August 4, 1978, Lowry filed a petition for leave to file comments. It states that in the event the Commission determines to consider Inspirational's response, fairness dictates that Lowry be afforded the opportunity to address the contentions made for the first time by Inspirational. We agree that it is appropriate to give the opposing parties an opportunity to make a response to Inspirational's comments.

4. Accordingly, it is ordered, That the request for extension of time for filing comments and reply comments in BC docket 78-143 is granted to and

including July 24 and August 24, 1978, respectively.

5. It is further ordered, That the petition for leave to file further comments filed by Lowry Broadcasting Co. is granted.

6. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and section 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

FEDERAL COMMUNICATIONS  
COMMISSION,

MARTIN I. LEVY,  
*Acting Chief,  
Broadcast Bureau.*

[FR Doc. 78-23127 Filed 8-17-78; 8:45 am]

[4910-06]

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

[49 CFR Chapter II]

[Docket No. RSSI-78-5, Notice No. 31]

**GENERAL SAFETY INQUIRY**

**Public Hearing**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation.

**ACTION:** Notice of public hearing.

**SUMMARY:** As part of the general railroad safety inquiry initiated in the notice published in the May 8, 1978, issue of the FEDERAL REGISTER (43 FR 19696), FRA will conduct the third of a series of five 2-day hearings to obtain information from the public to assist in evaluating and improving the effectiveness of its safety regulatory program. The third hearing will address the FRA power brake regulations contained in 49 CFR Part 232.

**DATES:** (1) The third 2-day public hearing will begin at 10 a.m. on September 13, 1978. (The remaining two hearings have been rescheduled for October 18 and 19, and November 15 and 16, respectively.)

(2) Prepared written statements should be submitted by September 6, 1978 in triplicate to the address shown below.

(3) Persons desiring to participate in the hearing should notify the principal program person by September 6, 1978, and indicate the amount of time they need to present their views.

**ADDRESS:** Hearing location: Trans Point Building, Room 3201, 2100 Second Street SW., Washington, D.C. 20590. Send written comments to Docket Clerk, Office of Chief Counsel (RCC-1), Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590.



# FOR FURTHER INFORMATION CONTACT:

Principal program person: Rolf Mowatt-Larssen, Office of Safety, FRA, Washington, D.C. 20590, phone 202-426-0924.

Principal attorney: Edward F. Conway, Jr., Office of Chief Counsel, FRA, Washington, D.C. 20590, phone 202-426-8836.

## SUPPLEMENTARY INFORMATION:

Pursuant to §211.61 of its rules of practice (49 CFR 211.61), FRA is conducting a general safety inquiry to examine in depth selected topics covered by its safety regulations. FRA will use the information it receives in this inquiry in an assessment of the effectiveness of its safety regulatory program. On the basis of this and other information, existing regulations may be expanded in scope, revised or revoked to reflect changed conditions.

The scope of the general inquiry encompasses three general areas: (1) Rolling equipment; (2) track and related structures, appliances, and devices; and (3) signal and communications systems.

The first general area—rolling equipment—consists of these topics: Locomotives, freight cars and their safety appliances and the power brake systems on all equipment. Each topic is being considered in separate 2-day hearings. The first hearing was conducted on June 14 and 15, 1978; its subject was locomotives. The second hearing was held on July 12 and 13, 1978; its subject was freight cars and their safety appliances. The third hearing will be held on September 13 and 14, 1978; its subject will be power brakes.

Additional hearings on the other general areas have been rescheduled to take place in Washington, D.C., on the following dates:

October 18 and 19—Track and related structures, appliances and devices; and

November 15 and 16—Signal and communications systems. Separate notices for each of these hearings will be published at a later date setting forth the specific time and place of the hearing.

The purpose of the third 2-day hearing scheduled for September 13 and 14, 1978, is to elicit information to assist FRA in critically reviewing its present safety regulatory program with respect to power and train brakes. The existing regulations were initially issued by the Interstate Commerce Commission (ICC) after Congress enacted the Power and Train Brakes Safety Appliance Act in 1958 (Pub. L. 85-375, 72 Stat. 86, 45 U.S.C. 9). The statute directed the ICC to adopt and put into effect the rules of the Association of American Railroads (AAR) for the installation, inspection,

maintenance, and repair of all power or train brakes. The statute authorized the ICC to change these AAR rules only after a hearing and provided that the changes are made "solely for the purpose of achieving safety." The administration of this statute was transferred to the FRA by the Department of Transportation Act in 1966 (Pub. L. 89-670, 80 Stat. 931, 49 U.S.C. 1655). The current regulations were adopted by FRA in 1968 (33 FR 19679; 49 CFR Part 232).

The only significant change to these rules since they were initially issued by the ICC in 1958 occurred in 1972 when the FRA prescribed air brake test procedures for runthrough and unit runthrough trains that are operated by more than one railroad (49 CFR 232.19). The principal effect of new procedures was to strengthen the requirements for initial terminal air brake tests of these trains so that these trains may be safely interchanged between railroads without being given another initial terminal air brake test at each point of interchange (49 CFR 232.12).

FRA is considering a major restructuring of the power brake rules (49 CFR Part 232). The restructuring would not be limited to eliminating or updating existing requirements that are obsolete or no longer necessary; it would also include the development of new requirements to meet the needs of the present railroad operating environment. The issues to be addressed in this hearing have been placed in several categories and are discussed below.

## GENERAL

The present general service and emergency requirements for locomotive and train brake equipment were established more than 20 years ago. These standards were prepared and written specifically for 70 pounds brake pressure and for 150 car trains. Many changes have been made in recent years. The capacity of freight cars and the length of trains has been increased greatly. Composition and high phosphorous cast iron brake shoes are replacing the standard cast iron brake shoe. The traditional rod and lever system for transferring braking force from air cylinders to wheel is being replaced by truck mounted tread brake systems and by multiple cylinder installations. The disc brake is now used extensively on passenger equipment. In view of these changed conditions and technological advances, such as No. 26 locomotive valve, brake pipe pressure maintaining feature, dynamic brakes, and the more efficient ABD and ABDW freight car valves, part 232 should be carefully reviewed and revised where necessary. Among the issues to be addressed in any review or revision are the following:

1. Keeping in mind the statutory requirement that the regulations may only be changed for the purpose of achieving safety, what principal factors should be considered in reviewing the power brake regulations?

2. Should the FRA set specific train lengths for winter and summer operations consistent with train line leakage and gradient limitations?

3. Should the maximum permissible train line leakage be changed? How should it be changed? Explain and justify.

4. Should the present gradient requirement be changed? How should it be changed? Explain and justify.

5. Should provisions be made in this part for the testing of brakes in trains that have repeater air cars? Explain and justify.

6. How can the effectiveness of the present train air brake test procedures be improved?

7. What changes can be made in the areas of brake pipe leakage and gradient without adversely affecting the safe handling of long, heavy trains?

8. How many car brakes may be "cut out" in a train without adversely affecting safety? Explain and justify.

9. A 15-pound brake pipe service reduction in automatic brake operation is now required when a leakage test is conducted. This reduction may in some instances result in partial release of brakes due to brake pipe and equalizing reservoir differences. Should a full service application be substituted for the 15-pound reduction? Explain and justify.

10. Some passenger train air brake systems have a coded light or visual indicator device to inform the person conducting a brake test that the brakes have applied and/or released. Are these devices effective and reliable? Can these devices give a positive indication when in fact the brake shoe is not applied with effective force against the wheel or disc? What other means could be used to determine whether these brakes are operating effectively during a brake test?

## MINIMUM PERCENTAGE OF POWER BRAKES

The requirements in §232.1 have been in effect for more than 70 years. Their purpose is to provide a means of moving cars not equipped with power brakes. Virtually all cars are now equipped with power brakes. However, some carriers have interpreted this section as authorizing the operation of a train when 15 percent of its cars have defective air brakes. Accordingly, this section needs to be revised. Among the issues to be considered in that revision are the following:

11. a. What principal factors should be considered by FRA in revising these provisions?

b. If it should become necessary to place cars with inoperative brakes in a train for movement to a repair facility, where should they be located in the train?

c. What is the maximum percentage or the number of cars with inoperative brakes (maximum brake pipe length) that could be placed in line in a train without interfering with the propagation of an air signal in service applications and in emergency applications?



# GENERAL RULES FOR LOCOMOTIVES

The majority of the requirements in § 232.10 duplicate requirements in the locomotive inspection regulations (49 CFR Part 230) and, therefore, should be deleted as surplusage. Changes in those requirements will be considered when the corresponding locomotive inspection regulations are rewritten. Additionally, this section needs to be revised. In such a revision the following issues must be considered:

12. a. What should the maximum piston travel be for underslung brake cylinders? Explain.
- b. What percentage of the locomotive fleet is equipped with handbrakes? Are all new locomotives placed in service so equipped?
- c. Should a handbrake be required on all locomotives? Explain.
- d. Should the table in § 232.10(n) that prescribes adjustments for the air pressure regulating devices be revised? Explain.
- e. What performance and testing requirements should be prescribed for Electro-Pneumatic-Hydraulic brake systems?
- f. What other changes should be made in the present requirements of section 232.10?

## INITIAL TERMINAL TRAIN AIR BRAKE TESTS

Section 232.12 requires an initial terminal road train air brake test to be made on each train (other than a run-through or unit run-through train) at points where it is originally made up (initial terminal), where the train consist is substantially changed, and where the train is interchanged with another railroad. Among the issues to be considered in a review of this section are the following:

13. a. Is the present requirement that all trains, other than run-through and unit run-through train, receive another complete initial terminal train air brake test, at each point of interchange, necessary from the standpoint of safety? Should it be eliminated or modified? Explain and justify.
- b. Are the present test procedures adequate? How should they be changed? Explain and justify.
- c. How long should the air brakes be required to remain applied on each car during this air brake test?
- d. Should railroads be required to designate qualified persons to conduct these tests? What qualifications should those so designated have?
- e. Railroads are now required to designate inspection points that are not more than 500 miles apart where intermediate air brake tests will be made. At some of these designated inspection points, facilities to repair defects discovered by these tests may not be available. In the interest of safety, should section 232.12(b) be changed to require railroads to have repair facilities and qualified employees on duty at all designated intermediate inspection points to perform these tests and make necessary repairs?
- f. Should Procedures for intermediate tests be the same as those for initial terminal tests? If not, how should they differ? Explain.

- g. Should the 500-mile maximum test interval be changed? Explain and justify.
- h. Since a train could travel as far as 500 miles without its brakes being used or tested, should a train air brake test, such as a "running test", be required at each crew change point so that the crew can be assured that the brakes are functioning properly?
- i. Can effective initial terminal and intermediate air brake tests be monitored from a motorized vehicle? Should this procedure be prohibited?
14. Section 232.13(d)(1) now provides that when a train air brake system is tested from a yard air plant, it must be connected to the end of the plant which will be nearer to the hauling locomotives.
  - a. Should this requirement be retained? Explain and justify.
  - b. How should a charged air brake system be defined?
  - c. When a yard air plant is used for making a train air brake test, how long after the air supply has been removed should the train brake system be considered to remain charged? What are the bases for this determination? When should verification that the train brake system does in fact remain charged be required? How should this verification be made?

## INTERMEDIATE TERMINAL TRAIN AIR BRAKE TESTS

Section 232.13 prescribes air brake test procedures for cars added to trains enroute, trains in which motive power and/or a solid block of cars are removed or added, and transfer and yard trains that travel 20 miles or less. Among the issues to be considered in a review of this section are the following:

15. a. Are the present test procedures adequate? How should they be changed? Explain and justify.
- b. Air gauges on locomotives must be tested each quarter. Should there be a similar requirement for caboose and portable air gauges?

## INBOUND BRAKE EQUIPMENT INSPECTIONS

16. Section 232.14 requires an inbound air brake inspection of trains arriving at terminals where inspectors are employed for this purpose. Is this inspection necessary from the standpoint of safety? Should this requirement be changed? Explain and justify.

## PERIODIC TESTING AND REPAIR

Under the provisions of § 232.17(a) an in-date-test (IDT) is required whenever a car, that has not been so tested within the previous 90 days, is on a shop or repair track. This test examines the general condition and functioning of a car's brake equipment. It includes a check of leakage, brake response times and the service and emergency portions of the brake valve. The importance of this test procedure has increased as the interval between periodic repairs of brake equipment has lengthened in recent years. The periodic repairs are provided for in paragraph (b) of section 232.17 which requires that brake equipment be periodically cleaned, repaired, lubricated and tested. These procedures are commonly referred to as "COT&S" and constitute a form of preventive maintenance in which the valve portions and certain other brake system components are disassembled and cleaned as well as tested. In light of the changes in equipment that have taken place since the adoption of these requirements, they are being reviewed and will be revised where necessary. Among the issues to be addressed in any review or revision are the following:

17. a. What is the average number of IDT's performed on a car each year?

- b. What does it cost to perform an IDT?
- c. How frequently are brake defects found during an IDT?
- d. How often do cars remain in service for two or more years without receiving an IDT?
- e. Should the IDT be required to be performed on all cars at fixed intervals regardless of whether a car is in a shop or repair track? What would that fixed interval be? Explain and justify.
- f. Should the frequency of IDT be changed because of extensions in the periodic repair (COT&S) interval?

g. Should railroads be required to designate qualified persons to perform IDT tests? Should they also be required to maintain a record of those qualified persons and the procedures used to qualify them?

18. a. In view of the equipment changes that have taken place since the COT&S requirement was adopted in 1958, is it still necessary from the standpoint of safety? Should it be retained, revised or deleted? Explain and justify.

- b. What are the predominate causes of brake failures and malfunctions in today's train brake systems? Are these failures and malfunctions caused by wear or identifiable factors in the operating environment? To what extent does age of the brake equipment and the type of service contribute to these failures? Are these failures "fail-safe" or do they present a safety hazard? Explain.
- c. What are the principal underlying causes or "cutout brakes" on trains?

d. How many cars received a COT&S during the last three years? What percentage of these were made solely on the basis of the passage of time? Would these numbers remain the same if this requirement were deleted?

e. How much does it cost to perform COT&S on a car?

f. Should there be uniform or varying COT&S intervals for individual air brake systems?

## RUN-THROUGH AND UNIT RUN-THROUGH TRAINS

Section 232.19 was issued in 1972. It was designed to reduce train delays at interchange points and to improve safety by assuring higher quality train brake inspections and tests and prompt correction of all defects on run-through and unit run-through trains. Trains tested as prescribed in this section are not required to be given another initial terminal test at each point of interchange.



19. a. Are the present run-through and unit run-through train air brake test procedures sufficient for today's operations? Should they be changed or discontinued? Explain and justify.

b. Should run-through or unit run-through trains also be required to be certified that they have no safety appliance and freight car standards defects?

c. Should railroads be required to designate qualified persons to perform these tests? Should they also be required to maintain a record of those qualified persons and the procedures used to qualify them?

d. Poor compliance with initial terminal test requirements on run-through trains have been established in a number of instances. Should the run-through concept be discontinued, requiring each carrier to take full practical responsibility for its own actions?

#### SPECIFICATIONS AND REQUIREMENTS

The existing regulation contains an appendix dealing with the specifications and requirements for power brakes and appliances for operating power-brake systems for freight service. The purpose of this specification is to define and prescribe requirements for power brakes and appliances for operating power-brake systems. Since they were written, new air brake technology has been introduced into the railroad industry.

20. a. What additions or deletions of the general service and emergency requirements should be made to establish basic air brake performance for today's air brake systems?

b. What are the bases for changing these requirements?

c. What is the variation in brake rate (deceleration) in cars now in service?

d. What variation in brake rate (deceleration) from car to car can be accepted without jeopardizing safety? Should an "empty and load" brake feature be required to assure that these variations stay within safe limits?

e. What standards does the rail industry use to determine and rate brake shop characteristics?

f. Do some brake shoes cause more wheel hot spots or greater rates of heat input than others? Explain.

g. What controls should be instituted to assure safety when individual railroads make revisions in braking practices such as increasing standard brake pipe pressures from 70 to 90 or 110 p.s.i.? How should the safety impact of these changes be assessed and by whom?

h. Should there be an industry or federal performance requirement for car deceleration rates?

i. In light of the hazards associated with an emergency brake application, should the emergency brake cylinder pressure requirement be changed? What other measures can be taken to eliminate these hazards?

#### RESEARCH

21. What testing, acceptance and approval procedures should new braking components be subjected to prior to adoption?

22. What automated wayside inspection devices are available for assessing brake conditions on a "roll-by" basis? Are there any

promising concepts or developments that might be applicable in the future?

23. What are the greatest long and short range research and development needs relative to train brakes? What should the government's role in this research be?

24. Are additional testing facilities needed to assist in improving safety of braking systems? Explain.

FRA has requested that the Association of American Railroads, the American Short Line Railroad Association, individual railroads, brake system suppliers, the National Transportation Safety Board, railroad employee organizations and other interested parties participate actively in this hearing by providing knowledgeable spokesmen and pertinent technical, manufacturing, service, and cost data. FRA has further requested that these spokesmen present detailed information to justify their positions.

(Sec. 208, Federal Railroad Safety Act of 1970, 84 Stat. 974, 45 U.S.C. 437; Sec. 1.49(n) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(n).

Issued in Washington, D.C. on August 15, 1978.

JOHN M. SULLIVAN,  
Administrator.

[FR Doc. 78-23308 Filed 8-17-78; 8:45 am]

#### [1505-01]

#### INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1124]

[Ex Parte No. 277 (Sub-1)]

#### REGULATIONS GOVERNING THE ADEQUACY OF INTERCITY RAILROAD PASSENGER SERVICE

Adequacy of Intercity Rail Passenger Service  
for Handicapped Persons

#### Correction

In FR Doc. 78-22270 appearing at page 35082 in the issue for Tuesday, August 8, 1978, the Ex Parte number should have been printed as set forth above.

#### [4310-55]

#### DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 23]

Endangered Species Convention

Addition of Certain Mammals and Insects to  
Appendix I or II

AGENCY: Fish and Wildlife Service,  
Interior.

ACTION: Advance notice of proposed  
rulemaking.

**SUMMARY:** The Fish and Wildlife Service received a notification, dated July 28, 1978, from the Secretariat of the Convention to the effect that the United Kingdom had proposed the inclusion of Grevy's zebra, *Equus grevyi*; Hartmann's mountain zebra, *Equus zebra hartmannae*; musk deer, *Moschus moschiferus* in appendix I and the inclusion of all other species of the genus *Moschus* in appendix II. Also proposed for inclusion in appendix II were all species in butterfly genera *Ornithoptera*, *Trogonoptera* and *Troides*. This proposal is to be considered according to the postal procedure established by the Convention. The Service invites public comment and information on these species in order to develop a reply to the proposal and to submit any relevant scientific data and information to the Secretariat.

**DATE:** The Service will consider all comments received by September 18, 1978.

**ADDRESS:** Please send comments to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:**

Arthur Lazarowitz, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, phone 202-632-8796.

**SUPPLEMENTARY INFORMATION:** Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora is a list of species threatened with extinction which are or may be affected by trade. Appendix II is a list of species that, although not necessarily now threatened with extinction, may become so unless trade in such species is subject to strict regulation in order to avoid utilization incompatible with their survival, and other species which must be subject to regulation in order that trade in such species may be brought under effective control. Trade in this context means any import, export or reexport.

Amendments to appendices I and II by the postal procedure require the following steps:

(1) A proposal must be communicated by a party to the Secretariat of the Convention which must communicate the proposal and, as soon as possible, its own recommendation to the parties.

(2) Any party may reply to a proposal within 60 days of the communication of the Secretariat's recommendation. Replies shall be communicated to the parties by the Secretariat together with its recommendations.

(3) Provided the Secretariat does not receive an objection within 30 days of its communication of the replies and



recommendations, the amendment becomes effective 90 days later.

(4) If the Secretariat receives an objection, it shall so notify the parties which may then mail their votes to the Secretariat. An amendment is adopted by a two-thirds majority of the affirmative and negative votes, provided one-half of the parties vote affirmatively, negatively or in abstention.

(5) An amendment becomes effective 90 days after its adoption.

(6) If the Secretariat does not receive the votes of one-half of the parties, the proposal shall be referred to the next meeting of the Conference of the parties for further consideration.

The Service invites public comment and information on these species in order to develop a timely reply and to determine the position of the United

States with respect to this proposal. All comments received will be available for public inspection during normal business hours at the Federal Wildlife Permit Office, Room 536, 1717 H Street NW., Washington, D.C.

This document was prepared by Arthur Lazarowitz, Federal Wildlife Permit Office.

NOTE.—The Department of the Interior had determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: August 15, 1978.

LYNN A. GREENWALT,  
Director, U.S. Fish and  
Wildlife Service.

[FR Doc. 78-23197 Filed 8-17-78; 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.

[3410-07]

## DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Designation Number A642]

### IDAHO

#### Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in Idaho County, Idaho, as a result of excessive rainfall and below-normal temperatures during the period October 1, 1977, through June 3, 1978.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended, and the provisions of 7 CFR 1904, Subpart C, Exhibit D, Paragraph V B, including the recommendation of Governor John V. Evans that such designation be made.

Applications for emergency loans must be received by this Department no later than January 29, 1979, for physical losses, and August 2, 1979, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans.

The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 11th day of August 1978.

GORDON CAVANAUGH,  
Administrator,

Farmers Home Administration.

[FR Doc. 78-23174 Filed 8-17-78; 8:45 am]

[3410-02]

#### Federal Grain Inspection Service

##### GRAIN STANDARDS

Request for Transfer of Designation by the Plainview Grain Inspection and Weighing Service, Inc.

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

**SUMMARY:** Notice that the Plainview Grain Inspection & Weighing Service, Inc., Plainview, Tex., has requested that its designation to operate as an official agency under the U.S. Grain Standards Act, as amended, be transferred to Robert W. Davis, Edna H. Davis, and A. W. DeBerry, who have filed application for such designation. This notice also requests comments on the proposed transfer and invites other interested persons to make application for designation as an official agency at Plainview, Tex.

**DATE:** Comments and/or application by September 18, 1978.

#### FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street SW., Room 2405, Auditors Building, Washington, D.C. 20250, 202-447-8525.

**SUPPLEMENTARY INFORMATION:** The U.S. Grain Standards Act, as amended (7 U.S.C. 71 et seq.) (hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to sections 7 and 7A of the Act, the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at inland locations where the Administrator determines there is a need for such services (7 U.S.C. 79 and 79a). Under the Act, such designation shall terminate triennially, but may be renewed in accordance with criteria and procedures prescribed (7 U.S.C. 79(g)(1) and 79a(c)).

The Plainview Grain Inspection & Weighing Service, Inc., has requested that its designation under the Act to operate as an official agency at Plainview, Tex., with an additional designated inspection point at Hereford, Tex., be transferred to Robert W. Davis, the present Chief Inspector of the agency, and Edna H. Davis and A. W. DeBerry, licensed inspectors presently employed by the agency, Mr. Davis et al. have applied for designation in accordance with section 7(f)(1) of the Act (7 U.S.C. 79(f)(1)) to operate

as an official agency at Plainview, Tex. This application does not preclude other interested persons from making similar application.

**NOTE.**—Section 7(f)(2) of the Act (7 U.S.C. 79(f)) provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

Interested persons are hereby given opportunity to submit written views or comments with respect to the requested transfer of official agency designation. All views or comments should be submitted in writing, in duplicate, and mailed to the Director's Office, Compliance Division, Federal Grain Inspection Service, 201 14th Street SW., Room 2405, Auditors Building, Washington, D.C. 20250, not later than September 18, 1978.

Under the provisions of section 7(f)(1), interested persons are also given opportunity to make application for designation to operate as an official agency at Plainview, Tex., pursuant to the requirements in section 7(f)(1)(A) of the Act, as amended (7 U.S.C. 79(f)(1)(A)) and § 26.96 of the regulations (7 CFR 26.96). Persons wishing to apply for designation to operate as an official agency at Plainview should contact the Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, for the appropriate forms and mail their applications to the Director's Office at the above cited address, not later than September 18, 1978.

Consideration will be given to the views and comments filed and to any applications submitted and to all other information available to the U.S. Department of Agriculture before a final determination is made with respect to the official agency designation. All views, comments and applications submitted pursuant to this notice will be made available for public inspection at the above Office of the Director during regular business hours (7 CFR 1.27(b)).

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); Sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note).)

Done in Washington, D.C. on:  
August 14, 1978.

L. E. BARTELT,  
Administrator.

[FR Doc. 78-23231 Filed 8-17-78; 8:45 am]



[4510-05]

## Office of the Secretary

## 1979—WHEAT

## Determinations Regarding the Proclamation of 1979-Crop National Program Acreage, Set-Aside Level, and Other Program Provisions for Wheat

**ACTION:** Notice of Determination of 1979-Crop National Program Acreage, Set-Aside Level, and Other Program Provisions for Wheat.

**SUMMARY:** This notice is for the purpose of proclaiming a national program acreage, set-aside level, and other program provisions for the 1979 crop of wheat in accordance with applicable sections of the Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977 and the Act of May 15, 1978 (hereinafter referred to as the "Act"). Provisions of the Act, as amended, require that a determination of the national program acreage and set-aside requirements be made by the Secretary not later than August 15, prior to the year in which the crop is harvested. This determination established a national program acreage, set-aside requirement, and other related program provisions for the 1979 crop of wheat.

**DATE:** Effective August 15, 1978.

**ADDRESS:** Production Adjustment Division, ASCS-USDA, 3630 South Building, P.O. Box 2415, Washington, D.C. 20013.

## FOR FURTHER INFORMATION CONTACT:

Bruce R. Weber (ASCS), 202-447-7987.

**SUPPLEMENTARY INFORMATION:** The need for this notice is to satisfy the statutory requirements as provided for in section 107A (d)(1)(3) and (f)(1) of the Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977 and the Act of May 15, 1978 (hereinafter referred to as the "Act"). It is essential that these decisions be made effective as soon as possible, since the proclamation of the national program acreage and set-aside level are required by statute to be made not later than August 15, 1978.

A notice that the Secretary was preparing to make determinations with respect to the 1979 wheat program was published in the FEDERAL REGISTER on June 27, 1978, 43 FR 27844 and 845, in accordance with 5 U.S.C. 553. Comments were received from over 2,100 producers and groups. The breakdown of comments received were 2,005 from producers, 3 from Congressmen, 3 from State representatives, 9 from national organizations, 32 from State organizations, and 136 from ASC State

and county committees. The majority of comments centered around three issues: (1) set-aside, (2) land diversion, and (3) voluntary reduction. Nearly all comments expressed a need for a set-aside. Levels recommended ranged from 10 percent to a level high enough to obtain at least 90 percent of parity. Most comments suggested a level of 20 to 25 percent. Comments received concerning land diversion on a bid basis were unanimously opposed to such a system, only one comment favored such a system, while 956 expressed opposition. Over 950 responses were received stating that 1978 set-aside, hay and grazing, and diversion acreage must be credited as harvested acreage along with the 1978 wheat acreage for 1979 program purposes and application of the voluntary reduction in 1979. All comments received were duly considered by the Secretary.

## NOTICE OF DETERMINATIONS

## 1. NATIONAL PROGRAM ACREAGE FOR 1979-CROP WHEAT

It is hereby proclaimed that the national program acreage for the 1979 crop of wheat shall be 57.1 million acres. The national program acreage is based on the following data:

|                                                                                           |       |
|-------------------------------------------------------------------------------------------|-------|
| (a) Estimated domestic consumption, 1979-80 (million bushels).....                        | 740   |
| (b) Plus estimated exports, 1979-80 (million bushels).....                                | 1,080 |
| (c) Minus adjustment to decrease stocks to desired level (million bushels).....           | -24   |
| (d) Minus estimated imports, 1979-80 (million bushels).....                               | -2    |
| (e) Divided by estimated national weighted average farm program yield (bushels/acre)..... | 31.4  |
| (f) Equals: 1979 National Program Acreage (million acres).....                            | 57.1  |

<sup>1</sup>Desired carryover of U.S. wheat stocks is equal to 7.5 percent of world consumption of wheat. World consumption of wheat during 1978-79 marketing year is estimated to be 407.9 million metric tons (MMT) (407.9 × .075 = 30.6 MMT × 36.74 (bushel conversion factor) = 1,124 million bushels (desired level of U.S. carryover wheat stocks)). Estimated 1978-79 ending stocks for wheat are 1,148 million bushels.

The Secretary may revise the national program acreage as proclaimed for the purpose of determining the allocation factor if he determines it is necessary based upon the latest information. The national allocation factor will be determined in the fall of 1979.

## 2. SET-ASIDE LEVEL FOR 1979-CROP OF WHEAT

It is hereby determined and proclaimed that a set-aside of cropland equal to 20 percent of the wheat acreage planted for harvest in 1979 will be in effect. Continuing a 20 percent set-aside program for the 1979 crop is expected to lead to results similar to those obtained under the 1978 program.

## 3. 1979 LAND DIVERSION

It is hereby determined that no land diversion program will be implemented for the 1979 crop of wheat. It is felt the needed adjustments for 1979 can be accomplished through the set-aside program as proclaimed.

## 4. VOLUNTARY REDUCTION FROM 1978 PLANTINGS FOR 1979-CROP WHEAT

It is hereby determined and proclaimed that producers who voluntarily reduce their 1979 wheat acreage by at least 15 percent from the 1978 wheat acreage considered planted for harvest shall be guaranteed target price protection on the normal production from the entire acreage.

In applying the voluntary reduction for 1979, the 1978 wheat acreage considered planted for harvest shall be: The 1978 wheat acreage planted for harvest plus the larger of:

- (a) The total set-aside, and special grazing and hay program acreage, or
- (b) The acreage reduced from the previous year but not to exceed the recommended 1978 voluntary reduction.

## 5. 1979 ESTABLISHED "TARGET" PRICE

It is hereby determined that the 1979 established "target" price for wheat shall be \$3.40 per bushel. As required by law, the 1979-crop wheat established "target" price shall be \$3 per bushel, adjusted to reflect any change in the average cost of production over a 2-year moving average period. This computation establishes the 1979 target level at an estimated \$2.98 per bushel. However, the Secretary does have authority, whenever a set-aside is in effect, to increase the established "target" price by an amount he determines appropriate to compensate producers for participation in such set-aside. This authority was implemented for the 1978 wheat program and is being continued for the 1979 program.

## 6. 1979 LOAN AND PURCHASE LEVEL

It is hereby determined that the 1979-crop wheat loan and purchase level shall be \$2.35 per bushel, the same as for the 1978 crop. It has been determined that this level is appropriate, taking into consideration competitive world prices of wheat and the feeding value of wheat in relation to feed grains, and that it will maintain the competitive relationship of wheat to other grains in domestic and export markets.

## 7. SPECIAL GRAZING AND HAY PROGRAM

It is hereby determined that the Special Grazing and Hay Program will not be implemented for the 1979 crop of wheat. However, grazing of set-aside acreage during the permitted 6-month period will be continued, as in 1978.



Grazing of wheat acreage is expected to continue as an attractive alternative for the wheat producer. The stocker margin (difference in value of stockers weight (approximately 400 pounds) when purchased, and value of the 400 pounds when sold), which typically is negative, should be the same or even positive over the next year as feeder cattle supplies tighten and prices strengthen. For this reason, it is felt the Special Grazing and Hay Program is not needed to encourage grazeout wheat acreage.

NOTE.—It has been determined that this document does contain a major proposal requiring preparation of an Impact Analysis Statement. The Impact Analysis Statement is available from Bruce R. Weber (ASCS), 202-447-7987.

NOTE.—The ASCS, to meet the requirements of the National Environmental Policy Act (Pub. L. 91-190, 42 U.S.C. 4321, et seq.), has developed an environmental assessment on the program and has determined that the proposed action would not constitute a major Federal action significantly affecting the human environment.

Signed at Washington, D.C., on August 15, 1978.

BOB BERGLAND,  
Secretary.

[FR Doc. 78-23247 Filed 8-15-78; 5:03 pm]

#### [3410-22]

Science and Education Administration

#### COMMITTEE OF NINE

##### Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given of a meeting of the Committee of Nine from 8:30 a.m. to 5 p.m., September 12-13, 1978, in the Food Research Conference Room, Food Research Laboratory, New York State Agricultural Experiment Station, Geneva, N.Y.

The purpose of the meeting is to evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations. The meeting is open to the public, and written statements can be filed with the Committee before or after the meeting.

The names of the members of the Committee, the agenda, minutes, and other information pertaining to the meeting may be obtained from the Recording Secretary, U.S. Department of Agriculture, Science and Education Administration, Cooperative Research, Washington, D.C. 20250, telephone 202-447-4329.

Dated: August 10, 1978.

T. S. RONNINGEN,  
Acting Deputy Director.

[FR Doc. 78-23230 Filed 8-17-78; 8:45 am]

#### [6320-01]

#### CIVIL AERONAUTICS BOARD

[Docket 31233; Order 78-8-63]

#### AIR NEW ENGLAND, INC.

##### Order

AUGUST 14, 1978.

On August 3, 1977, Air New England filed an application, under section 416(b) of the Act, for an exemption from section 401 and Part 298 of the Board's Regulations, to permit it to operate under Part 298 as a commuter airline. The authority requested is limited to operations in New England and New York, and transborder operations into Eastern Canada, and is further limited to markets in which Air New England is not certificated. The purpose of the exemption request is to enable Air New England to test service in new markets, with a view toward possible certification there in the future. The carrier anticipates that, after a reasonable test period, and a proper showing of public convenience and necessity, successful test markets could be added to its certificate by show cause or other simplified procedures. It states that it is in need of flexibility to test new markets, and seek new profit opportunities, in order to compete effectively in the New England area, which has seen a tremendous increase in commuter operations since Air New England was certificated. All commuter operations will be subsidy ineligible.

Answers in opposition were filed by Commuter Airlines, Inc.; Executive Airlines, Inc.; Empire Airlines, Pilgrim Aviation and Airlines, Inc., et al.; Bar Harbor Airlines, et al.; and Commuter Airline Association of America, Inc. These parties argue principally the following: (1) Allowing Air New England to compete as a commuter airline would give it an unfair competitive advantage over other commuter airlines because of its certificated status and its eligibility for Federal subsidy; (2) the Board rejected the concept of dual authority in New England in the *New England Service Investigation*,<sup>3</sup> on the grounds of a possible diversion of man-

agement resources away from certificated operations, the possibility of public confusion, and the danger of cross-subsidy and subsidy leakage; and (3) the statutory standards for grant of exemption authority under section 416(b) have not been met.

Delta Air Lines also filed an answer objecting to award of exemption authority in any of its markets. It alleges that diversion from it could result in the elimination of certificated service in these markets. It does not oppose award of authority in other markets.<sup>4</sup>

Air New England replied that as a certificated small community specialist it is in need of the flexibility to test new markets, especially in view of the substantial growth in commuter competition in New England since its certification. It further states that it does not believe that it will have an undue competitive advantage; that the Board's subsidy staff can assure that subsidy leakage is avoided, as it does with Air New England's existing subsidy ineligible routes; that management resources will not be diverted from its certificated operations; and that public confusion need not result from granting it dual authority.

We have decided to grant Air New England's application, and allow it to conduct both certificated operations and commuter operations under Part 298. In promulgating Part 298, we determined that since air taxi services, as a class, are limited in extent and affected by unusual circumstances, enforcement of the Act would be an undue burden. See *Part 298 Weight Limit Investigation*, Order 72-7-61, July 18, 1972. We noted that air taxi operations are nonsubsidized, high risk operations conducted with small aircraft in short-haul, low density markets where surface transportation is often an attractive alternative. Flexibility to enter and exit markets quickly is required. We have concluded that these findings are equally applicable to the commuter operations Air New England proposes. We see no reason why it, too, should not be exempted from the certification requirements of the Act to the extent necessary to allow it to conduct such operations. While a basis for the Part 298 exemption may have been the burden of certification upon small firms desiring to conduct commuter operations, certification also imposes an undue burden upon larger carriers that desire to conduct commuter operations with small aircraft because the cost of certification would be great,

<sup>4</sup>United Air Lines also answered in opposition to Air New England's application, stating that the application should be dismissed for failure to meet the requirements of Rule 402 of the Board's regulations. Air New England's reply, however, was accompanied by data correcting the deficiency to the extent necessary for this proceeding.

<sup>1</sup>Pilgrim Aviation and Airlines, Inc., Business Aircraft Corp., New England Airlines, Inc., New Haven Airways, Inc., Nor-East Commuter Airlines, Inc., and Precision Valley Aviation, Inc.

<sup>2</sup>Bar Harbor Airlines, Command Airways, Inc., Downeast Airlines, Provincetown-Boston Airlines, Inc., and Winnepesaukee Aviation, Inc.

<sup>3</sup>Order 74-7-70, July 17, 1974.



compared to the financial benefit they would be likely to receive from the operation of small aircraft. This would be particularly true of Air New England since it is smaller than some commuter carriers and is significantly smaller than the local service carriers.<sup>5</sup> While our findings here, in terms of undue burden, are limited to Air New England, the logic of our action may well apply to all certificated carriers, and we plan to institute a rulemaking to examine this question. In the meantime, in view of the benefits that could result from permitting Air New England to conduct commuter operations, we will exempt it from section 401 of the Act and section 298.3 of the Board's Economic Regulations and allow it to conduct dual operations.

Air New England is in an unusual situation for a certificated carrier. Although certificated, its operations are essentially commuter in nature. Due to the nature of New England travel, it experiences the most pronounced seasonal pattern of operations in the industry,<sup>6</sup> and is subject to very high levels of unregulated competition from other commuter carriers.<sup>7</sup> With commuter authority, it will be able to test new markets without the burden of formal proceedings before the Board, and eventually may be able to uncover new market opportunities that could enhance its profitability. The public could benefit by receiving service in markets that might not otherwise get it and by the improvements in service and reductions in fares that can follow the introduction of competition. In the long run, this competition could result in more efficient commuter service in the New England area. In addition, if Air New England is successful in its venture, the public will benefit from the resulting reduction in subsidy payments.

Our decision to grant Air New England this exemption, and thereby authorize it to conduct dual operations, is clearly a break with past policy.

<sup>5</sup>For the year ended December 31, 1977, Air New England had enplanements of 468,000 passengers, versus 738,411 for Prinair and 510,449 for Golden West. In terms of all measures it is far smaller than the smallest of the locals—13 points on its system versus 45 for TXI (in 1976); 110,000 available seat miles versus 2,023,000 for TXI, 468,000 passenger enplanements versus 3,225,000 for TXI; 4,042,000 aircraft revenue miles versus 24,025,000 for TXI; an average of 27.1 seats per aircraft mile versus 78.2 for Southern.

<sup>6</sup>Air New England's traffic levels during the peak two summer months are triple its monthly average for the rest of the year. See Order 77-4-161, April 29, 1977.

<sup>7</sup>In April 1978, for example, 11 of the carrier's 26 single-plane markets were faced with commuter competition, and those 11 tended to be its largest markets. Ten of the carrier's 14 stations are served by commuters.

Part 298 explicitly excludes certificated carriers from commuter operations under our regulations, and, in the past, we have been reluctant to grant them extensive exemption authority to do so. When we certificated Air New England in the *New England Service Investigation*, we refused to consider an award of dual authority, and we followed that precedent in the *Air Midwest Certification Proceeding*.<sup>8</sup>

Our current regulatory philosophy requires a reexamination of the dual authority question. Our policy now is to place greater reliance on market forces, and less reliance on protectionism, in meeting the country's air service needs.<sup>9</sup> Unless it appears that significant injury to the air transportation system will occur, we believe dual authorizations are in the public interest.

The past concerns that led us to deny dual authorizations are discussed in detail below. It is our conclusion that these concerns—the possibility of diversion of management resources, cross subsidization and subsidy leakage, and public confusion—are outweighed by the benefits of competition, specifically lower fares, better service, and more efficient carrier operations.

Our major fear in the past has been that dual authorizations would result in diversion of managerial talent and resources away from a carrier's certificated to its commuter operations. Especially in the case of a subsidized carrier, we felt this was contrary to the public interest. However, diversion of management resources did not prevent the Board from allowing the local service carriers to expand their operations, and today the locals offer extensive subsidy ineligible service, while continuing to devote sufficient management resources to their subsidized service. Established certificated carriers, such as Air New England, should have no problem conducting commuter operations in addition to certificated ones. To the extent that additional managerial resources are required, they can be hired. Moreover, in the case of Air New England, the commuter operations will be very close in type and geography to its certificated operations. The public benefits when a management with skills and experience in one field is given the opportunity to apply them in related fields. This is one of the efficiency advantages of integration. Even a relatively young carrier should be able to employ the management personnel required to conduct any numbers of different operations.

In denying dual authority to subsidized carriers, we also have expressed

concern about the possibility of cross-subsidization and subsidy leakage. Air New England's opponents raise these issues again. We are not persuaded that they are sufficient to deny the requested authority.

Cross-subsidization does not appear to be a danger sufficiently great to deny the public the benefit of this competition. The assumption is that a subsidized carrier such as Air New England will use its profits from its certificated routes to support its commuter operations in order to drive competition from the latter markets and then reap excessive profits. In order for this tactic to be successful, a carrier must be assured of long-term benefits after competitors are driven out. In commuter markets, however, where all 298 operators are free to enter and exit at will, a carrier is unlikely to have sufficient assurance of its ability to garner excess profits following the elimination of its competitors to justify the costs of driving them out through cross-subsidization. Within a short period of time, competitors are likely to reenter the market and challenge it.

Subsidy leakage raises different problems. There is a real danger that in the case of a carrier with both subsidy-eligible and subsidy-ineligible operations, the Board will be unable to separate the activities sufficiently to assure that subsidy is granted for only the former. No doubt, many common costs are difficult to allocate non-arbitrarily between eligible and ineligible operations, and this creates the potential for subsidy leakage. For the most part, however, the Board's experienced subsidy staff is capable of reasonably allocating revenues and expenses between subsidy eligible and ineligible operations, in such a way as to prevent appreciable subsidy leakage. Reporting requirements have been established to monitor the problem and assure such allocations. It is not novel for a carrier to have both subsidy eligible and ineligible operations. Air New England itself now has three subsidy ineligible routes and conducts a substantial off-route charter operation that is subsidy ineligible. We do not perceive any great difficulty in adding a third category of subsidy ineligible operations to its authority.<sup>10</sup>

Another major concern of ours in the past has been the possibility of public confusion. In using the services of a carrier with dual authority, the public may be uncertain whether it is receiving certificated or noncertificated service. The only significance such confusion might have, it would appear,

<sup>10</sup>We will require it to file the same data with the Board for its commuter operations as it files for its certificated operations, so as to enable the Board's staff to make proper allocations between subsidy eligible and ineligible operations.

<sup>8</sup>Order 76-9-165, September 30, 1976.

<sup>9</sup>See *Oakland Service Investigation*, Order 76-4-121, April 19, 1978.



would be if the two services differed in the degree of consumer protection they afforded. We have determined, therefore, that any adverse consequences of public confusion can be avoided through the imposition of conditions on exempted commuter operations of certificated carriers. We will require Air New England to maintain identical FAA standards for its commuter and certificated operations, and to extend the provisions of the Board's denied boarding rules (Part 250), no smoking section rules (Part 252), and baggage liability rules (see Docket 27589, to its commuter passengers. This will assure that Air New England's two operations—certificated and noncertificated—are substantially the same, and the public will be protected. In these circumstances such public confusion as there may be would seem to be of no significance.<sup>11</sup>

We will not require the carrier to enter into joint fare arrangements for its commuter operations. Passengers will be readily aware of their own ticket prices and will be free to patronize or reject the service.

It is apparent from the above discussion that we do not agree with the contentions of Air New England's opponents that they will be placed at a competitive disadvantage by our granting this authority. While, they say they fear competition with a certificated carrier, they continue vigorously to compete with Air New England on its certificated routes, and quite successfully.<sup>12</sup>

Our tentative view, therefore, is that certificated carriers should no longer be prohibited from conducting commuter operations under Part 298. This question will be fully explored in the rulemaking we intend to institute. However, in consideration of the substantial public and carrier benefits that could result from our award of commuter authority to Air New England, we will act on its application

<sup>11</sup>The denied boarding rules and baggage liability provisions require a carrier to file tariffs setting forth their terms. Commuters are not required to file tariffs, and we will not require Air New England to do so for its commuter operations. Rather, we will leave to the carrier the decision as to how to set forth the terms of these consumer protection provisions. Possible alternatives would be to file voluntarily rule tariffs or to specify the terms in conditions of contract on individual passenger tickets. We will monitor closely its operations to assure compliance with the specified rules.

<sup>12</sup>Delta's request that Air New England be precluded from operating in its markets will be denied. These markets are open to commuter competition now, and the addition of Air New England to the list of potential commuter competitors will not have any significant effect upon Delta. If commuter operations prove to be more successful than certificated operations over some of Delta's routes, it is free to reduce its service or withdraw.

now, and grant it the requested authority pending the outcome of the rulemaking. We find that certification would be an undue burden upon Air New England by reason of the limited extent of, and unusual circumstances affecting, air taxi operations, and would not be in the public interest.<sup>13</sup>

Accordingly, *It is ordered*, That: 1. Air New England be exempted from section 401 of the Act and § 298.3 of the Board's Economic Regulations to the extent that they would prevent it from operating, as an air taxi, aircraft that qualify under the weight and payload limitations of Part 298, in New England,<sup>14</sup> New York State, and in transborder operations into Canada;

2. In the conduct of this service, Air New England shall be deemed an "Air Taxi Operator" within the meaning of Part 298 of the Economic Regulations and shall comply with and be subject to all the provisions of that part, including but not limited to the registration, insurance and reporting requirements for air taxi operator; and Air New England shall submit for its air taxi operations, any data requested of it by the Board's Bureau of Accounts and Statistics in accordance with the requirements of Part 241;

3. Air New England's air taxi operations shall be conducted under the applicable safety requirements prescribed by the Administrator of the Federal Aviation Administration for Air New England's certificated operations;

4. Air New England's air taxi operations shall be subject to the Board's denied boarding rules as set forth in Part 250 of the Board's Regulations, no smoking rules as set forth in Part 252, and baggage liability rules as set forth in Docket 27589; and

5. This exemption shall be effective 60 days following the service date of this order, and continue in effect for 5 years thereafter, or until 60 days after final decision in the rulemaking referred to in this order, whichever occurs first; but it may be amended or revoked at any time without hearing in the discretion of the Board.

This order shall be published in the **FEDERAL REGISTER**.

<sup>13</sup>The authority we are granting here will enable Air New England to enter and exist commuter markets in the same manner as other commuter carriers now do. Because of the limited extent of these operations, our action does not constitute a major Federal action significantly affecting the environment within the meaning of the National Environmental Policy Act of 1969 and does not constitute "a major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in § 313.4(a)(1) of the Board's Regulations.

<sup>14</sup>Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, and Connecticut.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

All Members concurred and Vice Chairman Minetti filed the attached statement concurring in the result:

Minetti, Vice Chairman, concurring in the result:

I join the Board in granting Air New England an exemption to conduct Part 298 operations in the New England/New York area but for reasons somewhat different than those expressed in the accompanying order. It is clear to me that the carrier's operations are affected by unusual circumstances which justify the grant of the exemption. I, however, view this action as an experiment designed to meet the unique air transportation needs of New England.

In the *New England Service Investigation*<sup>1</sup> the Board concluded that the chronic air-transportation problems of the New England region required a vigorous governmental response. The new pattern of service that resulted from the case (but which did not include dual-operating authority) was viewed by it as "something of an experiment."<sup>2</sup> In our concurrence and dissent, Member West and I expressed concern about assuring good service to New England communities. Unlike the majority in that case, we would have required Delta—the successor to Northeast—to maintain a residual service obligation at several points in northern New England which were not placed on Air New England's route.

The Board stated in the *New England Service Investigation* that an evaluation of its decision would have to await operating experience.<sup>3</sup> That experience has been gained and it suggests the desirability of allowing Air New England to hold dual authority. Although this view is a departure from the conclusion about that issue made by the Board in the *New England* case, it is consistent with the primary goal of the case, which was to improve air transportation within the New England area.

Two important aspects of Air New England's experience since certification point to the need to provide it with greater operating flexibility. First, the carrier's operations are characterized by extraordinary peaking in the summer months.<sup>4</sup> Although it has improved its equipment mix over the last several years,<sup>5</sup> the unprecedented seasonality that Air New England encounters means that it is confronted with the need to find productive uses for its equipment and personnel during the unusually long off-peak period of its operations. Second, the carrier is exposed to substantial competition from commuter carriers, as is observed in today's order. Ordinarily the existence of such unregulated, third-level competition would not be of decisional significance. But in light of the carrier's status as a small, specialized regional carrier, which was recognized when the Board designated it last year as an area air carrier,<sup>6</sup> the effect of commuter competition on Air New England is a legitimate consideration in this instance. The carrier's

<sup>1</sup>Order 74-7-70, July 17, 1974.

<sup>2</sup>Id. at 32.

<sup>3</sup>Id. at 35-36.

<sup>4</sup>Order 77-4-161, Apr. 29, 1977, at 4.

<sup>5</sup>Application of Air New England for exemption, Aug. 3, 1977, Docket 31233, at 5.

<sup>6</sup>Order 77-7-8, July 5, 1977. See generally Order 77-5-12, May 3, 1977.



modest size and concentration upon serving regional markets make its operations more akin to those of a commuter carrier than a local-service carrier. These factors also mean that many of its markets, including some of its more lucrative ones, can be successfully entered almost at will by commuters. And this is what has occurred over the last several years. It has thus been exposed to a high degree of competition from carriers which, because they are unregulated, have great managerial discretion, but it does not have the corresponding flexibility to explore new market opportunities. Under these circumstances, Air New England should be given the authority—albeit on an experimental basis—to mount Part 298 operations. It has stated it intends to use this authority to test new markets with a view toward their possible certification; efforts designed to develop improved service patterns in the region of course would be in harmony with our historic concern for the quality of air service available in New England. To require the carrier to undergo certification proceedings before testing new markets in its geographic area would deny it precisely what the environment in which it operates appears to demand: additional operating flexibility.<sup>7</sup>

My approval of Air New England's application assumes it that it will in fact only conduct its Part 298 operations as an adjunct to its certificated service. I have no doubt that it will be able to discharge its certificate obligations—particularly its subsidized service—while it tests new, unregulated services. Additionally, I believe, for the reasons outlined above, that Air New England's situation is sui generis. Consequently, I discern no need at this time to reach a judgment about the broader question of whether certificated air carriers routinely should be permitted to hold extensive Part 298 authority. That question is best left for consideration in a rulemaking proceeding.

G. JOSEPH MINETTI.

[FR Doc. 78-23211 Filed 8-17-78; 8:45 am]

<sup>7</sup> Air New England finds itself in a peculiar competitive position. A local-service carrier faced with stiff competition from a commuter carrier would probably seek to withdraw from the market; chances are it would do so with alacrity. It could then direct its energies toward longer stage length, higher density markets. Because of the type of equipment it operates and the regional nature of its system, Air New England is poorly situated to pursue market opportunities outside of its service area. The difficulty this restriction poses is that the carrier must search out new opportunities in an area in which: (1) many of the larger communities are relatively close to one another and are linked by a very good highway system; (2) many of the more isolated communities that would presumably respond to new or improved air service are low traffic generating points; and (3) demographic trends are far less encouraging than other regions of the country. These circumstances indicate the need to allow Air New England considerable freedom to develop new markets to respond to the increasing commuter competition it must withstand. That undertaking could be hindered or even frustrated if the carrier were required to obtain certificate authority to operate in each market it wished to test.

## [6320-01]

[Docket Nos. 32710; 33076; 30185; Order 78-54]

### SAN FRANCISCO-RENO-ALBUQUERQUE-TEXAS SERVICE INVESTIGATION; FRONTIER AIRLINES, INC., AND TEXAS INTERNATIONAL AIRLINES, INC.

#### Order on Motions To Consolidate Applications

AUGUST 10, 1978.

Order 78-5-128, served June 14, 1978, which instituted this proceeding delegated "to the presiding Administrative Law Judge the authority to consolidate by order any applications which conform to the scope of the proceeding." Pursuant thereto, by Order 78-7-126 dated July 25, 1978, action was taken on timely filed motions to consolidate applications of several carriers.

Thereafter, by motions for leave to file late documents dated July 24 and 28, respectively, Frontier Air Lines, Inc. (Frontier) and Texas International Airlines, Inc. (TXIA), each ask consolidation of applications for route award authority in certain of the markets.

No answers have been received to motions of either applicant. Frontier, while inaccurately stating that the prehearing conference had not been set at the time of the motion, otherwise states a case for late filing in the circumstances of a new corporate strategy calculated to respond to the emerging policy of the Civil Aeronautics Board to consider grants of multiple permissive route authority. TXIA asserts an error on its part in failing earlier to recognize that the instituting order here, Order 78-5-128, contemplated more markets than those then pending in TXIA's application in docket 30185 as that docket was constituted when it was consolidated into Docket 32710. TXIA has now filed an amendment No. 1 in docket 30185 to add the previously omitted markets. TXIA is, however, in error in asserting in its motion that its amended application must be consolidated as a matter of law. Whatever "right" TXIA may have had to obtain consolidation was waived by its failure to make timely application for consolidation.

In the present posture of this proceeding, considering particularly the large number of carriers already seeking authority to serve the routes at issue, I find that good cause has been shown for Frontier's and TXIA's failure to timely file their motions and applications for the following routes:

| Applicant | Docket | Market                                                                |
|-----------|--------|-----------------------------------------------------------------------|
| Frontier  | 33076  | San Francisco/Oakland-Reno; Reno-Albuquerque; Reno-Dallas/Fort Worth. |
| TXIA      | 30185  | San Francisco/Oakland-Reno; Reno-Houston.                             |

<sup>1</sup> The other two Reno markets are already included in TXIA's application consolidated from docket 30185 into docket 32710 at order-up paragraph 5 of Order 78-5-128. TXIA was made a party at ordering paragraph 8 of Order 78-5-128.

Accordingly, it is ordered, that:

1. The motions to consolidate the applications of Frontier Airlines, Inc., in docket 33076 and Texas International Airlines, Inc., in docket 30185, into the investigation in docket 32710 are granted to the extent that they conform to the scope of the investigation into the need for new non stop authority in the markets specified in Order 78-5-128, and such applications are otherwise dismissed.

2. Frontier Airlines, Inc., is made a party to the proceeding in docket 32710.

Persons entitled to petition the board for review of this order pursuant to the board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the service of this order.

This order shall be effective and become the action of the civil Aeronautics board upon expiration of the above period unless before that date a petition for review thereof is filed, or the board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,  
Secretary.

## [6335-01]

### COMMISSION ON CIVIL RIGHTS

#### COLORADO ADVISORY COMMITTEE

##### Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Colorado Advisory Committee (SAC) of the Commission will convene at 9 a.m. and will end at 1 p.m. on September 9, 1978, 1405 Curtis Drive, room 1706, Denver, Colo. 80202.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, 1405 Curtis Street, Denver, Colo. 80202.

The purpose of this meeting is to plan future activities.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.



Dated at Washington, D.C., August 14, 1978.

JOHN I. BINKLEY,  
Advisory Committee  
Management Officer.

[FR Doc. 78-23130 Filed 8-17-78; 8:45 am]

[6335-01]

WYOMING ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Wyoming Advisory Committee (SAC) of the Commission will convene at 10:30 a.m. and will end at 12:30 p.m. on September 9, 1978, at Job Service Center, 506 West 17th Street, Cheyenne, Wyo. 82001.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, 1405 Curtis Street, Suite 1700, Denver, Colo. 80202.

The Advisory Committee will finalize plans for its press conference to release the report on its November 1977 consultation. The members will also discuss participation in future projects.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 14, 1978.

JOHN I. BINKLEY,  
Advisory Committee  
Management Officer.

[FR Doc. 78-23131 Filed 8-17-78; 8:45 am]

[6325-01]

CIVIL SERVICE COMMISSION

DEPARTMENT OF COMMERCE

Title Change in Noncareer Executive  
Assignment

By notice of July 14, 1978, FR Doc. 78-19251 the Civil Service Commission authorized the Department of Commerce to fill by noncareer executive assignment the position of Assistant to

the Secretary and Director of Communications, Office of the Secretary. This is notice that the title of this position is now being changed to Assistant to the Secretary and Director of Public Affairs, Office of the Secretary.

For the U.S. Civil Service Commission.

JAMES C. SPRY,  
Executive Assistant  
to the Commissioners.

[FR Doc. 78-22760 Filed 8-17-78; 8:45 am]

[6325-01]

DEPARTMENT OF TRANSPORTATION

Title Change in Noncareer Executive  
Assignment

By notice of January 12, 1977, FR Doc. 77-1037 the Civil Service Commission authorized the Department of Transportation to make a change in title for the position of Assistant Director for Communications Coordination, Office of Public Affairs, Office of the Secretary, authorized to be filled by noncareer executive assignment. This is notice that the title of this position is now being changed to Assistant Director for Public Information, Office of Public and Consumer Affairs, Office of the Secretary.

For the U.S. Civil Service Commission.

JAMES C. SPRY,  
Executive Assistant  
to the Commissioners.

[FR Doc. 78-22761 Filed 8-17-78; 8:45 am]

[3510-25]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

[Order No. 42-1, Amdt. 1]

DEPUTY ASSISTANT SECRETARY FOR  
ADMINISTRATIVE AND LEGISLATIVE POLICY

Statement of Organization and Function and  
Delegation of Authority

ITA Organization and Function  
Order 42-1 of December 4, 1977 (43 FR

9184) is hereby amended as follows to reflect the establishment of the Career Management and Employment Services Division. The Employee Relations Division and Employment Division are abolished and the functions of those divisions are transferred to the Career Management and Employment Services Division.

In Section 8, Office of Personnel, 1. Sections 8.03 *Employee Relations Division* and 8.04 *Employment Division* are revised to read as follows:

.03 The *Career Management and Employment Services Division* shall plan, develop, and execute a complete program of staffing, placement and employee relations services for the Industry and Trade Administration, which includes recruitment, merit promotion, equal employment opportunity, and affirmative action programs; provide interpretation and advice to management, employees, and applicants on employment and employee relations policy and procedures; establish and maintain custody of official personnel folders and records; monitor utilization of assigned ceiling plan and coordinate ITA-wide programs in the areas of employee performance evaluations, employee recognition and incentives, employee benefits and welfare, and labor-management relations; advise supervisors on methods of dealing with poor work performance or behavior problems and inform them of regulatory and other requirements in effecting satisfactory resolutions either through administrative or disciplinary actions; conduct inquiries and implement actions leading to resolution of employee complaints, grievances and appeals, and process proposed adverse actions; keep employees informed of their rights, privileges, obligations and responsibilities; administer program for disclosure of outside employment and financial interests of employees in order to prevent conflicts of interests; coordinate the Alcoholism and Drug Abuse Program; and process requests for security clearance of employees.

2. Section 8.05 *Employee Development Division* is renumbered section 8.04.

3. The attached organization chart<sup>1</sup> supersedes the organization chart dated December 1977.

<sup>1</sup> Filed as part of the original document.



Effective date: July 19, 1978.

FRANK A. WEIL,  
Assistant Secretary for  
Industry and Trade.

LISBETH K. GODLEY,  
Deputy Assistant Secretary for  
Administrative and Legisla-  
tive Policy.

[FR Doc. 78-23193 Filed 8-17-78; 8:45 am]

[3510-22]

National Oceanic and Atmospheric  
Administration

**GULF OF MEXICO FISHERY MANAGEMENT  
COUNCIL**

Public Meeting; Partially Closed

AGENCY: National Marine Fisheries  
Service, NOAA.

ACTION: Notice of public meeting  
with partially closed session.

SUMMARY: The Gulf of Mexico Fish-  
ery Management Council will conduct  
a series of meetings.

DATES: The Council meetings will  
start at 1:30 p.m., Wednesday, Septem-  
ber 6, 1978, 8:30 a.m., Thursday, Sep-  
tember 7, 1978, and 8:30 a.m., Friday,  
September 8, 1978, adjourning at 12  
noon on September 8, 1978.

ADDRESSES: The Council meeting  
will take place in the Padre Room of  
the Hilton Inn, located at 6255 Inter-  
state 37, Corpus Christi, Tex.

**FOR FURTHER INFORMATION  
CONTACT:**

Mr. Wayne E. Swingle, Executive Di-  
rector, Gulf of Mexico Fishery Man-  
agement Council, Lincoln Center,  
Suite 881, 5401 West Kennedy Bou-  
levard, Tampa, Fla. 33609, telephone  
813-228-2815.

**SUPPLEMENTARY INFORMATION:**  
The Gulf of Mexico Fishery Manage-  
ment Council was established by the  
Fishery Conservation and Manage-  
ment Act of 1976 (Pub. L. 94-265). The  
Council agenda is as follows:

**SEPTEMBER 6**

1. Consideration of fishery management  
plans under development.
2. Operational and procedural matters of  
the Council, including its staff, advisory  
panels and committee activities.

**SEPTEMBER 7**

1. Closed 3½-hour session (8:30 a.m. to 12  
noon) to discuss proposals by potential  
contractors in a negotiated procurement for the  
preparation of draft fishery management  
plans.
2. Review of foreign fishing applications,  
if any.
3. Consideration of reports from manage-  
ment committees.

**SEPTEMBER 8**

1. Other fishery management business.

The Council expects to address each  
of the items of the agenda above.  
Time restraints may require that some  
items be deferred to a later meeting.  
Interested parties should contact the  
Executive Director as mentioned  
above and may obtain a more detailed  
agenda.

The closed session of the Council is  
planned for the early morning of the  
second day, September 7, from 8:30  
a.m. through 12 noon to discuss pro-  
posals by potential contractors in a ne-  
gotiated procurement for the prepara-  
tion of draft fishery management  
plans.

The Assistant Secretary for Admin-  
istration of the Department of Com-  
merce, with the concurrence of its  
General Counsel, formally determined  
on August 14, 1978, pursuant to sec-  
tion 10(d) of the Federal Advisory  
Committee Act, that the agenda item  
covered in the closed session may be  
exempt from the provisions of the act  
relating to open meetings and public  
participation therein because these  
items will be concerned with matters  
that are within the purview of 5 U.S.C.  
552b(c) (4), (6), and (9)(B) (commercial  
and financial information obtained  
from a person and privileged or confi-  
dential; information of a personal  
nature where disclosure would consti-  
tute a clearly unwarranted invasion of  
personal privacy; and information the  
premature disclosure of which would  
be likely to significantly frustrate im-  
plementation of a proposed agency  
action). (A copy of the determination  
is available for public inspection and  
copying in the Public Reading Room,  
Central Reference and Record Inspec-  
tion Facility, Room 5317, Department  
of Commerce.)

Dated: August 15, 1978.

WINFRED H. MEIBOHM,  
Associate Director, National  
Marine Fisheries Service.

**DETERMINATION**

The Gulf of Mexico Fishery Management  
Council has scheduled a meeting in Corpus  
Christi, Tex., for September 6-8, 1978. The  
Council has requested that the meeting be  
partially closed in that one of the agenda  
items for this meeting is the consideration  
of proposals by potential contractors in a  
negotiated procurement for the preparation  
of a draft fishery management plan. This  
will involve establishing the Council's ne-  
gotiation position upon evaluation of finan-  
cial, personal, and other capabilities of po-  
tential contractors by the Council. There  
will be a lengthy discussion of the individual  
proposer's professional abilities in the area  
of the contract to be let, including discus-  
sions of competence of individuals. Discus-  
sion will relate to each of the proposals,  
which include commercial data submitted to  
the Government in confidence. Conducting  
this portion of the meeting in public would  
make it impossible for the Council to con-  
duct effective negotiations with potential  
contractors and thus frustrate negotiations

of contracts advantageous to the Govern-  
ment.

The Council was established pursuant to  
section 302 of the Fishery Conservation and  
Management Act of 1976 (Pub. L. 94-265, 16  
U.S.C. 1852). There are 17 voting members  
of the Council including the Regional Direc-  
tor of the National Marine Fisheries Ser-  
vice, the principal State Officials with fish-  
ery management responsibility and exper-  
tise from Alabama, west coast of Florida,  
Louisiana, Mississippi and Texas; and 11  
members appointed by the Secretary of  
Commerce. Nonvoting members include rep-  
resentatives of the United States Fish and  
Wildlife Service, the United States Coast  
Guard, the Department of State, and the  
Gulf States Marine Fisheries Commission.

The Council's agenda scheduled for the  
morning of September 7, 1978, is a discus-  
sion of proposals by potential contractors  
mentioned in paragraph 1, above. Accord-  
ingly, pursuant to the authority delegated  
to me by the Secretary of Commerce, I find  
and determine pursuant to section 10(d) of  
the Federal Advisory Committee Act, 5  
U.S.C. App., that this portion of the Sep-  
tember 7, meeting may be closed to the  
public in accordance with section 552b(c)  
(4), (6) and (9)(B) of Title 5, United States  
Code, because disclosure of this information  
is likely to disclose: commercial and finan-  
cial information obtained from a person and  
privileged or confidential; information of a  
personal nature where disclosure would con-  
stitute a clearly unwarranted invasion of  
personal privacy; and information the pre-  
mature disclosure of which would be likely  
to significantly frustrate implementation of  
a proposed agency action.

All other portions of the meeting will be  
open to the public.

Dated: August 14, 1978.

GUY W. CHAMBERLIN, Jr.,  
Assistant Secretary  
for Administration.

Dated: August 11, 1978.

ALFRED MEISNER,  
Assistant General Counsel.  
[FR Doc. 78-23183 Filed 8-17-78; 8:45 am]

[3510-22]

**MARINE MAMMAL ANNUAL REPORT**

Availability

AGENCY: National Marine Fisheries  
Service.

ACTION: Notice of availability of  
marine mammal annual report.

SUMMARY: On June 21, 1978, the  
Secretary of Commerce approved and  
transmitted to the Congress the  
annual administration and status  
report on the marine mammals under  
the Department's jurisdiction, as re-  
quired by section 103(f) of the Marine  
Mammal Protection Act of 1972 (16  
U.S.C. 1361 et seq.). This report covers  
the period April 1, 1977, to March 31,  
1978. By this notice, the Assistant Ad-  
ministrator for Fisheries, National  
Marine Fisheries Service, informs the  
public that the report is available and  
that any interested individual may



secure a copy by requesting same in writing from the Service.

**ADDRESS:** A copy may be obtained from the Marine Mammal and Endangered Species Division, National Marine Fisheries Service, Washington, D.C. 20235. Requests will be filled until the supply is exhausted.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard B. Roe, Acting Chief, Marine Mammal and Endangered Species Division, National Marine Fisheries Service, Washington, D.C. 20235, 202-634-7461.

**SUPPLEMENTARY INFORMATION:** The Marine Mammal Protection Act of 1972 assigns responsibility for marine mammals of the Order Cetacea (whales and porpoises) and the Suborder Pinnipedia (seals and sea lions), except walrus, to the Department of Commerce. Under authority delegated to it, the National Marine Fisheries Service carries out those responsibilities. The annual report reviews the Service's marine mammal related activities during the reporting period and summarizes the following status information for each species: Distribution and migration, abundance and trends, general biology, ecological problems, allocation problems, regulations, and current research. Administrative matters discussed include bowhead whale management, tuna-porpoise management, legal actions taken against the Department of Commerce, law enforcement activities, issuance of scientific research and public display permits, research, and international activities.

Dated: August 11, 1978.

WINFRED H. MEIBOHM,  
Associate Director, National  
Marine Fisheries Service.

[FR Doc. 78-23234 Filed 8-17-78; 8:45 am]

**[3510-17]**

**Office of the Secretary**

[Dept. Organization Order 10-1]

**ASSISTANT SECRETARY FOR SCIENCE AND TECHNOLOGY**

**Statement of Organization, Function, and Delegation of Authority**

This order effective July 27, 1978, further amends the material appearing at 41 FR 18536 of May 5, 1976, 41 FR 26593 of June 28, 1976, and 42 FR 40963 of August 12, 1977.

Department Organization Order 10-1 of April 9, 1976, is hereby further amended as shown below. The purpose of this amendment is to change the office title of the Assistant Secretary for Science and Technology.

In Section 5. Office of the Assistant Secretary for Science and Technology, in pen and ink, change the title of this section to: "Office of Science and Technology".

ELSA A. PORTER,  
Assistant Secretary  
for Administration.

[FR Doc. 78-23187 Filed 8-17-78; 8:45 am]

**[3510-17]**

**PRIVACY ACT OF 1974**

**Changes to Systems of Records**

**AGENCY:** U.S. Department of Commerce.

**ACTION:** Notice of changes to certain existing Privacy Act systems of records; proposal to adopt routine uses.

**SUMMARY:** The changes noticed are made necessary by the establishment of the National Telecommunications and Information Administration (NTIA) within the Department of Commerce. NTIA replaces the Office of Telecommunications Policy (OTP), Executive Office of the President, and the Office of Telecommunications (OTEL), Department of Commerce. This notice:

(1) Announces the disposition of the eleven systems of records previously maintained by OTP and the one system of records of OTEL, summarized as follows:

- OTP-1, Bioeffects Projects, is deleted;
- OTP-2, Congressional Relations System, is merged into an existing Commerce Department system;
- OTP-3, Contractor Record System, is deleted;
- OTP-4, Employee Reports of Financial Interests and Employment, is part of an existing Civil Service Commission Government-wide system;
- OTP-5, General Personnel Records, is part of an existing Civil Service Commission Government-wide system;
- OTP-6, Inventory Control of Property; and
- OTP-7, Library Circulation Control Records, are merged into an existing Commerce Department system;
- OTP-8, Military Personnel System, is redesignated COMMERCE/NTIA-1;
- OTP-9, Payroll/Personnel System, is merged into an existing Commerce Department system;
- OTP-10, Personnel Applicant Records, is deleted;
- OTP-11, Travel Payment System, is merged into an existing Commerce Department system; and
- OTEL-1, Radio Spectrum Management Career Development Program, is redesignated COMMERCE/NTIA-2.

Miscellaneous changes in existing Commerce Department systems (add NTIA as a location, for example) to accommodate the merged records are described.

(2) Proposes to adopt the Commerce Department's general routine uses to the NTIA-1 system of records. These

routine uses are already applicable to OTEL-1, which is being redesignated NTIA-2.

**FOR FURTHER INFORMATION CONTACT:**

Mrs. Marilyn S. McLennan, Office of Organization and Management Systems, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-4217.

**SUPPLEMENTARY INFORMATION:** By Executive Order 12046, effective March 26, 1978, the President abolished the Office of Telecommunications Policy and transferred certain of its functions to the Secretary of Commerce. The President's authorities for this action were sections 3(c), 4(d), 5(b) and 7 of Reorganization Plan No. 1 of 1977. The Secretary of Commerce established NTIA by Department Organization Order 10-10, effective March 26, 1978. OTEL was abolished and its functions and personnel transferred to NTIA by the same DOO 10-10.

The replaced agencies previously published in the FEDERAL REGISTER notices of systems of records maintained under the Privacy Act of 1974. For notices of the Office of Telecommunications Policy see 42 FR 53533-53537, September 30, 1977; for notices of the Commerce Department's Office of Telecommunications see 42 FR 47679-80, September 21, 1977, and 43 FR 28028-29, June 28, 1978; and for Commerce Department notices of departmentwide systems referring to the Office of Telecommunications, see 42 FR 47682-47699.

A detailed description of the changes summarized above follows:

(1) Under section 6.01 of Department Organization Order 10-10, system notices published by the replaced agencies continue in force under NTIA. This document gives notice of changes necessary to reflect the replacement of the Office of Telecommunications Policy and the Office of Telecommunications by NTIA; and to conform notices formerly published by the Executive Office of the President to the system notice format of the Department of Commerce. These minor changes do not require opportunity for public comment under 5 U.S.C. 552a(e)(11); and do not require the submission of a New System Report under 5 U.S.C. 552a(o).

Existing system notices are changed as follows:

**OTP File No. 1**

OTP File No. 1 (Bioeffects Project Resumes) is deleted. The Department has determined that records containing data on federally-sponsored research projects investigating the biological effects of nonionizing electro-



magnetic radiation (radio wave energy), which are filed by the name of the sponsoring agency and then chronologically, do not constitute a system of records under the Privacy Act.

**OTP File No. 2** (Congressional Relations System) is deleted as a separate system. Its records are merged into COMMERCE/DEPT-4 (Congressional Files). To accomplish this, provisions of COMMERCE/DEPT-4 are modified to read as follows:

*System location:* a. Office of the Assistant Secretary for Congressional Affairs, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230.

b. Office of the Director of Congressional and Public Affairs, National Telecommunications and Information Administration, 1800 G Street NW., Washington, D.C. 20504.

*System manager(s) and address:* For records at location a.: Assistant Secretary for Congressional Affairs, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230.

For records at location b.: Director of Congressional and Public Affairs, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

*Notification procedure:* For records at location a.: Information may be obtained from the Departmental Office of Organization and Management Systems, OS, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20504.

For records at location b.: Information may be obtained from the Privacy Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

#### OTP File No. 3

**OTP File No. 3** (Contractor Record System) is deleted. The Department has determined that invoices, bills and evaluations of contractors' performance do not constitute a system of records under the Privacy Act.

#### OTP File No. 4

**OTP File No. 4** (Employee Reports of Financial Interests and Employment) is deleted as a separate system. Its records are part of a Government-wide system announced by the Civil Service Commission, CSC/GOVT-2 (Confidential Employment and Financial Interest Statements) (42 FR 48738, September 23, 1977).

#### OTP File No. 5

**OTP File No. 5** (General Personnel Records) is deleted as a separate

system. Its records are part of CSC/GOVT-3 (General Personnel Records) (42 FR 48738, September 23, 1977).

#### OTP File Nos. 6 and 7

**OTP File Nos. 6** (Inventory Control of Property) and **7** (Library Circulation Control Records) are deleted as separate systems. Records in these systems are merged into COMMERCE/DEPT-16 (Property Accountability Files), to which the following provisions are added:

*System location:* f. For NTIA: Office of Administration, National Telecommunications and Information Administration, 1325 G Street NW., Washington, D.C. 20005.

*System manager(s) and address:* For records at location f.: Director of Administration, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

*Notification procedure:* For records at location f., information may be obtained from: Privacy Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

#### OTP File No. 8

**OTP File No. 8** (Military Personnel System) is redesignated Commerce/NTIA-1. References to "OTP" are replaced by "NTIA." Certain provisions of this system notice are modified to read as follows:

*System location:* Office of Administration, National Telecommunications and Information Administration, 1325 G Street NW., Washington, D.C. 20005.

*Authority for maintenance of the system:* Executive Order 12046 and Reorganization Plan No. 1 of 1977.

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:* Used to prepare evaluation reports and correspondence relative to future assignment. Only user is the Director of Administration (or his designee) for purposes indicated. Information contained in the file relates to the individual's assignment to NTIA only. For additional routine uses, see "Appendix to COMMERCE/NTIA-1."

*System manager(s) and address:* Director of Administration, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

*Notification procedure:* Information may be obtained from the Privacy Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

*Record access procedures:* Requests from individuals should be addressed

to: Same address as stated in the Notification section, above.

*Contesting record procedures:* The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use address in Notification section, above.

#### OTP File No. 9

**OTP File No. 9** (Payroll/Personnel System) is deleted as a separate system. Its records are merged into COMMERCE/DEPT-1 (Attendance, Leave and Payroll Records of Employees and Certain Other Persons). References to "OTEL" in COMMERCE/DEPT-1 are replaced by "NTIA," and applicable provisions are changed to read as follows:

*System location:* c. For employees of NBS, NTIS and NTIA: National Bureau of Standards, Accounting Division (Payroll Section), Administration Building, Gaithersburg, Md. (P.O. Washington, D.C. 20234). NTIA records dating prior to March 26, 1978, relating to employees of the former Office of Telecommunications Policy, Executive Office of the President, are located at General Services Administration Region 3 Office, 7th and D Streets SW., Washington, D.C. 20407.

*Notification procedure:* For NTIA records at location c., information may be obtained from the Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20504.

#### OTP File No. 10

**OTP File No. 10** (Personnel Applicant Records) is deleted. Documents formerly stored therein, and applications for employment received by NTIA, will either be destroyed or stored by date of receipt, and thus will not constitute a system of records under the Privacy Act.

#### OTP File No. 11

**OTP File No. 11** (Travel Payment System) is deleted as a separate system. Its records are merged into COMMERCE/DEPT-9 (Travel Records (Domestic and Foreign) of Employees and Certain Other Persons). References to "OTEL" in COMMERCE/DEPT-9 are replaced by "NTIA" and the applicable notification procedure is changed to read as follows:

For NTIA records at location c., information may be obtained from the Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20504.

#### COMMERCE/OTEL-1

**COMMERCE/OTEL-1** (Radio Spectrum Management Career Development Program) is redesignated COMMERCE/NTIA-2. Certain provisions



of this system notice are modified to read as follows:

**System location:** National Telecommunications and Information Administration, 1325 G Street NW., Washington, D.C. 20005 (paper), 179 Admiral Cochrane Drive, Annapolis, Md. 21401 (magnetic disc).

**Authority for maintenance of the system:** 47 U.S.C. 305, Executive Order 12046 and Reorganization Plan No. 1 of 1977.

**System manager(s) and address:** Coordinator, Radio Spectrum Management Career Development Program, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

**Notification procedure:** Information may be obtained from the Privacy Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

**Contesting record procedures:** The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use address in Notification section, above.

#### COMMERCE/DEPT-2

In COMMERCE/DEPT-2 (Accounts Receivable), references to "OTEL" are replaced by "NTIA," and the applicable notification procedure is changed to read as follows:

For NTIA records at location c., information may be obtained from the Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20504.

#### COMMERCE/DEPT-5

In COMMERCE/DEPT-5 (Donors of Gifts and Bequests), references to "OTEL" are replaced by "NTIA," and the applicable notification procedure is changed to read as follows:

For NTIA records at location d., information may be obtained from the Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20504.

#### COMMERCE/DEPT-7

In COMMERCE/DEPT-7 (Employee Accident Reports), applicable provisions are changed to read as follows:

**System location:** k. For employees of NTIA: Office of Administration, National Telecommunications and Information Administration, 1325 G Street NW., Washington, D.C. 20005.

**System manager(s) and address:** For records at location k.: Safety Officer, Office of Administration, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

**Notification procedure:** For records at location k., information may be obtained from the Privacy Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

#### COMMERCE/DEPT-8

In COMMERCE/DEPT-8 (Employee Applications for Motor Vehicle Operator's Card), references to "OTEL" are replaced by "NTIA," and the applicable notification procedure is changed to read as follows:

For NTIA records at location a., information may be obtained from the Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20504.

#### COMMERCE/DEPT-14

In COMMERCE/DEPT-14 (Litigation, Claims, and Administrative Proceeding Records), applicable provisions are changed to read as follows:

**System location:** i. For matters involving NTIA: Office of the Chief Counsel, National Telecommunications and Information Administration, 1800 G Street NW., Washington, D.C. 20504; or Office of Administration, National Telecommunications and Information Administration, 1325 G Street NW., Washington, D.C. 20005.

**System manager(s) and address:** For records at location i.: Chief Counsel and Director of Administration (for their respective portions), National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

**Notification procedure:** For records at location i., information may be obtained from the Privacy Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

#### COMMERCE/DEPT-17

In COMMERCE/DEPT-17 (Records of Cash Receipts), provisions are added as follows:

**System location:** f. For NTIA: Office of Administration, National Telecommunications and Information Administration, 1325 G Street NW., Washington, D.C. 20005.

**System manager(s) and address:** For records at location f.: Director of Administration, National Telecommunications and Information Administration, 1325 G Street NW., Washington, D.C. 20005.

**Notification procedure:** For records at location f., information may be obtained from: Privacy Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

#### COMMERCE/DEPT-18

In COMMERCE/DEPT-18 (Employees Personnel Files not covered by U.S. Civil Service Commission), references to "OTEL" are replaced by "NTIA," and the applicable notification procedure is changed to read as follows:

For NTIA records at location a., information may be obtained from the Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20504.

#### COMMERCE/DEPT-20

In COMMERCE/DEPT-20 (Biographical Files), applicable provisions are changed to read as follows:

**System location:** q. For employees of NTIA's Institute for Telecommunication Sciences: Institute for Telecommunication Sciences, NTIA, Boulder, Colo. 80302.

For other NTIA employees: Office of the Director of Congressional and Public Affairs, NTIA, 1800 G Street NW., Washington, D.C. 20504.

**System manager(s) and address:** For records at location q.: Director of Congressional and Public Affairs, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

**Notification procedure:** q.: Privacy Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

#### COMMERCE/DEPT-21

In COMMERCE/DEPT-21 (Freedom of Information and Privacy Request Records), applicable provisions are changed to read as follows:

**System location:** g. For FOIA request records of NTIA: Freedom of Information Request Control Desk, National Telecommunications and Information Administration, 1800 G Street NW., Washington, D.C. 20504.

**System manager(s) and address:** For records at location g.: Director of Congressional and Public Affairs, NTIA, U.S. Department of Commerce, Washington, D.C. 20504.

**Notification procedure:** For records at location g.: Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20504.

To insure clarity, the revised system notice for COMMERCE/NTIA-1 and its Appendix containing additional routine uses is reprinted in its entirety at the end of this Notice. To reduce cost, the other systems affected by this Notice are not reprinted below because they will be republished in approximately one month to comply with the statutory annual republication requirement. The republication will incorporate all changes described above.



(2) The Department of Commerce proposes to adopt its previously noticed general routine uses for the system NTIA-1. These general routine uses, which may be applicable to any Commerce Department system, were last published in the *FEDERAL REGISTER* for September 21, 1977 at pages 47682-83. The purpose of this proposal is simply to conform NTIA-1 to the system notice format of the Department. When the proposal is made final, the routine uses noticed by the former Office of Telecommunications Policy, now set forth as the Appendix to NTIA-1, will be deleted.

Public comments regarding this proposal will be given due consideration before final publication. Any interested person may submit written data, views, or arguments to the Assistant Secretary for Administration (Attention: Information Management Division, Room 5319), U.S. Department of Commerce, 14th and E Street NW., Washington, D.C. 20230, any time on or before September 18, 1978. The comments will be available, as received, for public inspection at the above address between the hours of 9 a.m. and 4 p.m., Monday through Friday (except holidays).

**EFFECTIVE DATES:** The revisions contained in part (1) above are effective August 18, 1978. The proposal to adopt Commerce Department general routine uses to NTIA-1 in part (2) will become effective September 18, 1978, unless the Department notices to the contrary.

(5 U.S.C. 552a(e)(4) and (11), Sec. 3 of the Privacy Act of 1974, (Pub. L. 93-579, 88 Stat. 1896).)

Dated: August 14, 1978.

GUY W. CHAMBERLIN, Jr.,  
Acting Assistant Secretary  
for Administration.

COMMERCE/NTIA-1

**System name:**

Military Personnel System—COMMERCE/NTIA-1.

**System location:**

Office of Administration, National Telecommunications and Information Administration, 1325 G Street NW., Washington, D.C. 20005.

**Categories of individuals covered by the system:**

Military personnel detailed to NTIA.

**Categories of records in the system:**

System contains evaluation reports, job descriptions, documents relating to assignments, and letters of evaluation.

**Authority for maintenance of the system:**

Executive Order 12046 and Reorganization Plan No. 1 of 1977.

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:**

Used to prepare evaluation reports and correspondence relative to future assignment. Only user is the Director of Administration, or his designee, for purposes indicated. Information contained in the file relates to the individual's assignment to NTIA only. For additional routine uses, see "Appendix to COMMERCE/NTIA-1."

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:**

Folders are maintained in file cabinets.

**Retrievability:**

Alphabetically by name.

**Safeguards:**

Maintained in locked file cabinets.

**Retention and disposal:**

Destroyed when military detailee is reassigned from NTIA.

**System manager(s) and address:**

Director of Administration, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

**Notification procedure:**

Information may be obtained from the Privacy Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

**Record access procedures:**

Requests from individuals should be addressed to: Same address as stated in the Notification section, above.

**Contesting record procedures:**

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use address in notification section, above.

**Record source categories:**

Information in this system of records either comes from the individual to whom it applies or is derived from information the individual supplied, except information provided by agency officials.

**APPENDIX TO COMMERCE/NTIA-1**

In the event that a system of records maintained by this agency to carry out

its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record from a system of records may be disclosed as a "routine use" to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

A record from a system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee. A record from this system of records may be disclosed to the United States Civil Service Commission in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

A record from a system of records may be disclosed to officers and employees of a Federal agency for purposes of audit.

The information contained in a system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from a system of records may be disclosed as a routine use to a Member of Congress or to a Congress-



sional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained.

A record from a system of records may be disclosed to officers and employees of the General Service Administration in connection with administrative services provided to this agency under agreement with GSA.

[FR Doc. 78-23196 Filed 8-17-78; 8:45 a.m.]

## [6820-33]

### COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

#### Proposed Addition

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed addition to procurement list.

SUMMARY: The committee has received a proposal to add to procurement list 1978 a service to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 20, 1978.

ADDRESS: Committee for Purchase From the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the committee approves the proposed addition, all entities of the Federal Government will be required to procure the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following service to procurement list 1978, November 14, 1977 (42 FR 59015):

SIC 7641

Furniture rehabilitation, San Antonio, Tex., plus 40-mile radius, excluding Lackland and Randolph Air Force Bases (SH).

C. W. FLETCHER,  
Executive Director.

[FR Doc. 78-23195 Filed 8-17-78; 8:45 am]

## [1620-01]

### COST ACCOUNTING STANDARDS BOARD

#### Merits of Standards

#### Public Meeting

ACTION: Notice of public meeting.

SUMMARY: This notice is issued in furtherance of the decision of the Cost Accounting Standards Board to invite the public to observe meetings at which the Board considers the merits of Standards, rules and regulations, including modifications, which are proposed for final promulgation.

TIME AND DATE: 2 p.m., September 6, 1978.

PLACE: General Accounting Office, Room 7315, 441 G Street NW., Washington, D.C.

AGENDA: The Board will consider a proposal to promulgate as Cost Accounting Standard 416, a Standard on "Accounting for Insurance Costs." The Board will also consider whether to take final action on proposed amendments which would authorize limited exemptions for national defense contracts and subcontracts awarded to foreign concerns.

STATUS: Open to the public.

CONTACT PERSON:

Noah Minkin, General Counsel, 202-275-5940.

NOAH MINKIN,  
General Counsel.

[FR Doc. 78-23186 Filed 8-17-78; 8:45 am]

## [3128-01]

### DEPARTMENT OF ENERGY

#### Office of the Secretary

NATIONAL PETROLEUM COUNCIL: SUBCOMMITTEE ON PETROLEUM INVENTORIES AND STORAGE AND TRANSPORTATION CAPACITIES

#### Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the Subcommittee on Petroleum Inventories and Storage and Transportation Capacities of the National Petroleum Council will meet Wednesday, September 6, 1978, at 9 a.m., in the Mount Vernon Room of the Madison Hotel, 15th and M Streets NW., Washington, D.C.

The parent Committee was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

The Subcommittee will make an analysis of the petroleum inventories, and storage and transportation capaci-

ties of the United States, and will report its findings to the parent Committee.

The tentative agenda is as follows:

Discuss the scope of the study to be conducted in response to the Secretary of Energy's requests for an analysis of the petroleum inventories, and storage and transportation capacities of the United States;

Discuss an organizational structure for the study;

Discuss a timetable for completion of the study;

Discuss any other matters pertinent to the overall assignment from the Secretary.

The meeting is open to the public. The chairman of the Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Georgia Hildreth, Director, Advisory Committee Management, 202-566-9996, at least 5 days prior to the meeting, and reasonable provision will be made for their appearance on the agenda.

Transcripts of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 2107, DOE, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcripts from the reporter.

Issued at Washington, D.C., on August 15, 1978.

WILLIAM S. HEFFELFINGER,  
Director of Administration.

[FR Doc. 78-23258 Filed 8-17-78; 8:45 am]

## [1505-01]

### ENVIRONMENTAL PROTECTION AGENCY

[OPP-180209; FRL 934-51]

#### IDAHO, OREGON, AND WASHINGTON

Issuance of Specific Exemptions To Use Bentazon To Control Canada Thistle in Mint Fields

#### Correction

In FR Doc. 78-21004 appearing at page 33313 in the issue for Monday, July 31, 1978, third column, paragraph numbered 6, third line, "1.9" should read "1.0".



[6560-01]

# ENVIRONMENTAL PROTECTION AGENCY

[OPP-33000/549; FRL 949-41]

## RECEIPT OF APPLICATION FOR PESTICIDE REGISTRATION

### Data To Be Considered in Support of Application

On November 19, 1973, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (39 FR 31862) its interim policy with respect to the administration of section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended ("Interim Policy Statement"). On January 22, 1976, EPA published in the FEDERAL REGISTER a document entitled "Registration of a Pesticide Product—Consideration of Data by the Administrator in Support of an Application" (41 FR 3339). This document described the changes in the Agency's procedures for implementing section 3(c)(1)(D) of FIFRA, as set out in the interim policy statement which were effected by the enactment of the amendments to FIFRA on November 28, 1975 (Pub. L. 94-140), and the regulations governing the registration and re-registration of pesticides which became effective on August 4, 1975 (40 CFR Part 162).

Pursuant to the procedures set forth in these FEDERAL REGISTER documents, EPA hereby gives notice of the applications for pesticide registration listed below. In some cases these applications have recently been received; in other cases, applications have been amended by the submission of additional supporting data, the election of a new method of support, or the submission of new "offer to pay" statements.

In the case of all applications, the labeling furnished by the applicant for the product will be available for inspection at the Environmental Protection Agency, Room 209, East Tower, 401 M Street SW., Washington, D.C. 20460. In the case of applications subject to the section 3 regulations which utilize either the 2(a) or 2(b) method of support specified in the Interim Policy Statement, all data citations submitted or referenced by the applicant in support of the application will be made available for inspection at the above address. This information (proposed labeling and, where applicable, data citations) will also be supplied by mail, upon request. However, such a request should be made only when circumstances make it inconvenient for the inspection to be made at the Agency offices.

Any person who (a) is or has been an applicant, (b) believes that data he developed and submitted to EPA on or

after January 1, 1970, are being used to support an application described in this notice, (c) desires to assert a claim under section 3(c)(1)(D) for such use of his data and wishes to preserve his right to have the Administrator determine the amount of reasonable compensation to which he is entitled for such use of the data, or (d) wishes to assert confidential status under section 10 for his data, must notify the Administrator and the applicant named in the notice in the FEDERAL REGISTER of his claim by certified mail. Notification to the Administrator should be addressed to the Product Control Branch, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Every such claimant must include, at a minimum, the information listed in the interim policy statement of November 19, 1973.

Specific questions concerning applications made to the Agency should be addressed to the designated product manager (PM), Registration Division (TS-767), Office of Pesticide Programs, at the above address, or by telephone as follows:

PM 12—202-755-9315  
PM 15, 16, & 17—202-426-9425  
PM 21 & 22—202-426-2454  
PM 23—202-755-1397  
PM 24—202-755-2196  
PM 25—202-426-2632  
PM 31 & 32—202-426-2635

The Interim Policy Statement requires that claims for compensation be filed on or before October 17, 1978. EPA will not delay any registration pending the assertion of claims for compensation or the determination of reasonable compensation. Inquiries and assertions that data relied upon are subject to protection under section 10 of FIFRA, as amended, should be made on or before September 17, 1978. Registration will be delayed pending resolution of section 10 claims.

Dated: August 10, 1978.

DOUGLAS D. CAMPT,  
Acting Director,  
Registration Division.

APPLICATION RECEIVED 33000/549

EPA File Symbol 270-RGG. Farnam Companies, Inc., P.O. Box 21447, Omaha, Nebr. 68112. FARNAM SX-70 FLY BAIT. Active Ingredients: Methomyl (S-methyl N-[(methylcarbamoyl)oxy]thioacetimidate) 1.00%. Method of Support: Application proceeds under 2(b) of interim policy. PM12

EPA Reg. No. 1022-470. Chapman Chemical Co., P.O. Box 9158, Memphis, Tenn. 38109. PERMATOX 180. Active Ingredients: Potassium 2, 3, 4, 6-tetrachlorophenolate 22.40%; Potassium salts of other chlorophenols 6.05%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added uses. PM22

EPA Reg. No. 1057-47. C. B. Dolge Co., 11 Ferry Lane West, Westport, Conn. 06880. PURIFAC DISINFECTANT SPRAY. Active Ingredients: O-phenyl phenol 0.10%; N-alkyl (60%C14, 30%C16, 5%C12, 5%C18) dimethyl benzyl ammonium chlorides 0.04%; N-alkyl (50%C12, 30%C14, 17%C16, 3%C18) dimethyl ethyl benzyl ammonium chlorides 0.04%; Essential oils 0.20%; Alcohol 67.20%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Formula change PM32

EPA Reg. No. 1109-13. Cities Service Co., Minerals Group, P.O. Box 50360, Atlanta, Ga. 30302. CITCO TRI-BASIC COPPER SULFATE. Active Ingredients: Copper (in basic copper sulfate) 53%. Method of support: Application proceeds under 2(b) of interim policy. Republished: Added uses. PM22

EPA Reg. No. 1109-28. Cities Service Co., Minerals Group. CITCOP 6E. Active Ingredients: Copper salts of fatty and rosin acids 65%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Added uses. PM22

EPA File Symbol 1299-EE. Scientific Supply Co., Inc., P.O. Box 7406, Denver, Colo. 80207. SG 701. Active Ingredients: Poly[oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 10.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA File Symbol 1299-EG. Scientific Supply Co., Inc. SG 702. Active Ingredients: Poly[oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 30.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA File Symbol 1299-EU. Scientific Supply Co., Inc. SG 703. Active Ingredients: Poly[oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 10.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA Reg. No. 1471-35. Elanco Products Co., Division of Eli Lilly & Co., P.O. Box 1750, Indianapolis, Ind. 46206. TREFLAN E. C. Active Ingredients: trifluralin (a,a,a-trifluoro-2,6-dinitro - N,N - dipropyl-p-toluidine 44.5%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Amendment. PM23

EPA File Symbol 1471-RRR. Elanco Products Co., Division of Eli Lilly & Co. SPIKE SOLUTION. Active Ingredients: tebuthiuron:N-(5-(1, 1-dimethylethyl)-1,3,4 - thiadiazol-2-yl)N,N'-dimethylurea 0.36%. Method of Support: Application proceeds under 2(b) of interim policy. PM25

EPA File Symbol 1471-RRE. Elanco Products Co., Division of Eli Lilly & Co. SURFLAN AS. Active Ingredients: oryzalin (3,5-dinitro-N4,N4-dipropylsulfanilamide) 41.3%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Added use. PM25

EPA Reg. No. 2342-964. Kerr-McGee Chemical Corp., Kerr McGee Center, P.O. Box 25861, Oklahoma City, Okla. 73125. KM HARVEST AID. Active Ingredients: Sodium Chlorate 56%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM25

EPA Reg. No. 2342-970. Kerr-McGee Chemical Co. KM HARVEST AID



- LIQUID CONCENTRATE 4.** Active Ingredients: Sodium Chlorate 21.3%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM25
- EPA Reg. No. 3090-163.** Sanitized, Inc., 605 Third Avenue, New York, N.Y. 10016. **SANITIZED VAN INTERIOR AEROSOL FOGGING SPRAY.** Active Ingredients: Pentachlorophenol 0.10%; Pyrethrins 0.50%; Technical Piperonyl Butoxide 1.00%; N-Octyl Bicycloheptene Dicarboximide 1.67%; Petroleum Distillates 11.73%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Formulation change PM32
- EPA File Symbol 3125-143.** Mobay Chemical Corp., Chemagro Agricultural Division, P.O. Box 4913, Kansas City, Mo. 64120. **DYLOX LIQUID SOLUTION INSECTICIDE.** Active Ingredients: Dimethyl (2,2,2-trichloro-1-hydroxyethyl) phosphonate 40.5%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Rate reduction. PM16
- EPA Reg. No. 3125-288.** Mobay Chemical Corp., Chemagro Agricultural Division. **NESUROL 75% WETTABLE POWDER.** Active Ingredients: 3,5-Dimethyl-4-(Methylthio)phenol methylcarbamate 75%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM12
- EPA Reg. No. 3635-166.** Oxford Chemical Division, Consolidated Foods Corp., P.O. Box 80202, Atlanta, Ga. 30341. **OXFORD PINE SCENT DISINFECTANT.** Active Ingredients: Isopropanol 10.75%; Steam distilled pine oil 6.00%; Potassium soaps 5.90%; Ortho-benzyl para-chlorophenol 5.85%; Ethylenediamine-tetraacetic acid tetra-sodium salt 0.20%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Formulation change. PM32
- EPA File Symbol 4651-RA.** Hunter Industrial Chemicals, Niagara at Holmes Road, Houston, Tex. 77021. **HUNTO-GUARD 500.** Active Ingredients: Alkyl (C14, 90%; C12, 5%; C16, 5%)dimethyl dichlorobenzyl ammonium chloride 19.23%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revised offer to pay. PM31
- EPA File Symbol 4652-L.** Crown Chemical Co., Inc., 1416 North Dixie Highway, Hollywood, Fla. 33020. **SODIUM HYPOCHLORITE SOLUTION.** Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM32
- EPA File Symbol 4822-RLI.** S. C. Johnson and Son, Inc., 1525 Howe St., Racine, Wis. 53403. **JOHNSON END BAC II LIQUID DISINFECTANT SPRAY.** Active Ingredients: Ethyl alcohol 19.7350%; n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18); dimethyl benzyl ammonium chlorides 0.0875% n-Alkyl (50% C12, 30% C14, 17% C16, 3% C18); dimethyl ethylbenzyl ammonium chlorides 0.0875%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revised offer to pay. PM31
- EPA File Symbol 5185-EOE.** Bio-Lab, Inc., Decatur, Ga. 30031. **BIO-QUAT 50.** Active Ingredients: Alkyl (C14, 58%; C16, 28%; C12, 14%) dimethyl benzyl ammonium chloride 50.0%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revised offer to pay. PM31
- EPA File Symbol 5736-24.** DuBois Research Laboratory, DuBois Chemicals, Division of Chemed Corp., 3630 East Kemper Road, Sharonville, Ohio 45241. **GSC.** Active Ingredients: Isopropyl Alcohol 14.62%; Sodium Dodecylbenzene Sulfonate 7.39%; Sodium ortho-benzyl-para-chlorophenolate 5.79%; Sodium ortho-phenylphenolate 3.95%; Sodium para-tertiary amylphenolate 0.88%; Essential oil 0.25%; Trisodium ethylene diamine tetraacetic acid 0.20%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Added Use. PM32
- EPA Reg. No. 6720-59.** Southern Mill Creek Products Co., Inc., P.O. Box 1098, Tampa, Fla. 33601. **DURBAN 2E INSECTICIDE.** Active Ingredients: Chlorpyrifos [0,0-diethyl 0-(3,5,6-trichloro-2-pyridyl) phosphorothioate] 23.5%; Aromatic petroleum derivative solvent 14.9%; Xylene 54.9%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added Use. PM12
- EPA Reg. No. 6720-148.** Southern Mill Creek Products Co., Inc. **DURBAN 1E INSECTICIDE.** Active Ingredients: Chlorpyrifos [0,0-diethyl 0-(3,5,6-trichloro-2-pyridyl) Phosphorothioate] 12.9%; Aromatic petroleum derivative solvent 73.9%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM12
- EPA Reg. No. 6720-237.** Southern Mill Creek Products Co., Inc. **LAWN AND ORNAMENTAL SPRAY.** Active Ingredients: Chlorpyrifos [0,0-diethyl 0-(3,5,6-trichloro-2-pyridyl) Phosphorothioate] 2.35%; Aromatic petroleum derivative solvent 93.44%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM12
- EPA Reg. No. 6720-257.** Southern Mill Creek Products Co., Inc. **HOME LAWN AND ORNAMENTAL SPRAY.** Active Ingredients: Chlorpyrifos [0,0-diethyl 0-(3,5,6-trichloro-2-pyridyl) phosphorothioate] 5.40%; Aromatic Petroleum Derivative Solvents 91.24%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM12
- EPA Reg. No. 7173-56.** Chempar Chemical Co., Inc., 260 Madison Avenue, New York, N.Y. 10016. **CHEMPORVOS TECHNICAL.** Active Ingredients: 2,2-Dichlorovinyl Dimethyl Phosphate min. 97%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Amendment. PM17
- EPA Reg. No. 8772-12.** Blue Cross Chemical Co., Division of Zarov Chemical Co., 1301 South First Avenue, Maywood, Ill. 60153. **SHOCK TREATMENT FOR RAPID CONTROL OF ALGAE.** Active Ingredients: Calcium Hypochlorite 65%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Formula change. PM32
- EPA File Symbol 10019-U.** Clover Pool Supply Co., Inc., 1812 Ridge Road East, Rochester, N.Y. 14621. **CLOVER SANICLEAR.** Active Ingredients: Sodium Hypochlorite 12.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM32
- EPA File Symbol 10352-EN.** Union Carbide Corp., 270 Park Avenue, New York, N.Y. 10017. **UCARCIDE 225 ANTIMICROBIAL.** Active Ingredients: Glutaraldehyde 25.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM31
- EPA File Symbol 14775-GI.** Asgrow Florida Co., P.O. Box Drawer D, Plant City, Fla. 33566. **ASGROW DIPEL 150 DUST.** Active Ingredients: *Bacillus thuringiensis*, Berliner, 320 International Units of Potency per mg. (0.15 billion International Units per pound of this product). Method of Support: Application proceeds under 2(b) of interim policy. PM17
- EPA File Symbol 14775-GO.** Asgrow Florida Co. **ASGROW DIPEL 150 BAIT.** Active Ingredients: *Bacillus thuringiensis*, Berliner, 320 International Units of Potency per mg. (0.15 billion International Units per pound of this product). Method of Support: Application proceeds under 2(b) of interim policy. PM17
- EPA File Symbol 14797-E.** Delray Chemical Co., Inc., 5065 W. Atlantic Avenue, Delray Beach, Fla. 33445. **DELRAY HYPOCHORITE.** Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM32
- EPA File Symbol 15136-L.** Wave Energy Systems, Inc., 600 Madison Ave., New York, N.Y. 10022. **AGROCID II.** Active Ingredients: Glutaraldehyde (1,5-Pentanediol) 10%; Triethylene-glyco 60%. Method of Support: Application proceeds under 2(b) of interim policy. PM31
- EPA Reg. No. 15300-1.** Chemical Treatment Co., Hanover Industrial Air Park, 500 Lickinghole Road, Ashland, Va. 23005. **CHEMICAL TREATMENT CL-2151.** Active Ingredients: Poly[oxyethylene (dimethyliminio)ethylene (dimethyliminio) ethylene dichloride] 7.5%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Amendment. PM32
- EPA Reg. No. 15300-2.** Chemical Treatment Co. **CHEMICAL TREATMENT CL-2152.** Active Ingredients: Poly[oxyethylene (dimethyliminio)ethylene (dimethyliminio) ethylene dichloride] 15%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Amendment. PM32
- EPA Reg. No. 15300-11.** Chemical Treatment Co. **CHEMICAL TREATMENT CT-202.** Active Ingredients: Poly[oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 24.0%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Amendment. PM32
- EPA File Symbol 18466-E.** Pulliam, Inc., 2221 Eighth Avenue, Fort Worth, Tex. 76110. **POLYGARD ALGAECIDE CONCENTRATE.** Active Ingredients: Poly[oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 60.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM32
- EPA File Symbol 32460-RM.** Hydrology Laboratories, Inc., P.O. Box 174, Smithtown, N.Y. 11787. **SWIM FREE 30.** Active Ingredients: Poly[oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 30.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM32
- EPA File Symbol 34164-I.** American Refining and Mfg., Inc., 2375 Northwest 75th Street, Miami, Fla. 33147. **KRYSTAL KLEAR SODIUM HYPOCHLORITE SOLUTION.** Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM32



EPA File Symbol 35900-I. Ionics, Inc., Routes 519 and 50 (P.O. Box 99), Bridgeville, Pa. 15017. HYGENE REPLACEMENT MEDIA—GENERAL IONICS MODEL MIVSH-8 BACTERIOSTATIC WATER CONDITIONER. Active Ingredients: Silver as Metallic 1.05%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 37657-R. J and B Pool Supply, 5801 Margate Boulevard, Margate, Fla. 33063. J AND B POOL SUPPLY. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA File Symbol 37658-R. Barnett Hardware and Paint Inc., 100 East Hallandale Beach Boulevard, Hallandale, Fla. 33009. SODIUM HYPOCHLORITE SOLUTION. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA File Symbol 37924-R. Ed Carter's Swimming Pool Service, 1544 Northeast 109th Street, Miami, Fla. 33161. ED CARTER'S POOL SERVICE. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA File Symbol 37795-R. B and S Hardware, University Shopping Plaza, 1100 University Drive, Pembroke Pines, Fla. 33024. B AND S HARDWARE, INC. SODIUM HYPOCHLORITE SOLUTION. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA File Symbol 38241-R. Reed's Pools, 4068 Northeast Ninth Avenue, Ft. Lauderdale Fla. 33308. REED'S SODIUM HYPOCHLORITE SOLUTION. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA File Symbol 39113-G. Pool Medic, Inc., 9354 Alt. A1A, Suite 17A, Palm Beach Gardens, Fla. 33403. POOL MEDIC SODIUM HYPOCHLORITE SOLUTION. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA File Symbol 39638-E. Colt Chemical Co., 90 Elinor Avenue, Akron, Ohio 44305. COLT GERMICIDAL CLEANER. Active Ingredients: n-Alkyl(80% C14, 30% C16, 5% C12, 5% C18)dimethyl benzyl ammonium chloride 2.25%; n-Alkyl(68% C12, 31% C14)dimethyl ethylbenzyl ammonium chlorides 2.25%; Sodium Carbonate 3.00%; Tetrasodium ethylenediamine tetraacetate 1.00%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revise offer to pay. PM31

EPA File Symbol 41575-R. Environtrol, Inc., 7155 Northwest Third Avenue, Miami, Fla. 33150. AQUAMATIC. Active Ingredients: Metallic Silver 1.05%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 41697-R. George Warren Pool Service, Inc., 9534 Colonial Drive, Miami, Fla. 33157. GEORGE'S POOL BLEACH. Active Ingredients: Sodium Hypochlorite 9.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA File Symbol 41879-R. United Worth Hydrochem Corp., P.O. Box 366, Fort Worth, Tex. 76101. A-740. Active Ingredients: Polyfoxyethylene (dimethyliminio) ethylene(dimethyliminio) ethylene dichlo-

ride 9.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

[FR Doc. 78-23102 Filed 8-17-78; 8:45 am]

[6560-01]

[FRL 935-3]

# CALIFORNIA STATE MOTOR VEHICLE POLLUTION CONTROL STANDARDS

## Waiver of Federal Preemption

By letter dated March 8, 1978, California requested a waiver of Federal preemption for the "California Motor Vehicle Tune-Up Label Specifications" and the corresponding amendments to certain sections of title 13 of the California Administrative Code. These specifications apply to 1979 and subsequent model year passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty gasoline-fueled engines, and heavy-duty diesel-fueled engines and 1982 and subsequent model year motorcycles.

California believed that these specifications needed a waiver of Federal preemption to make them enforceable since they were incorporated by reference in various California test procedures for 1979 and subsequent model year motor vehicles.<sup>1</sup> By virtue of previous waivers of Federal preemption for the underlying standards,<sup>2</sup> these specifications need not independently meet the requirements of section 209(b)(1) of the Clean Air Act (hereinafter "the Act"),<sup>3</sup> in order for California to enforce them.

California is correct in its belief that these specifications would ordinarily be preempted by section 209(a) of the Act. That section prohibits any State or political subdivision thereof from regulating emissions from new motor vehicles and specifically prohibits any State from requiring an emissions related approval as a condition precedent to the initial retail sale, titling, or registration of a new motor vehicle.<sup>4</sup> The tuneup label specifications are neither an emissions standard nor an

accompanying enforcement procedure. Although California stated that compliance with these specifications is a condition of certification,<sup>5</sup> these specifications do not pertain to a manufacturer's ability to certify and produce motor vehicles which conform to the applicable emission standards. Thus, I find that they are neither standards nor accompanying enforcement procedures. They are, however, an approval which is a condition precedent to the initial retail sale and which falls within the purview of section 209(a).

In this instance, though, California may enforce these requirements because the waivers granted for the underlying exhaust emission standards operate to remove the prohibition regarding any other approvals within section 209(a), as long as they do not establish new standards or new accompanying enforcement procedures. My basis for this holding lies in both the language and the legislative history of section 209.

The criteria for granting or denying waivers in sections 209(b)(1)(A) and 209(b)(1)(B) focus on the standards, and in section 209(b)(1)(C) on the standards and accompanying enforcement procedures, adopted by California. If such standards and accompanying enforcement procedures meet the statutory criteria, I must grant a waiver. Under the language of section 209(b) and its legislative history, however, the waiver extends beyond the specific standards and accompanying enforcement procedures to encompass all of the prohibitions of section 209(a).

Section 209(b)(1), which contains the pertinent language, provides:

The Administrator shall, after notice and opportunity for public hearing, waive application of this section to \* \* \* [California], if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—

(A) The determination of the State is arbitrary and capricious,

(B) Such State does not need such State standards to meet compelling and extraordinary conditions, or

(C) Such State standards and accompanying enforcement procedures are not consistent with section 202(a) of [the Act]. [Emphasis added.]

On its face, section 209(b)(1) indicates that any waiver, based on the merits of California's standards and accompanying enforcement procedures, waives application of section 209(a) in its entirety for the vehicles involved. Two comments made at the time section 209(b) was adopted in 1967 support this interpretation:

Senator Murphy convinced the committee that California's unique problems and pio-

<sup>1</sup>Letter from Mr. Thomas Austin, deputy executive officer, California Air Resources Board, to Hon. Douglas Costle, Administrator, Environmental Protection Agency 3 (Mar. 8, 1978).

<sup>2</sup>See 43 FR 25729 (June 14, 1978) pertaining to 1979 and subsequent model year passenger cars; 43 FR 1829 (Jan. 12, 1978) pertaining to 1979-82 light-duty trucks and medium-duty vehicles; 43 FR 15490 (Apr. 13, 1978) pertaining to 1983 and subsequent model year light-duty trucks and medium-duty vehicles; 42 FR 31639 (June 22, 1977) and 43 FR 20549 (May 12, 1978) pertaining to 1979 heavy-duty engines; 42 FR 31637 (June 22, 1977) pertaining to 1980 and subsequent model year heavy-duty engines; 43 FR 998 (Jan. 5, 1978) pertaining to 1982 and subsequent model year motorcycles.

<sup>3</sup>42 U.S.C. § 7543(b)(1) (1977).

<sup>4</sup>42 U.S.C. § 7543(a) (1977).

<sup>5</sup>Transcript of California waiver hearing at 59 (May 18, 1978).



neering efforts justified a waiver of the entire preemption section to the State of California.

As stated in the act the Secretary is required to waive application of preemption to California \* \* \* [Emphasis added.] \*

This concept was both reapproved and bolstered by the legislative history of the Clean Air Act Amendments of 1977:

[P]rovision was included in the 1967 Act requiring the Administrator to waive application of the preemption to California, unless certain findings were made.

In general, the Environmental Protection Agency has liberally construed the waiver provision so as to permit California to proceed with its own regulatory program in accordance with the intent of the 1967 Act.

The committee amendment is intended to ratify and strengthen the California waiver provision and to affirm the underlying intent of that provision, i.e. to afford California the best means to protect the health of its citizens and the public welfare.<sup>7</sup>

Congress thus intended that preemption of all of section 209(a) continue and, further, that EPA continue its liberal interpretation of the waiver provision. This position is consistent with Congress initial intent and will aid in giving California the widest possible latitude to develop and proceed with its own program as intended by the 1977 amendments.<sup>8</sup>

Lastly, this position is consistent with EPA's prior approach to regulations of this kind. An earlier waiver decision held that California's new vehicle emission control system warranty provisions fell within the scope of section 209(a) but did not need to independently meet the requirements of section 209(b) and that previous waivers granted to California for its emission control program extended to these provisions.<sup>9</sup> I believe that the concept expressed in that decision has the same basis as my holding herein.

Once California receives a waiver for standards for a certain class of motor vehicles, it need only meet the waiver criteria of section 209(b) for regulations pertaining to those vehicles when it adopts new or different standards or accompanying enforcement procedures. Otherwise, California may adopt any other condition precedent to the initial retail sale, titling, or registration of those vehicles without the necessity of receiving a further waiver of Federal preemption.

Accordingly, the following California regulations need not independently meet the waiver criteria of section 209(b)(1) and may be enforced by Cali-

fornia: "California Motor Vehicles Tune-Up Label Specifications" incorporated by reference in section 1965 of title 13 of the California Administrative Code, adopted March 1, 1978, and referred to in the test procedures incorporated by reference in sections 1956.5(b), 1959.5(b), 1960(b), 1965.5, 1966, and 1967 of title 13 of the California Administrative Code, as amended March 1, 1978. These specifications apply to 1979 and subsequent model year passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty gasoline-fueled engines, and heavy-duty diesel-fueled engines and 1982 and subsequent model year motorcycles.

My decision will affect not only persons in California but also the manufacturers located outside the State who must comply with California's standards in order to produce motor vehicles for sale in California. For this reason I hereby determine and find that this decision is of nationwide scope and effect.

A copy of the above standards and procedures, as well as the record of the hearing and those documents used in arriving at this decision, is available for public inspection during normal working hours (8 a.m. to 4:30 p.m.) at the U.S. Environmental Protection Agency, Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street SW., Washington, D.C. 20460. Copies of the standards and test procedures are also available upon request from the California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, Calif. 95812.

Dated: August 11, 1978.

DOUGLAS M. COSTLE,  
Administrator.

[FR Doc. 78-23113 Filed 8-17-78; 8:45 am]

[6560-01]

[OPP-180213; FRL 949-31]

#### IDAHO AND WASHINGTON STATE DEPARTMENTS OF AGRICULTURE

##### Specific Exemptions to Use Metribuzin To Control Broadleaf Weeds in Lentils

The Environmental Protection Agency (EPA) granted specific exemptions to the Idaho and Washington State Departments of Agriculture (hereafter referred to as the "Applicants") to use metribuzin for the control of broadleaf weeds on 33,000 acres of lentils in Idaho and 30,000 acres of lentils in Washington. These exemptions were granted in accordance with, and were 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 regula-

tion to be included in the notice. For more detailed information, interested parties are referred to the applications 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 Applicants, broadleaf weeds constitute a high priority problem in growing lentils, and threaten continued production in Idaho and the State of Washington; lack of weed control in lentils not only reduces yield, but also increases weed problems in succeeding rotational crops. Wild mustard and lambsquarters are the major broadleaf problems threatening lentil production. The Applicants stated that herbicide treatment must be made within a few days after planting and before crop emergence.

There are currently no EPA-registered herbicides for controlling broadleaf weeds in lentils. On March 28, 1978, EPA granted specific exemptions to the Applicants for preemergence applications of dinoseb to control broadleaf weeds on 30,000 acres of lentils in Idaho and 67,500 acres of lentils in Washington. Under normal weather conditions, an early preemergence treatment with dinoseb has proven effective for control of broadleaf weeds; however, the Applicants stated that, due to extremely wet weather conditions, preemergence application was not possible or the applications of the herbicide were ineffective.

The Applicants requested the EPA allow a single postemergence applications of the herbicide metribuzin (4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5 (4H)-one), manufactured by Chemagro Agricultural Division, Mobay Chemical Corp., under the trade name Sencor 50WP (EPA Registration No. 3125-277). All applications, at a rate not to exceed 4 to 6 ounces active ingredient per acre, were to be made by State-licensed commercial applicators or qualified growers.

EPA data indicate that metribuzin is effective in controlling lambsquarters and wild mustard at the 1-inch growth stage. Metribuzin is registered for selective broadleaf weed control in soybeans, potatoes, and sugarcane. Permanent tolerances are established for these raw agricultural commodities as well as meat, milk, and meat byproducts. EPA reviewed data submitted for registration and establishment of full tolerances for dried lentils, lentil forage, and lentil hay and determined they were adequate to protect the public health. The proposed use of metribuzin was expected to have a minimal adverse effect to the environment.

In Idaho the Applicant estimated that potential crop losses due to lack of weed control could be as high as 25 percent. Consequently, an economic

<sup>8</sup>S. Rept. 403, 90th Cong., 1st sess. 33 (1967).

<sup>7</sup>H.R. Rept. 95-294, 95th Cong., 1st sess. 301-302 (1977).

<sup>9</sup>My interpretation of the scope of a section 209(b)(1) waiver is, furthermore, consistent with the provisions of section 177 of the Act. See 42 U.S.C. § 7507 (1977).

<sup>8</sup>37 FR 14831 (July 25, 1972).



loss of more than \$3 million could be incurred, based on yield of 1,000 pounds of lentils per acre.

In Washington State, the Applicant estimated that a potential loss in yield of 25 percent was expected if the weeds were not controlled; this could amount to a loss in yield of 350 pounds per acre. The dollar loss for 30,000 acres could be as high as \$4,630,500, according to the Applicant.

After reviewing the applications and other available information, EPA determined that (a) a pest outbreak of various broadleaf weeds occurred or was about to occur; (b) there was no pesticide presently registered and available for use to control these weeds in lentils in Idaho and Washington State; (c) there were no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems might result if the weeds were not controlled; and (e) the time available for action to mitigate the problems posed was insufficient for a pesticide to be registered for this use. Accordingly, the Applicants were granted specific exemptions to use the pesticide noted above until June 30, 1978, to the extent and in the manner set forth in the applications. The specific exemptions were also subject to the following conditions:

1. A single postemergence application of Sencor 50WP (EPA Reg. No. 3125-277) might be made at a rate of 4.0 to 6.0 ounces active ingredient per acre;
2. Applications were to be made with ground equipment. In Washington, the spray mixture volumes were to be of 10 to 40 gallons of water per acre;
3. A maximum of 33,000 acres of lentils might be treated in Idaho. A maximum of 30,000 acres of lentils in counties east of the crest of the Cascade Mountains might be treated in Washington;
4. All applications were to be made by qualified growers or by State-licensed commercial applicators. In Washington, Washington State University extension agents were to furnish information on rates and timing;
5. Precautions were to be taken to avoid spray drift to nontarget areas;
6. Residue levels of metribuzin and its triazinone metabolites were not expected to exceed 0.05 ppm in dried lentils, 0.05 ppm in or on lentil vine hay, and 0.5 ppm in or on lentil forage. Dried lentils and lentil vine hay with residues which are not in excess of these levels may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, was advised of this action;
7. Application was not to be made within 75 days of harvest of lentils;
8. All applicable directions, restrictions, and precautions on the EPA-registered label were to be followed;
9. Each applicant was responsible for insuring that all of the provisions of his State's specific exemption were met and must submit a report summarizing the results of this program by February 15, 1979;
10. Sencor may not be applied to the rotational crop during the same year as the ini-

tial treatment in order to prevent illegal crop residues. Soybeans, potatoes, and winter wheat may be planted in treated area 4 months after application of Sencor. Plants which do not have established tolerances for metribuzin may not be planted within 18 months after the use of Sencor; however, cover crops planted to prevent soil erosion or for soil-building purposes may be planted anytime after application of Sencor provided they are not used for grazing or harvested for feed or food; and

11. EPA was to be immediately informed of any adverse effects resulting from the use of metribuzin in connection with this exemption.

STATUTORY 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 August 10, 1978.

DOUGLAS D. CAMPT,  
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-23103 Filed 8-17-78; 8:45 am]

[6560-01]

[OPP-180218; FRL 949-2]

#### MINNESOTA DEPARTMENT OF AGRICULTURE

##### Issuance of Specific Exemption To Use Asulox To Control Wild Oats, Buckwheat and Foxtails

The Environmental Protection Agency (EPA) has granted a specific exemption to the Minnesota Department of Agriculture (hereafter referred to as the "Applicant") to use Asulox on 26,720 acres of flax in four counties in northwest Minnesota to control wild oats, wild buckwheat and foxtails. 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 (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW., Room E-315, Washington, D.C. 20460.

Flax is grown in the United States primarily for flaxseed. Fiber from flax straw is used in making cigarette paper, currency and other high grade paper. The flaxseed is processed into linseed oil which is used to produce paint, varnishes, and other products. Although the feeding value of flax straw is comparable to other small grain crops, flax straw is not normally fed to livestock. Linseed meal and cake, which remain after the oil is extracted from the seed are, however, important livestock feed commodities.

Minnesota is a leading producer of flax. Much of the flax grown in that State is planted as a fill-in crop when plantings of the primary crops have not been successful. Kittson, Marshall, Roseau and Lake of the Woods Counties, where flax is a major crop, grew more than 80,000 acres of flax in 1977. A loss of several million dollars in agricultural income may be incurred, the Applicant claimed, if the exemption was not granted.

Flax does not compete well with weeds; weed infestations result in poor stands of flax by reducing germination and competing with the developing flax plants. Wild oats and foxtails are common weed pests of flax. According to the Applicant, these weeds are present in all areas where flax is produced in Minnesota, and due to heavy snowfall and rain this past winter, heavy weed growth is expected.

Eptam, Avadex, Dalapon, Carbyne, MCP Amine and Bromoxynil are registered for selective weed control in flax. According to the Applicant, the registered alternative pesticides are either not effective or are not acceptable control methods for wild oats, wild buckwheat and foxtails this season.

The Applicant proposed to use an asulam formulation, Asulox, EPA Reg. No. 359-662, in a single post-emergence application when wild oats are in the three- to four-leaf stage. Applications will be made by both private and commercial State-certified applicators using both ground and air equipment in the counties of Kittson, Lake of the Woods, Marshall and Roseau. The Applicant claimed that studies conducted in Minnesota demonstrated that Asulox gave acceptable control of wild oats and suppressed the growth of foxtails and wild buckwheat. EPA has determined that the available data are adequate to support the proposed use of Asulox of flax.

After reviewing the application and other available information, EPA has determined that (a) an outbreak of wild oats, wild buckwheat and foxtails in flax has occurred or is about to occur; (b) there is no pesticide presently registered and available for use to control these weeds in flax in Minnesota; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if these weeds 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 August 1, 1978, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:



1. A single post-emergence application of Asulox (EPA Reg. No. 359-662) is authorized;

2. Application shall be made by air and/or ground equipment at a rate not to exceed 1.25 pounds active ingredient per acre;

3. A maximum of 33,400 pounds active ingredient may be applied to 26,720 acres of flax in the four counties mentioned above;

4. Applications will be made when wild oats are in the 3-4 leaf stage;

5. All applications shall be made by State-certified private and commercial applicators;

6. Precautions shall be taken to avoid or minimize spray drift from target area. Application may not be made when weather conditions favor spray drift;

7. Residue levels of asulam are not expected to exceed 2.0 ppm in flaxseed and its fractions (meal, oilseed cake, refined oil and soapstock) and 2.5 ppm in the flax straw. Any resulting residues in meat, milk, poultry and eggs will be well below detectable levels (0.05 ppm in meat, 0.025 ppm in milk, and 0.1 ppm in poultry tissues and eggs). The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

8. Crops grown for food and feed may not be planted in the treated area within 12 months of application. Root crops may not be planted in the treated area within 18 months of application;

9. All applicable directions, restrictions and precautions on the EPA-registered label must be followed;

10. Application of Asulox to flax may result in crop injury and reduction in yield under stress conditions or if the herbicide is applied at stages of growth other than those specified;

11. The Applicant will provide the EPA region V office, Pesticides Branch, with a list of distributors for Asulox. The distributors will be required to maintain point of sale records;

12. The EPA shall be immediately informed of any adverse effects resulting from the use of Asulox in connection with this exemption; and

13. The Applicant is responsible for ensuring that all of the provisions of the specific exemption are met and must submit a report summarizing the results of this program by January 15, 1979.

STATUTORY 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: August 10, 1978.

DOUGLAS D. CAMPT,  
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-23104 Filed 8-17-78; 8:45 am]

[6560-01]

[OPP-180212; FRL 948-8]

#### NEBRASKA DEPARTMENT OF AGRICULTURE

Specific Exemption To Use Atrazine To Control Grasses and Broadleaf Weeds in Proso Millet

The Environmental Protection Agency (EPA) has granted a specific

exemption to the Nebraska Department of Agriculture (hereafter referred to as the "Applicant") to use Atrazine (2-chloro-4-(ethylamino)-6-(isopropyl)-amine-s-triazine) to control grasses and broadleaf weeds in proso millet on 48,000 acres in Nebraska. 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.

Proso millet is a minor crop grown for grain along the Atlantic seaboard and the northern half of the Great Plains. It is a short-season plant that often requires less than seventy days to mature. Although it is used in soups and the ground meal is eaten as a cooked cereal, its major commercial use is in chicken feeds, bird seed mixtures, and livestock feed. Proso millet can also be foraged or cut and dried for hay.

According to the Applicant, grasses and broadleaf weeds are common problems in millet. The herbicide 2,4-D amine plus dicamba is State-registered for post-emergence weed control; however, the Applicant has reported erratic control with this herbicide depending upon weather conditions. In addition, it will not control some of the annual grasses such as stinkgrass and green foxtail.

The Applicant requested permission to make a single preemergence or early post-emergence application of atrazine at a rate of one-half to one pound active ingredient per acre. The application will be made by State-licensed commercial applicators or qualified growers using ground or air equipment. In 1977, the Applicant estimated that growers suffered losses of about \$538,170 due to weed damage and destruction and incurred a replanting cost of \$92,500. The Applicant anticipates similar losses in 1978 if the exemption is not granted.

Tolerances are established for residues of atrazine in meat, milk, poultry and eggs. EPA has determined the use of atrazine as specified in this exemption will place no additional burden of residues of atrazine on livestock diets. It has also determined that this use will pose a minimal hazard to the environment.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of grasses and broadleaf weeds has oc-

curred or is about to occur; (b) there is no pesticide presently registered and available for use to control grasses and broadleaf weeds in Nebraska; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if grasses and broadleaf weeds 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 July 15, 1978, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. A single pre-emergence or early post-emergence application of an EPA-registered atrazine product may be made at a rate of one-half to one pound active ingredient per acre;

2. Applications will be made with ground or air equipment; if applied by air, an atrazine product registered for aerial application must be used;

3. A maximum of 48,000 acres may be treated;

4. All applications will be made by qualified growers or State-licensed commercial applicators. The University of Nebraska Extension Service will furnish information pertaining to timing, rates, and procedures to the applicators;

5. Precautions will be taken to avoid or minimize spray drift to non-target areas;

6. Residue levels of atrazine are not expected to exceed 0.25 ppm on proso millet grain and 5.0 ppm on the straw and green forage and fodder. Proso millet grain and straw with residues which are not in excess of 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;

7. All applicable directions, restrictions, and precautions on the EPA-approved label must be followed;

8. The Applicant is responsible for assuring that all of the provisions of the specific exemption are met and must submit a report summarizing the results of this program by October 30, 1978;

9. Any residue, efficacy, or phytotoxicity data which are necessary for establishment of a permanent tolerance for atrazine on proso millet and can be obtained under the provisions of the specific exemption should be collected and submitted to EPA; and

10. EPA shall be immediately informed of any adverse effects resulting from the use of atrazine in connection with this exemption.

STATUTORY 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: August 10, 1978.

DOUGLAS D. CAMPT,  
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-23106 Filed 8-17-78; 8:45 am]



[6560-01]

[OPP-180220; FRL 949-1]

## OREGON DEPARTMENT OF AGRICULTURE

## Specific Exemption To Use Acephate To Control the Redbacked Cutworm

The Environmental Protection Agency (EPA) granted a specific exemption to the Oregon Department of Agriculture (hereafter referred to as the "Applicant") to use Orthene 75S (acephate) in ground or air applications to control the redbacked cutworm on 10,060 acres of peppermint east of the Cascade Mountains in Oregon. This exemption was granted in accordance with, and was 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 (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

According to the Applicant, the redbacked cutworm, *Euxoa ochrogaster* (Guenee), has become a serious pest of peppermint in central and eastern Oregon. It is a subterranean cutworm which feeds upon peppermint roots and rhizomes in April and May, and on the foliage in late May and June.

No pesticide is registered for use on mint by EPA to control this cutworm, but Dyfonate 10S is currently State-registered by Oregon for this use. This product cannot be widely used, the Applicant claimed, since it requires soil incorporation, a technique inconsistent with the growers' non-tillage program to control verticillium wilt, a very serious disease in peppermint which spreads by soil incorporation.

Peppermint is a major crop in Oregon with over 42,000 acres producing oil valued in excess of \$36 million. The Applicant estimated a potential loss in central and eastern Oregon of \$1,450,000 this year without effective control of the redbacked cutworm.

The Applicant proposed to use a maximum of 20,000 pounds of an acephate formulation, Orthene 75S (0, S-dimethylacetylphosphoramidothioate), manufactured by the Chevron Chemical Co., Ortho Division, EPA Reg. No. 239-2418, at a rate of one pound active ingredient per acre, with a maximum of two applications to be made. No application would be allowed within 14 days of any harvest.

EPA has determined that residues of acephate and its metabolites would be undetectable in oil, thus resulting in

no significant increase in human exposure to the residues of acephate and its metabolite, methamidophos. This use of acephate was not expected to cause any adverse effect to man or the environment.

After reviewing the application and other available information, EPA determined that (a) a pest outbreak of the redbacked cutworm had occurred or was about to occur; (b) there was no pesticide registered and available for use to control the redbacked cutworm in Oregon; (c) there were no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems might result if the redbacked cutworm was not controlled; and (e) the time available for action to mitigate the problems posed was insufficient for a pesticide to be registered for this use. Accordingly, the Applicant was granted a specific exemption to use the pesticide noted above until July 15, 1978, to the extent and in the manner set forth in the application. The specific exemption was also subject to the following conditions:

1. The EPA-registered product Orthene 75S (EPA Reg. No. 239-2418) might be used at a rate of one pound active ingredient per acre per application;
2. A maximum of two applications might be made;
3. A Maximum of 20,000 pounds active ingredient might be applied to 10,000 acres;
4. Applications were to be made with ground or air equipment;
5. Spray mixture volumes of 20-100 gallons per acre were to be applied by ground equipment or 5-10 gallons by aircraft;
6. All applications were to be made by qualified growers using their own equipment or by State-licensed commercial applicators. Oregon State University Extension agents were to furnish information on rates and procedures;
7. Precautions were to be taken to avoid spray drift to non-target areas. The pesticide was not to be applied when weather conditions favored drift;
8. Care was to be exercised to keep the pesticide out of lakes, streams, or ponds, and to prevent contamination of water by cleaning of equipment or disposal of waste;
9. This product is highly toxic to bees exposed to direct treatment or residues on crops. The Cooperative Agricultural Extension Service was to provide protection information;
10. Combined residues of acephate and its metabolite methamidophos were not expected to exceed 20 ppm in fresh and spent peppermint hay. Detectable residues (greater than 0.05 ppm) were not to occur in peppermint oil. Fresh and spent peppermint hay and peppermint oil with residues which are not in excess of these levels may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, was advised of this action;
11. All applicable directions, restrictions, and precautions on the EPA-registered label were to be followed;
12. The Applicant was responsible for ensuring that all of the provisions of the spe-

cific exemption were met and must submit a report summarizing the results of this program by January 15, 1979; and

13. The EPA was to be informed immediately of any adverse effects resulting from the use of acephate in connection with this exemption.

STATUTORY 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: August 10, 1978.

DOUGLAS D. CAMPT,  
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-23105 Filed 8-17-78; 8:45 am]

[6560-01]

[OPP-31017; FRL 948-6]

## PESTICIDE PROGRAMS

## Receipt of Application to Register a Pesticide Product Entailing a Changed Use Pattern

Chempar Chemical Co., Inc., 260 Madison Avenue, New York, N.Y. 10016, has submitted to the Environmental Protection Agency (EPA) an application to amend the registration of the pesticide product Rozol Tracking Powder (EPA Reg. No. 7173-113), which contains 0.2 percent of the active ingredient 2-[(p-chlorophenyl) phenylacetyl]-1,3-indandione. The application received from Chempar Chemical Co. proposes that the use pattern of this pesticide product be changed from hand application of the powder in tracking patches inside of buildings to foot-pump application into burrows inside and outside of buildings in the control of mice and rats. The application also proposes that the product be classified for general use. PM16.

Notice of receipt of this application does not indicate a decision by this Agency on the application. Interested persons are invited to submit written comments on this application to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, Room 401, East Tower, 401 M Street SW, Washington, D.C. 20460. The comments must be received on or before September 18, 1978, and should bear a notation indicating the EPA Registration No. "7173-113." Comments received within the specified time period will be considered before a final decision is made; comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. Specific questions concerning this application should be directed to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, at the above address or by telephone at 202-755-9315. The label



furnished by Chempar Chemical Co., Inc., as well as all written comments filed pursuant to this notice, will be available for public inspection in the Office of the Federal Register Section from 8:30 a.m. to 4 p.m., Monday through Friday.

Notice of approval or denial of this application to register Rozol Tracking Powder will be announced in the FEDERAL REGISTER. Except for such material protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the test data and other information submitted in support of registration as well as other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedures for requesting such data will be given in the FEDERAL REGISTER if an application is approved.

Dated: August 10, 1978.

DOUGLAS D. CAMPT,  
*Acting Director,*  
*Registration Division.*

[FR Doc. 78-23108 Filed 8-17-78; 8:45 am]

#### [6560-01]

[OPP-31018; FRL 948-51]

#### PESTICIDE PROGRAMS

##### Receipt of Application To Register a Pesticide Product Entailing a Changed Use Pattern

Chempar Chemical Co., Inc., 260 Madison Avenue, New York, N.Y. 10016, has submitted to the Environmental Protection Agency (EPA) an application to register the pesticide product Rozol Meadow Vole Bait (EPA file symbol 7173-RTO), which contains 0.005 percent of the active ingredient 2-[(p-chlorophenyl) phenylacetyl]-1,3-indandione. The application received from Chempar Chemical Co. proposes that the use pattern of this product be changed from use in and around buildings to control the Norway rat, roof rat, and house mouse to use in orchards to control the meadow mouse. The application also proposes that this product be classified for general use.

Notice of receipt of this application does not indicate a decision by this Agency on the application. Interested persons are invited to submit written comments on this application to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460. The comments must be received within 30 days from the publication of this notice in the FEDERAL REGISTER, and should bear a notation indicating the EPA file symbol "7173-RTO." Comments received within the

specified time period will be considered before a final decision is made; comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. Specific questions concerning this application should be directed to Product Manager (PM) 16, Registration Division (TS-767), Office of Pesticide Programs, at the above address or by telephone at 202-755-9315. The label furnished by Chempar Chemical Co., Inc., as well as all written comments filed pursuant to this notice, will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m., Monday through Friday.

Notice of approval or denial of this application to register ROZOL MEADOW VOLE BAIT will be announced in the FEDERAL REGISTER. Except for such material protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the test data and other information submitted in support of registration as well as other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedures for requesting such data will be given in the FEDERAL REGISTER if an application is approved.

Dated: August 10, 1978.

DOUGLAS D. CAMPT,  
*Acting Director,*  
*Registration Division.*

[FR Doc. 78-23109 Filed 8-17-78; 8:45 am]

#### [6560-01]

[OPP-30151; FRL 948-41]

#### PESTICIDE PROGRAMS

##### Application to Register a Pesticide Product Containing a New Active Ingredient

Herculite Products, Inc., 1107 Broadway, New York, N.Y. 10010, has submitted to the Environmental Protection Agency (EPA) an application to register the pesticide product Hercon Luretape Cotton Boll Weevil (EPA file symbol 8730-RL), containing the active ingredients (1R-cis)-1-methyl-2-(1-methylethenyl) cyclobutaneethanol 1.0 percent; (Z)-2-(3,3-dimethyl-cyclohexylidene) ethanol 1.3 percent; (E)-(3,3-dimethyl-cyclohexylidene) acetaldehyde 0.5 percent; and (Z)-(3,3-dimethylcyclohexylidene) - acetaldehyde 0.5 percent which have not been included in any previously registered pesticide products. The application proposes that the product be classified for general use to suppress boll weevil in cotton.

Notice of receipt of this application does not indicate a decision by the

Agency on the application. Interested persons are invited to submit written comments on this application to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460. The comments must be received within 30 days from the date of publication of this notice in the FEDERAL REGISTER and should bear a notation indicating the EPA file symbol "8730-RL." Comments received within the specified time period will be considered before a final decision is made; comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. Specific questions concerning this application should be directed to Product Manager (PM) 17, Registration Division (TS-767), Office of Pesticide Programs, at the above address or by telephone at 202-426-9425. The label furnished by Herculite Products, Inc., as well as all written comments filed pursuant to this notice, will be available for public inspection in the office of the FEDERAL REGISTER Section from 8:30 a.m. to 4 p.m., Monday through Friday.

Notice of approval or denial of this application to register Hercon Luretape Cotton Boll Weevil will be announced in the FEDERAL REGISTER. Except for such material protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the test data and other information submitted in support of registration as well as other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedures for requesting such data will be given in the FEDERAL REGISTER if an application is approved.

Dated: August 10, 1978.

DOUGLAS D. CAMPT,  
*Acting Director,*  
*Registration Division.*

[FR Doc. 78-23110 Filed 8-17-78; 8:45 am]

#### [6560-01]

[PP 7G2006/T158; FRL 948-11]

#### PESTICIDE PROGRAMS

##### Establishment of Temporary Tolerances; 4-Amino-6-(1,1-Dimethylethyl)-3-(Methylthio)-1,2,4-Triazin-5(4H)-one

The Mobay Chemical Corp., Chemagro Agricultural Division, P.O. Box 4913, Kansas City, Mo. 64120, and E. I. du Pont de Nemours & Co., Inc., Wilmington, Del. 19898, submitted a joint pesticide petition to the Environmental Protection Agency (EPA). This petition requested that temporary toler-



ances be established for combined residues of the herbicide 4-amino-6-(1,1-dimethylethyl) - 3 - (methylthio) - 1,2,4-triazin-5(4H)-one and its triazinone metabolites in or on the raw agricultural commodities wheat forage at 2 parts per million (ppm); barley straw and wheat straw at 1 ppm; and barley grain and wheat grain at 0.75 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the experimental use permits that were issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973, 89 Stat. 751; 7 U.S.C. 136(a) et seq.).

An evaluation of the scientific data reported and other relevant material showed that the requested tolerances were adequate to cover residues resulting from the proposed experimental uses, and it was determined that the temporary tolerances would protect the public health. The temporary tolerances have been established for the pesticide, therefore, with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permits.
2. Mobay Chemical Corp. and E. I. du Pont de Nemours & Co. will immediately notify the EPA of any findings from the experimental uses that have a bearing on safety. The firms must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary tolerances expire April 11, 1979. Residues not in excess of 2 ppm remaining in or on wheat forage, 1 ppm remaining in or on barley straw and wheat straw, and 0.75 ppm remaining in or on wheat grain and barley grain after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permits and temporary tolerances. These temporary tolerances may be revoked if the experimental use permits are revoked or if any scientific data or experience with this pesticide indicates such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to the Special Registrations Branch, Registration Division (WH-567), Office of Pesticide Programs, Room 315, East Tower, 401 M Street SW., Washington, D.C. 20460, 202-755-4851.

STATUTORY AUTHORITY: Sec. 408(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(j)).

Dated: August 10, 1978.

DOUGLAS D. CAMPT,  
Acting Director,  
Registration Division.

[FR Doc. 78-23112 Filed 8-17-78; 8:45 am]

[6560-01]

[OPP-180217; FRL 948-7]

# VERMONT DEPARTMENT OF AGRICULTURE

## Specific Exemption To Use Carbaryl To Control the Maple Leafcutter and the Forest Tent Caterpillar

The Environmental Protection Agency (EPA) granted a specific exemption to the Vermont Department of Agriculture (hereafter referred to as the "Applicant") to use carbaryl (Sevin) on approximately 10,500 acres in nine counties in Vermont to control populations of the maple leafcutter and the forest tent caterpillar, which were threatening commercial sugar maple orchards. This exemption was granted in accordance with, and was 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, populations of the maple leafcutter (*Paracles acerifoliella* Fitch) has been a serious defoliator in Vermont for the last 4 years. It is estimated that over 42,000 acres of sugar maple were defoliated in 1977 due to the maple leafcutter. During 1977, the forest tent caterpillar (*Malacasoma disstria*), another forest pest found in Vermont, caused heavy defoliation in 31,000 acres of maple stands, the Applicant reported. Unless control measures were taken again this year, tree mortality, treetop and branch kill, and lower sap quality and syrup production would take place. Apparently, stress is present after 1 year of defoliation. Some commercial operators have not "sugared" for 3 or more years in order to ease the stress on infested trees. The Applicant stated that many others would not operate during the 1979 spring sap season unless control measures were taken. The Applicant estimated that syrup losses amounting to \$250,000 were expected to occur this year due to defoliating insects.

There are no insecticides currently registered for control of maple leafcutter and forest tent caterpillar on sugar

maples that are being used as a food crop. Several insecticides, including carbaryl, are registered for use on forest insect pests on sugar maples in forest situations.

The Applicant proposed to use carbaryl (Sevin) applied from fixed-wing aircraft at a dosage rate of 1 pound active ingredient per acre. The sugar maple acreage that was to be treated is located in the counties of Bennington, Lamoille, Windham, Windsor, Rutland, Washington, Orange, Franklin, and Caledonia. Personnel from the University of Vermont Agricultural Experiment Station and Agricultural Extension Service, the Vermont Department of Forests and Parks, and the Vermont Department of Agriculture controlled the program. A maximum of 10,500 acres were to be treated.

After reviewing the application and other available information, EPA determined that (a) a pest outbreak of the maple leafcutter and forest tent caterpillar had occurred; (b) there was no pesticide presently registered and available for use to control the maple leafcutter, and the forest tent caterpillar in Vermont; (c) there were no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems might result if the maple leafcutter and tent caterpillar were not controlled; and (e) the time available for action to mitigate the problems posed was insufficient for a pesticide to be registered for these uses. Accordingly, the Applicant was granted a specific exemption to use the pesticide noted above until July 30, 1978, to the extent and in the manner set forth in the application. The specific exemption was also subject to the following conditions:

1. The products Sevin 80 Sprayable, EPA Reg. No. 1016-43 and Sevin 4-Oil, EPA Reg. No. 1016-70, manufactured by Union Carbide, were authorized;
2. Applications were to be made by State-certified commercial applicators using fixed-wing aircraft, at a rate of up to 1 pound carbaryl per acre;
3. A maximum of one application was to be made on a maximum of 10,500 acres;
4. A maximum of 10,500 pounds carbaryl might be applied in the counties mentioned above;
5. Personnel of the University of Vermont Agricultural Experiment Station, University of Vermont Extension Service, Vermont Department of Forests and Parks, and the Vermont Department of Agriculture were to make recommendations of treatment, monitor the program, and apprise applicators of program criteria;
6. A residue level of carbaryl not exceeding 0.5 ppm in maple syrup has been evaluated as adequate to protect the public health. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare was advised of this action;
7. All label precautions were to be followed;



8. The EPA was to be informed immediately of any adverse effects to man or the environment resulting from this program;

9. The Applicant was responsible for insuring that all provisions of this specific exemption were followed; and

10. A final report summarizing the results of this program shall be submitted to EPA by December 31, 1978.

STATUTORY 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: August 10, 1978.

DOUGLAS D. CAMPT,  
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-23107 Filed 8-17-78; 8:45 am]

[6560-01]

[FRL 949-51]

**GASOHOL (ETHANOL-GASOLINE BLENDS)  
AND METHYL T-BUTYL ETHER**

**Waiver Request; Public Hearing**

AGENCY: Environmental Protection Agency.

ACTION: Notice of hearing.

SUMMARY: Section 211(f) of the Clean Air Act establishes prohibitions and limitations on the use of certain fuels and fuel additives including Gasohol (a blend of 90 percent gasoline and 10 percent ethanol) and Methyl t-Butyl Ether (MTBE). Section 211(f)(4) provides for the granting of waivers to any of these prohibitions or limitations upon a showing by a fuel or fuel additive manufacturer that the fuel or fuel additive will not cause or contribute to a failure of any emission control device or system. Guidelines for the submission of waiver requests have been previously published in the FEDERAL REGISTER, 43 FR 24131, June 2, 1978.

The Environmental Protection Agency (EPA) has received a request for a waiver for Gasohol from James Lustgarten of "Gas Plus", Inc., Lincoln, Nebr. and the Farm Energy Conservation Program of the Illinois Department of Agriculture. The waiver request for MTBE was made by Petro-Tex Chemical Corp., Houston, Tex. The purpose of this notice is to announce a public hearing and to give interested persons an opportunity to participate in the proceeding by the presentation of data, views, arguments, or other pertinent information concerning the Administrator's review of the data pursuant to a determination whether to grant or deny a waiver. Participation by automobile manufacturers and other parties who have studied the potential emission effects of Gasohol is specifically encouraged.

Notice of intent to make comments or submit material should be made by August 29, 1978. Five copies of the proposed testimony and supporting materials should be submitted by this date. Send notice of intent to make comments or submit material to:

Director: Mobile Source Enforcement Division (EN-340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:**

Margaret Pena, Mobile Source Enforcement Division (EN-340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 202-426-4147.

**SUPPLEMENTARY INFORMATION:** Section 211(f)(4) of the Clean Air Act provides for a waiver of any prohibition of the use of any fuel or fuel additive which is controlled by section 211(f). The Administrator may grant a waiver if he determines that the applicant has established that the fuel or fuel additive or a specified concentration thereof and the emission products of the fuel or fuel additive or a specified concentration thereof will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it had been certified pursuant to section 206 of the Clean Air Act.

Notice is hereby given that:

(i) A request for a waiver for Gasohol has been received from "Gas Plus", Inc., and the Farm Energy Conservation Program of the Illinois Department of Agriculture on June 19, 1978; and (ii) A request for a waiver for MTBE has been received from Petro-Tex Chemical Corp. on June 30, 1978; and (iii) A public hearing on the request for a waiver will be convened at the General Services Administration auditorium, 18th and F Streets NW., Washington, D.C., on September 6, 1978, at 9 a.m. The hearing will continue through September 8, 1978, should additional time be necessary.

The Presiding Officer will have the responsibility for maintaining order, excluding irrelevant or repetitious material, scheduling presentations, and to the extent possible notifying participants of the time at which they may appear. Any person desiring to make a statement at the hearing or to submit material for the hearing record should file notice of such intent along with five copies of his or her proposed testimony (and other relevant material) by August 29, 1978, with the Director, Mobile Source Enforcement Division (EN-340), U.S. Environmental Protection Agency, 401 M Street SW., Wash-

ington, D.C. 20460. In addition, if feasible, additional copies of such statement or material should be made available to the public at the time of the hearing.

Data and information which are available to EPA do not appear to indicate any adverse emissions effects resulting from the use of Gasohol or MTBE. In the absence of a showing or any significant adverse emissions effects, it is likely that the application for waiver will be granted.

**VEHICLE MANUFACTURER PARTICIPATION:**

Vehicle manufacturers are specifically invited to participate in this hearing. Due to the potential impact that any fuel or fuel additive, including Gasohol or MTBE may have on a vehicle manufacturer's ability to meet emission standards it is anticipated that such participation will be conducive to a fully informed decision by the Administrator. It is recommended that vehicle manufacturers be prepared to discuss in detail the technical merits and deficiencies of the data presented to EPA in support of a waiver request.

**STANDARD FOR REVIEW:**

In making a determination as to whether a waiver should be granted or denied the Administrator is required to apply the statutory standard. EPA will review any application in order to determine whether the applicant has established that such fuel or fuel additive or a specified concentration thereof, and the emission products of such fuel or fuel additive or a specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified pursuant to section 206 of the Act. The applicant must establish such lack of effect. Any data analysis supporting an application must clearly present the analytical and/or statistical techniques in the analysis.

**PROCEDURES**

Since the public hearing is designed to give interested parties an opportunity to participate in the proceeding by the presentation of data, views, arguments, or other pertinent information concerning the Administrator's determination to grant or deny the waiver request, there are no adversary parties as such. Statements by the participants will not be subject to cross-examination.

Presentations by the participants should address the following considerations:

(1) Whether the data submitted in support of a request for a waiver



meets the statutory standard as established in section 211(f)(4); (2) any time and concentration dependent effects which Gasohol or MTBE may have on automotive systems such as gaskets or other parts of fuel systems, both metallic and nonmetallic; and (3) any additional comments on the submitted data and analysis where relevant to a determination of whether a waiver for Gasohol and MTBE should be granted.

However, the Administrator is not required to make his determination on this matter solely on the record of this hearing.

A verbatim record of the proceedings will be made, and a copy of the transcript will be made available at the expense of the person so requesting. A copy of the request for a waiver for Gasohol is available for public inspection during normal working hours (8 a.m. to 4:30 p.m.) at the U.S. Environmental Protection Agency, Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street SW., Washington, D.C. 20460.

Dated: August 11, 1978.

MARVIN B. DURNING,  
Assistant Administrator  
for Enforcement.

[FR Doc. 78-23152 Filed 8-17-78; 8:45 am]

[6560-01]

[FRL 950-41]

# GROUND-WATER SYSTEM OF CENTRAL SANTA CRUZ COUNTY, CALIF.

## Request for EPA Determination Regarding Aquifers

Section 1424(e) of the Safe Drinking Water Act (Pub. L. 93-523) authorizes the Administrator to determine, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health. After such a determination is made, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such an aquifer through a recharge zone so as to create a significant hazard to public health.

A petition has been submitted by Mr. Al Haynes, chairperson of the Santa Cruz Regional Group of the Sierra Club, P.O. Box 604, Santa Cruz, Calif. 95061, requesting the Administrator of EPA to determine that the ground-water system of central Santa Cruz County is the sole or principal drinking water source for the central area of Santa Cruz County, and that contamination of this source would

create a significant hazard to public health. This petition, as submitted to Mr. Paul De Falco, Regional Administrator, Region IX, is reprinted in full below:

In accordance with attached requirements we submit the following information and herewith request the Administrator to designate the subject aquifer as the sole and principal source of drinking water for portions of the Scotts Valley and San Lorenzo Valley areas and which, if contaminated, would create a significant hazard to public health.

### A. This petition is submitted by:

Santa Cruz Regional Group, Ventana Chapter, Sierra Club, P.O. Box 604, Santa Cruz, Calif. 95061, 408-426-9348.

B. The Santa Cruz Regional Group of the Sierra Club has interest in the Administrator's determination in that many of its members live within the areas for which the subject aquifer is their principal source of drinking water, and in that the members as a whole desire to see the natural resources of the county protected from misuse and degradation.

C. The subject aquifer is located in north central Santa Cruz County, Calif., and in the vicinity of the city of Scotts Valley. The area covers about 12 square miles and lies mostly between Carbonera Creek, the San Lorenzo River, and Zayante Creek. It is not now highly urbanized, but the population and demand for water have been growing rapidly. The aquifer is more completely described in the attached USGS Open-File Report "Ground Water in the Scotts Valley Area, Santa Cruz County, Calif." (Exhibit A).

D. The location, and approximate boundaries of the area for which we allege the aquifer is the sole and principal source of drinking water are as shown for the "study area" in Figures 1 and 2 of Exhibit A.

E. The population in the area described under D totaled 10,647 according to the April 1976 Census. Alternative sources of drinking water for the subject area would depend on development of reservoirs in nearby watersheds, such as the proposed Glenwood and Zayante Reservoirs. These reservoirs are not projected for completion for at least another 10-20 years and their development is not certain because of reported geologic hazards in the area of the proposed dams. Zayante Reservoir is primarily intended to serve the City of Santa Cruz and no certain amounts would be available for the subject area. The Glenwood Reservoir would not have capacity to serve the total projected population of the area in question.

F. The recharge zones are unknown at the present time. They are generally thought to be areas of exposed Santa Margarita Sandstone. The Association of Monterey Bay Area Governments has commissioned an investigation of the recharge zones for the San Lorenzo Valley, including the area which is the subject of this petition.

G. Nearly all the water that enters the Santa Margarita Sandstone Formation is from direct precipitation on exposed areas or from runoff. The water from precipitation enters where the formation is exposed, and that from runoff enters the exposures along the streams in the subject area (see Figure 2 of Exhibit A and Exhibit B). The streams would be Ruins Creek, Carbonera

Creek, Bean Creek, Lackhart Creek, Newell Creek, Zayante Creek, and McKenzie Creek. H. Existing or planned federally assisted projects which might contaminate the aquifer through the recharge zones are:

Expansion of the City of Scotts Valley Wastewater Treatment Facilities (EPA Project No. C-06-1329, State Clearinghouse No. 76041905).

Implementation of the City of Scotts Valley Storm Drainage Plan.

I. Contamination of the aquifer would result in a serious hazard to public health by virtue of the fact that contaminants most likely to enter the aquifer are toxic to human health and that treatment of ground-water will not be available to persons relying on individual wells drawing from the aquifer and that treatment of ground-water which does occur cannot remove all possible contaminants which may be present. In addition, the costs of treatment to remove such contaminants may be prohibitively expensive. These contaminants may include fecal coliform bacteria, PCB's, phenols, lead, heavy metals, asbestos, and nitrates. Other public health hazards include ground subsidence resulting from excessive drawdown of the water table.

We hope this information will be sufficient to establish the merit of the request. If you have any questions please do not hesitate to call.

Sincerely,

AL HAYNES,  
Chairperson.

### OTHER REFERENCES

"Potential for Developing Groundwater in Western Santa Cruz County, Calif., with Particular Emphasis on the Santa Margarita Sandstone"; J. P. Akers and Lionel E. Jackson, USGS, Menlo Park, September 1976.

"Geological and Geophysical Survey for Groundwater Supply, Phase I Report (June 1976) and Phase II Report (January 1977)"; Scotts Valley County Water District, Santa Cruz County, Calif.

"Master Plan for Water Development, 1968-2020"; Santa Cruz County Flood Control and Water Conservation District, Santa Cruz County.

EPA intends to make a determination consistent with a complete review of the relevant data and information, and a full opportunity for public participation. In this regard, the Agency solicits comments, data, and references to additional sources of information which will contribute to the factual record. In particular, EPA seeks information relevant to (a) that portion of the hydrologic system underlying central Santa Cruz County which should be designated for protection as an aquifer which provides drinking water; (b) the surface boundary of the recharge area for the aquifer, which is the area that would be subject to regulation under this provision; (c) the boundary of the recharge source zone, that is, any area which drains into the recharge zone and thus contributes to the recharge of the aquifer; (d) the source or sources; (e) any current or anticipated Federal financially assisted projects which may cause contamination of the aquifer; and (g) any



other information deemed relevant to the determination.

Comments, data and references should be submitted in writing to the Regional Administrator, Region IX, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105; Attn: Central Santa Cruz County Aquifer Designation, on or before November 17, 1978. Information which is available to the Agency concerning the Groundwater System of Central Santa Cruz County, Calif., will be available to the public for inspection at this address.

Dated: August 3, 1978.

SHEILA M. PRINDIVILLE,  
Acting Regional Administrator.

[FR Doc. 78-23114 Filed 8-17-78; 8:45 am]

#### [6560-01]

[FRL 951-3; PF-107]

#### PESTICIDE PROGRAMS

##### Notice of Filing of Pesticide Petitions

Pursuant to the provisions of section 408(d)(1) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) gives notice that the following petitions have been submitted to the Agency for consideration:

PP 8F2089. Montedison U.S.A., Inc., 1114 Avenue of the Americas, New York, N.Y. 10036. Proposes that 40 CFR 180 be amended by establishing a tolerance for residues of the insecticide ethyl alpha-[(dimethoxyphosphinothioyl)thio] benzenacetate in or on the raw agricultural commodities citrus fruits at 2.0 parts per million (ppm). Proposed analytical method for determining residue is by gas liquid chromatographic procedure. PM16. (202-426-9425.)

PP 8F2090. Mobay Chemical Corp., P.O. Box 4913, Kansas City, Mo. 64120. Proposes that 40 CFR 180 be amended by establishing a tolerance for residues of the insecticide 1-methylethyl 2-[(ethoxy-[(1-methylethyl)amino] phosphinothioyl)oxy] benzoate and its cholinesterase-inhibiting metabolites in or on the following raw agricultural commodities:

| Commodity                                                                         | Parts<br>per<br>million |
|-----------------------------------------------------------------------------------|-------------------------|
| Corn, forage and fodder .....                                                     | 1.0                     |
| Corn, fresh (including sweet, kernels plus<br>cob with husk removed) .....        | 0.1                     |
| Corn, grain (including field and popcorn) .....                                   | 0.1                     |
| Meat, fat and meat byproducts, of cattle,<br>goats, hogs, horses, and sheep ..... | 0.02                    |
| Milk .....                                                                        | 0.004                   |

Proposed analytical method for determining residues is by gas liquid chromatography with thermionic detection. PM16.

PP 8F2096. Union Carbide Corp., 1730 Pennsylvania Avenue NW., Washington D.C. 20006. Proposes that 40 CFR 180.269 be amended by establishing a tolerance for the combined residues of the insecticide aldicarb (2-methyl-2-(methylthio)propionaldehyde O-methylcarbamoyl)oxime and its cho-

linesterase-inhibiting metabolites, aldicarb sulfoxide and aldicarb sulfone in or on raw agricultural commodity tomatoes with a tolerance limitation of 0.06 ppm. The proposed analytical method for determining residues is by gas chromatography utilizing a flame photometric detector specific for sulfur-containing compounds. PM 12. (202-426-9425.)

PP 8F2098. Ciba-Geigy Corp., Agricultural Division, P.O. Box 11422, Greensboro, N.C. 27409. Proposes that 40 CFR 180.368 be amended by establishing a tolerance for residues for the herbicide metolachlor [2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl) acetamide] and its metabolites determined as (2-[(ethyl-6-methylphenyl)amino]-1-propanol) and 4-[(2-ethyl-6-methylphenyl) 2-hydroxy-5-methyl-3 morpholinone], each expressed as parent metolachlor in or on sorghum forage and fodder at 1.5 ppm and sorghum grain at 0.3 ppm. The proposed analytical method for determining residues is by gas chromatographic procedure using a hall electrolytic conductivity detector specific for nitrogen. PM23. (202-755-1397.)

Interested persons are invited to submit written comments on these petitions to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA Room 401, East Tower, 401 M Street SW., Washington D.C. 20460. Inquiries concerning these petitions may be directed to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, at the above address, or by telephone at the numbers cited. Written comments should bear a notation indicating the petition number to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: August 14, 1978.

HERB HARRISON,  
Acting Director,  
Registration Division.

[FR Doc. 78-23249 Filed 8-17-78; 8:45 am]

#### [6712-01]

#### FEDERAL COMMUNICATIONS COMMISSION

[FCC 78-614]

#### BOARD OF COMMISSIONERS

##### Establishment; Order

Adopted: August 9, 1978.

Released: August 11, 1978.

By the Commission:<sup>1</sup>

1. To assure the continuity of Commission operations during the latter half of August 1978, we are hereby establishing a Board of Commissioners, to function during that period when-

<sup>1</sup> Commissioner Washburn absent.

ever a quorum of the Commission is not present and able to act.

2. Authority for this action is contained in section 5(d) of the Communications Act, 47 U.S.C. 155(d). Subject to the provisions of section 5(d), the Board shall have the authority of a Board established under § 0.212 of the Rules and Regulations, 47 CFR 0.212.

3. In view of the foregoing, it is hereby Ordered, effective August 14, 1978, that a Board of Commissioners, composed of all Commissioners present and able to act, is established to function during the period August 14-September 1, 1978, in accordance with the provisions of this Order when a quorum of Commissioners is not present.

FEDERAL COMMUNICATIONS  
COMMISSION,  
WILLIAM J. TRICARICO,  
Secretary.

[FR Doc. 78-22978 Filed 8-17-78; 8:45 am]

#### [6712-01]

#### FM BROADCAST APPLICATION

##### Ready and Available for Processing

Adopted: August 11, 1978.

Released: August 11, 1978.

By the Chief, Broadcast Bureau:  
Cut-off date: September 25, 1978.

Notice is hereby given that the FM broadcast application listed below will be considered as ready and available for processing on September 25, 1978. Since this application was timely filed and mutually exclusive with the earlier-filed and cut-off application of Amber Productions, Inc. (File No. BPH-10,388), no other applications which involve conflict with this application may be filed. Rather, the purpose of this Notice is to establish a date by which the parties to the forthcoming comparative hearing may compute the deadlines for filing amendments as a matter of right under § 1.522(a)(2) of the Rules and pleadings to specify issues pursuant to § 1.584.

BPH-10,651—New, Owasso, Okla.,  
John K. Major. REQ: 106.1 MHz  
channel 291C. ERP: 100 kW; HAAT:  
485 ft.

FEDERAL COMMUNICATIONS  
COMMISSION,  
WILLIAM J. TRICARICO,  
Secretary.

[FR Doc. 78-23115 Filed 8-17-78; 8:45 am]



[6712-01]

[FCC 78-423]

## ENGINEERING PERSONNEL

FCC Policy Concerning Technical Standards for  
Television Broadcast Signals

JUNE 16, 1978.

The Commission has received numerous inquiries from television station licensees, independent program production studios, and distributors of video-taped program material concerning the Commission's policy regarding transmission of television signals not in conformance with prescribed standards. The video signal transmitted by TV stations contains not only the actual picture information of the program, but also contains other signals necessary to reproduce the picture at the receiver. Certain additional test and reference signals may also be transmitted concurrently with the program material for telemetry and quality control purposes. The studio that originates the program as a video signal also originates the synchronizing pulses and color burst components of the signal transmitted to the home receivers, but additional signal components may be originated elsewhere in the transmission chain.

The Commission's rules and regulations contain technical standards and tolerances governing the form of the transmitted TV signal. The Commission has consistently held that each TV station licensee is fully responsible for insuring that the transmitted signal conforms with these regulations. Monitoring observations made by the Commission's field staff and inquiries received from station engineers indicate frequent occurrences of program signals which are not in compliance with regulations. Some of the reasons given for the faulty signals are as follows:

1. Video signals are distorted or modified in the network distribution circuits between the point of program origination and the station studios.

2. Use of video tape recordings that were either originally made or duplicated which did not conform with Commission standards.

3. Program material is prepared with waveform parameters set near the limits allowed by the Commission's rules. Distortions and changes in the waveform which may occur in the transmission process results in radiation of a nonconforming signal.

4. Program signals are modified when passed through a series of production processing or special effects devices.

5. Certain equipment designed for portable use is difficult to adjust or maintain within tolerances during operation.

6. Video cameras, tape recorders, and other equipment not designed for the broadcast service are used for program production.

7. Use of video tape recordings that were not originally prepared for broadcast purposes.

Some defects encountered in network or prerecorded program material can be corrected by licensees prior to transmission through the use of special equipment designed for this purpose. However, there are other types of deficiencies or defects that, once generated, are very difficult to correct in order to make the program signal acceptable for transmission.

In light of the Commission's observations and the numerous inquiries from station engineers, we find it appropriate to state the Commission's policy concerning adherence to prescribed TV waveform standards.

In the following respects, the Commission's policy is as it has been, i.e.:

1. All licensees are required to have signal monitoring and measuring equipment to insure that the TV signal as transmitted complies with the Commission's broadcast standards.

2. Each station licensee is solely responsible for the technical quality of the TV signal as transmitted, regardless of the source of the program material. In exercising this responsibility, licensees should preview program material, when practicable, to insure its technical acceptability. Suppliers of program material that cannot be broadcast in conformance with the Commission's rules should be notified that the material is technically unacceptable for broadcasting.

3. The use of television cameras, tape recorders, or other program production equipment which cannot be adjusted or maintained to provide TV signals for transmission within the Commission's prescribed standards is to be avoided. Those marketing equipment intended for use in production of broadcast program material should be made aware of this policy.

4. Test and reference signals transmitted during the vertical interval shall be transmitted only on those lines specifically designated for their use.

In regard to standards concerning the horizontal and vertical blanking intervals, it is to be emphasized that the maximum horizontal blanking interval permitted by the Commission's rules is 11.44 microseconds at that level of the radiated signal corresponding to 90 IRE units, and vertical blanking is limited to a maximum of 21 lines. In making blanking interval measurements, the picture should be observed on a picture monitor to verify that the black edges are consistent with the scene content and not the

result of improper equipment adjustment.

While we find no sound justification for modifying the blanking standards, we shall, with release of this policy statement, clarify and slightly modify our current policy regarding enforcement of the horizontal blanking standard and institute a new temporary policy concerning enforcement of the vertical blanking standard.

Recognizing that various random timing errors may accumulate during normal processing of color programs, which may result in moderate lengthening of the horizontal blanking interval in the transmitted signal, the Commission, in 1975, adopted a policy permitting occasional excursions of up to 12 microseconds of blanking, pending further consideration. Contrary to the intent of the 1975 action, 12 microseconds of horizontal blanking has tended to become the norm rather than an occasional occurrence. This, in turn, has generated an increase in incidence of horizontal blanking in excess of 12 microseconds.

Excessive vertical blanking is also observed to be on the increase.

Our own observations regarding increased occurrences of excessive blanking is buttressed by the increasing frequency with which our attention is being directed to the distribution of program material which cannot be broadcast in conformance with our blanking standards. Rejection of such program material generates repercussions adverse to the public interest. As a result of our analysis of the factors giving rise to this situation, we are persuaded that strict enforcement of our blanking interval standards tends to work a severe hardship on station licensees and, to some extent, deprives the public of some otherwise valuable programming.

It has been urged that, given time, the problems being encountered can be remedied. Accordingly, the Commission finds it in the public interest to adopt a temporary policy concerning enforcement of its blanking interval standards and will, until (1 year), issue advisory notices when horizontal blanking is detected in excess of 11.44 microseconds, up to 12 microseconds, and when vertical blanking of 22 or 23 lines is detected. Horizontal blanking in excess of 12 microseconds, and vertical blanking in excess of 23 lines, will be cause for issuance of a notice of violation. Irrespective of this pronouncement of our temporary policy, stations demonstrating a pattern of operation with horizontal blanking in excess of 11.44 microseconds, and vertical blanking in excess of 21 lines, will be subject to more severe sanctions.

As a further matter of clarification, the use of black or other colored borders, or reinserted video, solely to



mask excessive horizontal or vertical blanking, is an unacceptable practice.

It is to be emphasized that the policy announced herein places reliance upon representations made to us that a temporary modification of our enforcement effort regarding blanking standards will provide needed relief, consistent with public interest considerations, while fundamental corrective action is diligently pursued.

Action by the Commission June 15, 1978. Commissioners Ferris (Chairman), Lee, Quello, Washburn, Fogarty and Brown.

FEDERAL COMMUNICATIONS  
COMMISSION,  
WILLIAM J. TRICARICO,  
Secretary.

[FR Doc. 78-23248 Filed 8-17-78; 8:45 am]

#### [6730-01]

#### FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder  
License No. 322]

#### CITY TRANSFER CO., LTD.

##### Order of Revocation

The bond issued in favor of City Transfer Co., Ltd., 98-1054-A Kuleana Road, Pearl City, Hawaii 96782, FMC No. 322, was canceled effective August 4, 1978.

By letter dated July 11, 1978, City Transfer Co., Ltd. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 322 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission on or before August 4, 1978.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

City Transfer Co., Ltd. has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised) § 5.01(d) dated August 8, 1977:

It is ordered, That Independent Ocean Freight Forwarder License No. 322 be and is hereby revoked effective August 4, 1978.

It is further ordered, That Independent Ocean Freight Forwarder License No. 322 issued to City Transfer Co., Ltd. be returned to the Commission for cancellation.

It is further ordered, That a copy of this order be published in the FEDERAL

REGISTER and served upon City Transfer Co., Ltd.

ROBERT G. DREW,  
Director, Bureau of  
Certification and Licensing.

[FR Doc. 78-23199 Filed 8-17-78; 8:45 am]

#### [6730-01]

#### COLLECTIVE BARGAINING AGREEMENT AMENDMENTS

##### Temporary Exemption

Notice is hereby given that on August 4, 1978, the Commission determined the following collective bargaining agreement amendments to be temporarily exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814), pending FEDERAL REGISTER notice, opportunity for comment, and subsequent determination by the Commission that the agreements (or any specific provision thereof) should be permanently exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, or should be approved, disapproved, or modified under that section. This action was taken in accordance with our June 9, 1978, Interim Policy Statement—Collective Bargaining Agreement (46 CFR 530.9).

Interested parties may inspect the agreements at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10128; or at the field offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; Chicago, Ill.; and San Juan, P.R. Comments on the agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before September 11, 1978. Comments should include facts and arguments concerning the exemption, approval, modification, or disapproval of the proposed agreements. Comments shall discuss with particularity allegations that the agreements are unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors; detrimental to the commerce of the United States, or are contrary to the public interest, or are in violation of the act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreements Nos.: LM-4-A-1, LM-4-A-2, LM-4-B-1 and LM-4-C-1.

Filing Party: Edward D. Ransom, Esquire, Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, Calif. 94111.

Summary: Agreements Nos. LM-4-A-1, LM-4-A-2, LM-4-B-1 and LM-4-C-1 amend subsidiary agreements of Agreement No.

LM-4, which is the 1978-1981 collective bargaining agreement between the International Longshoremen's and Warehousemen's Union (ILWU) and the Pacific Maritime Association (PMA). Agreements Nos. LM-4-A-1, and LM-4-A-2, supplement the basic ILWU-PMA Pension Agreement. The purpose of Agreement No. LM-4-A-1, is basically twofold: (1) It conforms the ILWU-PMA Pension Plan with the Employee Retirement Income Security Act of 1974; and (2) it modifies the provision of the basic agreement relating to non-PMA members participation in the Plan. Agreement No. LM-4-A-2, supplements the basic agreement by providing for non-PMA members participation in the Plan. Agreement No. LM-4-B-1 amends the ILWU-PMA Pension Fund-Declaration of Trust which establishes the Trust employed to administer the ILWU-PMA Pension Plan. The purpose of Agreement No. LM-4-B-1 is to make certain clarifying technical changes to the provisions of the basic agreement setting forth the procedures for action by the Pension Plan's Trustees. Agreement No. LM-4-C-1 supplants the parties original Nonmember Participation Agreement Form (Pension Plan). Agreement No. LM-4-C-1 is "Exhibit A" to Agreement No. LM-4-A-2.

By Order of the Federal Maritime Commission.

Dated: August 14, 1978.

FRANCIS C. HURNEY,  
Secretary.

[FR Doc. 78-23200 Filed 8-17-78; 8:45 am]

#### [6730-01]

#### COLLECTIVE BARGAINING AGREEMENTS

##### Temporary Exemption and Interim Approval

Notice is hereby given that on July 27, the Commission determined §§21.23 through 21.25 of Agreement No. LM-4 to be approved on an interim basis, and determined the balance of the agreement, as amended by Agreement No. LM-4-1 and supplemented by Agreements Nos. LM-4-A through LM-4-F to be temporarily exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814), pending FEDERAL REGISTER notice, opportunity for comment, and subsequent determination by the Commission that the agreements (or any specific provision thereof) should be permanently exempt from the filing and approval requirements of section 15, Shipping Act, 1916, or should be approved, disapproved or modified under that section. This action was taken in accordance with our June 9, 1978, Interim Policy Statement—Collective Bargaining Agreements (46 CFR § 530.9).

Interested parties may inspect the agreements at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10128; or at the Field Offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; Chicago, Ill.; and San Juan,



Puerto Rico. Comments on the agreements, including request for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before September 11, 1978. Comments should include facts and arguments concerning the exemption, approval, modification or disapproval of the agreements. Comments shall discuss with particularity allegations that the agreements are unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors or operates to the detriment of the commerce of the United States, or are contrary to the public interest, or are in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: LM-4, as amended and supplemented, between the International Longshoremen's and Warehousemen's Union and the Pacific Maritime Association.

Filing Party: Edward D. Ransom, Esq., Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, Calif. 94111.

Summary: The following agreements constitute the 1978-81 collective bargaining agreement between the International Longshoremen's and Warehousemen's Union (ILWU) and the Pacific Maritime Association (PMA):

FMC No. LM-4: 1975-78 Pacific Coast Longshore Contract Document and Pacific Coast Clerks Contract Document;

FMC No. LM-4-1: July 1, 1978, Memorandum of Understanding;

FMC No. LM-4-A: ILWU-PMA Pension Agreement;

FMC No. LM-4-B: ILWU-PMA Pension Fund-Declaration of Trust;

FMC No. LM-4-C: Nonmember Participation Agreement Form (Pension);

FMC No. LM-4-D: ILWU-PMA Welfare Agreement;

FMC No. LM-4-E: ILWU-PMA Welfare Fund-Declaration of Trust;

FMC No. LM-4-E-1: December 30, 1977, Amendment to ILWU-PMA Welfare Fund-Declaration of Trust; and

FMC No. LM-4-F: Nonmember Participation Agreement Form (Welfare).

By order of the Federal Maritime Commission.

Dated: August 15, 1978.

FRANCIS C. HURNEY,  
Secretary.

[FR Doc. 78-23202 Filed 8-17-78; 8:45 am]

[6730-01]

#### COLLECTIVE BARGAINING AGREEMENTS

##### Temporary Exemption

Notice is hereby given that on August 9, 1978, the Commission Determined the following collective bargaining agreements to be temporarily

exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814), pending FEDERAL REGISTER notice, opportunity for comment, and subsequent determination by the Commission that the agreements (or any specific provision thereof) should be permanently exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, or should be approved, disapproved or modified under that section. This action was taken in accordance with our *Interim Policy Statement—Collective Bargaining Agreements*, served June 12, 1978. This temporary exemption is effective until November 17, 1978.

Interested parties may inspect the agreements at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10218; or at the Field Offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; Chicago, Ill.; and San Juan, Puerto Rico. Comments on the agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before September 11, 1978. Comments should include facts and arguments concerning the exemption, approval, modification or disapproval of the proposed agreements. Comments shall discuss with particularity allegations that the agreements are unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operate to the detriment of the commerce of the United States, or are contrary to the public interest, or are in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: LM-10, as amended and supplemented, between the American Radio Association and the Pacific Maritime Association.

Filing Party: Edward D. Ransom, Esq., Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, Calif. 94111.

Summary: The following agreements constitute the 1978-81 collective bargaining agreement between the American Radio Association (ARA) and the Pacific Maritime Association (PMA):

FMC No. LM-10: Agreement dated June 16, 1972;

FMC No. LM-10-1: Memorandum of Understanding dated July 1, 1975;

FMC No. LM-10-2: Memorandum of Understanding dated June 16, 1978;

FMC No. LM-10-A: Revised ARA-PMA Pension Plan Agreement;

FMC No. LM-10-B: Revised ARA-PMA Pension Plan-Declaration of Trust;

FMC No. LM-10-C: Revised ARA-PMA Welfare Plan Agreement;

FMC No. LM-10-D: Second Revised ARA-PMA Welfare Plan-Declaration of Trust;

FMC No. LM-10-E: Revised ARA-PMA Vacation Plan Agreement; and

FMC No. LM-10-F: Revised ARA-PMA Vacation Plan-Declaration of Trust.

By Order of the Federal Maritime Commission.

Dated: August 14, 1978.

FRANCIS C. HURNEY,  
Secretary.

[FR Doc. 78-23201 Filed 8-17-78; 8:45 am]

[4110-88]

#### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health  
Administration

##### ADVISORY COMMITTEES

##### Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory bodies scheduled to assemble during the month of September 1978:

##### PSYCHIATRIC NURSING EDUCATION REVIEW COMMITTEE

September 14, 1978, 9 a.m. Open meeting: Conference Room I, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857. Contact: Dr. Jeanette G. Chamberlain, Room 9-C-24, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4423.

**Purpose.** The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to psychiatric nursing manpower development and makes recommendations to the National Advisory Mental Health Council for final review.

**Agenda.** From 9 a.m. to 4 p.m. September 14, the meeting will be open for administrative announcements and discussion of review criteria in the light of new program initiatives and priorities of the Institute.

##### MENTAL HEALTH SMALL GRANT COMMITTEE

September 14-16; 1 p.m. Board Room and Chef's Corner, Shoreham Americana Hotel, 2500 Calvert Street NW., Washington, D.C. 20008. Open: September 14, 1 to 2 p.m. Closed: Otherwise. Contact: Mary E. Enyart, Room 10C-14, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4337.

**Purpose.** The Committee is charged with the initial review of small grant applications for Federal assistance in all disciplines relevant to the National



Institute of Mental Health and for small grant projects submitted for support to the other Institutes of the Alcohol, Drug Abuse, and Mental Health Administration. Makes recommendations to the National Advisory Councils of the respective Institutes for final review.

**Agenda.** From 1 to 2 p.m., September 14, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

\* \* \* \* \*

**BIOLOGICAL SCIENCES TRAINING REVIEW COMMITTEE**

September 22-23, 9 a.m. Conference Room C, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857. Open: September 22, 9 to 11 a.m. Closed: Otherwise. Contact: Donna Spain, Room 9C-09, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3855.

**Purpose.** The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to biological sciences research training and makes recommendations to the National Advisory Mental Health Council for final review.

**Agenda.** From 9 to 11 a.m., September 22, the meeting will be open for discussion of administrative announcements and program developments.

Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

\* \* \* \* \*

**PSYCHOLOGICAL SCIENCES FELLOWSHIP REVIEW COMMITTEE**

September 29-30, 9 a.m. Conference Room C, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857. Open: September 29, 9 to 11 a.m. Closed: Otherwise. Contact: Mary Cope, Room 9C-15, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3856.

**Purpose.** The Committee is charged with the initial review of fellowship applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to psychological sciences fellowships and makes recommendations to the National Advisory Mental Health Council for final review.

**Agenda.** From 9 to 11 a.m., September 29, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of fellowship applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Substantive program information may be obtained from contact persons listed above. The NIMH Information Officer who will furnish upon request summaries of these meetings and rosters of the committee members is Dr. Jacquelyn Hall, Acting Chief, Public Information Branch, Division of Scientific and Public Information, NIMH, Room 15C-17, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4573.

Dated: August 14, 1978.

ELIZABETH A. CONNOLLY,  
*Committee Management Officer,  
Alcohol, Drug Abuse, and  
Mental Health Administration.*

[FR Doc. 78-23129 Filed 8-17-78; 8:45 am]

**[4110-03]**

**Food and Drug Administration**

**ADVISORY COMMITTEES**

**Meetings**

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

| Committee name           | Date, time, and place                                                                                                                            | Type of meeting and contact person                                                                                                                                                                                     |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Ophthalmic Panel..... | Sept. 15 and 16, 9 a.m.; Conference Room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. (Sept. 15), Holiday Inn, Bethesda, Md. (Sept. 16). | Open public hearing Sept. 15, 9 to 10 a.m.; open committee discussion Sept. 15, 10 a.m. to 4:30 p.m., Sept. 16, 9 a.m. to 4:30 p.m.; John T. McElroy (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960. |

**General function of the Committee.** The Committee reviews and evaluates available data on the safety and effectiveness of nonprescription drug products.

**Agenda—Open public hearing.** Any interested parties may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who desire to make such

a presentation should notify the contact person before September 12, 1978, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

**Open committee discussion.** The Panel will review data submitted in response to the over-the-counter (OTC) review's call for data for this Panel (see also § 330.10(a)(2) (21 CFR 330.10)(A)(2)).

The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

| Committee name                                     | Date, time, and place                                                                                                                            | Type of meeting and contact person                                                                                                                                                                                                               |
|----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Miscellaneous External Drug Products Panel..... | Sept. 17 and 18, 9 a.m.; Holiday Inn, Bethesda, Md. (Sept. 17); Conference Room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. (Sept. 18). | Open committee discussion Sept. 17, 9 a.m. to 4:30 p.m.; open public hearing Sept. 18, 9 to 10 a.m.; open committee discussion Sept. 18, 10 a.m. to 4:30 p.m.; John T. McElroy (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960. |



**General function of the Committee.** The Committee reviews and evaluates available data on the safety and effectiveness of nonprescription drug products.

**Agenda—Open public hearing.** Any interested parties may present data, information, or views, orally or in writing, on issues pending before the Com-

mittee. Those who desire to make such a presentation should notify the contact person before September 13, 1978, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

**Open committee discussion.** The Panel will review data submitted in response to the over-the-counter (OTC) review's call for data for this Panel (see also § 330.10(a)(2) (21 CFR 330.10(a)(2))).

The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

| Committee name              | Date, time, and place                                                                                                                          | Type of meeting and contact person                                                                                                                                                                                     |
|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3. Antimicrobial Panel..... | Sept. 22 and 23, 9 a.m.; Conference Room K, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. (Sept. 22); Ramada Inn, Rosslyn, Va. (Sept. 23). | Open public hearing Sept. 22, 9 to 10 a.m.; open committee discussion Sept. 22, 10 a.m. to 4:30 p.m., Sept. 23, 9 a.m. to 4:30 p.m.; Armond M. Welch (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960. |

**General function of the Committee.** The Committee reviews and evaluates available data on the safety and effectiveness of nonprescription drug products.

**Agenda—Open public hearing.** Any interested parties may present data, information, or views, orally or in writing on issues pending before the Com-

mittee. Those who desire to make such a presentation should notify the contact person before September 19, 1978, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

**Open committee discussion.** The Panel will review data submitted in response to the over-the-counter (OTC) review's call for data for this Panel (see also § 330.10(a)(2) (21 CFR 330.10(a)(2))).

The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

| Committee name                                                                  | Date, time, and place                                                                  | Type of meeting and contact person                                                                                                                                 |
|---------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4. Hepatotoxicity Subcommittee of the Gastrointestinal Drugs Advisory Committee | Sept. 25, 9 a.m., Conference Room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. | Open public hearing 9 to 10 a.m.; open committee discussion 10 a.m. to 5 p.m.; Joan C. Standaert (HFD-110), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4730. |

**General function of the Committee.** The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in gastrointestinal diseases.

**Agenda—Open public hearing.** Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

**Open committee discussion.** The Committee will discuss the revision of the "Guidelines for Early Detection of Hepatotoxicity in New Drug Trials," Post Fogarty Conference.

| Committee name                        | Date, time, and place                                                                                            | Type of meeting and contact person                                                                                                                                                                                           |
|---------------------------------------|------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. Drug Abuse Advisory Committee..... | Sept. 28 and 29, 9 a.m., Research Institute of Pharmaceutical Sciences, University of Mississippi, Oxford, Miss. | Open public hearing Sept. 28, 9 a.m. to 10 a.m.; open committee discussion Sept. 28, 10 a.m. to 4:30 p.m., Sept. 29, 9 a.m. to 4:30 p.m.; Robert C. Nelson (HFD-120), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3800. |

**General function of the committee.** The Committee advises the Commissioner of Food and Drugs on the scientific and medical evaluation of all information gathered by the Department of Health, Education, and Welfare and the Department of Justice with regard to safety, efficacy, and

abuse potential for drugs or other substances and recommends actions to be taken by the Department of Health, Education, and Welfare with regard to marketing, investigation, and control of such drugs or other substances.

**Agenda—Open public hearing.** Any interested persons may present data,

information, or views, orally or in writing, on issues pending before the Committee.

**Open committee discussion.** Open discussion will include presentations by the staff of the Research Institute of Pharmaceutical Sciences with a



tour of the facilities and marihuana farm; discussion of a proposal for study entitled "Effects of Scheduling";

report on the current controlled substances research protocols; and orientation to the new and composite duties of this newly merged committee.

| Committee name                    | Date, time, and place                                                       | Type of meeting and contact person                                                                                                                                                                                    |
|-----------------------------------|-----------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6. Allergenic Extracts Panel..... | Sept. 28 and 29, 2:30 p.m.; Room 719, 11400 Rockville Pike, Rockville, Md.. | Open public hearing Sept. 28, 2:30 p.m. to 3:30 p.m.; open committee discussion Sept. 28, 3:30 p.m. to 9 p.m., Sept. 29, 8 a.m. to 4 p.m.; Clay Sisk (HFB-5), 8800 Rockville Pike, Bethesda, Md. 20014, 301-443-5455. |

*General function of the Committee.* The Committee reviews and evaluates available data on the safety and effectiveness of biological products.

*Agenda—Open public hearing.* Any interested parties may present data, information, or views, orally or in writing, on issues pending before the Committee.

*Open committee discussion.* The Committee will discuss alum-precipitated allergenic extracts of ragweed pollen and the editing of the panel report draft.

| Committee name                                                               | Date, time, and place                                             | Type of meeting and contact person                                                                                                                                       |
|------------------------------------------------------------------------------|-------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7. Neurological Section of the Respiratory and Nervous System Devices Panel. | Sept. 29, 9 a.m., Room 1409, FB-8, 200 C St. SW., Washington, DC. | Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4 p.m.; James R. Veale (HFK-430), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7226. |

*General function of the Committee.* The Committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

*Agenda—Open public hearing.* Interested parties are encouraged to present information pertaining to the classification and evaluation of neurologi-

cal devices to the Director, Division of Anesthesiology and Neurological Devices. Submission of data relating to tentative classification findings is also invited. Those desiring to make formal presentations should notify the division director by September 15, 1978, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the

names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their presentations.

*Open committee discussion.* Open discussion will include discussion and classification of "temporary" aneurysm clips and discussion of progress toward a standard for aneurysm clips.

| Committee name                                           | Date, time, and place                                                                                                                                        | Type of meeting and contact person                                                                                                                                                                                            |
|----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8. Contraceptives and Other Vaginal Drug Products Panel. | Sept. 28, 29, and 30, 9 a.m.; Conference room I, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. (Sept. 28 and 29); Holiday Inn, Bethesda, Md. (Sept. 30). | Open public hearing Sept. 28, 9 to 10 a.m.; open committee discussion Sept. 28, 10 a.m. to 4:30 p.m., Sept. 29 and 30, 9 a.m. to 4:30 p.m.; Armond M. Welch (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960. |

*General function of the Committee.* The Committee reviews and evaluates available data on the safety and effectiveness of nonprescription drug products.

*Agenda—Open public hearing.* Any interested parties may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who desire to make such

a presentation should notify the contact person before September 26, 1978, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

*Open committee discussion.* The Panel will review data submitted in response to the over-the-counter (OTC) review's call for data for this Panel (see also § 330.10(a)(2) (21 CFR 330.10(a)(2))).

The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

| Committee name                                     | Date, time, and place                                                                                                                                                | Type of meeting and contact person                                                                                                                                                                                                     |
|----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9. Miscellaneous Internal Drug Products Panel..... | Sept. 29, 30, and Oct. 1, 9 a.m.; conference room K, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. (Sept. 29); Holiday Inn, Bethesda, Md. (Sept. 30 and Oct. 1). | Open public hearing Sept. 29, 9 a.m. to 10 a.m.; open committee discussion Sept. 29, 10 a.m. to 4:30 p.m., Sept. 30 and Oct. 1, 9 a.m. to 4:30 p.m.; Armond M. Welch (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960. |



**General function of the Committee.** The Committee reviews and evaluates available data on the safety and effectiveness of nonprescription drug products.

**Agenda—Open public hearing.** Any interested parties may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who desire to make such a presentation should notify the contact person before September 26, 1978, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

**Open committee discussion.** The Panel will review data submitted in response to the over-the-counter (OTC) review's call for data for this Panel (see also § 330.10(a)(2) (21 CFR 330.10(a)(2))).

The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1-hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending

the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, D.C., area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Dated: August 10, 1978.

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

[FR Doc. 78-22755 Filed 8-17-78; 8:45 am]

[4110-03]

[Docket No. 75P-0152]

COCA/COLA CO.

Frozen Concentrated Orange Juice; Extension  
of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

**SUMMARY:** This document announces that an extension of a temporary permit has been issued to Coca-Cola Co. to market test reduced acid frozen concentrated orange juice. The purpose of the extension is to provide the Coca-Cola Co. with the opportunity to complete the market test program.

**DATES:** This extension is effective on August 18, 1978, and shall terminate either on the effective date of an affirmative order ruling on a proposal based on a Coca-Cola Co. petition to establish a standard for the new product or 30 days after a negative order ruling on the proposal.

**FOR FURTHER INFORMATION CONTACT:**

F. Leo Kauffman, Bureau of Foods (HFF-414), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1164.

**SUPPLEMENTARY INFORMATION:** In the FEDERAL REGISTER of August 6, 1975 (40 FR 33063), notice was given that a temporary permit had been issued to the Coca-Cola Co. The permit covered limited interstate market tests of frozen concentrated orange juice that deviates from the standard of identity set forth in § 146.146 (21 CFR 146.146) in that citric acid is removed from a portion of the orange juice. Two amendments to the original permit were published in the FEDERAL REGISTER of September 3, 1976 (41 FR 37386) and November 4, 1977 (42 FR 57748). The amendments provided for a change in the effective date of the permit, a change in the market test areas, and a change in the brand name of the food. The company has now requested an extension of its temporary permit. It stated that due to conditions beyond its control, it had been unable to complete the test marketing program set out in the original permit.

The Coca-Cola Co. has submitted a petition, in conjunction with the request for an extension to the temporary permit, proposing to establish a standard of identity for reduced acid frozen concentrated orange juice. The petition, which is being considered by the Food and Drug Administration, is on file with the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857 for review by interested persons.

The Commissioner of Food and Drugs concludes that it will be in the interest of consumers to extend the temporary permit as requested. Under § 130.17 (21 CFR 130.17), all interested persons may participate in the market tests under the conditions that apply to the Coca-Cola Co., including the labeling requirements and amounts to be distributed (100,000 cases each of forty-eight 6-ounce and twenty-four 12-ounce containers). The designated area of distribution does not apply to such interested persons. Any interested person who elects to participate in the extended market test shall notify the Commissioner in writing of that fact, the amount to be distributed, and the area of distribution. Along with such notification, such person shall submit the labeling under which the food is to be distributed.

This permit extension, as issued to the Coca-Cola Co. and others who participate in accordance with the provisions set out above, expires either on the effective date of an affirmative order ruling on the proposal based on the Coca-Cola Co. petition, or 30 days after a negative order ruling on the proposal, whichever the case may be.



Dated: August 10, 1978.

WILLIAM F. RANDOLPH,  
Associate Commissioner  
for Regulatory Affairs.

[FR Doc. 78-22959 Filed 8-17-78; 8:45 am]

#### [4110-03]

[Docket No. 76N-0504]

#### FOOD SERVICE SANITATION MANUAL INCLUDING A MODEL FOOD SERVICE SANITATION ORDINANCE

##### Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces availability of the Food Service Sanitation Manual (1976) including a model food service sanitation ordinance.

ADDRESSES: Copies of the manual are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, at a price of \$2.30 per copy, properly identified as: Food Service Sanitation Manual, DHEW Publication No. (FDA) 78-2081.

#### FOR FURTHER INFORMATION CONTACT:

A. Sidney Davis, Bureau of Foods (HFF-220), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1511.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of March 22, 1977 (42 FR 15428), FDA announced withdrawal of a proposed food service sanitation regulation and revision of the Food Service Sanitation Manual, including a model food service sanitation ordinance recommended for State and local government adoption. Draft copies of the Food Service Sanitation Manual were sent at that time to Federal and State offices so that they might familiarize themselves with the model ordinance.

Printed copies of the manual are now available. Copies have been mailed to appropriate Federal and State offices and a copy has been placed on display in the office of the Hearing Clerk (HFA-305), Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

Dated: August 9, 1978.

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

[FR Doc. 78-22961 Filed 8-17-78; 8:45 am]

#### [4110-03]

[Docket No. 77P-0247]

#### MEDICAL DEVICES

##### Gonorrhea Antibody Screening Kit; Denial of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its denial of approval of the application for premarket approval of the Gonosticon Dri-Dot gonorrhea antibody screening kit (N 17985), sponsored by Organon Diagnostics, El Monte, Calif. After reviewing the Microbiology Device Classification Panel's recommendation, FDA notified the sponsor that the application was denied approval because the device had not been shown to be safe and effective and because of deficiencies in the labeling.

ADDRESS: Requests for copies of the letter denying approval of the application and of the summary of safety and effectiveness data may be sent to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

#### FOR FURTHER INFORMATION CONTACT:

Keith Lusted, Bureau of Medical Devices (HFK-402), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Avenue, Silver Spring, Md. 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: The sponsor, Organon Diagnostics, El Monte, Calif., submitted the application for premarket approval of the Gonosticon Dri-Dot gonorrhea antibody screening kit to FDA on December 29, 1976. The Microbiology Device Classification Panel recommended that the application not be approved. On April 11, 1978, FDA denied approval of the application by a letter to the sponsor from the Director, Bureau of Medical Devices, FDA. The letter notified the sponsor of its right to file, by May 12, 1978, a petition for a formal hearing on, or for independent advisory committee review of, FDA's decision. On May 9, 1978, a representative of the sponsor informed FDA that the sponsor would not petition for a hearing or for advisory committee review.

Copies of FDA's denial letter and of a detailed summary of the information on which FDA's decision is based are available upon request from the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857. Requests should be identified with the name of the device and the Hearing

Clerk docket number found in brackets in the heading of this document.

Dated: August 8, 1978.

SHERWIN GARDNER,  
Acting Commissioner  
of Food and Drugs.

[FR Doc. 78-22960 Filed 8-17-78; 8:45 am]

#### [1505-01]

##### Food and Drug Administration

[Docket No. 78N-0197; DESI 12339]

#### INHALATION PRODUCTS CONTAINING ISOETHARINE MESYLATE OR ISOETHARINE HYDROCHLORIDE

##### Drug Efficacy Study Implementation; Followup Notice

##### Correction

In FEDERAL REGISTER Doc. 78-19228 appearing at page 30349 in the issue for Friday, July 14, 1978, in the paragraph entitled "For Further Information Contact," the phone number for Herbert Gerstenzang, now reading "301-443-4650," should have read "301-443-3650."

#### [4110-03]

[Docket No. 77N-0437; DESI Nos. 9149, 11020, 11127, and 12486]

#### PHYSICIAN LABELING FOR ANTIPSYCHOTIC DRUGS

##### Amendment of Notice Regarding Precaution Statement

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice amends a notice published in the FEDERAL REGISTER of May 16, 1978 (43 FR 21051), which required that physician labeling for certain antipsychotic drugs contain a precaution statement, by proposing a revised precaution statement to be included in the labeling for these drugs.

DATE: Comments by September 18, 1978.

ADDRESSES: Communications forwarded in response to this notice should be identified with docket No. 77N-0437, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

Written comments to Ann Greenstein, Division of Neuropharmacological Drug Products (HFD-120), Bureau of Drugs.

Requests for opinion of the applicability of this notice to a specific product: Division



of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

#### FOR FURTHER INFORMATION CONTACT:

Mary E. Catchings, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3650.

#### SUPPLEMENTARY INFORMATION:

A notice was published in the *FEDERAL REGISTER* of May 16, 1978 (43 FR 21051) which required that physician labeling for antipsychotic drugs, except for lithium carbonate, include a precaution statement about the chronic administration of these drugs. The notice provided a July 17, 1978 deadline for submitting supplements to approved NDA's or ANDA's incorporating the statement and announced a meeting to be held on June 26, 1978 between FDA and all sponsors of NDA's and IND's to discuss the design and initiation of epidemiological studies involving the chronic administration of the drugs. Because of new information presented at this meeting, the agency has reconsidered the precaution statement stated in the May 16, 1978 notice and now amends that notice by proposing a revised precaution statement for comment. Also, the time limits for submitting supplements to approved NDA's or ANDA's (July 17, 1978) and for putting revised labeling into use (Sept. 13, 1978) are hereby postponed. New dates will be set forth in a subsequent notice to be published after review of the comments on the proposed precaution statement.

This notice also corrects the heading of the *FEDERAL REGISTER* notice of May 16, 1978, page 21051, by changing "DESI 11120" to read "DESI 11020."

Accordingly, the Director of the Bureau of Drugs proposes that the physician labeling for antipsychotic drugs, except for lithium carbonate, be revised to include under the precaution section the following statement:

"The chronic administration of antipsychotic drugs in rodents induces the development of mammary neoplasms under the appropriate experimental conditions. These drugs elevate prolactin levels in both animals and man, but the role of prolactin in human mammary tumorigenesis is uncertain. Studies conducted to date have not shown an association between chronic administration of antipsychotic drugs and mammary tumors in human beings, but the available evidence is considered too limited to be conclusive at this time. Inasmuch as a fraction of human breast tumors appears to be prolactin-dependent, periodic breast examinations are advised, especially in patients with a previously detected breast cancer or in those with a strong family history of breast cancer."

#### REFERENCES

1. Minutes of the Toxicology Advisory Committee meeting, February 23-24, 1977.
2. Minutes of the Toxicology Advisory Committee meeting, May 12-23, 1977.
3. Minutes of the Psychopharmacological Agents Advisory Committee meeting, June 16, 1977.
4. FDA Toxicology Advisory Committee report on antipsychotic drugs.
5. Transcript of Ad Hoc Meeting between FDA and Industry Representatives to discuss epidemiological studies involving the chronic administration of antipsychotic drugs, June 26, 1978.

Reprints of the above references have been placed on file with the Hearing Clerk (HFA-305), Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons are invited to submit comments regarding the proposed statement and further comments on the design and initiation of epidemiological studies. All comments should be addressed to Mr. Gerald R. Hajarian, Division of Neuropharmacological Drugs Products (HFD-120), (address given above). Comments on the proposed statement should be submitted on or before September 18, 1978.

The following drug entities, and their salts and esters, are examples of antipsychotic agents which are covered by this notice, although this is not intended to be an exhaustive listing: Acetophenazine, butaperazine, carphenazine, chlorpromazine, chlorprothixene, mesoridazine, fluphenazine, haloperidol, loxapine, molindone, perphenazine, piperacetazine, prochlorperazine, promazine, thiopropazate, thiothixene, trifluoperazine, trifluopromazine, and thioridazine.

This notice applies not only to the particular antipsychotic drugs subject to the drug efficacy study but to all antipsychotic drug products that are the subject of new drug applications approved either before or after the drug amendments of 1962 and also to any identical, related, or similar drug product (21 CFR 310.6), whether or not it is the subject of an approved new drug application. Any person may request an opinion of the applicability of this notice to a specific drug product the person manufactures or distributes by writing to the Division of Drug Labeling Compliance (address given above.) The following antipsychotic drugs were reviewed by the drug efficacy study and conclusions on them were published in the following *FEDERAL REGISTER* notices:

November 28, 1970 (35 FR 18213; DESI 11020): Acetophenazine maleate; Fluphenazine hydrochloride; Thiopropazate hydrochloride.

April 3, 1971 (36 FR 6447; DESI 9149): Chlorpromazine hydrochloride; Perphenazine; Prochlorperazine edisy-

late; Prochlorperazine maleate; Promazine hydrochloride; Thioridazine hydrochloride; Trifluoperazine hydrochloride; Trifluopromazine hydrochloride; Trifluopromazine.

July 27, 1972 (37 FR 15038; DESI 11127): Chlorpromazine; Prochlorperazine.

August 8, 1972 (37 FR 15947; DESI 12486): Chlorprothixene.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-1053; as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70).

Dated: August 10, 1978.

JEROME A. HALPERIN,  
Acting Director,  
Bureau of Drugs.

[FR Doc. 78-23128 Filed 8-17-78; 8:45 am]

[4110-03]

[Docket No. 78N-0276]

#### NITRITES

##### Availability of Dietary Nitrite Animal Study

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the availability of a report on an animal feeding study involving nitrite. The study strongly suggests that nitrite produces cancer of the lymphatic system in test animals.

ADDRESS: Single copies of the study are available from the office of the Hearing Clerk (HFA-305), 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: The Commissioner of Food and Drugs announces the availability of a study recently completed for the Food and Drug Administration by the Massachusetts Institute of Technology.

In the study, 13 percent of the test animals receiving nitrite contracted cancer of the lymphatic system, whereas about 8 percent of those receiving no nitrite contracted cancer. The difference is statistically significant and leads to the concern that nitrite may increase the risk of human cancer.



Dated: August 15, 1978.

SHERWIN GARDNER,  
Acting Commissioner of  
Food and Drugs.

[FR Doc. 78-23261 Filed 8-16-78; 10:23 am]

#### [4110-35]

##### Health Care Financing Administration

##### PHARMACEUTICAL REIMBURSEMENT BOARD

##### Proposed MAC's and Announcement of Public Hearing

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Notice.

SUMMARY. In accordance with 45 CFR 19.5 (as amended at 43FR 35310-11, August 9, 1978), the Pharmaceutical Reimbursement Board proposes maximum allowable cost (MAC) limits on the drugs specified below and announces a public hearing with regard to these proposed MAC's.

DATES: Hearing: October 4, 1978 (9 a.m. to 5 p.m.), and October 5, 1978 (9 a.m. to 5 p.m.). End of comment period: September 18, 1978. End of period for submission of requests to appear at the hearing: September 19, 1978.

PLACE OF HEARING: Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201

##### FOR FURTHER INFORMATION CONTACT:

Peter Rodler, Executive Secretary, Pharmaceutical Reimbursement Board, 3076 Switzer Building, 330 C Street SW., Washington, D.C. 20201.

SUPPLEMENTARY INFORMATION: The Pharmaceutical Reimbursement Board has been established within the Health Care Financing Administration for the purpose of setting a MAC for multiple-source drugs for which reimbursement is provided under medical, medicare, and other programs administered by the Department. Pursuant to 45 CFR 819.5 (as amended at 43 FR 35310-11, August 9, 1978), the Pharmaceutical Reimbursement Board proposes the following MAC limits:

|                                             |          |
|---------------------------------------------|----------|
| Doxepin HCl, capsules, 10 mg.....           | \$0.0940 |
| Doxepin HCl, capsules, 25 mg.....           | 1.1150   |
| Doxepin HCl, capsules, 50 mg.....           | 1.1765   |
| Meprobamate, tablets, 200 mg.....           | 0.0108   |
| Meprobamate, tablets, 400 mg.....           | 0.0117   |
| Phenylbutazone, tablets, 100 mg.....        | 0.0750   |
| Phenylbutazone, alka, capsules, 100 mg..... | 1.0940   |

<sup>1</sup>Per capsule.

<sup>2</sup>Per tablet.

The Board originally identified these multiple-source drugs as drugs for which significant amounts of Federal funds are expended and for which there are significantly different prices. The Food and Drug Administration

has advised the Board that there is no regulatory action, either pending or under consideration, that would be a reason for delaying or withholding the establishment of MAC's on the drugs listed above. In making the initial determination of the lowest unit price at which each of the drugs is widely and consistently available from any formulator or labeler, the Board made use of a HCFA-sponsored survey of drugstore sales by IMS America, offers to sell as found in the Red Book, several comments from manufacturers, and certain State MAC limits on these drugs already in effect in 15 States. The FDA advice and the economic data listed above are available for inspection at the Office of Pharmaceutical Reimbursement and a limited number of copies are available upon request.

Interested persons and organizations are invited to submit in writing comments on the proposed MAC's. All comments received by September 18, 1978, will be considered and will be maintained for public inspection at the office of Pharmaceutical Reimbursement.

A public hearing on the proposed MAC's will be held October 4 and 5, 1978. Persons or organizations wishing to make presentations must submit to the Board's executive secretary by September 19, 1978, at least 20 copies of the proposed oral presentation in its entirety, together with all supporting studies and materials and the names and addresses of proposed participants. The Board will grant every request to appear when the presentation is relevant to the proposed MAC.

Dated: August 16, 1978.

PETER RODLER,  
Executive Secretary, Pharmaceutical  
Reimbursement Board.

[FR Doc. 78-23407 Filed 8-17-78; 9:21 am]

#### [4110-02]

##### Office of Education

##### GRANTS FOR NONCOMMERCIAL EDUCATIONAL BROADCASTING FACILITIES

##### Acceptance of Applications for Filing

Notice is hereby given that the following described application for Federal financial assistance in the construction of noncommercial educational broadcasting facilities is accepted for filing under provisions of Title III, Part IV of the Communications Act of 1934, as amended (47 U.S.C. 390-399) and in accordance with 45 CFR 153.8.

Any interested person may, pursuant to 45 CFR 153.9, file comments regarding this application on or before August 18, 1978, with the Chief, Educational Broadcasting Facilities Branch, Division of Educational Technology, Bureau of Elementary and

Secondary Education, Office of Education, Washington, D.C. 20202.

##### EDUCATIONAL RADIO

Austin Community Radio, KAZI, 5505 Pendleton Lane, Austin, Texas 78723, File No. 465-R/413BH80004 for the establishment of a noncommercial educational radio station on 88.7 MHz, Austin, Texas. Proposal determined acceptable: March 6, 1978. Estimated total project costs \$46,754. Grant requested: \$35,056. Application signed by: John Warfield, President, Board of Directors.

(Catalog of Federal Domestic Assistance Program No. 13.413, Educational Broadcasting Facilities Program)

(47 U.S.C. 390-95; 397-99)

This notice issued in Washington, D.C.

Dated: August 14, 1978.

ERNEST L. BOYER,  
U.S. Commissioner of Education.  
[FR Doc. 78-23154 Filed 8-17-78; 8:45 am]

#### [4210-01]

##### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

##### Office of the Secretary

[Docket No. N-78-888]

##### PRIVACY ACT OF 1974

##### Deletion of Systems of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Deletion of systems of records.

SUMMARY: Notice is given that 20 Privacy Act systems of records are deleted.

EFFECTIVE DATE: August 18, 1978.

ADDRESS: Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

##### FOR FURTHER INFORMATION CONTACT:

Mr. Harold Rosenthal, Departmental Privacy Act Officer, telephone 202-755-5192.

SUPPLEMENTARY INFORMATION: On October 7, 1977, the Department published in the FEDERAL REGISTER (42 FR 54756-79) an annual notice of system of records as required by the Privacy Act of 1974. All record systems being deleted were described in the October 7, 1977 notice, except the adverse and disciplinary action and employee grievance records system which was described in a notice published on June 12, 1978, at 43 FR 25387. This notice deletes the systems of records



listed below. The specific reason for deletion is shown for each system.

#### HUD/DEPT-3

**System name:**

Appraisal Review File.

**Reason:**

The records contained in the system are covered by system number HUD/DEPT-4, entitled Appraisals/Appraisers Files.

#### HUD/DEPT-6

**System name:**

Audits and Financial Reports Files.

**Reason:**

The records contained in this system have been determined not to be subject to the provisions of the Privacy Act. The system contains records about business firms.

#### HUD/DEPT-7

**System name:**

Board of Contract Appeals Files.

**Reason:**

The records contained in this system have been determined not to be subject to the provisions of the Privacy Act. This system contains records about business firms.

#### HUD/DEPT-8

**System name:**

Builder, Contractor and Developer Evaluations—Workmanship Adjustment Records.

**Reason:**

The records contained in this system have been determined not to be subject to the provisions of the Privacy Act. The system contains records about business firms.

#### HUD/DEPT-11

**System name:**

Contractors—Adverse Actions.

**Reason:**

The records contained in this system have been determined not to be subject to the provisions of the Privacy Act. This system contains records about business firms.

#### HUD/DEPT-12

**System name:**

Contractors', Brokers' and Management Agents, Qualifications and Bidders' List.

**Reason:**

The records contained in this system have been determined not to be subject to the provisions of the Privacy Act. This system contains records about business firms.

#### HUD/DEPT-14

**System name:**

Credit Processing.

**Reason:**

The records contained in this system have been determined not to be subject to the provisions of the Privacy Act. These records are filed chronologically and duplicate those in system number HUD/DEPT-46, entitled Single Family Case Files or are about business firms.

#### HUD/DEPT-16

**System name:**

Equal Opportunity Programs—Construction.

**Reason:**

The records contained in this system have been determined not to be subject to the provisions of the Privacy Act. This system contains records about business firms.

#### HUD/DEPT-19

**System name:**

Grant and Loan Files.

**Reason:**

The records contained in this system have been determined not to be subject to the provisions of the Privacy Act. This system contains records about community development proposals, finding and project details.

#### HUD/DEPT-21

**System name:**

Housing Assistance Applicants.

**Reason:**

The records contained in this system pertain to individuals who applied for Home Rehabilitation Grants and Government agencies that applied for HUD grants. The records on individuals are covered by system number HUD/DEPT-29, entitled Mobile Home, Home Improvement Loans and Rehabilitation Grants and Loans; records pertaining to government agencies are not subject to the provisions of the Privacy Act.

#### HUD/DEPT-26

**System name:**

Loan Management Files.

**Reason:**

The records contained in this system are covered by system number HUD/DEPT-32, entitled Mortgages—Delinquent/Default.

#### HUD/DEPT-27

**System name:**

Local Housing Mortgage Insurance.

**Reason:**

The records contained in this system are covered by system number HUD/DEPT-46, entitled Single-Family Case File or are about projects.

#### HUD/DEPT-31

**System name:**

Mortgages Servicing Files on HUD-Held Properties.

**Reason:**

The records contained in this system are covered by system number HUD/DEPT-43, entitled Real Estate Files.

#### HUD/DEPT-38

**System name:**

Pre-Construction, Plans, Bids and Contracts.

**Reason:**

The records contained in this system have been determined not to be subject to the provisions of the Privacy Act. This system contains records about business firms.

#### HUD/DEPT-40

**System name:**

Property Inspection Reports System.

**Reason:**

The records contained in this system are covered by system number HUD/DEPT-4, entitled Appraisals/Appraisers Files or are about business firms.

#### HUD/DEPT-45

**System name:**

Repair and Maintenance Contractors.

**Reason:**

The records contained in this system have been determined not to be subject to the provisions of the Privacy Act. This system contains records about business firms.

#### HUD/DEPT-47

**System name:**

Spanish Speaking Program.



## Reason:

The records contained in this system were transferred into the U.S. Civil Service Commission Government-wide system of records entitled, Recruiting, Examining and Placement Records—CSC (CSC/GOVT-5) published on September 23, 1977 at 42 FR 48741.

HUD/DEPT-48

## System name:

Subdivision Files.

## Reason:

The records contained in this system have been determined not to be subject to the provisions of the Privacy Act. This system contains records about HUD insured projects and business firms.

HUD/DEPT-49

## System name:

Wage Complaints and Compliance.

## Reason:

The records contained in this system have been determined not to be subject to the provisions of the Privacy Act. This system contains records about business firms.

HUD/DEPT-57

## System name:

Adverse and Disciplinary Action and Employee Grievance Records.

## Reason:

This system is covered by the U.S. Civil Service Commission Government-wide system of records entitled Appeals, Grievances, and Complaints Records (CSC/GOVT-1) published on September 23, 1977 at 42 FR 48737.

AUTHORITY: 5 U.S.C. 552a, 88 Stat. 1896; Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C., August 7, 1978.

WILLIAM A. MEDINA,  
Assistant Secretary  
for Administration.

[FR Doc. 78-23182 Filed 8-17-78; 8:45 am]

[4310-84]

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[NM 34099]

## NEW MEXICO

## Application

AUGUST 9, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as

amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for one 12 $\frac{1}{4}$ -inch natural gas pipeline right-of-way across the following lands:

## NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 19 S., R. 30 E.,  
Sec. 13, S $\frac{1}{2}$ S $\frac{1}{2}$ ;  
Sec. 14, S $\frac{1}{2}$ S $\frac{1}{2}$ ;  
Sec. 15, S $\frac{1}{2}$ S $\frac{1}{2}$ ;  
Sec. 17, S $\frac{1}{2}$ S $\frac{1}{2}$ ;  
Sec. 18, lot 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$  and S $\frac{1}{2}$ SE $\frac{1}{4}$ .  
T. 19 S., R. 31 E.,  
Sec. 13, S $\frac{1}{2}$ S $\frac{1}{2}$ ;  
Sec. 14, S $\frac{1}{2}$ S $\frac{1}{2}$ ;  
Sec. 15, S $\frac{1}{2}$ S $\frac{1}{2}$ ;  
Sec. 17, S $\frac{1}{2}$ S $\frac{1}{2}$ ;  
Sec. 18, lot 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$  and S $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
Sec. 24, N $\frac{1}{2}$ NE $\frac{1}{4}$ .  
T. 19 S., R. 32 E.,  
Sec. 18, lot 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$ .

This pipeline will convey natural gas across 10.351 miles of public lands in Eddy and Lee Counties, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

FRED E. PADILLA,  
Chief, Branch of Lands  
and Minerals Operations.

[FR Doc. 78-23142 Filed 8-17-78; 8:45 am]

[4310-84]

[NM 34100]

## NEW MEXICO

## Application

AUGUST 9, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the act of November 16, 1973 (87 Stat. 576), Natural Gas Pipeline Co. of America has applied for one 6-inch natural gas pipeline right-of-way across the following land:

## NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 19 S., R. 21 E.,  
Sec. 1, lot 1;  
Sec. 3, SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 9, E $\frac{1}{4}$ SE $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 10, N $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 17, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$ .

This pipeline will convey natural gas across 2.670 miles of public land in Eddy County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

FRED E. PADILLA,  
Chief, Branch of Lands  
and Minerals Operations.

[FR Doc. 78-23143 Filed 8-17-78; 8:45 a.m.]

[4310-84]

[NM 34263]

## NEW MEXICO

## Order Providing for Opening of Public Lands to Mineral Leasing and General Mining Laws

AUGUST 10, 1978.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934, as amended; U.S.C. 315g (1970), the following described land has been reconveyed to the United States:

## NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 21 S., R. 1 W.,  
Sec. 2, lots 1, 2, 3, 4, 5, 6, 7, 8, N $\frac{1}{2}$ N $\frac{1}{2}$  and S $\frac{1}{2}$ .

The area described contains 636.34 acres in Dona Ana County.

2. The subject land is a part of a State exchange whereby Bureau of Land Management acquired State lands within the boundary fences of the New Mexico State University Ranch. The land is in a known geothermal resource area (KGRA) and considered highly valuable for geothermal resource development.

3. Subject to valid existing rights, the provisions of existing withdrawals and requirements of applicable law, the lands described above shall at 10 a.m., on October 20, 1978, be open to application and offers under the mining laws and the mineral leasing laws and to geothermal leasing. All valid applications received at or prior to 10 a.m., on October 20, 1978, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

Inquiries concerning the land should be addressed to the Bureau of Land Management, P.O. Box 1449, Santa Fe, N. Mex. 87501.

ARTHUR W. ZIMMERMAN,  
State Director.

[FR Doc. 78-23144 Filed 8-17-78; 8:45 am]



[4310-84]

[INT FES 78-19]

## NEVADA

**Availability of Final Supplement to the Final Environmental Statement for the Sale of Fort Mohave Lands to the State of Nevada**

In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a Final Supplement to the Final Environmental Statement for the Sale of Fort Mohave Lands to the State of Nevada.

The proposed action contained in the Final Environmental Statement itself involves the transfer of 9,000 acres of public land in Clark County, Nev. to the State of Nevada's Division of Colorado River Resources. If approved by the Secretary of the Interior, the transfer could take place over a 6-year period.

The Final Supplement contains updated information on the Fort Mohave land sale area developed in response to comments and concerns expressed by various agencies, groups, and individuals reviewing the Draft Supplement released in March 1977. Information in the Final Supplement pertains primarily to: existing habitat and limiting factors associated with the potential presence of endangered or threatened wildlife and plant species; flood hazard evaluation; cultural resources of the land sale area; and social-economic conditions affecting the Mojave Indian Tribe.

A final decision on whether to approve the sale will not be made until at least 30 days after issuance of the Final Supplement.

A limited number of copies of the Final Supplement are available at the Bureau of Land Management's Nevada State Office, Room 3008, Federal Building, 300 Booth Street, Reno, Nev. 89509, and the Las Vegas District Office, P.O. Box 5400, 4765 Vegas Drive, Las Vegas, Nev. 89102. Copies may also be obtained by writing the Director (321), Bureau of Land Management, Department of the Interior, 19th and C Streets, Washington, D.C. 20240.

Reading copies of the Final Supplement are available at the University of Nevada libraries in Las Vegas and Reno, and at various Nevada public libraries.

Dated: August 15, 1978.

LARRY E. MEIEROTTO,  
Deputy Assistant Secretary.

[FR Doc. 78-23181 Filed 8-17-78; 8:45 am]

[4310-84]

**WORLAND DISTRICT GRAZING ADVISORY BOARD****Meeting**

Notice is hereby given, in accordance with the Federal Advisory Committee Act (Pub. L. 92-463), that a meeting of the Worland District Grazing Advisory Board will be held at 9 a.m., September 28, 1978, in the conference room of the BLM office in Worland, Wyo.

The agenda for this meeting includes: (1) discussion and recommendation for 1979 fiscal year range improvement projects; and (2) opportunity for public comment.

The meeting will be open to the public. Interested persons may make oral statements to the board, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 1700 Robertson, Worland, Wyo. 82401, by September 22, 1978.

Summary minutes of this meeting will be on file in the district office and available for public inspection (during regular business hours) within 30 days following the meeting.

JOHN A. KWIATKOWSKI,  
District Manager.

[FR Doc. 78-23194 Filed 8-17-78; 8:45 am]

[4810-10]

**Office of the Secretary****NONFUEL MINERAL POLICY REVIEW COORDINATING COMMITTEE, PROBLEM AREA 4, "MINERAL RESOURCE POTENTIAL OF FEDERAL LANDS"****Nonfuel Mineral Exploration and Development on Federal Lands; request for Comments**

AGENCY: Nonfuel Mineral Policy Review Coordinating Committee, Problem Area 4, U.S. Department of the Interior.

ACTION: Request for comments and information relating to experiences of companies and individuals in exploration and development of nonfuel minerals located on Federal lands.

SUMMARY: The purpose of this notice is to seek information from companies and individuals who have been engaged in nonfuel mineral exploration and development on Federal lands. This information is to be used in a study of the minerals potential of Federal lands, part of a larger review of U.S. nonfuel minerals policy.

The Nonfuel Minerals Policy Review was called for by President Carter, and it is being conducted under the White House Domestic Policy Review System. A Cabinet-level Policy Coordi-

nating Committee, chaired by Secretary of the Interior Cecil D. Andrus, is responsible for developing appropriate policy options and recommendations for the President's consideration.

An interagency group, denominated Problem Area 4 and led by the U.S. Geological Survey, is looking at the effect of different types of land-use decisions on present and future minerals resource exploration, development and production on those lands. Companies and individuals who have engaged in these activities are asked to furnish comments and suggestions.

DATE: Responses must be received by September 22, 1978, to allow sufficient time for compilation and evaluation.

ADDRESS: Responses should be addressed to: John D. Wells, U.S. Geological Survey, 913 National Center, Reston, Va. 22092, 703-860-6568. These comments will be available for viewing at this address from 9 a.m. to 12 noon and 1 p.m. 4 p.m., Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:**

Bernice Steinhardt, Nonfuel Minerals Policy Review, Room 6647, Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240, 202-343-4176.

REQUEST FOR INFORMATION: 1. With regard to actions on projects, initiated within the last 3 years, by your organization on public lands where a Federal land-use decision has had significant effects, describe any problems encountered in obtaining the decision. Include in your discussion, relevant references to: (a) The law, regulation, or policy cited as the authority for the land-use decision, (b) documents and information you were required to furnish Federal managers, including your opinion of the requirements. In preparing your comments, consider the nature of the action or project, and (c) the time required for the Government to render its decision in the cited projects or actions. Was this longer or shorter or about the same time as you anticipated?

2. Where it took longer than you anticipated for the agency to render a decision on your proposed actions or projects, please discuss the reasons for the delay, e.g., were you required to prepare additional documents and information or did the agency require additional time to render a decision?

3. For projects where unanticipated delays in decisionmaking added substantially to their costs; discuss the estimated percent of such increase, and the effect on dollar amounts and acreage of land affected.

4. Realizing the complexity of land-use decisionmaking (and community goals), briefly describe how you be-



lieve the process could be improved so that better, more timely, decisions could be made.

For projects where substantial changes in plans for mineral exploration, development, or production were brought about by actual or pending land-use decisions; discuss how such decisions affected your programs. Include a discussion of the costs and benefits of the changes, and the effect on dollar amounts and acreages of land affected.

6. Do you expect that future nonfuel mineral exploration and development actions or projects of your association or corporate planning body will be influenced because of a known or anticipated land-use decision? Briefly describe how the decision will affect your total program. Include a discussion of the effect on dollar amounts and acreage of land affected.

7. Do you expect the trends reflected in the information provided in item 6 will become, (1) much better, (2) better, (3) same, (4) worse, (5) much worse, over the next 3 years; over the next 10 years?

Dated: August 14, 1978.

JOAN DAVENPORT,  
Assistant Secretary—Energy and  
Minerals, Department of the  
Interior.

[FR Doc. 78-23141 Filed 8-17-78; 8:45 am]

#### [4310-10]

Office of the Secretary

[INT DES 78-33]

#### NAVAJO LAND SELECTION

##### Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a Draft Environmental Statement for the Navajo Land Selection proposal, under which 250,000 acres of public domain land in Arizona or New Mexico will be made available for purchase by the Navajo Indian Tribe under Pub. L. 93-531.

The environmental statement examines the proposed land transfer in terms of its effects on the physical, biological, cultural, economic, and other aspects of the human environment.

Copies of the statement are available for inspection at the following locations:

Branch of Environmental Quality Services,  
Bureau of Indian Affairs, Interior Building,  
Room 4554, Washington, D.C. 20245, Tele-  
phone 202-343-8248.

Flagstaff Administrative Office, Bureau of  
Indian Affairs, 121 East Birch, Arizona  
Bank Building, Room 307, Flagstaff, Ariz.

86001, Telephone 602-774-5261, Extension  
1372.

Single copies of the Draft Environ-  
mental Statement may be obtained  
from the Flagstaff Administrative  
Office, Bureau of Indian Affairs, P.O.  
Box 1889, Flagstaff, Ariz. 86002.

Written comments will be accepted  
within forty-five (45) days of this  
notice, and such comments will be con-  
sidered during the preparation of the  
final environmental statement. The  
comments should be addressed to: Wil-  
liam L. Benjamin, Project Officer,  
Flagstaff Administrative Office,  
Bureau of Indian Affairs, P.O. Box  
1889, Flagstaff, Ariz. 86002.

Dated: August 15, 1978.

LARRY E. MEIEROTTO,  
Deputy Assistant  
Secretary of the Interior.

[FR Doc. 78-23178 Filed 8-17-78; 8:45 am]

#### [4310-10]

##### NAVAJO LAND SELECTION

##### Draft Environmental Statement; Public Hearings

Public hearings on the Navajo Land  
Selection Environmental Impact  
Statement, each to begin at 7:30 p.m.,  
will be held September 11, 1978, in the  
San Juan Community College auditor-  
ium in Farmington, N. Mex.; Septem-  
ber 12, in the Day School gymnasium,  
Oraibi, Ariz.; September 13, at the  
Public Schools Cultural Arts Center,  
Page, Ariz., and September 15, in the  
Maricopa County Supervisors Room,  
205 West Jefferson, Phoenix, Ariz.  
These hearings are being held to  
enable members of the public to pre-  
sent comments concerning the Depart-  
ment of Interior's Draft Environmen-  
tal Impact Statement on the proposal,  
under which 250,000 acres of public  
domain land in Arizona or New Mexico  
will be made available for purchase by  
the Navajo Indian Tribe.

Oral and written comments by inter-  
ested parties are invited. The number  
of persons desiring to present oral  
statements may make it necessary to  
limit the time allowed for any single  
statement. Written comments supple-  
mentary to, or in lieu of, oral state-  
ments will be accepted at the hearings.  
Copies of the Draft Environmental  
Impact Statement may be obtained  
from the Flagstaff Administrative  
Office, Bureau of Indian Affairs, P.O.  
Box 1889, Flagstaff, Ariz. 86002.

Those desiring to make an oral pres-  
entation at the hearings should make  
that fact known by advising the Flag-  
staff Administrative Office in advance  
of the hearing or by registering on the  
date and at the place of hearing prior  
to the scheduled hour. An interpreter  
will be present at the Oraibi hearing  
to translate comments from the

Navajo language into English and vice  
versa.

Date: August 15, 1978.

LARRY E. MEIEROTTO,  
Deputy Assistant  
Secretary of the Interior.

[FR Doc. 78-23179 Filed 8-17-78; 8:45 am]

#### [4410-09]

##### DEPARTMENT OF JUSTICE

##### Drug Enforcement Administration

[Docket No. 78-8]

JOSEPH J. GODOROV, D.O.

##### Revocation of Registration

On April 11, 1978, the Administrator  
of the Drug Enforcement Administra-  
tion (DEA) directed to Joseph J. Go-  
dorov, D.O. (Respondent), of St. Pe-  
tersburg, Fla., an Order to Show  
Cause as to why the Respondent's  
DEA Certificate of Registration,  
AG6206064, should not be revoked for  
reason that on March 1, 1978, in the  
Circuit Court for the Sixth Judicial  
Circuit of Florida, in and for Pinellas  
County, the Respondent was convicted  
of 19 counts of unlawfully delivering  
methaqualone and amphetamine,  
Schedule II controlled substances,  
felony violations of Chapter 893.13,  
Florida Statutes. The Order to Show  
Cause was issued to section 824(a)(2),  
Title 21, United States Code.

On May 12, 1978, the Respondent re-  
quested a hearing on the issues raised  
by the Order to Show Cause and this  
matter was placed on the docket of  
the Honorable Francis L. Young, Ad-  
ministrative Law Judge. In his re-  
sponse to the Order to Show Cause,  
the Respondent raised a preliminary  
objection to these proceedings. This  
objection was founded on the Respon-  
dent's contention that since he was ac-  
tively prosecuting an appeal of the  
trial court's verdict and sentence, his  
conviction was not final and he had  
not been "convicted," therefore,  
within the intent and meaning of 21  
U.S.C. 824(a)(2).

On May 31, 1978, Judge Young con-  
ducted a prehearing conference by  
telephone with counsel for the Gov-  
ernment and for the Respondent par-  
ticipating. Judge Young subsequently  
ordered that counsel file legal memo-  
randa with respect to the conviction  
issue. After receiving and considering  
these memoranda, the Administrative  
Law Judge issued a Memorandum  
Opinion in which he concluded that  
"the issue whether Respondent has  
been convicted within the purview of  
21 U.S.C. 824(a)(2) must be answered  
in the affirmative."

Further prehearing conferences  
were held by telephone on July 20 and  
21, 1978. A tentative hearing date was



set. However, prior to such hearing date, counsel for the Government and the Respondent entered into a stipulation designed to preclude the necessity for an evidentiary hearing and to narrow the issues to be decided by the Administrator in this matter. In effect, the parties have stipulated as to the Florida criminal trial, its result, and the subsequent appeal. The Respondent conceded that if the legal issue of his conviction, or lack thereof, is ultimately resolved against him, the Administrator's action revoking the Respondent's registration would not constitute abuse of administrative discretion. Thus, any judicial review of this proceeding and the final order therein will be limited to the single issue of whether or not the Respondent had been "convicted" within the purview and meaning of 21 U.S.C. 824(a)(2).

On July 31, 1978, the Administrative Law Judge certified the record of this proceeding to the Administrator pursuant to the provisions of 21 CFR § 1316.65. This record includes, *inter alia*, the Order to Show Cause, the Respondent's request for a hearing, the respective legal memoranda, the Judgement and Sentence of the Florida court in *State of Florida v. Joseph J. Godorov*, the Administrative Law Judge's Memorandum Opinion and the Joint Stipulation and Motion for Termination of Proceedings. After a thorough review of this record, and pursuant to the provisions of 21 CFR § 1316.66, the Administrator hereby publishes his final order in this matter based on the findings of fact and conclusions of law set forth below.

The Administrator finds that on March 1, 1978, in the Circuit Court for the Sixth Judicial Circuit of Florida, in and for Pinellas County, the Respondent, following a jury trial, was adjudged guilty of violation of the Florida Comprehensive Drug Abuse Prevention and Control Act (19 counts), and was sentenced to a term of imprisonment of 3 years, less time already spent in the St. Petersburg City Jail.

The Administrator further finds that the aforementioned 19 counts are felony offenses relating to Schedule II controlled substances, to wit: amphetamine and methaqualone.

Section 304 of the Controlled Substances Act (Title 21, United States Code, section 824) provides, in pertinent part, that:

§ 824. Denial, revocation, or suspension of registration—Grounds.

(a) A registration pursuant to section 823 of this title to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Attorney General upon a finding that the registrant—

(2) has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance; \* \* \*

The Respondent contends that since his conviction on 19 counts of an information in a Florida Circuit Court is presently on appeal to the Florida District Court of Appeals, it is not a final conviction and cannot, therefore, serve as a basis for revocation of his DEA registration pursuant to the above-quoted statutory provision.

As the Government counsel pointed out in its memorandum of law filed in this matter, we must look not to the intricacies of Florida law, but to Federal law and the intent of Congress in the enactment of the Federal Controlled Substances Act. Specifically, we must determine whether Congress intended that a "conviction" in order to form the basis for administrative action under § 824 must be a "final conviction" as the Respondent contends.

"Conviction" is not defined in the Controlled Substances Act. Thus, the Administrator, charged with enforcement and administration of the Act, and ultimately the courts, must determine what Congress intended. In doing so, the Administrator must be bound by the axiom that words in a statute are to be given their ordinary meaning in the absence of persuasive reasons to the contrary. *Burns v. Alcala*, 420 U.S. 575, 580-581, 95 S.Ct. 1180, 1184 (1975); *Banks v. Chicago Grain Trimmers*, 390 U.S. 459, 465, 88 S.Ct. 1140, 1144 (1968). As a general rule, words in a statute are to be given their usual and commonly understood meaning, unless it is plain from the statute that a different meaning is intended. A "conviction" is "the result of a criminal trial which ends in a judgment or sentence that the prisoner is guilty as charged." Black's Law Dictionary, fourth edition.

The Judgement and Sentence of the Circuit Court for Pinellas County, Fla., upon which this proceeding is based, shows on its face that the Respondent was adjudged guilty as charged. He has been convicted in the plain sense of the word.

In several other sections of the Controlled Substances Act, 21 U.S.C. 841(b), 842, 844(a), 845(b) and 848(a), Congress expressly provided for actions to be taken after "convictions" \* \* \* have become final." As Judge Young concluded in his Memorandum Opinion, where Congress meant "final," it said "final." Judge Young's conclusion is supported by the unreported Memorandum Opinion and Order of the U.S. District Court for the District of Vermont in Civil Action No. 75-273, *John H. Perry-*

*Hooker, M.D. v. Four Unnamed Known Agents of the Drug Enforcement Administration, et al.*, a case in which the plaintiff's sentence, resulting from his conviction in the U.S. District Court for the District of Massachusetts, had been stayed pending appeal. In *Perry-Hooker* the Court concluded that the plaintiff had been "convicted" for the purposes of § 824(a)(2) at the time a guilty verdict was returned and that the suspension of his registration was proper.

Therefore, the Administrator concludes that the Respondent has been convicted of felony offenses relating to controlled substances within the meaning and intent of 21 U.S.C. 824(a)(2). There is a lawful basis for the revocation of the Respondent's DEA registration as proposed in the Order to Show Cause. The registration should be revoked.

Accordingly, pursuant to the authority vested in the Attorney General by 21 U.S.C. 824, and redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby orders that DEA Certificate of Registration AG6206064, previously issued to Joseph J. Godorov, D.O., be, and it hereby is, revoked, effective on September 18, 1978.

Dated: August 14, 1978.

PETER B. BENSINGER,

Administrator,

Drug Enforcement Administration.

[FR Doc. 78-23204 Filed 8-17-78; 8:45 am]

[4510-30]

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

##### Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased



unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.
2. Employment trends in the same industry in the local area.
3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.
4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).
5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice to:

Deputy Assistant Secretary for employment and Training, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 14th day of August 1978.

ERNEST G. GREEN,  
Assistant Secretary for  
Employment and Training.

*Applications Received During the Week  
Ending August 11, 1978*

| Name of applicant and location of enterprise                 | Principal product or activity                   |
|--------------------------------------------------------------|-------------------------------------------------|
| Franconia Paper Co., Lincoln, N.H.                           | Manufacture of recycled bond paper.             |
| Columbus Landing Development Co., St. Croix, Virgin Islands. | Yacht club, marina, and full service hotel.     |
| Family Recreational Clubs of America, Inc., Clarence, N.Y.   | Membership sports and recreation clubs.         |
| Masters Health Care Center, Inc., Algood, Tenn.              | Intermediate and skilled care nursing services. |
| Cane River Feed Mill, Inc., Natchitoches, La.                | Manufacture of livestock feed.                  |
| Red Cross Drugs, Inc., Columbia, La.                         | Retail drug sales.                              |
| Ancestor Square Development, St. George, Utah.               | Retail shopping plaza.                          |
| Harris Ranch, Coalings, Calif.                               | Service station-restaurant.                     |
| E. K. Fernandez Shows, Inc., Ewa, Oahu, Hawaii.              | Theme amusement and recreational park.          |
| Star Fleet, Inc., Morgan City, La.                           | Work boat rentals.                              |

[FR Doc. 78-23015 Filed 8-17-78; 8:45 am]

[4510-28]

Office of the Secretary

[TA-W-3547]

ACE KNITTING MILLS, LONG ISLAND CITY, 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-3547: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 27, 1978, in response to a worker petition received on April 27, 1978, in response to a worker petition received on April 17, 1978, which was filed on behalf of all workers producing knitted fabrics at Ace Knitting Mills in Long Island City, N.Y.

The notice of investigation was published in the FEDERAL REGISTER on May 16, 1978 (43 FR 21069). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Ace Knitting Mills, 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 as-

sistance, 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 company closed in October 1977. Imports of circular knit fabric declined 40.8 percent from 3,790,000 pounds in 1976 to 2,244,000 pounds in 1977. The ratio of imports fell from 0.28 percent in 1976 to 0.17 percent in 1977.

CONCLUSION

After careful review, I determine that all workers of Ace Knitting Mills in Long Island City, New York 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 9th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22866 Filed 8-17-78; 8:45 am]

[4510-28]

[TA-W-3064]

FAIRFIELD WORKS, U.S. STEEL CORP.,  
BIRMINGHAM, ALA.

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-3064 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 producing railroad products at the Fairfield Works of the United States Steel Corp.

Workers engaged in employment related to the production of plates, structurals, wire and wire products at the Fairfield Works were previously certified eligible to apply for trade adjustment assistance on June 9, 1977 (see TA-W's-1429, 1451, 1452).

Workers engaged in employment related to the production of cold rolled sheet, coated sheet, painted sheet, tin mill products and hot rolled sheet products at the Fairfield Works were previously certified eligible to apply



for trade adjustment assistance on January 31, 1978 (see TA-W's-2364, 2365, and 2366).

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 U.S. 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.

The investigation has revealed that without regard to whether any of the other criteria have been met, the following criterion has not been met with respect to railroad products:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separation, or threats thereof, and to the absolute decline in sales or production.

The Department conducted a survey of some of the Fairfield Works' customers that purchased railroad products (rails, tie plates and spikes), in 1976 and 1977. None of these customers purchased imports of these products. Among the responding customers that purchased axles, none of the customers purchased imports in 1976 and only one customer purchased imports in 1977. The customer that purchased imports increased purchases of axles from the Fairfield Works in 1977.

#### CONCLUSION

After careful review I determine that all workers engaged in employment related to the production of railroad products at the Fairfield Works in Birmingham, Ala. of U.S. Steel Corp. 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 9th day of August 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.  
[FR Doc. 78-22879 Filed 8-17-78; 8:45 am]

[4510-28]

[TA-W-3588]

#### FASHION CLOTHING, INCORPORATED, 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-3588: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated in May 8, 1978, in response to a worker petition received on April 28, 1978, filed on behalf of workers and former workers producing ladies' coats.

The notice of investigation was published in the *FEDERAL REGISTER* on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Fashion Clothing, Inc. and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. 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 increased in value in 1977 compared to 1976 and also increased in the first five months of 1978 compared to the same period in 1977. Fashion Clothing produces on order; therefore, sales and production are equal.

#### CONCLUSION

After careful review, I determine that all workers of Fashion Clothing, Incorporated, Paterson, New Jersey 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 9th day of August 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.  
[FR Doc. 78-22880 Filed 8-17-78; 8:45 am]

[4510-28]

[TA-W-2900]

#### FAY SPORTSWEAR CO., BURLINGTON, 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-2900: 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 11, 1978, in response to a worker petition received on December 27, 1977, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing children's dresses and women's sportswear at Fay Sportswear Co., Burlington, N.J.

The notice of investigation was published in the *FEDERAL REGISTER* on January 27, 1978 (43 FR 3776). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Fay Sportswear Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that Fay Sportswear produced children's dresses and women's sportswear under contract to apparel manufacturers.

A departmental survey of manufacturers for whom the subject firm worked in the 1975-77 period revealed that none of the manufacturers imported any children's dresses or women's sportswear and none used foreign contractors. All of the manufacturers reported increased sales in quantity in 1977 compared to 1976, and either increasing or constant dollar sales in the same period.

Furthermore, the total value of contract work performed by Fay Sportswear increased from 1976 to 1977 and



in the first 2 months of 1978 compared to the first 2 months of 1977.

#### CONCLUSION

After careful review I determine that all workers of Fay Sportswear Co., Burlington, 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 9th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22881 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3508]

#### FLORSHEIM SHOE CO., OLNEY, ILL.

#### Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3508: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 13, 1978, in response to a worker petition received on April 3, 1978, which was filed by the United Shoe Workers of America on behalf of workers and former workers producing men's shoes and boots at the Olney, Ill., plant of the Florsheim Shoe Co.

The notice of investigation was published in the FEDERAL REGISTER on April 25, 1978 (43 FR 17552). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Florsheim Shoe Co., the 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.

Imports of men's dress and casual footwear declined in absolute terms from 1973 to 1974, increased from 1974 to 1975, and increased from 1975 to 1976. Imports declined 3.7 percent from 1976 to 1977. The ratios of imports to domestic production and consumption increased from 70.4 percent and 41.3 percent, respectively, in 1976 to 71.7 percent and 41.8 percent, respectively, in 1977.

Production of men's shoes at the Olney plant declined, in quantity,

from 1976 to 1977, and declined in the first quarter of 1978 compared to the same quarter of 1977. All production ceased in April 1978 when the plant was permanently shut down.

Average employment of production workers at the plant declined from 1976 to 1977, and declined in the first quarter of 1978 compared to the same quarter of 1977. All workers were permanently released from employment in April 1978 when the plant shut down.

The decline in production and employment at Florsheim's Olney plant can be linked to the import influence in the shoe industry generally, in accordance with the findings of the International Trade Commission. After careful consideration of all the alleged factors causing injury, the Commission concluded that certain footwear articles, including men's nonrubber shoes, were being imported into the United States in such increased quantities as to be the most substantial cause of injury to domestic producers. In the case of men's dress and casual footwear, the ratio of imports to domestic production has been greater than 50 percent in each of the past 5 years, reaching a peak level of 71.7 percent in 1977.

#### CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's shoes and boots produced at the Olney, Ill., plant of the Florsheim Shoe Co., contributed importantly 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 the Olney, Ill., plant of the Florsheim Shoe Co., who became totally or partially separated from employment on or after March 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 7th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22882 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3637]

#### GAYLOR FASHIONS, INC., PASSAIC, 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-3637: investigation regarding certification of eligibility to apply for worker adjustment assist-

ance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, filed on behalf of workers and former workers producing ladies' blazers and jackets.

The Notice of Investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Gaylor Fashions, Inc. and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. 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 such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated.

Employment increased in 1977 compared to 1976 and also increased in the first quarter of 1978 compared to the first quarter of 1977.

#### CONCLUSION

After careful review, I determine that all workers of Gaylor Fashions, Inc., Passaic, 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 9th day of August 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.

[FR Doc. 78-22883 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3709]

#### HARRISON WESTERN CORP., CASA GRANDE, ARIZ.

#### 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-3709: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 15, 1978, in response to a worker petition received on May 2, 1978, which was filed on behalf of workers and former workers of Harrison West-



ern Corp., Casa Grande, Ariz., engaged in shafting, drifting, and developing mines.

The notice of investigation was published in the *FEDERAL REGISTER* on June 27, 1978 (43 FR 27923). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Harrison Western 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."

Harrison Western Corp. was incorporated in 1976 in Florida and is affiliated through common stockholders with Patrick Harrison & Co., Ltd., a Canadian company engaged in construction and other business ventures. Harrison Western is a contractor engaged in mine development work for mineral companies. Harrison Western operates facilities at 16 sites in 11 States.

The petitioning group of workers is engaged in the construction of mine facilities and shaft sinking for a major copper company in Casa Grande, Ariz. The buildings and some of the equipment at the Casa Grande facility are owned by Harrison Western. Some of the equipment is owned by the copper company.

The workers at Harrison Western's Casa Grande facility are engaged in mine construction and do not produce an article within the meaning of section 222(3) of the Trade Act.

Harrison Western Corp. and its customers have no controlling interest in each other.

All workers who perform mine construction work at Harrison Western are employed by that firm. All personnel action and payroll transactions are controlled by Harrison Western. All employment benefits are provided and maintained by Harrison and Western. Thus, Harrison Western Corp. must be considered the "workers' firm."

#### CONCLUSION

After careful review, I determine that all workers at Harrison Western Corp., Casa Grande, Ariz., 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 9th day of August 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.

[FR Doc. 78-22884 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3364]

#### HICKEY-FREEMAN CO., INC., ROCHESTER, 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-3364: 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 20, 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 workers producing men's tailored clothing at Hickey-Freeman Co., Inc., Rochester, N.Y. During the course of the investigation it was revealed that Hickey-Freeman operates two plants in Rochester, one in Buffalo, N.Y., and a sales office in New York City.

The notice of investigation was published in the *FEDERAL REGISTER* on April 7, 1978 (43 FR 14776). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Hickey-Freeman Co., its customers, the U.S. International Trade Commission, the 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 subdivision have contributed importantly to the separations, or threat thereof and to the absolute decline in sales or production.

Imports of men's and boys' tailored dress coats and sportcoats increased from 5,465 thousand units in 1975 to 6,965 thousand units in 1976 and decreased to 6,269 thousand units in 1977.

Imports of men's and boys' tailored suits increased absolutely from 3,106 thousand units in 1975 to 4,091 thou-

sand units in 1977. Imports also increased relative to domestic production from 18.3 percent in 1975 to 20.0 percent in 1976.

None of the customers of Hickey-Freeman who were surveyed reduced purchases from Hickey-Freeman while increasing purchases from foreign sources.

#### CONCLUSION

After careful review, I determine that workers of Hickey-Freeman Co., Inc., Rochester, N.Y.; Buffalo, N.Y.; and 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 7th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22885 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3494]

#### HASPEL, INC., TYLERTOWN, MISS.

##### 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-3494: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on April 11, 1978, in response to a worker petition received on March 31, 1978, which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of all workers producing men's suits and sportcoats at Haspel, Inc., Tylertown, Miss.

The notice of investigation was published in the *FEDERAL REGISTER* on May 2, 1978 (43 FR 18790). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Haspel, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. It is concluded that all of the requirements have been met.

Imports of men's and boys' tailored dress coats and sportcoats declined slightly in 1977 compared to 1976,



however the level of imports in 1977 was still greater than import levels in the years 1973 through 1975. Imports of men's and boys' tailored suits increased each year from 1973 through 1977.

A survey of a sample of customers who purchase suits and sportcoats from Haspel indicated that some customers have been reducing purchases from Haspel while increasing purchases of imported suits and sportcoats.

The Tylertown plant was previously certified eligible for adjustment assistance on April 2, 1976, expiring April 2, 1978.

#### 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 suits and sportcoats produced by Haspel, Inc., Tylertown, Miss., contributed importantly to the total or partial separations of the workers of that plant. In accordance with the provisions of the act, I make the following certification:

All workers at Haspel, Inc., Tylertown, Miss., who became totally or partially separated from employment on or after April 2, 1978, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of August 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.

[FR Doc. 78-22886 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3659]

#### J & J FASHIONS, INC., LONG BRANCH, 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-3659: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, filed on behalf of workers and former workers producing children's coats.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained

principally from officials of J & J Fashions, Inc., and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. 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 increased from 1976 to 1977 and also increased in the first 5 months of 1978 compared to the first 5 months of 1977. J & J Fashions produces on order; therefore, sales and production are equal.

#### CONCLUSION

After careful review, I determine that all workers of J & J Fashions, Inc., Long Branch, 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 9th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22887 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3196]

#### MANHATTAN COAT CORP., NEW YORK CITY, 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-3196: 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 6, 1978, which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of workers and former workers producing men's suitcoats, sportcoats, and vests at the Manhattan Coat Corp., New York City, N.Y.

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 the Manhattan Coat 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 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.

A certification applicable to the petitioning group of workers was issued on January 27, 1976 (TA-W-373), and expired on January 27, 1978.

Sales is equal to production at the Manhattan Coat Corp. Sales increased 16.1 percent in value from 1975 to 1976 and 22.4 percent from 1976 to 1977. Sales increased 23.2 percent in the first quarter of 1978 compared to the same period in 1977.

#### CONCLUSION

After careful review I determine that all workers at the Manhattan Coat Corp., New York City, N.Y., 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 9th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22888 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3281]

#### MID-HUDSON LEATHER GOODS CO., INC., NEWBURGH, 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-3281: 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 petition received on February 21, 1978, which was filed by the International Leather Goods, Plastic & Novelty Workers Union on behalf of workers and former workers producing ladies' vinyl handbags at Mid-Hudson Leather Goods Co., Inc., Newburgh, N.Y.

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 Mid-Hudson Leather Goods 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 sales or production, or both, of such firm or subdivision have decreased absolutely.

The value and quantity of sales and the quantity of production of Mid-Hudson Leather Goods increased in 1977 from 1976 and in January-April 1978 compared to the same period in 1977.

#### CONCLUSION

After careful review, I determine that workers of Mid-Hudson Leather Goods Co., Inc., Newburgh, 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 9th day of August 1978.

HARRY J. GILMAN,  
*Acting Director, Office of  
Foreign Economic Research.*

[FR Doc. 78-22889 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3576]

#### M&O SPORTSWEAR, 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-3576: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 4, 1978, in response to a worker petition received on April 19, 1978, which was filed on behalf of former workers producing boys' and girls' jackets at M&O Sportswear, Paterson, N.J.

The notice of investigation was published in the FEDERAL REGISTER on May 23, 1978 (43 FR 22087). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of M&O Sportswear, 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 threats thereof, and to the absolute decline in sales or production.

U.S. imports of men's and boys' non-tailored outer jackets increased 1 percent in 1976 compared to 1975 and increased 24 percent in 1977 compared to 1976. The ratios of imports to domestic production and consumption declined from 26.3 percent and 20.8 percent, respectively, in 1975 to 25.3 percent and 20.2 percent, respectively, in 1976 then increased to 30.8 percent and 23.6 percent, respectively, in 1977.

U.S. imports of women's, misses', and children's coats and jackets increased 48 percent in 1976 compared to 1975 and increased 21 percent in 1977 compared to 1976. The ratios of imports to domestic production and consumption increased from 38.9 percent and 28.0 percent, respectively, in 1975 to 48.3 percent and 32.6 percent, respectively, in 1976 to 54.9 percent and 35.4 percent, respectively, in 1977.

The Department's survey of the sole manufacturer for whom M&O Sportswear did contract work revealed that the manufacturer's sales were increasing and no contracting was performed by foreign sources.

#### CONCLUSION

After careful review, I determine that all workers of M&O Sportswear, 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 9th day of August 1978.

HARRY J. GILMAN,  
*Acting Director, Office of  
Foreign Economic Research.*

[FR Doc. 78-22890 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3451, 3453, 3460]

#### NATIONAL APPAREL INDUSTRIES, INC., NEW YORK, N.Y., RAINCRAFT CORP., FARMINGDALE, N.Y., AND WEATHERCRAFT CORP., NEW YORK, N.Y.

#### 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-3451, 3453 and 3460: investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigations were initiated on March 30, 1978, in response to a worker petition received on March 21, 1978, which was filed on behalf of all workers producing men's raincoats at Raincraft Corp., Farmingdale, N.Y., and its sales offices. National Apparel Industries, Inc., New York, N.Y., and Weathercraft Corp., New York, N.Y. All three firms were commonly owned and operated.

The notice of investigation was published in the FEDERAL REGISTER on April 25, 1978 (43 FR 17551). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of National Apparel Industries, Inc., Raincraft Corp., and Weathercraft Corp.; their customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. It is concluded that all of the requirements have been met.

Imports of men's and boys' outer coats and jackets, a category which includes men's raincoats, increased from 20 million units in 1975 to 22 million units in 1976 to 27 million units in 1977. The ratio of imports to domestic production increased from 28.1 percent in 1975 to 29.6 percent in 1976 to 35.3 percent in 1977.

A survey of some of the former customers of these firms indicated that a major customer had reduced purchases from these firms and increased purchases of imported men's raincoats.

#### 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



raincoats produced by National Apparel Industries, Inc., New York, N.Y., Raincraft Corp., Farmingdale, N.Y., and Weathercraft Corp., New York, N.Y., contributed importantly to the sales and production declines and to the total or partial separations of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of National Apparel Industries, Inc., New York, N.Y.; Raincraft Corp., Farmingdale, N.Y.; and Weathercraft Corp., New York, N.Y., who became totally or partially separated from employment on or after March 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 9th day of August 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.

[FR Doc. 78-22891 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3011]

#### NATIONAL STEEL PRODUCTS CO., TERRE HAUTE, 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-3011: 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 2, 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 prefabricated metal buildings at the Terre Haute, Ind., plant of National Steel Products Co.

The Notice of Investigation 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 National Steel Products Co., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met.

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

Imports of metal buildings have constituted an insignificant proportion of the domestic market in the period 1973 through 1977. Although imports increased absolutely and relatively in 1976 compared to 1975, imports declined from \$41.1 million in 1976 to \$31.3 million in 1977.

The ratio of imports to domestic production peaked in 1976 at 3.8 percent and then declined to 2.4 percent in 1977.

The United States is a net exporter of metal buildings. U.S. exports have increased absolutely in each year from 1973 through 1977 at an average annual rate of 60 percent. Exports in 1977 were over six times imports in terms of dollar value.

Furthermore, sales at the Terre Haute, Ind., plant of National Steel Products Co., increased 6 percent and 8 percent in quantity and value, respectively, in 1977 compared to 1976. Production increased 52 percent and 31 percent in quantity and value, respectively, in 1977 compared to 1976.

#### CONCLUSION

After careful review, I determine that all workers at the Terre Haute, Ind., plant of National Steel Products 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 9th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22892 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3738]

#### PHELPS DODGE MERCANTILE, INC., AJO, ARIZ.

##### 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-3738: investigation regarding certification of eligibility to apply for worker adjustment assistance prescribed in section 222 of the Act.

The investigation was initiated on May 18, 1978, in response to a worker petition received on May 2, 1978, which was filed on behalf of workers and former workers engaged in selling general merchandise to employees of the copper mines at the Ajo, Ariz., store of Phelps Dodge Mercantile Co.

The investigation revealed that the Ajo store was one of several stores operated by the subject firm in the Arizona-New Mexico area.

The Notice of Investigation was published in the FEDERAL REGISTER on June 13, 1978 (43 FR 25498). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Phelps Dodge Mercantile 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.

Phelps Dodge Mercantile is a wholly owned subsidiary of Phelps Dodge Copper Corp., an integrated mining company with headquarters in New York. The Ajo, Ariz., store of Phelps Dodge Mercantile Co. sells various commodities including clothing, food, drugs, meat produce, liquor, sporting equipment, etc. to individual consumers. The store is one of several operated by Phelps Dodge Mercantile in areas where there are operating Phelps Dodge Corp. mines.

Employees of Phelps Dodge Mercantile's Ajo store are engaged in retail sales of various products to the General public. Since the Ajo store sells consumer goods unrelated to Phelps Dodge Corp.'s mining operations it has been determined that Phelps Dodge Mercantile is not an "appropriate subdivision" of Phelps Dodge Copper Corp. within the meaning of section 222 of the Trade Act of 1974. Furthermore, the retail store of Phelps Dodge Mercantile in Ajo, Ariz., does not produce an article and the Department of Labor has previously determined that the performance of services is not included within the meaning of the term "articles" as used in section 222(3) of the Act.

#### CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that the Ajo, Ariz., store of Phelps Dodge Mercantile Co. is not an "appropriate subdivision" of Phelps Dodge Copper Corp. within the meaning of section 222 of the Trade Act of 1974. Moreover, the services provided by the Ajo store of Phelps Dodge Mercantile Co. are not articles within the meaning of section 222(3) of the Trade Act.

Signed at Washington, D.C., this 9th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22893 Filed 8-17-78; 8:45 am]



[4510-28]

[TA-W-3370]

PURITAN CO., INC., LANSDALE, 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-3370: 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 20, 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 and women's blazers at the Lansdale, Pa., plant of the Puritan Co. The Notice of Investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14776). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Puritan 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 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.

On January 28, 1976, the Department issued a certification of eligibility to apply for adjustment assistance for all workers at the Puritan Co. (TA-W-269). That certification expired on January 28, 1978.

Production of men's and women's blazers at the Puritan Co., Inc., Lansdale, Pa., increased in quantity in the first quarter of 1978 compared to the same period in 1977. The company is a contractor and therefore production equals sales.

**CONCLUSION**

After careful review I determine that all workers at The Puritan Co., Inc., Lansdale, 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 9th day of August 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.

[FR Doc. 78-22894 Filed 8-17-78; 8:45 am]

[4510-28]

[TA-W-2708]

REPUBLIC STEEL CORP., CENTRAL ALLOY DISTRICT, CANTON STEEL PLANT, CANTON, 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-2708: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on December 5, 1977, in response to a worker petition received on November 23, 1977, which was filed by the United Steelworkers of America on behalf of workers and former workers producing various steel products at the Canton Steel Plant, Canton, Ohio in the Central Alloy District of Republic Steel Corp.

The investigation revealed that alloy, carbon, and stainless steel and bar products are produced.

In a determination signed on May 25, 1976, all workers engaged in employment related to the production of stainless steel at the Canton plant were certified as eligible to apply for adjustment assistance. Impact and termination dates of March 9, 1975, and March 1, 1976, were approved. In the same determination all workers engaged in employment related to the production of alloy steel at the Canton plant were denied eligibility to apply for adjustment assistance. (See TA-W-665)

In a determination signed on August 4, 1977 all workers of the Canton plant were denied eligibility to apply for adjustment. (See TA-W-1492)

The notice of investigation was published in the FEDERAL REGISTER on December 16, 1977 (42 FR 63487). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from the officials of Republic Steel Corp., its customers, the U.S. Department of Commerce, the 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. With-

out 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 employment at the Canton plant increased in the last quarter of 1976 compared to the last quarter of 1975 and from 1976 to 1977. Employment also increased in the first five months of 1978 compared to the same period in 1976.

No reduced hours occurred.

**CONCLUSION**

After careful review I determine that all workers of the Canton Steel plant, Canton, Ohio in the Central Alloy District of Republic Steel Corp. 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 9th day of August 1978.

HARRY J. GILLMAN,  
Acting Officer, Office of  
Foreign Economic Research.

[FR Doc. 78-22895 Filed 8-17-78; 8:45 am]

[4510-28]

[TA-W-3241]

SABRE ENTERPRISES, INC., CLEVELAND, OHIO

**Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3241: 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 23, 1978, in response to a worker petition received on February 14, 1978, which was filed on behalf of workers and former workers producing special fasteners and cold-headed and roll-threaded products at Sabre Enterprises, Inc., Cleveland, Ohio.

The notice of investigation was published in the FEDERAL REGISTER on March 14, 1978 (43 FR 10650). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Sabre Enterprises, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment as-



sistance, 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.

Sabre Enterprises, Inc. produces fasteners according to its customer's specifications. U.S. imports of specialty fasteners are not separately identifiable within the Tariff Schedules of the United States (TSUS). Industry sources indicate, however, that imports of specialty items represent a negligible portion of the categories which encompass industrial fasteners. Specialty fasteners are generally produced in low-volume and require short delivery times, thus making their importation impractical.

#### CONCLUSION

After careful review of the facts obtained in the investigation, I determine that workers of Sabre Enterprises, Inc. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, S.C. this 9th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22896 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3678]

SHARLYN FASHIONS, INC., EAST NEWARK,  
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-3678: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, filed on behalf of workers and former workers producing children's dresses.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained

principally from officials of Sharlyn Fashions 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 a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated.

Employment increased in 1977 compared to 1976 and also increased in the first five months of 1978 compared to the same period in 1977.

#### CONCLUSION

After careful review, I determine that all workers of Sharlyn Fashions, East Newark, New Jersey 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 9th day of August 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.

[FR Doc. 78-22897 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3124]

SHER LISA CO., INC. (M & M SPORTSWEAR),  
KEYPORT, 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-3124: 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 13, 1978, in response to a worker petition received on January 31, 1978, which was filed on behalf of workers and former workers producing ladies' coats at Sher Lisa Co., Inc. and M & M Sportswear Co., Keypoint, N.J. The investigation revealed that the true company name is Sher Lisa Co., Inc. and that M & M Sportswear is a trading name. The investigation also revealed that women's sportswear is produced by the company.

The notice of investigation was published in the FEDERAL REGISTER on February 28, 1978 (43 FR 8207). No public hearing was requested and none was held.

The information upon which the determination was made was obtained

principally from officials of Sher Lisa Co., Inc., its customers, the National Cotton Council of America, 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 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.

The Department's investigation revealed that the average number of production workers at Sher Lisa Co., Incorporated remained stable from 1976 to 1977 and increased 36.6 percent in the first quarter of 1978 compared to the same period of 1977.

The petition indicated that layoffs occurred in January 1976. Section 223(b) (1) of the Trade Act of 1974 provides, in substance, that a certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than one year before the date of the petition. The separations which occurred in January, 1976 were more than a year prior to January 19, 1977, the earliest possible impact date that could be covered by a certification of eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

#### CONCLUSIONS

After careful review I determine that all workers at Sher Lisa Company, 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 7th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22898 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-2616]

SIMON'S OUTERWEAR, INC., LONG ISLAND  
CITY, 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-2616: investigation regarding



certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 15, 1977, in response to a worker petition received on November 7, 1977, which was filed on behalf of workers and former workers producing knitted outerwear for women at Simon's Outerwear, Inc., Long Island City, N.Y.

The notice of investigation was published in the *FEDERAL REGISTER* on January 10, 1978 (43 FR 1557). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Simon's Outerwear, Inc., its customers, the U.S. Department of Commerce, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. The investigation has revealed that all of the requirements have been met.

Approximately 60 percent of the women's outerwear produced by Simon's consists of coordinated outfits (skirts with matching blouses, shirts and/or jackets), while the remainder of production consisted of dresses and pant suits.

Imports of women's and misses' dresses increased from 645 thousand dozen in 1975 to 659 thousand dozen in 1976 and declined to 587 thousand dozen in 1977. The ratio of imports to domestic production remained at 4.5 percent in 1975 and 1976.

Imports of women's, misses' and children's skirts increased from 517 thousand dozen in 1975 to 791 thousand dozen in 1976 and declined to 654 thousand dozen in 1977. The ratio of imports to domestic production amounted to 11.2 percent in 1976 and 10.5 percent in 1977.

Imports of women's, misses' and children's blouses and shirts increased from 26,113 thousand dozen in 1975 to 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production amounted to 74.8 percent in 1976 and 69.7 percent in 1977.

Approximately 85 percent of Simon's production is geared for one clothing jobber in New York City. The clothing jobber imports women's knitted outerwear. The jobber began contracting with foreign firms late in 1976. Imports accounted for more than 25 percent of the jobber's 1977 sales. As a result of its increased import purchases, the clothing jobber reduced contracts with domestic firms in 1976 and 1977.

Declines in sales and employment occurred at Simon's throughout 1976 and during the first 9 months of 1977. The Department of Commerce approved Simon's for firm adjustment assistance in a decision dated July 18, 1978.

#### CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's apparel produced at Simon's Outerwear, Inc., Long Island City, N.Y. contributed importantly to the total or partial separation of workers at such plant. In accordance with the provisions of the Act, I make the following certification:

All workers of Simon's Outerwear, Inc., Long Island City, N.Y., who became totally or partially separated from employment on or after October 31, 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 9th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22899 Filed 8-17-78; 8:45 am]

[4510-28]

[TA-W-3630]

#### TEL AVIV FASHIONS, INC., HOBOKEN, N.J.

##### Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3630: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing ladies' coats at Tel Aviv Fashions, Inc., Hoboken N.J.

The notice of investigation was published in the *FEDERAL REGISTER* on May 26, 1978 (43 FR 22793). No hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Tel Aviv Fashions, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment as-

sistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. It is concluded that all of the requirements have been met.

U.S. imports of 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 2,723 thousand dozen in 1977. The import to domestic production ratio for women's, misses', and children's coats increased from 38.9 percent in 1975 to 48.3 percent in 1976 and to 54.9 percent in 1977.

A survey of the only manufacturer doing business with Tel Aviv Fashions, Inc., showed that this manufacturer increased purchases of imported ladies' coats from 1976 to 1977 and in the first quarter of 1978 compared to the first quarter of 1977. This same manufacturer decreased its utilization of Tel Aviv Fashions, Inc., in the latter part of 1977 and in the first quarter of 1978.

#### CONCLUSION

After careful review of the facts obtained in the investigation, it is concluded that increases of imports like or directly competitive with ladies' coats produced by Tel Aviv Fashions, Inc., Hoboken, N.J. contributed importantly to the total or partial separation of workers at that firm. In accordance with provisions of the act, I make the following certification:

All workers of Tel Aviv Fashion, Inc., Hoboken, N.J. who became totally or partially separated from employment on or after October 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 9th day of August 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.

[FR Doc. 78-22900 Filed 8-17-78; 8:45 am]

[4510-28]

[TA-W-3452]

#### THIRD STREET, LEXINGTON, KY., PLANT OF THE PARKER SEAL DIVISION OF THE PARKER HANIFIN CORP.

##### 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-3452: 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 30, 1978, in response to a worker petition received on March 21,



1978, which was filed by the United Automobile, Aerospace & Agricultural Implement Workers of America on behalf of workers and former workers producing lathe cuts at the Third Street, Lexington, Ky., plant of the Parker Seal Division of the Parker Hanifin Corp. The Department's investigation revealed that production of O-rings also took place at the Lexington plant.

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 the Parker Hanifin 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 Act must be met. The investigation has revealed that all of the requirements have been met.

Imports of O-rings and lathe cuts in absolute terms, increased from 1975 to 1976 and from 1976 to 1977.

O-ring and lathe cut production have been transferred by Parker Seal from the Lexington plant to a foreign Parker Seal manufacturing facility from which the finished products are shipped into the United States to Parker Seal's central warehouse for distribution to the domestic market.

#### CONCLUSION

After careful review of the facts obtained in the investigation I conclude that increases in imports of articles like or directly competitive with O-rings and lathe cuts produced at the Third Street, Lexington, Ky., plant of the Parker Seal division of the Parker Hanifin Corp. contributed importantly to the decrease in production and to the total or partial separations of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Third Street, Lexington, Ky., plant of the Parker Seal Division of the Parker Seal Corp. engaged in employment related to the production of O-rings and lathe cuts who became totally or partially separated from employment on or after January 1, 1978, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of August 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.

[FR Doc. 78-22901 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-2605]

#### UNION RAILROAD CO., EAST PITTSBURGH, 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-2605: 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 14, 1977, in response to a worker petition received on November 3, 1977, which was filed by the United Transportation Union on behalf of workers and former workers engaged in railroad service to the United States Steel Corp. and other industries at the Union Railroad Co., East Pittsburgh, Pa.

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 Union Railroad Co., the United States Steel 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 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.

The Union Railroad Co. (URR) is licensed and regulated by the Interstate Commerce Commission as a common carrier by rail. URR is an autonomously operated and wholly owned subsidiary of United States Steel Corp., an integrated producer of steel. In 1976 and 1977, the majority of revenue cars hauled by URR were for United States Steel Corp.

Average employment was stable in 1977 compared to 1976, and there were no partial separations from employment. There is no immediate threat of separations.

#### CONCLUSION

After careful review of the facts obtained in the investigation, I determine that all workers of the Union Railroad Co., East Pittsburgh, Pa., are denied eligibility to apply for adjust-

ment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22902 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3852]

#### WALLACE DIAMOND DRILL CO., INC., WALLACE, IDAHO

##### Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 15, 1978, in response to a worker petition received on June 15, 1978, which was filed on behalf of workers and former workers of the Wallace Diamond Drill Co., Inc., Wallace, Idaho, site of operations at the Yellowhead and Pend Oreille Mines, Metaline Falls, Wash.

Notice of investigation was published in the *FEDERAL REGISTER* on June 27, 1978 (43 FR 27922). No public hearing was requested and none was held.

During the course of the investigation, it was established that all workers were separated from employment at Wallace Diamond Drill Co. operations at the Yellowhead and Pend Oreille Mines, Metaline Falls, Wash., in May 1977. Section 223(b)(1) of the Trade Act of 1974 states that a certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than 12 months before the date of the filing under title II, chapter 2 of the Trade Act of 1974.

The filing date of the petition in this case is June 12, 1978. Since workers separated from employment at Wallace Diamond Drill Co., Inc., prior to June 12, 1977, are not eligible for program benefits under title II, chapter 2, subchapter B of the Trade Act of 1974, continuation of this investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 7th day of August 1978.

HAROLD A. BRATT,  
Acting Director, Office of  
Trade Adjustment Assistance.

[FR Doc. 78-22903 Filed 8-17-78; 8:45 am]



[4510-28]

[TA-W-3246]

**WILSON SPORTING GOODS CO., TULLAHOMA, TENN.****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-3246: 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 23, 1978, in response to a worker petition received on February 9, 1978, which was filed on behalf of former workers producing baseballs and softballs at the Tullahoma, Tenn., baseball plant of Wilson Sporting Goods Co.

The notice of investigation was published in the *FEDERAL REGISTER* on March 14, 1978 (43 FR 10650). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Wilson Sporting Goods Co., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. The investigation has revealed that all of the criteria have been met.

Imports of baseballs and softballs increased each year during the 5-year period from 1973 through 1977. Imports increased 26 percent from 22.1 million units in 1975 to 27.7 million units in 1976 and increased 9 percent to 30.3 million units in 1977. The ratio of imports to domestic production amounted to 468 percent in 1976 and 703 percent in 1977.

The Tullahoma, Tenn., plant was the only domestic baseball and softball production facility operated by Wilson Sporting Goods Co. from 1943 through 1977. A production facility in Haiti was opened by the company in 1971. As a result of a corporate decision by Wilson, baseball and softball production was gradually transferred from the Tullahoma plant to the Haiti facility. Baseball and softball production at the Tullahoma, Tenn., plant was discontinued by Wilson in December 1977. Nearly all 1978 production of baseballs and softballs by Wilson Sporting Goods Co. has been performed at the Haiti facility.

In an earlier decision, TA-W-61 (40 FR 39947), all stitchers at the Tullahoma plant separated on or after Oc-

tober 3, 1974, were certified eligible to apply for adjustment assistance. That certification expired on August 22, 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 baseballs and softballs produced at the Tullahoma, Tenn., baseball plant of Wilson Sporting Goods Co. contributed importantly to declines in sales and production and to total or partial separations of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers, except stitchers, of the Tullahoma, Tenn., baseball plant of Wilson Sporting Goods Co. who became totally or partially separated from employment on or after February 6, 1977, and before March 4, 1978, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974. All stitchers who became totally or partially separated from employment on or after August 22, 1977, and before March 4, 1978, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of August 1978.

JAMES F. TAYLOR,  
*Director, Office of Management,  
Administration, and Planning.*

[FR Doc. 78-22904 Filed 8-17-78; 8:45 am]

[4510-28]

[TA-W-3268]

**WOLLMAN INDUSTRIES, INC., HAZELTON, 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-3268: Investigation regarding certification of eligibility to apply for 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 24, 1978, which was filed on behalf of workers and former workers producing finished fabric for use in men's and women's clothing at Wollman Industries, Inc., Hazleton, Pa.

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 officials of Wollman Industries, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. 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 and production of finished fabric by Wollman in terms of quantity increased in 1977 from 1976 and in January-April 1978 compared to the same period in 1977.

**CONCLUSION**

After careful review, I determine that workers of Wollman Industries, Inc., Hazleton, 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 9th day of August 1978.

HARRY J. GILMAN,  
*Acting Director, Office of  
Foreign Economic Research.*

[FR Doc. 78-22905 Filed 8-17-78; 8:45 am]

[4510-28]

[TA-W-3579]

**ALL SEASONS, INC., PATERSON, N.J.****Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3579: Investigation regarding certification of eligibility to apply for adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats at All Seasons, Inc., Paterson, N.J.

The notice of investigation was published in the *FEDERAL REGISTER* on May 26, 1978 (43 FR 22793). No public hearing was requested.

The information upon which the determination was made was obtained principally from All Seasons, Inc., its customers (manufacturers), the U.S. Department of Commerce, U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility



requirements of section 222 of the Act must be met. The investigation has revealed that all of the requirements have been met.

U.S. imports of women's, misses', and junior's coats increased both absolutely and relatively from 1974 through 1977. Imports increased from 1,517 thousand dozen in 1975 and 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. This is an absolute increase of 79.5 percent between 1975 and 1977. The ratio of imports to domestic production also increased from 38.9 percent in 1975 and 48.3 in 1976 to 54.9 in 1977.

A survey of All Season, Inc., sole manufacturer indicated that the manufacturer's imports of ladies' coats have increased in 1977 and 1978 while its orders for such garments with All Seasons have decreased.

#### CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the ladies' coats produced at All Seasons, Inc., Paterson, N.J., contributed importantly to the decline in sales and production and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at All Seasons, Inc., Paterson, N.J., who became totally or partially separated from employment on or after October 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 9th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22867 Filed 8-17-78; 8:45 am]

[4510-28]

[TA-W-2607]

AMBERTON KNITTING MILLS, INC., JAMAICA, 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-2607: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 15, 1977, in response to a worker petition received on October 26, 1977, which was filed on behalf of former workers producing women's and misses' sportswear at Amberton Knitting Mills, Inc., Jamaica, N.Y.

The notice of investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1557). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Amberton Knitting Mills, Inc., its customers, the U.S. Department of Commerce, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. The investigation has revealed that all of the requirements have been met.

Approximately 60 percent of the women's and misses' sportswear produced by Amberton consisted of coordinated outfits (skirts with matching blouses, shirts and/or jackets), while the remainder of production consisted of dresses and pant suits.

Imports of women's and misses' dresses increased from 645 thousand dozen in 1975 to 659 thousand dozen in 1976 and declined to 587 thousand dozen in 1977. The ratio of imports to domestic production remained at 4.5 percent in 1975 and 1976.

Imports of women's, misses', and children's skirts increased from 517 thousand dozen in 1975 to 791 thousand dozen in 1976 and declined to 654 thousand dozen in 1977. The ratio of imports to domestic production amounted to 11.2 percent in 1976 and 10.5 percent in 1977.

Imports of women's, misses', and children's blouses and shirts increased from 26,113 thousand dozen in 1975 to 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production amounted to 74.8 percent in 1976 and 69.7 percent in 1977.

Amberton Knitting Mills, Inc., performed contract work exclusively for one clothing jobber in New York, N.Y. The clothing jobber imports women's knitted sportswear. The jobber began contracting with foreign firms late in 1976. Imports accounted for more than 25 percent of the jobber's 1977 sales. As a result of its increased import purchases, the clothing jobber reduced contracts with domestic firms in 1976 and 1977.

Declines in sales and employment occurred at Amberton throughout 1976 and the first quarter of 1977. Amberton Knitting Mills, Inc., closed in April 1977.

#### CONCLUSION

After careful review, I conclude that increases of imports of articles like or directly competitive with women's and

misses' sportswear produced at Amberton Knitting Mills, Inc., Jamaica, N.Y., contributed importantly to declines in sales and production and to the total or partial separations of workers at that firm. In accordance with the provisions of the Trade Act of 1974, I make the following certification:

"All workers of Amberton Knitting Mills, Inc., Jamaica, N.Y., who became totally or partially separated from employment on or after October 18, 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 9th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22868 Filed 8-17-78; 8:45 am]

[4510-28]

[TA-W-3516]

ANCHOR MOTOR FREIGHT, INC.,  
WILMINGTON, DEL.

#### Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of the TA-W-3516: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 18, 1978, in response to a worker petition received on April 6, 1978, which was filed on behalf of workers and former workers transporting cars to and from dealerships at the Wilmington, Del., facility of Anchor Motor Freight, Inc.

The notice of investigation was published in the FEDERAL REGISTER on May 2, 1978 (43 FR 18790). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Anchor Motor Freight, Inc., and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. The Department has determined that services are not "articles" within the meaning of section 222 of the Act, and that independent firms for which the subject firm provides services cannot be considered to be the "workers' firm."

Anchor Motor Freight was founded in 1964 and incorporated in Delaware. Anchor Motor Freight is a subsidiary of Leaseway Transportation Corp.



Anchor Motor Freight, Inc., is a contract carrier which transports automobiles for a single automobile producer. Anchor owns auto carrier tractors and trailers used in transporting vehicles. Facilities include office buildings, maintenance areas, and auto storage yards, which are either owned or leased.

The petitioning workers are employed at the Wilmington, Del., facility of Anchor Motor Freight. Workers at the Wilmington facility are engaged in transporting automobiles for Anchor Motor's customer and do not produce an article within the meaning of section 222(3) of the Act.

Anchor Motor Freight, Inc., and its customer have no controlling interest in each other. All workers engaged in transporting automobiles at the Wilmington, Del., facility of Anchor Motor Freight are employed by that firm. All personnel action and payroll transactions are controlled by Anchor Motor Freight. All employment benefits are provided and maintained by Anchor Motor Freight. Workers are not at anytime under employment or supervision by any customer of Anchor Motor Freight, Inc. Therefore, Anchor Motor Freight, Inc., must be considered the "workers' firm."

#### CONCLUSION

After careful review, I determine that all workers at the Wilmington, Del., facility of Anchor Motor Freight, 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 7th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22869 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3661]

#### ARVIN OUTERWEAR, INC., UNION CITY, N.J.

#### Certification regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3661; Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978 which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing ladies' coats at Arvin Outerwear, Inc., Union City, N.J.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public

hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Arvin Outerwear, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's coats and jackets increased from 1,517,000 dozen in 1975 to 2,252,000 dozen in 1976 and 2,723,000 dozen in 1977. U.S. imports declined from 590,000 dozen in the first quarter of 1977 to 572,000 dozen in the first quarter of 1978. The ratio of imported women's, misses', and children's coats and jackets to domestic production increased from 38.9 percent in 1975 to 48.3 percent and 54.9 percent, respectively, in 1976 and 1977.

A survey of Arvin Outerwear, Inc.'s sole manufacturer indicated that this manufacturer increased its imports of ladies' coats in 1977 compared to 1976 and in the first quarter of 1977 while decreasing its utilization of Arvin Outerwear, Inc., in the latter part of 1977 and the first quarter of 1978.

#### CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with ladies' coats produced by Arvin Outerwear, Inc., Union City, N.J., contributed importantly 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 Arvin Outerwear, Inc., Union City, N.J., who became totally or partially separated from employment on or after October 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 9th day of August 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.

[FR Doc. 78-22870 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3612]

#### AVANTE FASHIONS, HOBOKEN, 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-3612; Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, filed on behalf of workers and former workers producing ladies' coats.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Avante Fashions, Hoboken, N.J., 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 such firm or subdivision have decreased absolutely.

Sales increased in value in the final 7 months of 1977 compared to the same period in 1976 and also increased in the first 5 months of 1978 compared to the same period in 1977. Avante Fashions produces on order; therefore, sales and production are equal.

#### CONCLUSION

After careful review, I determine that all workers of Avante Fashions, Hoboken, 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 9th day of August 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.

[FR Doc. 78-22871 Filed 8-17-78; 8:45 am]



[4510-28]

[TA-W-2646]

**BESSEMER & LAKE ERIE RAILROAD CO.,  
PITTSBURGH, 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-2646: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 23, 1977, in response to a worker petition received on November 14, 1977, which was filed on behalf of workers and former workers transporting iron ore, coal, coke, and limestone products essential in the manufacturing of steel at Bessemer & Lake Erie Railroad Co., Greenville, Pa. The investigation revealed company headquarters are in Pittsburgh, Pa. The investigation was expanded to include all workers at all locations of Bessemer & Lake Erie Railroad Co., Pittsburgh, Pa.

The notice of investigation was published in the FEDERAL REGISTER on December 6, 1977 (42 FR 61695). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Bessemer & Lake Erie Railroad Co., United States Steel 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 Trade Act of 1974 must be met. It is concluded that all of the requirements have been met.

Bessemer & Lake Erie Railroad Co. (B & LE) is an autonomously operated, wholly-owned subsidiary of United States Steel Corp., an integrated producer of steel. B & LE is licensed and regulated by the U.S. Interstate Commerce Commission as a common carrier by railroad.

Evidence developed during the course of the investigation revealed that in 1976 and 1977 the majority of revenue cars hauled by B & LE was for U.S. Steel Corp. The Department of Labor has already certified certain workers producing specified steel products at some U.S. Steel Corp. plants served by B & LE as eligible to apply for adjustment assistance. See notices of determinations for U.S. Steel Corp.: TA-W-1431, 1436, 1439, 1444, 1562. The certified workers are producing products which account for a significant proportion of the revenue cars

carried for U.S. Steel Corp. by the B & LE in 1976.

Average employment at B & LE declined in the 11 months ending in November 1977 compared to the same period in 1976, and declined from January 1976 through November 1977 in each quarter compared to the same quarter in the previous year.

The total number of revenue cars hauled by B & LE decreased in 1976 compared to 1975, and decreased in the 11 months ending November 1977 compared to the same period in 1976. Revenue cars hauled by B & LE for U.S. Steel plants where workers have been certified decreased in 1976 compared to 1975, and decreased in 1977 compared to 1976.

**CONCLUSION**

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the specified steel products produced at U.S. Steel Corp. plants where workers have been certified eligible to apply for adjustment assistance have contributed importantly to the total or partial separations of workers of Bessemer & Lake Erie Railroad Co., Pittsburgh, Pa. In accordance with the provisions of the Act, I make the following certification.

All workers at all locations of Bessemer & Lake Erie Railroad Co., Pittsburgh, Pa. (including all workers of the Greenville, Pa. location and the Transportation Department, Butler Yard, Butler, Pa., on whose behalf the petition was filed) who became totally or partially separated from employment on or after November 7, 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 9th day of August 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.

[FR Doc. 78-22872 Filed 8-17-78; 8:45 am]

[4510-28]

[TA-W-3094]

**BETHLEHEM STEEL CORP., BUFFALO TANK  
DIVISION, BUFFALO, N.Y.****Negative Determination Regarding Application  
for Reconsideration**

On July 12, 1978, the petitioner, United Steelworkers of America, requested administrative reconsideration of the Department of Labor's negative determination regarding eligibility to apply for worker adjustment assistance. This determination was published in the FEDERAL REGISTER on June 16, 1978 (43 FR 26149).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears, on the basis of facts not previously considered, that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the certifying officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

In his application, the petitioner claims that the Buffalo Tank Division is an integral part of the Lackawanna, N.Y., plant whose workers were certified eligible to apply for trade adjustment assistance on November 8, 1977 (TA-W-2308 and 2369). The petitioner further claims that the plant operations are directed by common supervision and the sales are directed in common and that the Tank Division was physically located immediately next to the bar mill of the Lackawanna plant. Further, the petitioner claims that the steel used in the fabrication of the tanks is produced within the Lackawanna Works.

The facts of common ownership and common direction of the Lackawanna plant and the Buffalo Tank Division, namely, by Bethlehem Steel Corp., do not warrant a reversal of the denial. Nor does the close physical location of the two operations provide a basis for certification. In its investigation, the Department was aware of the common ownership and common control of the two entities.

The Buffalo Tank Division produces distinct final products, of which some 85 percent consist of tanks and pressure vessels. The fact that these products incorporate steel produced in a plant whose workers were certified eligible for trade adjustment assistance does not confer status on workers producing final products. Those workers must meet all of the eligibility requirements provided in the Trade Act of 1974. In its investigation, the Department discovered that in the 5-year period, 1973 through 1977, the ratio of imports to domestic production of the like or directly competitive articles, namely, metal tanks and vessels, was less than 1 percent each year. Furthermore, a survey of customers of the Buffalo Tank Division failed to turn up any import impact on the Buffalo Tank Division.

**CONCLUSION**

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision.



Signed at Washington, D.C., this 7th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22873 Filed 8-17-78; 8:45 am]

[4510-28]

[TA-W-3475]

BI-FLEX MARION, INC., MARION, ALA.

**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-3475: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 6, 1978, in response to a worker petition received on March 27, 1978, which was filed by the International Ladies Garment Workers Union on behalf of workers formerly producing bras and girdles at Bi-Flex Marion, Inc., Marion, Ala.

The notice of investigation was published in the FEDERAL REGISTER on April 25, 1978 (43 FR 17550). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Bi-Flex International, 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 brassieres increased from 6,921 thousand dozen in 1975 to 8,751 thousand dozen in 1976 and then increased to 9,507 thousand dozen in 1977. The import to domestic production ratio for brassieres increased from 45.2 percent in 1975 to 51.6 percent in 1976.

U.S. imports of corsets and girdles increased from 137 thousand dozen in 1975 to 231 thousand dozen in 1976 and then increased to 269 thousand dozen in 1977. The import to domestic production ratio for corsets and girdles increased from 3.3 percent in 1975 to 6.0 percent in 1976.

Imports of bras by Bi-Flex International, the parent company of Bi-Flex Marion, increased by 13.1 percent in 1977 compared to 1976. Bras are the principal product produced by Bi-Flex Marion.

Many of the customers of Bi-Flex International that were surveyed indicated either that they have increased purchases of imported bras directly from foreign sources or that they have increased purchases, from other domestic sources, of bras which had been manufactured offshore. At the same time, these customers decreased their purchases of bras from Bi-Flex, in 1977 compared to 1976 and during the first quarter of 1978 as compared to the first quarter of 1978.

**CONCLUSION**

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with bras produced by Bi-Flex Marion, Inc., Marion, Ala., 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 of Bi-Flex Marion, Inc., Marion, Ala., who became totally or partially separated from employment on or after March 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 9th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22874 Filed 8-17-78; 8:45 am]

[4510-28]

[TA-W-3681]

BI-FLEX INTERNATIONAL, INC., CARLSTADT,  
N.J.

**Certification Regarding Eligibility To Apply for  
Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3681: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies Garment Workers Union on behalf of workers and former workers engaged in the warehousing of bras and girdles at the Carlstadt, N.J., facility of Bi-Flex International, Inc.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Bi-Flex International,

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 for brassieres increased from 6,921 thousand dozen in 1975 to 8,751 thousand dozen in 1976 and then increased to 9,507 thousand dozen in 1977. The import to domestic production ratio of brassieres increased from 45.2 percent in 1975 to 51.6 percent in 1976.

U.S. imports of corsets and girdles increased from 137 thousand dozen in 1975 to 231 thousand dozen in 1976 and then increased to 269 thousand dozen in 1977. The import to domestic production ratio for corsets and girdles increased from 3.3 percent in 1975 to 6.0 percent in 1976.

Imports of bras and girdles by Bi-Flex International, the parent company of Bi-Flex Marion, increased by 13.1 percent in 1977 compared to 1976. Bras are the principal product produced by Bi-Flex Marion.

Many of the customers of Bi-Flex International that were surveyed indicated either that they have increased purchases of imported bras directly from foreign sources or that they have increased purchases, from other domestic sources, of bras which had been manufactured offshore. At the same time, these customers decreased their purchases of bras from Bi-Flex, in 1977 compared to 1976 and during the first quarter of 1978 as compared to the first quarter of 1977.

Between June 1977, when the warehouse opened and February 1978, the Carlstadt, N.J., facility handled the packaging and shipping of bras and girdles produced at Bi-Flex Marion. This integrated affiliation with the Marion, Ala., plant makes the level of employment at the Carlstadt, N.J., warehouse contingent upon production at Bi-Flex Marion. The Marion plant closed in February 1978.

**CONCLUSION**

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with bras produced by Bi-Flex Marion, Inc., Marion, Ala., contributed importantly to the separation of workers at the Carlstadt, N.J., facility of Bi-Flex International, Inc. In accordance with the provisions of the Act, I make the following certification:

All workers at the Carlstadt, N.J., facility of Bi-Flex International, Inc., who became totally or partially separated from employ-



ment on or after October 14, 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 9th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22875 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-3800]

BOYLES BROS. DRILLING CO., BERKLEY PIT  
OPERATIONS, BUTTE, MONT.

#### Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 5, 1978, in response to a worker petition received on May 23, 1978, which was filed on behalf of workers and former workers of the Boyles Bros. Drilling Co. site of operations in an around the Berkley pit near Butte, Mont.

Notice of investigation was published in the FEDERAL REGISTER on June 20, 1978 (43 FR 26498). No public hearing was requested and none was held.

During the course of the investigation, it was established that all workers were separated from employment at Boyles Bros. Drilling Co. operations in and around the Berkley pit near Butte, Mont., in June 1975. Section 223(b)(1) of the Trade Act of 1974 states that a certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than 12 months before the date of filing under title II, chapter 2 of the Trade Act of 1974.

The filing date of the petition in this case is April 27, 1978. Since workers separated from employment at Boyles Bros. Drilling Co. prior to April 27, 1977, are not eligible from program benefits under title II, chapter 2, subchapter B of the Trade Act of 1974, continuation of this investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 7th day of August 1978.

HAROLD A. BRATT,  
Acting Director, Office of  
Trade Adjustment Assistance.

[FR Doc. 78-22876 Filed 8-17-78; 8:45 am]

[TA-W-3163; et al.]

BROOKFIELD CLOTHES, INC., ET AL., LONG  
ISLAND CITY, N.Y.

#### Notice of Negative Determinations Regarding Eligibility To Apply for Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3163, TA-W-3201, TA-W-3203, TA-W-3334: Investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigations were initiated on February 21, 1978, in response to worker petitions received on February 6, 1978, which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of workers and former workers producing men's suits and sportcoats at Brookfield Clothes, Inc.; Sabel & Schaps Co.; Shop Contracting Corp.; and Herda Contracting Co., all of Long Island City, N.Y.

The Notices of Investigation were published in the FEDERAL REGISTER on March 3, 1978 (43 FR 8864). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Brookfield Clothes, Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

Previous certifications applicable to workers at Brookfield Clothes (TA-W-303), Shop Contracting (TA-W-371) and Sable & Schaps (TA-W-372) were issued on February 3, 1976. The certifications expired on February 3, 1978. A previous petition dated December 5, 1975, filed on behalf of the workers of the Herda Contracting Division resulted in a denial of eligibility to apply for adjustment assistance for those workers due to employment increases during the relevant period of consideration (TA-W-369).

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 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.

Most production workers at Brookfield, Sabel & Schaps, Shop Contracting and Herda Contracting are employed on a piecework basis.

Average employment of production workers at Brookfield Clothes in-

creased 15 percent in the first quarter of 1978 compared to the first quarter of 1977. Average wages earned by those workers increased 2 percent from 1976 to 1977 and 9 percent in the first quarter of 1978 compared to the first quarter of 1977.

Average employment of production workers at Sabel & Schaps increased 2 percent in the first quarter of 1978 compared to the first quarter of 1977. Average wages earned by those workers increased 9 percent from 1976 to 1977 and 3 percent in the first quarter of 1978 compared to the first quarter of 1977.

Average employment of workers engaged in employment related to the production of men's suit pants at Shop Contracting declined 2 percent in the first quarter of 1978 compared to the first quarter of 1977. Average wages earned by those workers increased 6 percent in the first quarter of 1978 compared to the first quarter of 1977.

Average employment of workers engaged in employment related to the production of men's vests at Shop Contracting increased 26 percent in the first quarter of 1978 compared to the first quarter of 1977.

Average employment of production workers at Herda Contracting increased 1 percent in the first quarter of 1978 compared to the first quarter of 1977. Average wages earned by those workers increased 13 percent from 1976 to 1977 and did not change in the first quarter of 1978 compared to the first quarter of 1977.

#### CONCLUSION

After careful review I determine that all workers at Brookfield Clothes, Inc., Sabel & Schaps Co., Shop Contracting Corp., and Herda Contracting Co., all of Long Island City, 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 7th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22877 Filed 8-17-78; 8:45 am]

#### [4510-28]

[TA-W-2758]

BROWN SHOE CO., ST. LOUIS, 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-2758: 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 12, 1977, in response to a worker petition received on December 5, 1977, which was filed by the Leather Goods, Plastics & Novelty Workers Union on behalf of workers and former workers producing women's shoes and children's sandals at the Jefferson Street, St. Louis, Mo., plant of the Brown Shoe Co.

The notice of investigation was published in the *FEDERAL REGISTER* on December 30, 1977 (42 FR 65306). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Brown Shoe Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of women's nonrubber footwear, except athletic, increased absolutely from 1975 to 1976, and declined 6.5 percent from 1976 to 1977. The ratios of imports to domestic production and consumption increased from 117.9 percent and 54.1 percent, respectively, in 1976 to 122.8 percent and 55.1 percent, respectively, in 1977.

Imports of children's nonrubber footwear, except athletic, increased absolutely from 1975 to 1976, and declined 14.6 percent from 1976 to 1977. The ratios of imports to domestic production and consumption increased from 75.2 percent and 42.9 percent, respectively, in 1976, to 82.3 percent and 45.2 percent, respectively, in 1977.

Production of women's shoes and children's sandals at the Jefferson Street, St. Louis, Mo., plant of the Brown Shoe Co. declined in 1977 compared to 1976. Employment declines at the plant commenced in the second quarter of 1977, both compared to the previous quarter and when compared to the same quarter of the prior year.

The decline in the plant's production and employment can be linked to the import influence in the industry in accordance with the findings of the International Trade Commission. After studying various factors alleged as important causes of injury, the Commission concluded that certain footwear articles, including women's and children's nonrubber footwear, were being imported into the United States in such increased quantities as to be a substantial cause of serious injury to domestic producers of those articles. The ratio of imports to domestic production of women's nonrubber footwear, except athletic, has been

greater than 100 percent in each of the past 5 years, reaching a peak level of 122.8 percent in 1977. In the case of children's nonrubber footwear, except athletic, the same ratio was greater than 58 percent in each of the past 5 years, reaching a high of 82.3 percent in 1977.

Additionally, Brown Shoe Co. increased its imports of women's shoes by 10 percent, quantitatively, from fiscal year 1976 to fiscal year 1977. (The company's fiscal year extends from November through October.)

#### CONCLUSION

After careful review of the facts obtained in the investigation I conclude that increases in imports of articles like or directly competitive with women's shoes and children's sandals produced at the Jefferson Street, St. Louis, Mo., plant of the Brown Shoe Co., contributed importantly to the total or partial separations of workers at the plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Jefferson Street, St. Louis, Mo., plant of the Brown Shoe Co., who became totally or partially separated from employment on or after April 2, 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 9th day of August 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-22878 Filed 8-17-78; 8:45 am]

#### [4510-30]

#### STATE OF NEW HAMPSHIRE DEPARTMENT OF EMPLOYMENT SECURITY

##### Rescheduled Hearing and Revised Rules of Procedure

On Tuesday, June 20, 1978, a notice was published in the *FEDERAL REGISTER* at volume 43, No. 119, beginning at page 26500, announcing the opportunity for a hearing for the Department of Employment Security of the State of New Hampshire pursuant to the last and first sentences of section 3304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(c)) to be held on July 13, 1978 in Washington, D.C. This notice further stated the precise issues upon which the hearing was to be held and stated that the proceedings would be in accordance with the Rules of Procedure immediately following that published notice. Consistent with those Rules of Procedure the New Hampshire Department of Employment Security requested and was granted a 14-day postponement of the hearing, to July 27, 1978. On July 26, 1978, the New Hampshire Department

of Employment Security requested that the Secretary of Labor grant a further postponement of the hearing until September 14, 1978, so that it might fully prepare its case. With the mutual understanding between the New Hampshire Department of Employment Security and the U.S. Department of Labor that the Rules of Procedure would have to be revised in order to accommodate such a postponement, and to ensure that a final decision might be made on or before October 31, 1978, the New Hampshire Department of Employment Security's request for a further postponement of the hearing until September 14, 1978 was granted.

This notice announces that the rescheduled hearing is to be held at 9:30 o'clock in the morning on September 14, 1978 in Courtroom C, Seventh floor, Vanguard Building, 1111 20th Street NW., Washington, D.C. This notice additionally announces certain revisions to the Rules of Procedure as hereinafter described. Paragraph Nos. 1, 2, 4, 6, 7, 8, 9, 10, 11, 12, and 17 of the Rules of Procedure are unchanged. Paragraph Nos. 3, 5, 13, 14, 15, 16 of the Rules of Procedure are deleted. New paragraph Nos. 3, 5, 13, 14, 15, and 16 are substituted therefor, as follows:

3. Any State employment security agency, individual worker, or employer, or any organization or association of workers, employers, or the public, having an interest in these proceedings, may be permitted by the presiding Administrative Law Judge to participate in these proceedings. Participation by any such interested person shall be limited to the presentation of oral argument as provided in paragraph 12 below and to the submittal of a brief as provided in paragraph 13(b) below. Any State employment security agency, person, organization, or association described above, may apply for permission to participate in these proceedings as an interested person, by filing in the office of the Chief Administrative Law Judge, U.S. Department of Labor, Room 720, Vanguard Building, 1111 20th Street NW., Washington, D.C. 20036, not later than one week prior to the date of the hearing, a written request setting forth the applicant's name and address and the name, address and the title or position of any person who will represent the applicant. The presiding Administrative Law Judge shall rule on all applications and inform the applicants and the parties of the rulings.

5. The parties of record shall have the opportunity to present oral and



documentary evidence, and cross-examine witnesses, except as hereinafter provided in this paragraph.

(a) In the event that the Department of Employment Security of the State of New Hampshire wishes to raise any constitutional issue(s) and/or offer evidence regarding such constitutional issue(s) as a part of this proceeding, and notwithstanding any prior Statements filed by it prior to the revision of these Rules of Procedure, it must first file with the presiding Administrative Law Judge a new written Statement which contains:

(1) A statement of each such constitutional issue which it proposes to raise; and

(2) A summary of the evidence to be offered with respect to each such constitutional issue; this summary must specify with particularity the substance and form of the evidence to be offered. More particularly: (i) if oral testimony is to be offered regarding such constitutional issue(s), the Statement must specify the name of each such witness (and qualifications, if an expert witness) and provide a summary of the testimony to be offered; and (ii) if any documentary evidence is to be offered at the hearing, the Statement must list each such document by title, summarize the relevant portion or portions thereof, and attach a copy of each such document (unless such document was previously furnished to the presiding Administrative Law Judge and the other party of record).

(b) The Statement referred to in paragraph 5(a) above must be filed on or before August 31, 1978.

(c) In the event that a Statement is filed which meets the requirements of paragraphs 5(a) and (b), and the U.S. Department of Labor wishes to offer counter evidence regarding the constitutional issue(s) identified in that Statement, and notwithstanding any prior Statements filed by it prior to the revision of these Rules of Procedure, it must first file a Reply Statement which meets the requirements of paragraph 5(a) (2).

(d) This Reply Statement must be filed not later than September 7, 1978 or within 7 days of its receipt of the Statement, whichever occurs later.

13.(a) The parties of record shall be permitted to file a prehearing brief on the matters in issue on or before September 11, 1978.

(b) The parties of record and any interested person(s) permitted to participate in these proceedings shall be permitted to file a post hearing brief on the matters in issue, together with proposed findings of fact and conclusions of law, on or before October 2, 1978.

14. The presiding Administrative Law Judge shall prepare a recommended decision containing his findings of fact and conclusions of law on or before October 16, 1978. He shall promptly certify to the Secretary of Labor his recommended decision and the entire record of the proceedings, and mail a copy of his certified and recommended decision to each party of record and to each interested party permitted to participate in the proceedings. Additionally, the presiding Administrative Law Judge shall telephone each of the parties of record to advise that a copy of the recommended decision may be picked up by the parties of record at the address stated in paragraph 3.

15. The parties of record may, within 7 days from the date upon which the recommended decision was mailed to them, file with the Secretary of Labor a Statement of Exceptions in writing setting forth any exceptions they may have to the recommended decision.

16. Following the certification to him of the recommended decision in accordance with paragraph 14 above, and the filing of the Statement(s) of Exceptions, if any, provided for by paragraph 15 above, the Secretary of Labor shall render his decision in the matter, in writing, and shall cause the parties of record and the interested parties permitted to participate in the proceedings to be notified thereof.

Signed at Washington, D.C. on August 15, 1978.

RAY MARSHALL,  
Secretary of Labor.

[FR Doc. 78-23228 Filed 8-17-78; 8:45 am]

[7590-01]

## NUCLEAR REGULATORY COMMISSION

### DEVELOPMENT OF A RADIOACTIVE WASTE DISPOSAL CLASSIFICATION SYSTEM

#### Consideration of Specialized Notice Lists

#### INTRODUCTION

The staff of the Nuclear Regulatory Commission (NRC) is developing regulations governing the management and disposal of radioactive waste. To provide a broad analytic basis for formulation of these regulations, the staff has contracted a study in which a radioactive waste classification system is being developed. The classification system is not intended to replace existing practices, criteria, or regulations relating to the generation, packaging, handling, or transport of radioactive material. Rather, it will provide licensees with guidelines regarding the ultimate disposition of waste containing

specific concentrations of individual radionuclides.

A status report on the study has been written by the NRC contractor, Ford, Bacon and Davis, Utah. To insure maximum public participation, the NRC staff has published the report, entitled "A System for Classifying Radioactive Waste Disposal—What Waste Goes Where?" (NUREG-0456, June 1978), and is soliciting public comments on the report. The staff will incorporate the comments into the further development of the classification system, the completion of the study, and the development of regulations based on the classification system.

#### BACKGROUND

In 1974, the Atomic Energy Commission (AEC) proposed to prohibit the disposal of commercially-generated transuranic (TRU) radionuclides by shallow land burial. (TRU elements are elements having atomic numbers greater than 92.) The proposed rule was an extension of AEC policies implemented in 1970, in which waste suspected of containing TRU isotopes in concentrations greater than 10 nanocuries (A nanocurie is one-billionth of a curie.) per gram was consigned to retrievable storage facilities pending the development of a facility for the ultimate disposal of the waste.

As outlined in the September 12, 1974 FEDERAL REGISTER notice (39 FR 32921), commercially-generated TRU waste would have been transferred to the AEC for storage as soon as practicable but within five years after generation. The AEC would have then assumed responsibility for storage, treatment, and disposal. Upon delivery of the waste, the AEC would have taken title to the waste and would have levied a fee on the generator of the waste to cover all cost for subsequent management.

The limit at which radioactive waste would be considered TRU was suggested, in a footnote to the notice, to be 10 nanocuries of transuranic elements per gram of waste. Waste that was suspect, but had been measured and was not contaminated with more than 10 nanocuries of transuranic nuclides per gram, would have been consigned to a licensed commercial burial ground. The 10 nanocurie per gram limit was based on an upper range of concentration of radium in the earth's crust. TRU elements were compared to radium in terms of long half life and radiotoxicity.

A draft environmental statement ("Management of Commercial High Level and Transuranium-Contaminated Radioactive Waste," WASH-1539) was also issued to fulfill requirements of the National Environmental Policy Act of 1969 (NEPA). Following the



creation of the NRC and the Energy Research and Development Administration (ERDA), ERDA withdrew the draft environmental statement and announced that the statement would be greatly expanded in scope and reissued as a generic environmental impact statement (GEIS). The GEIS is presently still in preparation and several modifications to it have been suggested in a recent Department of Energy (DOE) task force report (report of task force for review of nuclear waste management, DOE/ER-0004/D, February 1978).

#### COMMENTS ON THE PROPOSED TRU RULE

The NRC received 27 documents from the public containing comments on the proposed rule and draft environmental statement. (Copies of these comments are available for public inspection in the Commission's Public Document Room located at 1717 H Street NW., Washington, D.C. 20555.) Those that commented on the general philosophy of the rule expressed no essential disagreement. Rather, the overall concept that the Federal Government would accept title to high-level and transuranium waste and be responsible for its subsequent storage, treatment, and disposal was regarded favorably.

Issue was taken however, with some practical considerations in implementation of the rule—particularly the 10 nanocurie per gram guideline. The general opinion expressed was that the 10 nanocuries per gram limit was not justified. Approximately half of the commenters felt that the proposed rule should be supported by an economic impact analysis that showed a positive cost-benefit ratio. Fifteen commenters noted that no practicable nondestructive assay method existed for the guideline. The commenters cited the difficulty, expense, and personnel exposures in performing assays. Several commenters felt that the forms, volumes and categories of wastes subject to Federal management under the proposed rule posed significant logistical problems. A number of modifications or alternatives to the 10 nanocurie per gram guideline were also suggested, including Federal management of other long-lived radionuclides such as Iodine-129.

#### WASTE CLASSIFICATION SYSTEM

Upon review of the proposed rule and the comments received from interested parties, the NRC staff determined that the proposed rule was unworkable and initiated development of regulations which would govern the disposal of all radioactive waste—not just TRU-contaminated waste.

The staff initiated a study to provide a broad analytic base for a waste dis-

posal classification system, providing a foundation for the forthcoming regulations and accompanying environmental impact statements.

As stated in the status report, the objectives of the classification system are the following: To classify radioactive wastes according to their requirement for safe disposal; to address the concerns of the public; to implement the system without undue burden on those directly affected by it.

The staff concluded on the basis of a previous portion of the study that the objectives could be best realized by categorizing waste according to the type and duration of containment required for safe disposal.

Three categories are investigated:

1. *Class A Waste*, which due to high or persistent and significant radiotoxicity, requires isolation in a repository or other disposal facility providing a high degree of containment.

*Class B Waste*, Which is acceptable for disposal in near-surface facilities such as shallow land burial facilities.

*Class C Waste*, Which has such low levels of radioactivity that it can be disposed of in a similar manner to non-radioactive trash.

The classification system then provides a systematic methodology for defining and quantifying the radioactivity concentration interfaces between the categories. Limiting (maximum) concentrations of class B waste form the interface between class A and class B waste. Similarly, limiting concentrations of class C waste form the interface between Class B and class C waste.

The interfaces are determined by modeling (1), a reference containment facility (RCF) utilized for the disposal of class B waste, and (2), a reference sanitary landfill facility (RSLF) utilized for the disposal of class C waste. Parameters describing the RCF are based upon consideration of the characteristics of existing shallow land burial facilities; parameters describing the RSLF are based on a model municipal sanitary landfill. Potential exposures from radioactive waste disposed of in the reference facilities are then assumed to occur either from the waste migrating off-site into man's environment or from individuals (reclaimers) encountering the radioactive waste. Reclamation events are assumed to occur after administrative control of the disposal facility is relinquished, assumed to be a few hundred years for facilities licensed for disposal of class B waste and immediately after disposal of class C waste.

The migration pathways considered in the study include: Atmospheric transport to individuals via continuous (operational) or accidental releases; ground water migration to a well providing water for consumption by indi-

viduals; ground water migration to a waterway; surface erosion to a waterway.

The assumed reclaimer exposure mechanisms include: inhalation of dust by a reclaimer digging in the waste, or by residents on the reclaimed site; ingestion of water from a well dug by a reclaimer; consumption by a reclaimer of food grown in contaminated soil; direct exposure to workers or residents from gamma radiation.

Several scenarios by which individuals or populations may be exposed to radiation are proposed and potential exposures compared to a set of reasonable dose guidelines. Waste management criteria and standards for use as guidelines are currently under development by the Environmental Protection Agency (EPA), but these criteria are not yet available. Rather than delay the study and development of the waste disposal classification system, the following general guidelines were used: 500 mrem per year to a few individuals (tens of individuals); 100 mrem per year to many individuals (hundreds of individuals); 1 mrem per year to many individuals resulting from disposal of radioactive waste produced during the generation of one GWe-year of electricity.

As stated in the report, the guidelines were derived for purposes of the study from consideration of recommendations by the International Commission on Radiological Protection (ICRP) and from insights gained during the course of the study. Dose limitations apply to either the whole body or critical organs depending on the most restrictive case per individual radionuclide. Population dose commitments are also considered.

Based on the guidelines, the allowable radionuclide concentrations are calculated for each scenario for each reference facility. For each radionuclide and facility, the most restrictive scenario determines the maximum allowable concentration (MAC) suitable for disposal. Mixtures of isotopes are accounted for in the methodology, as well as the effects of the ingrowth of radioactive daughter products. (Potential multiple pathway exposures are also under investigation.)

The value \$1,000 per man-rem was used as an "as low as reasonably achievable" (ALARA) guideline for cost-benefit analysis purposes. It was noted that for proper application of this guideline, all positive and negative impacts as well as the timing and rate of occurrence of the impacts should be considered. As explained in the report, this was not always possible in the scope of the study and the guideline was used with caution. With some exceptions, however, the application of this guideline was not the most restrictive factor in matching the disposal



methods with the concentration interfaces.

It is important to emphasize that the NRC is not now promulgating either the study guidelines or the interface concentrations for rulemaking. The guidelines are applied with the waste classification methodology in order to estimate potential exposures that could occur if a particular series of events took place. The methodology and guidelines are not used to predict actual exposures resulting from disposal of radioactive waste.

For one example isotope, plutonium-239, the preliminary interface concentration between class B and class A waste is calculated to be 100 nanocuries per cubic centimeter of waste, based upon an individual receiving a postulated dose to bone of 500 mrem per year during reclamation activities at the RCF. The class A/class B interface concentration for another example isotope, cesium-135, is limited by a postulated reclaimer receiving a hypothetical dose to bone 500 mrem per year from ingestion of contaminated food produced on the RCF site. In this case, the interface concentration is calculated to be 0.19 microcuries per cubic centimeter of waste.

The example interface concentrations are limits for the average concentrations of the particular isotopes buried at the reference facility. The maximum concentrations in an individual waste container could be a factor of 10 higher (i.e., 1 and 1.9 microcuries, respectively, per cubic centimeter of waste). Reclamation events for the above calculations were also assumed to occur after the site was released for completely unrestricted use—a time 150 years after waste emplacement in the RCF during which most of the short-lived radioisotopes will have decayed. In reality, it may be unlikely that institutional controls would be relaxed to the point that such exposures would actually occur. (For example, it is possible that the surface of a facility used for the disposal of class B waste could be opened for public use but restrictions would be still imposed on excavations.)

To investigate the versatility and usefulness of the radioactive waste classification system, the methodology is applied, with some adaptations, to some specific waste types and situations. The methodology is applied to decommissioning waste from nuclear power reactors and fuel reprocessing plants, and also to fuel element hulls. Specific materials such as mill tailings and coal ash containing low concentrations of radioactivity are also analyzed using the classification methodology. Next, two specific sites are analyzed. One site is an existing low-level waste, shallow land burial facility near Maxey Flats, Ky., and the other site is

a uranium ore residue processing facility in Hazelwood, Mo. Other applications of the methodology are also planned.

#### REQUEST FOR PUBLIC COMMENT

It is again emphasized that the NRC is not presently promulgating interface concentrations for rulemaking; but rather is developing a tool to be applied across the broad spectrum of waste types and radioactivity levels. The calculated interface concentrations are intended to be reasonable limits obtained by utilizing specific guidelines. If different guidelines are ultimately established, however, the concentration interfaces may be recalculated. In addition, further refinements in the methodology may also subject the limits to change.

The development of the waste classification methodology has been assisted by comments and suggestions from various government agencies such as DOE, EPA, and the U.S. Geological Survey (USGS), as well as the Advisory Committee on Reactor Safeguards (ACRS). Under the auspices of the contractor, discussions have been held with an independent advisory panel versed in the technical aspects of waste disposal.

The NRC staff is also incorporating public comments into the further development of the methodology and the completion of the study. For this reason, the results of the study at its current status are being published at this time. A document describing the classification system and applications, entitled "A System for Classifying Radioactive Waste Disposal—What Waste Goes Where?" (NUREG-0456, June 1978) has been published. This contractor's status report should be regarded as a solicitation of comments on a study in progress rather than a solicitation for comments on a final report being considered by the NRC staff. Comments are specifically requested in the following areas: The overall approach; the migration pathways and exposure mechanisms; the exposure guidelines; and applications of the methodology.

Comments should be mailed no later than October 17, 1978, to the Assistant Director for Waste Management, Mail Stop SS-396, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

A copy of the report is available for public inspection at the Commission's Public Document Room located at 1717 H Street NW., Washington, D.C. 20555. (Copies of public comments received by the Commission will also be placed in the public document room as the comments are received.) In addition, single copies of the report may be obtained to the extent of supply by writing the Division of Technical Information and Document Control, U.S.

Nuclear Regulatory Commission, Washington, D.C. 20555. Copies are also available for purchase through the National Technical Information Service, Springfield, Va. 22161.

#### CONSIDERATION OF SPECIALIZED NOTICE LISTS

The NRC has published and will continue to publish numerous documents (identified by title and a "NUREG" number—e.g., NUREG-.....) relating to the regulation and management of radioactive waste. Such documents cover a broad spectrum of subjects and individual interests. The NRC staff is considering announcing the availability of these documents by means of specialized notice lists. Such lists would: (1) insure that all persons and organizations who are interested in radioactive waste management are aware of the general availability of pertinent documents, (2) avoid inundating individuals with material in which they are not interested, and (3) avoid unnecessary costs of printing and distribution.

The following general subject areas are presently proposed for the notice lists:

- A. High-level waste (HLW) management:
  - A1. Regulatory programs (general—all HLW documents).
  - A2. Siting.
  - A3. Facility design.
  - A4. Facility operation.
  - A5. Facility monitoring.
  - A6. Waste treatment/solidification, characteristics, and properties.
  - A7. Documents relating to specific actual or proposed HLW facilities (please specify which facility).
- B. Low-level waste (LLW) management:
  - B1. Regulatory programs (general—all LLW documents).
  - B2. Siting.
  - B3. Facility design.
  - B4. Facility operations.
  - B5. Facility monitoring.
  - B6. Facility decommissioning, funding, and long-term care.
  - B7. Documents relating to specific actual or proposed LLW facilities (please specify which facilities).
  - B8. Waste treatment/solidification, characteristics, and properties.
- C. Waste volume projections.
- D. Decontamination and decommissioning of fuel cycle facilities.
- E. Uranium mill tailings.
- F. Radioactive gases.
- G. Waste classification.
- H. General waste management goals or policy.
- I. Other areas (please specify).

If you wish to be placed on any of these notice lists that may be developed by the NRC, please notify by writing to Louise Dressen, Mail Stop SS-426, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, by October 17, 1978. The request should include your name, affiliation, address, and the code(s) of the subject areas for which you wish to receive notice.



Dated at Silver Spring, Md., this 4th day of August 1978.

KITTY S. DRAGONETTE,  
Acting Chief, Low-Level Waste  
Branch, Division of Fuel Cycle  
and Material Safety.

[FR Doc. 78-22964 Filed 8-17-78; 8:45 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 August 11, 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

##### FEDERAL ACQUISITION INSTITUTE

Opinion Survey Contract Manager Future, single-time, 25 individual contract managers, Caywood, D. P., 395-3443.

##### DEPARTMENT OF AGRICULTURE

Economics, Statistics, and Cooperatives Service, Craft Guideline Survey, single-time, 24 craft cooperatives, Office of Federal Statistical Policy and Standard, 673-7956.

A Study of Profiles of Emerging Cooperatives in the South, single-time, 200 southern cooperatives, Clearance Office, 395-3772

##### U.S. INTERNATIONAL TRADE COMMISSION

Producers' Questionnaire: Importers' Questionnaire—Nuts, Bolts, and Screws, single-time, 70 producers and importers of bolts, nuts, and large screws, Kincannon, C. Louis, 395-3211.

##### DEPARTMENT OF AGRICULTURE

Forest Service, Wood-Destroying Beetle Survey, single-time, 1,895 member firms of association promoting hardwood products, Caywood, D. P., 395-3443.

##### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service, 1978-79 National Natality and Fatal Mortality Surveys, single-time, 2,300 mothers, physicians, and association, with live birth and fetal death, Office of Federal Statistical Policy and Standard, 673-7956.

##### DEPARTMENT OF TREASURY

Assistant Secretary (Economic Policy), Financial Liabilities to, and Claims on Unaffiliated Foreigners, CQ-1, 1A, 2, and 2A, quarterly, 3,200 U.S. nonbanking enterprises, Office of Federal Statistical Policy and Standard, 673-7956.

Dollar Deposit and Certificate of Deposit Claims on Banks Abroad, IC-M, monthly, 900 U.S. nonbanking enterprises, Office of Federal Statistical Policy and Standard, 673-7956.

#### REVISIONS

##### DEPARTMENT OF COMMERCE

Bureau of Census, Annual Survey of Manufactures, MA-100, MA-100S, annually, sample of manufacturing establishments, 70,000 responses, 280,000 hours, Office of Federal Statistical Policy and Standard, 673-7956.

##### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration, Request to Establish Eligibility in the Medicare and/or Medicaid Programs to Provide Outpatient Physical Therapy Service, HCFA-1856, annually, clinics, rehabilitation agencies and public health agencies for above, 200 responses, 20 hours, Richard Elsinger, 395-3214.

##### DEPARTMENT OF COMMERCE

Economic Development Administration, Public Works Application and Public Works Preapplication, ED-101A and 101P, on occasion, State and local governments, 800 responses, 46,200 hours, Budget Review Division, 395-4775.

#### EXTENSIONS

##### DEPARTMENT OF COMMERCE

Bureau of Census, Softwood Plywood—Production and Selected Material Consumption Report, MA-24H, annually, plywood manufacturers, 177 responses, 177 hours, Office of Federal Statistical Policy and Standard, 673-7956.

Lumber Production and Stocks, MA-24T, annually, sawmills, 2,500 responses, 1,250 hours, Office of Federal Statistical Policy and Standard, 673-7956.

##### DEPARTMENT OF THE INTERIOR

Bureau of Mines, Tungsten Concentrate and Tungsten Products, 6-1142-M, monthly, producers and consumers of tungsten,

444 responses, 888 hours, Office of Federal Statistical Policy and Standard, 673-7956.

DAVID R. LEUTHOLD,  
Budget and Management Officer.  
[FR Doc. 78-23264 Filed 8-17-78; 8:45 am]

# [3110-01]

## CLEARANCE OF REPORTS

### List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on August 14, 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 COMMERCE

Bureau of Census, Prelist Address Register—1980 Decennial Census, D-101A and D-101B, single time, 900,000 households not covered by commercial list, Office of Federal Statistical Policy and Standard, 673-7956.

Address Listing Page for Special Place Prelist—1980, Decennial Census, D-105A, single time, 30,000 households on special places, Office of Federal Statistical Policy and Standard, 673-7956.

##### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration, High-Yield Criteria Form, other (see SF-83), emergency service physicians in at least four hospitals, Office of Federal Statistical Policy and Standard, 673-7956.

National Institutes of Health, National Survey of Public Attitudes, Knowledge and Practices Related to Breast Cancer, single time, samples of women/spouses in general population, Office of Federal Statistical Policy and Standard, 673-7956.

Public Health Service, An Evaluation of the Potential Use of Multiplicity on Research on Population Movement, single time, households in Rhode Island, Office of



Federal Statistical Policy and Standard, 673-7956.

#### DEPARTMENT OF LABOR

Labor Management and Service Administration, Survey Instrument to Study Multi-Employer Pension Plans, LMSA 88T, single time, 200 administration of private multi-employer pension plans, Strasser, A., 395-6132.

#### EXTENSIONS

#### DEPARTMENT OF COMMERCE

Bureau of Census, Rubber—Annual Report on Receipts, Production, Consumption, Shipments, and Stocks, MA-30A, annually, rubber and rubber product manufacturers and dealers, 375 responses, 188 hours, Office of Federal Statistical Policy and Standard, 673-7956.

#### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration, Request for Claim Number Verification, SSA-1600 U3, on occasion, carr./intermed. who need to verify a Medicare claim number, 400,000 responses, 32,000 hours, Reese, B. F., 395-3211. Annual Report of Earnings, SSA 777, annually, beneficiaries who had benefits suspended because of work activity in prior year, 1,000,000 responses, 250,000 hours, Human Resources Division, 395-3532.

DAVID R. LEUTHOLD,  
Budget and Management  
Officer.

[FR Doc. 78-23265 Filed 8-17-78; 8:45 am]

#### [7115-01]

#### POSTAL RATE COMMISSION

#### POSTAL SERVICE PROPOSED REGULATION

#### Technical Comments

AUGUST 14, 1978.

Notice is hereby given that the undersigned, at the direction of the Chairman of the Postal Rate Commission, today transmitted to the U.S. Postal Service certain technical comments prepared by the Commission's advisory technical staff. These comments consist of technical analysis of a draft regulation concerning bulk rate third-class mail pieces which bear attachments; the Postal Service published its proposal of the draft regulation on July 17, 1978.<sup>1</sup> The comments transmitted to the Postal Service do not relate to any currently docketed proceeding before the Postal Rate Commission, do not constitute the official opinion of the Commission, and do not necessarily reflect the views of the Chairman or any other Commissioner.

In accordance with the Commission's rules, copies of the transmitted technical comments will be made available for public inspection in the

Commission's reading room during regular business hours.

By direction of the Chairman.

DAVID F. HARRIS,  
Secretary.

[FR Doc. 78-23198 Filed 8-17-78; 8:45 am]

#### [8010-01]

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15054; File No. SR-Amex-78-16]

#### AMERICAN 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. 94-29, 16 (June 4, 1975), notice is hereby given that on August 2, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission, a proposed rule change as follows:

#### STATEMENT OF TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The American Stock Exchange, Inc. ("Amex") proposes to amend exchange rule 950(b), the text of the proposed amendment is set forth below (*italics indicate new language*).

#### RULE 950. (b) RULES OF GENERAL APPLICABILITY

*Rule 950. (b) The provisions of rule 111 and the commentary thereto, with the exception of paragraphs (b) and (c) of such rule and the commentary insofar as it relates to such paragraphs, shall apply to exchange option transactions.*

*In addition, the following commentary shall also apply to an order in a class of options also traded on another exchange which is placed for an account in which a market maker in options registered as such on such other exchange has an interest (a "covered account"):*

#### Commentary

*.01 No member or member organization shall place, or permit to be placed, an order on the exchange which establishes or increases a position in a class of options for a covered account (other than an order specified by paragraph .02 of this commentary) unless such order yields priority and parity to all other off-floor orders.*

*.02 No member or member organization shall place, or permit to be placed, an order which establishes or increases a position in a series of options with a specialist on the exchange for a covered account without so identifying that order to the specialist.*

*Such order shall be deemed to be an on-floor order for the account of a registered trader until the intervention of two trades in the same series of options: Provided, however, That the provisions of paragraphs (a), (b), (c), and (e) of rule 111 shall not apply to that order.*

#### STATEMENT OF BASIS AND PURPOSE

The purpose of the proposed amendment is to provide similar treatment for the execution of option orders placed on the Amex by option market-makers in their professional capacity regardless of the exchange on which they are located. The amendment would eliminate the current disparity whereby certain orders initiated on the exchange by Amex market-makers are subject to restrictions which do not apply to such orders entered by market-makers registered on other exchanges when dealing on the exchange in dually listed options.

Under the present rules, in establishing or increasing a position for accounts in which they have an interest, Amex market-makers must yield to all orders originating from off the floor, even if such off-floor orders are those of market-makers registered on other exchanges. In addition, if an Amex market-maker chooses to place such an order on the limit order book, it does not take position on the book until the intervention of two trades; while an order originating from off-floor (even that of a nonmember market-maker), would take an immediate position on the limit order book.

Under current rules, it is possible for an order entered on the Amex for the account of an option market-maker from another exchange to have priority over (i) a previously entered order by an Amex market-maker and (ii) subsequently entered orders of public customers or other non-market-makers, thus, placing the Amex market at a competitive disadvantage with a competing market in those options.

The basis for the proposed amendment to rule 950(b) is authorized by section 6(b) of the Act and the exchange believes that such amendment will serve to promote just and equitable principles of trade and to protect investors.

No written comments were solicited or received.

The Amex has determined that the proposed amendment will not impose any burden on competition; rather, it will eliminate a competitive disadvantage to the Amex marketplace.

On or before September 22, 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

<sup>1</sup>See 43 FR 30579-80 (July 17, 1978).



self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change; or

(b) Initiate proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written date, 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 at 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 September 8, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

SHIRLEY E. HOLLIS,  
Assistant Secretary.

AUGUST 10, 1978.

[FR Doc. 78-23149 Filed 8-17-78; 8:45 am]

[8010-01]

[Release No. 34-15063; File No. SR-CBOE-1978-241]

#### CHICAGO BOARD OPTIONS 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. 94-29, 16 (June 4, 1975), notice is hereby given that on August 3, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

#### EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

##### Rule 17.2. Complaint and Investigation.

(a) No change.

(b) *Conduct of investigation.* No member or person associated with a member shall impede or delay an exchange investigation respecting possible violations within the disciplinary jurisdiction of the exchange nor refuse to furnish testimony, documentary materials or other information requested by the exchange during the course of its investigation. A member

or person associated with a member is entitled to be represented by counsel during any exchange investigation.

[(b)] (c) Report. In every instance where [an investigation has been instituted as a result of a complaint received by the exchange, and in every other instance in which] an investigation results in a finding that there are reasonable grounds to believe that a violation has been committed, the exchange staff shall submit a written report of its investigation to the Business Conduct Committee.

##### Rule 17.3. Charges.

(a) Determination not to initiate charges. Whenever it shall appear to the Business Conduct Committee from the report of the staff of the exchange that no probably cause exists for finding a violation within the disciplinary jurisdiction of the exchange, or whenever the Business Conduct Committee otherwise determines that no further [proceedings are] action is warranted, it shall issue to the Board a written statement to that effect setting forth its reasons for such a finding. A [copy of the] similar statement shall be sent to any member who is the subject of the report and to the complainant, if any.

(b) No change.

##### Rule 17.5. Hearing.

(a) No change.

(b) Notice and list of documents. Parties shall be given at least 15 days' notice of the time and place of the hearing and a statement of the matters to be considered therein. [All documentary evidence intended to be presented in the hearing by the respondent, the exchange, or any other party must be received by the panel at least 8 days in advance of the hearing or it may not be presented in the hearing. The parties shall furnish each other with a list of all documents submitted for the record not less than 4 days in advance of the hearing, and the documents themselves shall be made available to the parties for inspection and copying.] *Not less than 8 days in advance of the scheduled hearing date, each party shall furnish to the Panel and to the other parties copies of all documentary evidence such party intends to present at the hearing. Where time and the nature of the proceeding permit, the parties shall meet in a prehearing conference for the purpose of clarifying and simplifying issues and otherwise expediting the proceeding. At such prehearing conference, the parties shall attempt to reach agreement respecting the authenticity and contents of documents, facts and issues not in dispute, and any other items which will serve to expedite the hearing of the matter.*

(c) Conduct of hearing. The Panel shall determine all questions concerning the admissibility of evidence and

shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by a representative of the exchange who, along with respondent and any other party, may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the Panel and the other parties. *The Panel may request the production of documentary evidence and witnesses.* The respondent and intervening parties are entitled to be represented by counsel who may participate fully in the hearing. A transcript of the hearing shall be made and shall become part of the record.

##### Rule 17.9. Review.

(a) Petition. The respondent shall have [10] 15 days after service of notice of a decision made pursuant to rule 17.8 of this chapter to petition for review thereof. Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with reasons for such exceptions. Any objections to a decision not specified by written exception shall be considered to have been abandoned.

(b) Conduct of review. The review shall be conducted by the Board or a committee of the Board composed of at least three Directors. Unless the Board shall decide to open the record for the introduction of evidence or to hear argument, such review shall be based solely upon the record and the written exceptions filed by the parties. *Based upon such review, the Board may affirm, reverse or modify, in whole or in part, the decision of the Business Conduct Committee. Such modification may include an increase or decrease of the sanction.* The decision of the Board shall be in writing and shall be final.

(c) No change.

##### Rule 17.10. Judgment and penalty.

(a) No change.

(b) Effective date of judgment. Penalties imposed under this chapter shall not become effective until the exchange review process is completed or the decision otherwise becomes final. Pending effectiveness of a decision imposing a penalty on the respondent, the Business Conduct Committee may impose such conditions and restrictions on the activities of the respondent as the Committee considers reasonably necessary for the protection of investors and the exchange.

##### Rule 17.11. Miscellaneous provisions.

(a) Service of notice. Any charges, notices, or other documents may be served upon the respondent either personally or by leaving the same at his place of business or by deposit in the U.S. post office, postage prepaid via registered or certified mail addressed to the respondent at his [last known



place of business] address as it appears on the books and records of the exchange.

(b) No change.

#### EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The purposes of the proposed revisions in this rules change are as follows:

**Rule 17.2.** Proposed new paragraph 17.2(b) makes explicit the obligation of all exchange members to cooperate in all exchange investigations involving possible rules violations and codifies something now observed in practice, the right to be represented by counsel during an exchange investigation.

The proposed revision of rule 17.2 also includes a deletion of language from old section 17.2(b) so that the exchange staff need only provide reports to the Business Conduct Committee respecting complaints which give reasonable grounds to believe a violation has been committed. This change will free the exchange staff of the obligation to submit to the Committee formal reports on complaints which do not appear to involve violative activity and will permit the Committee to concentrate its attention on matters which the staff believes may involve violative activity.

**Rule 17.3.** The proposed revision to rule 17.3 would make clear that the Board of Directors should be advised whenever the Business Conduct Committee, upon consideration of a report by the staff, determines not to initiate charges. The proposed revision to rule 17.3 also provides that a determination not to initiate charges must be communicated to the subject of the investigation as well as the complainant. The exchange believes that a member or person associated with a member who has been the subject of an investigation is entitled to advice that an investigation has been concluded and that such advice will not hamper the exchange's regulatory capability.

**Rule 17.5.** The proposed change to rule 17.5(b) is intended to facilitate the hearing of disciplinary matters by requiring the parties to exchange documents and witness lists well in advance of the hearing date and to attempt to arrive at agreement on uncontested issues in advance of the hearing.

The proposed change to rule 17.5(c) explicitly provides that the Committee may call for the production of witnesses and evidence.

**Rule 17.9.** The proposed change to rule 17.9(b) spells out the power of the Board of Directors upon review of a disciplinary matter. By making explicit what is now implicit—the power of the Board to increase a sanction—the proposed revision will put respondents

on notice of the possibility that the sanction may be increased if a matter is reviewed by the Board.

**Rule 17.10.** This change is intended to make explicit that sanctions imposed by the Business Conduct Committee will ordinarily be deemed to be effective after Board review, notwithstanding further appeal to the Commission.

**Rule 17.11.** This change is designed to make the provision of notice for disciplinary matters accord more nearly with article X of the exchange constitution.

The bases under the act for the proposed rule change sections 6(b)(1), 6(b)(5), 6(b)(6), 6(b)(7), and 6(d)(1) in that the proposed change is designed to enhance the ability of the exchange to enforce compliance with its rules and to provide a fair procedure for the appropriate disciplining of its members and persons associated with members.

Comments were neither solicited nor received regarding this proposed rule change.

The exchange does not believe this proposed rule change will burden competition.

On or before September 22, 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, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and 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 September 8, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

SHIRLEY E. HOLLIS,  
Assistant Secretary.

AUGUST 14, 1978.

[FR Doc. 78-23150 Filed 8-17-78; 8:45 am]

[8010-01]

[Rel. No. 10356; 812-4333]

#### BANKERS SECURITY VARIABLE ANNUITY FUND A, ET AL.

Filing of Application for Amendment to Order of the Act for Approval of Offers of Exchange, and for Amendment to Order of Exemption

AUGUST 10, 1978.

Notice is hereby given that Bankers Security Life Insurance Society ("Bankers Security"), a New York stock life insurance company; Bankers Security Variable Annuity Fund A ("Separate Account A"), Bankers Security Variable Annuity Fund B ("Separate Account B"), Bankers Security Variable Annuity Fund C ("Separate Account C"), a unit investment trust registered under the Investment Company Act of 1940 (the "Act"); Bankers Security Variable Annuity Fund D ("Separate Account D"), Bankers Security Variable Annuity Fund E ("Separate Account E"), Bankers Security Variable Annuity Fund F ("Separate Account F"), Bankers Security Variable Annuity Fund G ("Separate Account G"), and Bankers Security Variable Annuity Fund H ("Separate Account H"), 1701 Pennsylvania Avenue, NW., Washington, D.C. 20006, a unit investment trust registered under the Act, Oppenheimer Fund, Inc., Oppenheimer A.I.M. Fund, Inc., Oppenheimer Income Fund of Boston, Inc., Oppenheimer Tax-Free Bond Fund, Inc., Oppenheimer Monetary Bridge, Inc., Oppenheimer Time Fund, Inc., Oppenheimer Special Fund, Inc., Oppenheimer Option Income Fund, Inc., and Oppenheimer High Yield Fund, Inc., diversified open-end investment companies registered under the Act; and Oppenheimer Systematic Capital Accumulation Program ("OSCAP"), Oppenheimer Time Fund Capital Accumulation Program ("TIMECAP") and Oppenheimer Capital Accumulation Program of Shares of A.I.M. Fund, Inc. ("AIMCAP"), unit investment trusts registered under the Act (hereinafter collectively referred to as "Applicants"), One New York Plaza, New York, N.Y. 10004 filed an application on July 14, 1978, and an amendment thereto on August 3, 1978, pursuant to section 11 of the Act for an amended order approving certain offers of exchange, and pursuant to section 6(c) of the Act for an amended order of ex-



emption from section 27(a)(3) and Rule 27a-2 thereunder, sections 27(d), 27(e), 27(f), and Rules 27e-1 and 27f-1 thereunder, section 26(a) and section 27(c)(2). All interested persons are referred to the Application on file with the Commission for a statement of the representations therein which are summarized below.

Previously, by application dated October 3, 1975, and amendments thereto, the Applicants, with the exception of Separate Accounts G and H, the Oppenheimer Option Income Fund, Inc., the Oppenheimer Tax-Free Bond Fund, Inc., and the Oppenheimer High Yield Fund, Inc. applied for an order approving the certain offers of exchange described in the application and for exemptions from the above-named sections and Rules. On February 17, 1976, a Notice was issued of the filing of said application (Investment Company Act Release No. 9160) and an Order was issued on March 19, 1976, granting the relief requested in the application (Investment Company Act Release No. 9212).

By Application dated August 22, 1977, and an amendment thereto, Separate Account G, the Oppenheimer Option Income Fund, Inc. and the Oppenheimer Tax-Free Bond Fund, Inc. applied to be added as participants in the offers of exchange in order that those Applicants could receive the benefits of exemptions previously granted to the other described Applicants. No additional relief was requested. On September 28, 1977, a Notice was issued of the filing (Investment Company Act Release No. 9949) and an Amended Order was issued on October 31, 1977, granting the relief requested in the application (Investment Company Act Release No. 9979).

The purpose of this application is to amend the aforementioned Orders solely to add Separate Account H and the Oppenheimer High Yield Fund, Inc. As participants in the offers of exchange in order that these new Applicants may receive the benefits of exemptions previously granted to the other described Applicants.

There is no additional relief requested although in connection with transfers of less than \$25,000 from the Oppenheimer High Yield Fund, Inc. to Separate Account H, a reduced sales charge will be imposed. Separate Account H was established by Bankers Security Life Insurance Society on July 7, 1978, and is included in the unit investment trust which now consists of Separate Accounts D, E, F, and G. The assets of Separate Account H are to be invested at net asset value in shares of the Oppenheimer High Yield Fund, Inc. (the "Fund").

Shares of the Fund which have been issued for not less than 6 months and shares of the fund acquired through

reinvestment of dividends and distributions on such Fund shares may be exchanged at net asset value (without a sales charge) for shares of any of the funds in the Oppenheimer Group.

The Oppenheimer Group consists of the following funds:

Oppenheimer Fund, Inc., Oppenheimer A.I.M. Fund, Inc., Oppenheimer Income Fund of Boston, Inc., Oppenheimer Tax-Free Bond Fund, Inc., Oppenheimer Monetary Bridge, Inc., Oppenheimer Time Fund, Inc., Oppenheimer Special Fund, Inc., Oppenheimer Option Income Fund, Inc., Hamilton Funds, Inc., Hamilton Growth Fund, Inc., and Hamilton Income Fund, Inc. Six months after the commencement of the continuous offering of shares of the Fund, shares of each fund in the Oppenheimer Group, other than shares of Oppenheimer Monetary Bridge, Inc., Oppenheimer Tax-Free Bond Fund, Inc. and Hamilton Income Fund, Inc., which were purchased at net asset value other than by share exchange value may be exchanged for shares of the fund on the same basis.

A fee of \$5 is charged for handling each exchange.

#### SECTION 11

Section 11(a) makes it unlawful for any registered open-end investment company or principal underwriter therefor to make an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) of the Act provides that, irrespective of the basis of exchange, the provisions of subsection (a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

Applicants propose to amend the Orders set forth in Release 9212 and Release 9979 by offering certain additional exchange privileges as follows:

(1) *First Exchange Right.* After the Fund commences a continuous offering of its shares, Bankers Security and Separate Account H propose to offer participations in Separate Account H through non-qualified, immediate or deferred individual single payment variable annuity contracts to (i) all shareholders of Oppenheimer High Yield Fund, Inc., Oppenheimer Option Income Fund, Inc., Oppenheimer Fund, Inc., Oppenheimer A.I.M. Fund, Inc., Oppenheimer Time Fund, Inc., and Oppenheimer Income Fund of Boston, Inc. (hereinafter collectively

referred to as the "Funds" and individually as a "Fund") and (ii) planholders of OSCAP, TIMECAP, and AIMCAP, registered unit investment trusts (collectively referred to as "Oppenheimer Unit Trusts") in exchange for shares of the Funds held directly, and indirectly in the case of the Oppenheimer Unit Trusts. Such exchange would take place on the following basis:

Regarding a shareholder of a Fund, the exchange would be initiated by written request of a shareholder and delivery of any issued share certificates to the Transfer Agent. The exchange would be accomplished by the redemption of the Fund shares at net asset value next determined after receipt of the request for exchange and the reinvestment of the proceeds, without a sales charge (except for reduced sales charges described below for transfers from the Oppenheimer High Yield Fund, Inc.) in accumulation units of Separate Account H at a value next determined after receipt of the assets for purchase of an individual variable annuity contract. If a deferred variable annuity is purchased, an additional deduction of 0.25 percent would be made as a premium for the minimum death benefit. Except for this minimum death premium and reduced sales loads to be charged on certain transfers from the Oppenheimer High Yield Fund, Inc., no fee is charged for this exchange. Any other prior charge which was specified in the original application has been waived on all exchanges.

Any holder of (A) a single payment plan issued by any of the Oppenheimer Unit Trusts, or (B) a systematic plan of TIMECAP, or (C) a systematic plan issued by any of the other Oppenheimer Unit Trusts who had held his plan for at least 18 months, may exchange his plan for an individual variable annuity certificate. The exchange would be accomplished by terminating the plan, redeeming the Fund shares held under that plan at the net asset value next determined after receipt of the request for exchange and reinvesting the proceeds without a sales charge in accumulation units of Separate Account H at their value next determined after receipt of the assets for purchase. For a deferred variable annuity, there would be a deduction of 0.25 percent of such proceeds as a premium for the Minimum Death Benefit. For the reason noted above, the reference to the 90-day holding period for (A) and (B) are deleted. The \$5 exchange fee has also been waived.

Applicants assert that the purpose of the First Exchange Right is to permit a shareholder or planholder who desires to carry on his investment in an investment medium managed by Oppenheimer pursuant to a variable



annuity contract rather than directly or through his Plan, to do so without paying a sales charge except for certain reduced charges with regard to the Oppenheimer High Yield Fund, Inc.

Applicants contend that a sales charge should be imposed on the ex-

change from the Fund to Separate Account H only to the extent the sales charge of the Oppenheimer High Yield Fund during the continuous offering period differs from the total deductions charged by Separate Account H. The following table illustrates the charge to be imposed:

Total deductions charged-percent

|                                        | Separate account H <sup>1</sup> | By fund during continuous offering period | Difference imposed upon exchange <sup>1</sup> |
|----------------------------------------|---------------------------------|-------------------------------------------|-----------------------------------------------|
| Periodic payments.....                 | 8.50                            | N/A                                       | N/A                                           |
| Single payments:                       |                                 |                                           |                                               |
| Less than \$10,000.....                | 8.50                            | 6.75                                      | 1.75                                          |
| \$10,000 but less than \$25,000.....   | 7.50                            | 6.75                                      | 0.75                                          |
| \$25,000 but less than \$50,000.....   | 6.00                            | 6.00                                      | .....                                         |
| \$50,000 but less than \$100,000.....  | 4.00                            | 4.00                                      | .....                                         |
| \$100,000 but less than \$250,000..... | 3.00                            | 3.00                                      | .....                                         |
| \$250,000 but less than \$500,000..... | 2.00                            | 2.00                                      | .....                                         |
| \$500,000 and over.....                | 1.00                            | 1.00                                      | .....                                         |

<sup>1</sup> Assumes the Minimum Death Benefit Charge of 0.25% is applied.

The charge of 1.75 percent is to consist of a sales charge of 1.50 percent and the Minimum Death Benefit of 0.25 percent. The charge of 0.75 percent is to consist of a sales charge of 0.50 percent and the Minimum Deposit Benefit of 0.25 percent. When an Immediate Variable Annuity is requested, the Minimum Death Benefit charge will not be made.

Applicants contend that the sales charges imposed for exchanges involving less than \$25,000 will mean that all of the Contract Holders of Separate Account H will have the opportunity to incur substantially the same percentage loads, depending upon the amount invested, whether they purchase during the initial or the continuous offering of the fund. Applicants further contend that such reduced charges incurred upon transfer into Separate Account H from the Fund will mean that a participant will pay the same percentage load whether he invests directly into Separate Account H or first purchases shares in the fund during the continuous offering period and then transfers into Separate Account H. Applicants point out that shareholders who purchase Fund shares in the initial Fund offering will be purchasing shares with a maximum sales charge of 5.70 percent for purchases under \$10,000, and reduced charges for higher amounts. The maximum sales charge will be increased to 6.75 percent for shares purchased in the Fund's continuous offering. For purposes of transferring into

Separate Account H, however, the separate account will only charge the difference, if any, between the Fund's continuous offering sales charge and the separate account's total deduction charge, regardless if Fund shares were purchased in the initial or continuous offering. Applicants assert that everyone will have the same opportunity to buy Fund shares during the initial offering and realize a savings because of the reduced sales charges during the initial offering.

The Applicants assert that a full sales charge should not be imposed for the exchange, however, because sales charges will have already been assessed at the time of entry into the Fund. No charges should be imposed on the exchange of securities for over \$25,000 for variable annuity contracts issued by Separate Account H, because full sales charges have already been assessed to these security holders. The Applicants further assert that no charges should be imposed on the exchange of securities issued by Oppenheimer Fund, Inc., Oppenheimer Income Fund of Boston, Inc., Oppenheimer Option Income Fund, Inc., Oppenheimer AIM Fund, Inc., Oppenheimer Time Fund, Inc., or an Oppenheimer Unit Trust for variable annuity contracts issued by the Separate Account H because full sales charges have already been assessed. In addition, shareholders and certificate holders of the Funds and the Oppenheimer Unit Trusts already are familiar with the managers of the invest-

ment companies which serve as the underlying investment media of Separate Account H. As a result, any selling effort in connection with the transfer will be reduced.

(2) *Second Exchanged Right.* Applicants propose to permit, without imposition of a sales load, exchange of deferred variable annuity contracts issued by Separate Accounts D, E, F, G, and H and sold by Bankers Security, on the basis of the accumulated values thereof, for other deferred variable annuity contracts sold by Bankers Security of the same type and class.

Nontax qualified contracts will be issued by Separate Accounts D, E, F, G, and H. Thus, a contract owner holding a contract under Separate Account D would have the option of exchanging his contract, without additional load, for a contract issued by Separate Accounts E, F, G, or H, on the basis of the net asset values of each separate account. Because Separate Accounts A, B, and C, are tax qualified accounts, transfers from one of these accounts can only be made to another of these tax-qualified separate accounts. Similarly, because Separate Accounts D, E, F, G, and H, are nonqualified, transfers from one of these accounts can only be made to another of these nontax qualified separate accounts.

With respect to the Second Exchange Right, Applicants contend that such exchange right is consistent with the protection of variable annuity contract owners or participants and the purpose clearly intended by the policy and provisions of the Act. The only purpose of exercising this exchange provision is to provide such contract owners and participants the right to obtain a contract which invests in shares of an investment company which operates under investment objectives more closely aligned with such contract owner's or participant's financial needs. This provides such contract owner or participant with greater flexibility in planning for his financial future.

#### SECTION 27(a)(3) AND RULE 27a-2

Section 27(a)(3) of the Act provides that no registered investment company issuing periodic payment plan certificates and no depositor of or underwriter for such company may sell any such certificate if the amount of sales load deducted from any one of the first 12 monthly payments exceeds proportionately the amount deducted from any other such payment, or if the amount deducted from any subsequent payment exceeds proportionately



ly the amount deducted from any other subsequent payment. Rule 27a-2 under the Act exempts a registered separate account, and any depositor of or underwriter for such account, from section 27(a)(3) if the proportionate amount of sales load deducted from any payment during the contract period does not exceed the proportionate amount deducted from any prior payment during the contract period.

Applicants state that where a no-load transfer from one separate account to another separate account takes effect, there will be a subsequent continuation of periodic payments subject to the sales load deductions. Accordingly, Applicants request an exemption from section 27(a)(3) and Rule 27a-2 thereunder to the extent necessary to permit such practice.

Applicants state that deductions will have already been made against past purchase payments and that the transfer from one separate account to another will be based on net accumulated values thereof, after these deductions were made. Applying net accumulated values from one separate account to another will not involve additional sales activities as to require imposition of an additional sales charge and allowing no-load transfers in the manner proposed will avoid an unnecessary imposition of charges. Applicants further state that granting the requested exemption will not conflict with the purpose of section 27(a)(3) which was to curb abuses associated with front-end load arrangements on mutual fund contractual plans by, in part, lessening the possible loss which could be incurred upon early termination of such a plan. Since the deduction for sales expenses under the Contracts do not involve the kind of front-end load arrangements at which section 27(a)(3) is directed, Applicants submit that the deductions cannot lead to the abuses intended to be curbed by section 27(a)(3). Applicants state further that the circumstances in which charges for sales and administrative expenses are applicable will be fully disclosed so that it is unlikely that any person will be misled or confused.

#### SECTION 27(d), 27(e), 27(f) AND RULES 27e-1 AND 27f-1

Under sections 27(d), 27(e), and 27(f) of the Act, as here relevant, the holder of certain periodic payment certificates is given, respectively (1) the right to surrender the certificate at any time within the first 18 months after its issuance and to receive, in cash, the value of his account and an amount equal to that part of the excess paid for sales loading which is over 15 per centum of the gross payments made by the certificate holder; (2) the right to be informed in writing,

in the event that he has missed a certain number of payments required to be made pursuant to the plan, that he may surrender his certificate and receive the aforementioned payments; and (3) the right, within 45 days after the mailing of notice of the charges to be deducted from the projected payments on the certificate of his right of withdrawal, to exercise such right of withdrawal by surrendering his certificate and receive the value of his account and the difference between the gross payments made and the net amount invested.

Applicants represent that under the terms of the First Exchange Right, exchanges would not be permitted until after the expiration of the time in which a Planholder could withdraw and receive a refund under his old plan. Applicants contend that while an exchange would, in form, involve the issuance of a new plan, in substance the exchange would result in a continuation of the original plan with a new underlying investment medium. Applicants submit that the protection of investors and the purposes of section 27 do not require that an exchanging planholder, who no longer has any refund or withdrawal rights under his old plan, have such right with respect to his new plan.

Applicants further request that exemption be granted from the provisions of Rules 27e-1 and 27f-1. Rule 27e-1 sets forth requirements for notices to be mailed to certain purchasers of periodic payment plan certificates sold subject to section 27(d) and Rule 27f-1 sets forth requirements for the notice of the right of withdrawal required to be mailed to periodic payment plan certificate holders and exempts from section 27(f) certain periodic payment plan certificates. If exemptions from the provisions of sections 27(d), 27(e), and 27(f), are granted, Applicants assert that exemptions from the provisions of Rules 27e-1 and 27f-1, would be appropriate since these rules are designed only to implement provisions of these sections.

#### SECTIONS 26(a) AND 27(c)(2)

Sections 26(a) and 27(c)(2), as here pertinent, provide in substance that a registered unit investment trust and any depositor of and underwriter for such trust are prohibited from selling periodic payment plan certificates unless the proceeds of all payments, other than amounts deducted for sales load, are deposited with a qualified bank as trustee or custodian and held under an indenture or agreement containing specified provisions. Such agreement must provide, in part, that (i) the custodian bank shall have possession of all the property of the unit investment trust and shall segregate and hold the same in trust; (ii) the

custodian bank shall not resign until either the unit investment trust has been liquidated or a successor custodian has been appointed; (iii) the custodian may collect fees from the income, and if necessary, from the corpus of the trust for services performed and for reimbursement of expenses incurred; and (iv) that no payment to the depositor or principal underwriter shall be allowed the custodian bank as an expense, except a fee, not exceeding such reasonable amount as the Commission may prescribe, as compensation for performing bookkeeping and other administrative expenses normally performed by the custodian.

Applicants have requested an exemption pursuant to section 6(c) of the Act from sections 26(a) and 27(c)(2) of the Act to allow Bankers Security to be the custodian of the assets for Separate Account H; such assets will be held in the safekeeping of the Bank of Commerce of New York. The portion of the purchase payments under the Contracts allocated to Separate Account H will be invested in shares of the Fund, which is available as the underlying investment media for the separate account. These shares will be issued under an open account arrangement without the use of stock certificates. Their ownership will be shown on the books and records of the underlying Fund and Separate Account H.

Bankers Security is subject to extensive supervision and control by the New York Insurance Department. Such control and supervision, Applicants contend, provide assurance against misfeasance and afford the essential protection of trusteeship. Under New York law, Bankers Security may not abrogate its obligations under the Contracts.

Under the foregoing circumstances, the Applicants contend that the dangers against which sections 26(a) and 27(c)(2) are directed are not present in this situation and an exemption therefrom is requested.

Applicants consent to the exemptions requested from sections 26(a) and 27(c)(2) being made subject to the following conditions: (1) That the charges to variable annuity contract owners for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, jurisdiction being reserved for such purpose; and (2) that the payments of sums and charges out of the assets of the separate account shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that the Applicants consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payments of sums and charges out of such assets



other than charges for administrative services, and Applicants reserve the right in any proceeding before the Commission or in any suit or action in any court to assert that the Commission has no authority to regulate the payments of such other sums or charges.

Section 6(c) of the Act provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary, or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested persons may, not later than September 4, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following September 4, 1978, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

SHIRLEY E. HOLLIS,  
Assistant Secretary.

[FR Doc. 78-23148 Filed 8-17-78; 8:45 a.m.]

## [8010-01]

[Release No. 34-15055; File No. SR-PHLX-78-16]

## PHILADELPHIA STOCK EXCHANGE, INC.

## Self-Regulatory Organization; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended, by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on August 4, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

## STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The title of rule 711 has been changed to "Financial and Operational Report."

The wording in rule 711 has been deleted and the new language reads as follows: (a) Each member and member organization shall file with the Exchange at such times as may be designated, in such form and within such time period as may be prescribed, a financial and operational report.

(b) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member or member organization required to file reports pursuant to this rule, a fee of \$10 for each day that such report is not filed in the prescribed time.

Commentary .01 Requests for temporary extension of time must be submitted to the Exchange no later than the day before the due date of such report.

.02 Reports filed pursuant to this Rule shall be deemed to have been filed on the date received by the Exchange.

## EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows: The purpose of the proposed rule change is to amend Rule 711 to provide for a more timely receipt of financial and operational reports from PHLX members and member firms.

All members and member firms subject to FOCUS Reporting Requirements must obtain an extension of time for filing such reports from the appropriate office of the SEC. Where a member or member firm subject to this requirement, fails to submit a report within the prescribed time without obtaining an extension from the Commission, the member or member firm would be subject to the provisions of proposed rule 711.

Those members and member firms not subject to the FOCUS Reporting

System, would be required, under the proposed rule, to obtain an extension of time from the Exchange in which to file required financial and operational reports.

The basis for the proposed rule change is found in section 6(b)(5) of the Securities Exchange Act of 1934, as amended, which provides, in pertinent part, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and to protect investors and the public interest.

Comments were neither solicited nor received.

The PHLX has determined that the proposed amendment will not impose any burden on competition.

On or before September 22, 1978, or within such longer period (1) 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 such 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 September 8, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

SHIRLEY E. HOLLIS,  
Assistant Secretary.

AUGUST 10, 1978.

[FR Doc. 23151 Filed 8-17-78; 8:45 am]

## [8010-01]

[Release No. 15058; File No. 4-208]

## AMERICAN STOCK EXCHANGE, INC.

## Temporary Order

AUGUST 11, 1978.

In the matter of American Stock Exchange, Inc., Boston Stock Exchange,



Inc., Midwest Stock Exchange, Inc., New York Stock Exchange, Inc., Pacific Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc.; application pursuant to section 11A(a)(3)(B).

Notice is hereby given that the Securities and Exchange Commission has issued an order, pursuant to section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (the Act), extending authority granted to certain self-regulatory organizations to act jointly, in accordance with a "Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage" (the Plan), to plan, develop, operate and regulate a national market system facility consisting of an Intermarket Trading System (ITS). The order extends authority previously granted to those self-regulatory organizations (and any other self-regulatory organization joining the Plan) for an additional period of 1 year.

#### I. BACKGROUND

On March 9, 1978, the American Stock Exchange, Inc. (Amex), Boston Stock Exchange, Inc. (BSE), New York Stock Exchange, Inc. (NYSE), Pacific Stock Exchange (PSE), and Philadelphia Stock Exchange, Inc. (Phlx) (collectively the filing exchanges) jointly filed the Plan with the Commission contemplating the implementation of the ITS, linking participating market centers and providing facilities and procedures for (i) rapid and efficient routing of orders and administrative messages between and among the participants, and (ii) participation, under certain conditions, by members of all participant markets in opening transactions in those markets.<sup>1</sup>

In connection with implementation of the Plan, the filing exchanges requested that the Commission approve the Plan and issue an order, pursuant to section 11A(a)(3)(B) of the Act, evidencing such approval. On April 14, 1978, the Commission issued a temporary order, pursuant to section 11A(a)(3)(B) of the Act authorizing the filing exchanges and any other self-regulatory organization which agreed to become a participant in the Plan (collectively participants) to act jointly in planning, developing, operating and regulating the ITS in accordance with the terms of the Plan for 120 days from the date of the order.<sup>2</sup>

<sup>1</sup>The ITS also contemplates the display of composite quotation information on the floors of each of the participating exchanges (at the designated trading post) so that members of each participating exchange will be able to determine readily the best bid and offer for a particular multiple traded security available from any participant.

<sup>2</sup>Securities Exchange Act Release No. 14661 (Apr. 14, 1978) 43 FR 17419 (ITS Order). Subsequently, the Midwest Stock Exchange announced its intention to participate in the Plan.

The Commission at that time also requested that interested persons submit written views, data and arguments with respect to the Plan (or any provision thereof) not later than June 9, 1978.

#### II. ITS IMPLEMENTATION

Following temporary approval of the Plan, the ITS participants began phased implementation of the ITS in accordance with the Plan. On April 17, 1978, the NYSE and Phlx were linked, and intermarket trading commenced in 11 multiple traded issues (although quotation information available on the floors of the two exchanges in those securities did not include size). On May 22, 1978, the system was expanded to include a total of 25 issues and quotation information available on the NYSE and Phlx was augmented to include size. The PSE became a participant on June 26, 1978, the BSE on July 10, 1978, the MSE on July 24, 1978,<sup>3</sup> and the Amex on August 7, 1978. Additional groups of 25 securities were added to the system on July 6, July 19, and August 2, 1978, and an additional 6 securities were added on August 7, 1978, bringing the total number of securities currently traded in the system to 106. Additional issues are proposed to be added (in groups of 25) on a periodic basis.

The participants have generally expressed satisfaction with the operation of the ITS thus far although some problems have been experienced. For example, some commitments to trade sent through the system have been canceled or returned unexecuted because the specialist in the receiving exchange has not been able to enter the acceptance codes in a timely manner.<sup>4</sup> In addition, those regional exchanges using automatic quotation generation equipment have experienced malfunctions in that equipment resulting in disruption of ITS service.<sup>5</sup>

#### III. SELF-REGULATORY ORGANIZATION RULE CHANGES

At the time the Commission approved ITS Plan on a temporary basis, not all of the participating market centers had filed rule changes necessary to implement ITS Plan. In the ITS Order the Commission noted that:

[T]he participants have filed, or have agreed to file, certain rule changes to imple-

<sup>3</sup>The Plan was amended as of Apr. 25, 1978, to include the MSE.

<sup>4</sup>The ITS automatically cancels any commitment to trade sent through the system which is not accepted within certain time parameters.

<sup>5</sup>On a number of occasions, the Securities Industry Automation Corp. (SIAC), the facilities manager for the ITS, has terminated service to these regional exchanges to "purge" the system of erroneous quotation information generated by this equipment.

ment the Plan \* \* \*. The Commission expects each of the participants \* \* \* which has not already done so to file those rule changes promptly so that consideration of those changes can proceed concurrently with the Commission's further evaluation of the Plan itself.<sup>6</sup>

The Commission did, however, permit those self-regulatory organizations which did file rule changes to implement those changes upon commencement of their participation in the ITS. In this regard, the Commission stated that:

[n]otwithstanding the incomplete posture of self-regulatory organization \* \* \* rule filings in connection with the Plan, the Commission intends [its] temporary order to constitute interim approval of the Plan in all aspects (including the proposed conduct of the participants and their respective members in conformity with the Plan's provisions concerning the routing and honoring of commitments to trade through the system, pre-opening conduct, clearance and settlement of transactions, and similar matters).<sup>7</sup>

To date, proposed rule changes have been filed by the Amex, BSE, NYSE, PSE, and Phlx and have been published for comment.<sup>8</sup> The Commission has received no comments regarding any of these filings and, simultaneously with the issuance of this order, it is approving those rule changes with respect to which the comment period has expired (the NYSE, Phlx, and PSE). With respect to those rule filings which have been published and not yet approved and proposed rule changes filed by the MSE which must be refiled due to certain technical deficiencies, the Commission wishes to note that, notwithstanding the incomplete nature of these filings the Commission intends this temporary order to constitute interim approval of the Plan in all aspects (including the proposed conduct of the participants and their members in accordance with the Plan).

#### IV. DISCUSSION

In determining to grant temporary approval of the Plan pending solicitation of public comment, the Commission noted that it believed that the ITS might "provide the basis for an appropriate market linkage facility in

<sup>6</sup>ITS Order, *supra* note 2, at 2, n. 3, 43 FR 17420.

<sup>7</sup>*Id.*

<sup>8</sup>See File No. SR-NYSE-78-17, published in Securities Exchange Act Release No. 14701 (Apr. 24, 1978), 43 FR 18376; File No. SR-Phlx-78-5, published in Securities Exchange Act Release No. 14744 (Apr. 28, 1978), 43 FR 21765; File No. SR-BSE-78-3, published in Securities Exchange Act Release No. 14961 (July 14, 1978), 43 FR 31483; File No. SR-PSE-78-10, published in Securities Exchange Act Release No. 4915 (June 30, 1978), 43 FR 29388; File No. SR-Amex-78-14, published in Securities Exchange Act Release No. 14959 (July 14, 1978), 43 FR 31478.



a national market system,"<sup>9</sup> and that "prompt implementation of an inter-market linkage system is essential to the Commission's program to facilitate the development of a national market system."<sup>10</sup> The Commission also stated that:

During (the 120-day temporary approval period), the Commission expects to monitor the implementation of the ITS by the participants, including the use made of the system by members of the participating exchanges. At the conclusion of the 120-day period, the Commission intends to determine, on the basis of the experience of the participants during the period and on the basis of public comment on the Plan and related issues, whether to issue an order authorizing the participants to act jointly in implementing the Plan on a permanent basis.<sup>11</sup>

To date there have been no written comments received regarding the provisions of the Plan or the technical operation of the ITS.<sup>12</sup> In addition, because until recent weeks only a few market centers have been participating in the ITS, there is no data which would indicate the full impact of the system, and the extent of its use, once it has been fully implemented. Moreover, because of the significance of the relationship of market linkage systems to other national market system facilities, on June 12, 1978, the Commission requested each of the ITS participants, the National Association of Securities Dealers, Inc., and the Cincinnati Stock Exchange to comment on certain issues relating to the development of order routing and market linkage systems, and also solicited public comment on these questions.<sup>13</sup> To date, the Commission has only re-

ceived five responses to that request. In light of these circumstances, the Commission has determined to extend authority to the participants to continue implementation and operation of ITS for an additional twelve months to afford an opportunity to collect statistical data relative to the use and operation of the ITS, to analyze the impact of full operation of the system, and to provide additional time for interested persons to submit commentary regarding the operation or impact of the system.

Notice is hereby given that any interested person may submit written views, data and arguments with respect to the Plan (or any provision thereof) not later than June 1, 1979. Persons wishing to make such submissions should file six copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. 4-208 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street NW., Washington, D.C.

It is hereby ordered, pursuant to section 11A(a)(3)(B) of the Act, that the self-regulatory organizations named above (and any other self-regulatory organization which agrees to be a participant in the Plan) are authorized, for 12 months from the date of this order, to act jointly in planning, developing, operating, or regulating the ITS in accordance with the terms of the Plan, as amended.

By the Commission.

SHIRLEY E. HOLLIS,  
Assistant Secretary.

[FR Doc. 78-23235 Filed 8-17-78; 8:45 am]

#### [8010-01]

[Rel. No. 20670; 70-60391]

#### APPALACHIAN POWER CO.

#### Proposed Revised Credit Arrangements and Increase in Short-term Indebtedness

AUGUST 14, 1978.

Notice is hereby given that Appalachian Power Co. (Appalachian), 40 Franklin Road, Roanoke, Va. 24409, an electric utility subsidiary company of American Electric Power Co., Inc., a registered holding company, has filed with this Commission post-effective amendments to its application previously filed in this matter pursuant to section 6(b) of the Public Utility Holding Company Act of 1935 (Act), and Rules 50(a)(2) and 50(a)(5) promulgated thereunder concerning the following proposed transactions. All interested persons are referred to the amended application, which is summarized

below, for a complete statement of the proposed transactions.

By order dated September 30, 1977 (HCAR No. 20191), Appalachian was authorized to issue and sell short-term notes and commercial paper through December 31, 1978, in an aggregate amount not to exceed \$175,000,000 outstanding at any one time, such indebtedness to mature not later than June 30, 1979. By post-effective amendments Appalachian seeks approval of a proposed increase in the maximum amount of short-term indebtedness to \$200,000,000 outstanding at any one time and of revised credit arrangements it has negotiated for its short-term borrowing. Appalachian states that the increased amount of short-term indebtedness is necessary because its indenture and preferred stock limitations will only permit sale of securities in the remainder of 1978 in an amount reduced from earlier expectations.

Concerning the revised credit arrangements, it is stated that Appalachian has lines of credit with 78 banks which total \$319,000,000. For purposes of borrowing, these banks are of three classes. Each note to be issued to a Class I bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. Appalachian's credit arrangements with these banks require it to maintain compensating balances equal to a percentage of the line of credit made available by the bank plus a percentage of any amount actually borrowed (generally not in excess of 10 percent of the line of credit and 10 percent of the amount borrowed). In most cases Appalachian maintains deposit balances for its operational and financial needs in amounts sufficient to satisfy any compensating balances required with respect to borrowings from such banks. Borrowings from a Class I bank would generally bear interest at an annual rate not greater than the bank's prime commercial rate in effect from time to time.

Each note to be issued to a Class II bank will mature not more than 90 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. Appalachian's credit arrangements with these banks require it to maintain compensating balances of 5 percent of the line of credit and to pay a fee equal to 4 percent of the bank's prime commercial rate then in effect on the size of the line. The combination of 5 percent compensating balances and a fee is generally equivalent to compensating balances not in excess of 10 percent of the line of credit made available. In addition, Appalachian must pay interest at the rate of

<sup>9</sup>Id. at 8.

<sup>10</sup>Id. at 8. See Securities Exchange Act Release No. 14416 (Jan. 26, 1978) 43 FR 4354 (the "Market Structure Statement"), in which the Commission set forth "those steps which it believes must be taken over the next year to facilitate development of the kind of national market system envisioned by the Congress and mandated by the 1975 Amendments." Market Structure Statement at 26, 43 FR 4358. Among the steps for called by the Commission in the Market Structure Statement was: The prompt development of comprehensive market linkage and order routing systems to permit the efficient transmission of orders (i) among the various markets for qualified securities, whether on an exchange or over-the-counter \* \* \* (ii) and from brokers and dealers to all (such) markets. Id. at 28, 43 FR 4358.

<sup>11</sup>ITS Order supra note 2 at 9, 43 FR 17422.

<sup>12</sup>There have, however, been comments submitted by various self-regulatory organizations in response to the Market Structure Statement indicating that the ITS is an appropriate market linkage system which is responsive to the Commission's request that such a system be implemented. See note 11 supra.

<sup>13</sup>Securities Exchange Act Release No. 14885 (June 23, 1978).



108.5 percent of the bank's prime commercial rate then in effect on the borrowings. It is stated that if the balances maintained and the fees paid by I. & M. with and to the Class I and II banks were maintained and paid solely to fulfill requirements for borrowings by Appalachian, the effective annual interest cost under either such arrangement, assuming full use of the line of credit, would not exceed 125 percent of the prime commercial rate in effect from time to time, or not more than 11.0 percent on the basis of a prime commercial rate of 8.75 percent.

With respect to the Class III banks, Appalachian has a money market facility at each of two named banks in an aggregate amount of \$25,000,000. These money market facilities do not represent a formal commitment or engagement by these banks to Appalachian, but represent merely the ability of Appalachian to request unsecured borrowings, in the form of promissory notes, on a case-by-case basis. These money market facilities are available for unsecured borrowings in domestic dollars and/or in Eurodollars for periods of up to 180 days after the date of issuance, and any such borrowings will be prepayable at any time without premium or penalty. No compensating balances are required. The interest rate, which is presently to be negotiated on a case-by-case basis (using a 360-day year), is pegged to either the London Interbank Offering Rate Plus a designated percent, if the borrowings are made in Eurodollars, or to a designated percent of the bank's prime rate, if the borrowings are made in domestic dollars. It is stated that interest rates on these notes will be lower than the effective interest rates for borrowings made from Class I and II banks, including the effect of any compensating balances and fees paid.

Appalachian also proposes to issue commercial paper in the form of promissory notes in denominations of not less than \$50,000 nor more than \$5,000,000, which will be of varying maturities, with no maturity more than 270 days after the date of issue and none will be prepayable prior to maturity. The commercial paper notes will be sold directly by Appalachian to Lehman Commercial Paper Inc., (the "Dealer") at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. No commercial paper notes will be issued having a maturity or more than 90 days if such commercial paper notes would have an effective interest cost which exceeds the effective interest cost at which Appalachian could borrow from banks. The Dealer will reoffer the commercial paper notes to not more than 200 of

the Dealer's customers identified and designated in a nonpublic list prepared by the Dealer in advance, at a discount rate of  $\frac{1}{4}$  of 1 percent per annum less than the discount rate to Appalachian. It is expected that such customers of the Dealer will hold the commercial paper prior to maturity, but, if any such customer wishes to resell such commercial paper prior to maturity, the Dealer, pursuant to a verbal repurchase agreement, will repurchase such commercial paper sold by it and reoffer it to other customers on its nonpublic list.

The proceeds from the issue and sale of the notes will be used by Appalachian to reimburse its treasury for past expenditures made in connection with its construction program and to pay part of the cost of its future construction program. Such construction expenditures for the years 1977 and 1978 are estimated at approximately \$280,000,000 and \$400,000,000 respectively.

Appalachian claims exception from the competitive bidding requirements of Rule 50 for the proposed issuance of notes to banks pursuant to paragraph (a)(2) thereof. Additionally, Appalachian requests exception from the competitive bidding requirements of Rule 50 for the proposed issue and sale of its commercial paper pursuant to paragraph (a)(5) thereof.

There are no additional fees or expenses to be incurred in connection with the proposed transactions. The State Corporation Commission of Virginia has authorized the proposed transactions. No other State commission and no Federal commission, other than this commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than September 7, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application, as further amended by said post-effective amendments, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20449. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as further amended, by said post-effective amendments or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulation promulgated under the act, or the Commis-

sion may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and order issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the division of corporate Regulation, pursuant to delegated authority.

SHIRLEY E. HOLLIS,  
Assistant Secretary.

[FR Doc. 78-23236 Filed 8-17-78; 8:45 am]

# [8010-01]

[Rel. No. 20668; 70-6191]

## CONNECTICUT YANKEE ATOMIC POWER CO.

### Proposal To Make 5-Year Unsecured Bank Borrowings

APRIL 11, 1978.

Notice is hereby given that Connecticut Yankee Atomic Power Co. ("Connecticut Yankee"), P.O. Box 270, Hartford, Conn. 06101, a subsidiary of Northeast Utilities and New England Electric System, both registered holding companies, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6 and 7 of the Act and Rule 50(a)(2) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Connecticut Yankee is the owner of a 575,000-kW nuclear electric generating plant ("Plant") in Haddam, Conn., which has been in operation since January 1968. Outstanding shares of Connecticut Yankee's common stock are owned by 11 New England electric utilities.

The Connecticut Bank & Trust Co. ("CBT"), the Chase Manhattan Bank, N.A. ("Chase"), and Chemical Bank ("Chemical") (collectively the "Banks") propose to make 5-year unsecured term loans ("Term Loans") to Connecticut Yankee in the aggregate principal amount of \$20,000,000 as follows:

|                |             |
|----------------|-------------|
| CBT .....      | \$5,000,000 |
| Chase .....    | \$7,500,000 |
| Chemical ..... | \$7,500,000 |

The Term Loans will be evidenced by term notes ("Term Notes") executed by Connecticut Yankee which will mature on August 31, 1983. The Term Notes will bear interest at a rate per annum equal: (i) on and after the closing date to and including August 31,



1980 to 105 percent of the prime rate of The Connecticut Bank and Trust Company, known as "Base Rate A", (ii) on and after September 1, 1980, to and including August 31, 1981, to 106 percent of Base Rate A and (iii) on and after September 1, 1981, to August 31, 1983, to 107 percent of Base Rate A. The interest rate will be adjusted automatically on the effective date of any change in Base Rate.

A. Connecticut Yankee will pay to the Banks a commitment fee of  $\frac{1}{2}$  of 1 percent per annum on the principal amount of the Term Notes from the date of the Term Loan Agreement to the date the Term Loans are made, which date shall not be more than sixty (60) days from the date of the Term Loan Agreement.

CBT will act as agent for the Banks for the purpose of receiving payments by Connecticut Yankee on the Term Notes and in general for administration of the Term Loans under the Term Loan Agreement.

The Term Loans may be prepaid at any time, in whole or in part, without premium. In addition, Connecticut Yankee and the Banks have agreed to review, prior to September 1, 1980, the rate of interest to be in effect for the third, fourth and fifth years of the Term Notes. If the Banks and the Company agree on a modification of the rates, appropriate modifications to the Term Loans and the Term Notes will be made, subject to such regulatory approvals as may be required. Connecticut Yankee will not be required to obtain further approval of the Commission of any such modified rates so long as Connecticut Yankee's effective cost as a result of such modified rates is no greater than its cost resulting from the rates for the third, fourth and fifth years specified above.

If Connecticut Yankee and the Banks fail to agree on a modification of interest rates, the Banks may elect to require Connecticut Yankee to commence on December 1, 1980, quarterly prepayments of the principal of the Term Notes. If such election is made, Connecticut Yankee will prepay an aggregate \$1,666,666 principal amount of the Term Notes on March 1, June 1, September 1, and December 1, of each year commencing December 1, 1980, through June 1, 1983, inclusive and will make a final payment of \$1,666,674 principal amount of the Term Notes at maturity on August 31, 1983. Each prepayment will be at 100 percent of the principal amount prepaid, together with interest accrued thereon from the date of prepayment.

The net proceeds from the Term Loans will be used to repay a portion of Connecticut Yankee's short-term debt estimated to total approximately \$28,000,000 at the time of such Term Loans. Such short-term debt was in-

curred either to finance Connecticut Yankee's purchase of nuclear fuel for the Plant or to repay at maturity a two-year bank loan (HCAR No. 19564). The application of the proceeds from the Term Loans will not reduce the maximum limit of short-term borrowings outstanding at any one time previously authorized by this Commission (HCAR No. 20607).

As of July 20, 1978, Connecticut Yankee estimated that expenditures for nuclear fuel in 1978 will total about \$28,900,000, \$9,200,000 of which had been expended as of that date.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. The proposed transaction is subject to the jurisdiction of the Public Utilities Control Authority of Connecticut. It is stated that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than September 5, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

SHIRLEY E. HOLLIS,  
Assistant Secretary.

[FR Doc. 78-23237 Filed 8-17-78; 8:45 am]

## [8010-01]

[Release No. 15059]

### CONSOLIDATED TAPE ASSOCIATION AND SECURITIES INDUSTRY AUTOMATION CORP.

Request for Exemption from Market Identification Requirements of Rule 17a-15; Order Granting Temporary Exemptions

AUGUST 11, 1978.

Notice is hereby given that the Securities and Exchange Commission has extended temporary exemptions from Rule 17a-15 under the Securities Exchange Act of 1934 (the "Act") (and any plan declared effective by the Commission pursuant to that Rule) granted to the Consolidated Tape Association ("CTA") and Securities Industry Automation Corporation ("SIAC"), insofar as that Rule or plan requires the last-sale reports disseminated by means of moving-ticker displays be accompanied by a market identifier indicating the market of execution.

#### I. BACKGROUND

Rule 17a-15 under the Act requires that last-sale reports of transactions reported pursuant to that Rule be accompanied by an identifier indicating the market of execution. Paragraph (b) of Rule 17a-15 provides that:

[each composite tape or interrogation system, in displaying last sale reports, shall identify the marketplace where each transaction was executed.]

In addition, the joint industry plan governing the consolidated transaction reporting system (the "consolidated system") filed with and declared effective by the Commission pursuant to Rule 17a-15 (the "Joint Industry Plan") contains a similar requirement.<sup>2</sup>

On March 9, 1978, the New York Stock Exchange, Inc. ("NYSE"), American Stock Exchange, Inc. ("Amex"), Boston Stock Exchange, Inc. ("BSE"), Pacific Stock Exchange, Inc. ("PSE") and Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, the "filing exchanges") filed jointly with the Commission a "Plan for the Purpose of Creating and Operating and Intermarket Communications Linkage" (the "ITS Plan").<sup>3</sup> The ITS Plan contemplates the implementation of an Intermarket Trading System ("ITS") linkage the participation exchanges ("participants") and providing facilities and procedures for

<sup>1</sup>The Rule defines the term "composite tape" to mean a "moving, real-time last sale reporting system".

<sup>2</sup>See Joint Industry Plan, section V(e).

<sup>3</sup>A complete copy of the ITS Plan is available for public inspection at the Commission's Public Reference Room 6101, 1100 L Street NW., Washington, D.C. See File No. 4-208.



(i) rapid and efficient routing of orders and administrative messages between and among the participants, and (ii) participation, under certain conditions, by members of all participating markets in opening transactions in those markets.<sup>4</sup>

In connection with implementation of the ITS Plan, the filing exchanges requested certain regulatory actions by the Commission. First, the filing exchange requested that the Commission approve the ITS Plan and "issue an order pursuant to section 11A(a)(3)(B) of the \*\*\* Act evidencing such approval."<sup>5</sup> Second, the filing exchanges requesting that the Commission either amend Rule 17a-15 under the Act or issue an exemptive order pursuant to paragraph (h) of that rule, to permit the deletion of market identifiers from moving-ticker displays for all transactions effected in any market center which was scheduled to participate, or was participating, in the ITS (including transactions not effected through, and securities not then traded in, that system).<sup>6</sup>

In response to this request, on April 14, 1978, simultaneously with its temporary approval of the ITS,<sup>7</sup> the Commission issued temporary, conditional exemptions to the CTA and SIAC from the market-identifier requirements to Rule 17a-15 insofar as such requirements apply to moving-ticker displays.<sup>8</sup> The temporary exemptions were granted for a period of 120 days, or until the Commission took final action with respect to the ITS Plan, whichever occurred first. The Commission at that time also requested interested persons to submit written views, data, and arguments with respect to these exemptions.

In granting the temporary exemptions, the Commission noted that, in its view, although last sale information as to individual market centers is valuable to brokers and investors, the most important sources of this information for such persons are not moving-ticker displays but rather

vendor interrogation devices, newspapers, and various trade periodicals (e.g., the Fitch Sheets).

Since the proposed deletion of market identifiers would not involve deleting this information from the high speed data transmission line used to provide last sale data for these other sources, the Commission believes that no significant deprivation of market information would occur if moving tickers were permitted to display last sale reports without any market identification.<sup>9</sup>

In addition, the Commission cited two beneficial results which might flow from removal of market identifiers from moving-ticker display. First, deletion of market identifiers would eliminate reporting disparities between the "primary" exchange markets and other market centers;<sup>10</sup> second, removal would reduce the number of characters printed on moving-ticker displays, thereby reducing tape displays.

Therefore, the Commission determined that it was not necessary in the public interest or for the protection of investors that, during the limited period the ITS was authorized to operate, last-sale reports in securities eligible for reporting in the consolidated system be accompanied by market identifiers when disseminated on moving-ticker displays.

However, the Commission also noted that removal of market identifiers for less than all market centers reporting transactions in the consolidated system would be discriminatory and anti-competitive as to those market centers whose transactions would continue to be reported with an identifier. Accordingly, although the Commission granted the requested relief, that relief was conditioned on the prompt removal, as soon as technically feasible, of such identifiers on moving-ticker displays for all transactions as to which last-sale information is reported in the consolidated system, regardless of the market of execution.

On April 17, 1978, the ITS began operations, linking the NYSE and Phlx in 11 multiple traded issues and permitting display of quotations, without size, in those securities. Simultaneously CTA and SIAC deleted market identifiers from all moving-ticker displays with respect to transactions effected on all market centers having agreed to participate in the ITS (the BSE, MSE,<sup>11</sup> PSE and Phlx). One week later, on April 24, 1978, the CTA and

SIAC removed market identifiers from moving-ticker displays with respect to all remaining market centers reporting transactions through the consolidated system (the Cincinnati Stock Exchange, the National Association of Securities Dealers, and Institutional Network Corp.). The participants to the ITS and CTA have also filed amendments to the ITS Plan and Joint Industry Plan, respectively, requiring deletion of all market identifiers from moving-ticker displays so long as the ITS Plan is in effect.

The Commission has received some limited comment regarding the temporary exemption from Rule 17a-15. These commentators have generally opposed the deletion of market identifiers from moving-ticker displays because removal no longer permits identification of trades which are "out of sequence." Although the Commission remains interested in receiving and considering these views, in light of the limited commentary received to date, the Commission has determined to extend the conditional exemptions for an additional period of time in order to provide other interested persons time to submit their views.

Moreover, the Commission intends to publish a release in the near future proposing comprehensive amendments to Rule 17a-15 and a new Commission rule regulating the manner in which vendors display last-sale data. As a part of that proposal, the Commission intends to propose amendments to Rule 17a-15 which would require deletion of market identifiers from moving-ticker displays. It therefore appears appropriate to continue the exemptions granted to the CTA and SIAC pending the outcome of this rulemaking proceeding.

It is hereby ordered, pursuant to paragraph (h) of Rule 17a-15, that exemptions from the market identification requirements of the Rule and the Joint Industry Plan granted to CTA and SIAC on April 14, 1978, be extended for a period of 1 year from the date of this order.

By the Commission.

SHIRLEY E. HOLLIS,  
Assistant Secretary.

[FR Doc. 78-23238 Filed 8-17-78; 8:45 am]

[8010-01]

[Rel. No. 20672; 70-6179]

MONONGAHELA POWER CO. ET AL.

Order Authorizing Issuance of Promissory Notes to County in Connection With Financing of Pollution Control Facilities; Reservation of Jurisdiction

AUGUST 14, 1978.

Monongahela Power Company ("Monongahela"), Fairmont, W. Va.,

<sup>4</sup>The ITS also contemplates the display of composite quotation information on the floor of each of the participating exchanges (at the designating trading post) so that members of each participating exchange will be able to determine readily the best bid and offer for a particular security available from any participant.

<sup>5</sup>See Securities Exchange Act Release No. 14661 (April 14, 1978), 43 FR 17419 ("ITS Order").

<sup>6</sup>On April 5, 1978, the CTA filed with the Commission an amendment to the Joint Industry Plan which, in part, would have provided for the deletion of market identifiers for ticker display purposes of all ITS participants with respect to transactions occurring in their market centers.

<sup>7</sup>See ITS Order, *supra* note 5.

<sup>8</sup>Securities Exchange Act Release No. 14662 (April 14, 1978), (the "Exemptive Order") 43 FR 17422.

<sup>9</sup>*Id.* at 5, 43 FR 17423.

<sup>10</sup>For markets other than the NYSE and Amex, the identification consisted of an ampersand followed by a single alphabetic character identifying the market of execution. Transactions occurring on the NYSE or the Amex were identified by the absence of any market identifier. See Joint Industry Plan, section VIII(f).

<sup>11</sup>The MSE announced its intention to participate in ITS on April 14, 1978.



The Potomac Edison Co. ("Potomac Edison"), Hagerstown, Md., and West Penn Power Company ("West Penn"), Greensburg, Pa., all of which are electric utility subsidiaries of The Allegheny Power system, Inc., a registered holding company, have filed an application-declaration and amendments thereto with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50 promulgated thereunder as applicable to the proposed transactions.

Monongahela, Potomac Edison, and West Penn (collectively "the Companies") propose to engage in a second financing of certain air and water pollution control facilities and sewage or solid waste disposal facilities ("Facilities") which are required to meet various State and Federal air and water quality standards at the Pleasants Power station ("Pleasants"), through the issuance of pollution control notes to support pollution control revenue bonds to be issued by Pleasants county, W. Va. Pleasants is jointly owned by the Companies with the following undivided interests: West Penn—45%, Potomac Edison—30%, and Monongahela—25%. As of May 31, 1978, the Companies had spent approximately \$90 million on the facilities; however, the total cost of construction of the Facilities is expected to be \$170 million.

On November 1, 1977, the Commission issued an order (HCAR No. 20239) authorizing the Companies to enter into a Pollution Control Financing Agreement dated November 1, 1977 ("Agreement") with Pleasants County, W. Va. ("County"). In accordance with the Agreement, the County issued separately, in respect of each Company, the County's Pollution Control Revenue Bonds, 1977 Series A ("Series A Bonds") pursuant to Trust Indentures dated as of November 1, 1977 ("Indentures") in the aggregate principal amount of \$92.5 million, which consists of \$17.5 million, \$30 million, and \$45 million for Monongahela, Potomac Edison, and West Penn, respectively. The Indentures constituted an assignment to the trustee by the County of all the County's right, title and interest in the Agreement with respect to the Companies. Concurrently with the issuance of the Series A Bonds, each Company delivered to the trustee under the Indentures its nonnegotiable Pollution Control Note, 1977 Series A ("Series A Note") secured by a second lien on that Company's interest in the Facilities and certain other property pursuant to a Deed of Trust and Security Agreement dated November 1, 1977 ("Security Agreement"). It

is expected that all proceeds from the sale of Series A Bonds will be drawn down and applied to payment of the cost of the Facilities.

To finance the remaining currently projected costs of the Facilities, it is now proposed that, pursuant to the Agreement, the County issue and sell up to \$77.5 million in additional pollution control revenue bonds ("Series B Bonds"). It is expected that the additional issue in respect of Monongahela's interest in Pleasants will not exceed \$25 million, that the additional issue in respect of Potomac Edison's interest in Pleasants will not exceed \$21 million, and that the additional issue in respect of West Penn's interest in Pleasants will not exceed \$31.5 million.

The County and the trustee under the Indentures will enter into a Supplement to each Indenture ("Supplemental Indenture") providing for the series B Bonds in respect of each Company. The Series B Bonds will be sold, at such times, in such principal amounts, at such interest rates, and for such prices as shall be approved by the Companies. Each Company's Series B Bonds will have a maturity of not less than 5 and not more than 40 years and will have provisions for optional and mandatory redemption and for sinking, purchase and analogous funds.

It is proposed that the series B Bonds (assuming they are dated in August 1978) will be subject to redemption prior to maturity at the option of the County, upon the direction of the Company, in whole or in part on any date on or after August 1, 1988, but if in part, then in inverse order of maturity and within any maturity by lot. The redemption price to be paid in such event shall be the amount shown below as a percentage of principal amount, plus interest accrued to the redemption date:

|                      | Principal Amount | Maturity Aug. 1 | Interest Rate | Effective Interest Cost |
|----------------------|------------------|-----------------|---------------|-------------------------|
|                      |                  |                 | Percent       | Percent                 |
| Potomac Edison ..... | \$21,000,000     | 2008            | 7.30          | 7.42                    |
| West Penn.....       | 11,500,000       | 2003            | 6.95          | 7.058                   |
| West Penn.....       | 20,000,000       | 2008            | 7.00          | 7.145                   |

On July 31, 1978, Monongahela was granted a rehearing of an order of the Public Service Commission of West Virginia which granted Monongahela \$14,500,000 of a request \$40,000,000 annual revenue increase. Because of the adverse effect of that order on Monongahela's earnings and interest

| Redemption dates (inclusive)              | Redemption price (Percent) |
|-------------------------------------------|----------------------------|
| Aug. 1, 1988, through July 31, 1989 ..... | 103                        |
| Aug. 1, 1989, through July 31, 1990 ..... | 102½                       |
| Aug. 1, 1990, through July 31, 1991 ..... | 102                        |
| Aug. 1, 1991, through July 31, 1992 ..... | 101½                       |
| Aug. 1, 1992, through July 31, 1993 ..... | 101                        |
| Aug. 1, 1993, through July 31, 1994 ..... | 101½                       |
| Aug. 1, 1994, and thereafter .....        | 100                        |

In the event the Bonds are not issued in August of 1978, the first day of the month in which they are issued and the last day of the previous month would be substituted for August 1 and July 31 in the table and the first day of the month of issue 10 years later for August 1, 1988. It is also proposed that not less than 25 percent of the principal amount of the Bonds in respect of each Company will be paid by way of serial maturities or will be redeemed through mandatory sinking funds prior to stated maturity.

As provided in the Agreement and the Indentures, each Company will be required to deliver to the trustee its Series B Pollution Control Note ("Series B Note") which is, except as to interest rate, maturity, principal amount, and redemption provisions, substantially identical to the Series A Note, to provide revenues to the County to meet the debt service requirements on the Series B Bonds in respect of that Company. The Series B Note for each Company will also be secured by a second lien on the Company's interest in the Facilities and certain other property pursuant to the Security Agreement in respect of each Company and, as such, will not constitute "unsecured debt" within the meaning of the provisions of each of the Companies' charters. Each Company also proposes to pay any trustee's fees or other expenses incurred by the County as a result of the issuance of the Series B Bonds.

The terms of the Series B Notes to be issued by Potomac Edison and West Penn are set forth below:

coverages, the issuance of bonds by the County in respect of Monongahela has been postponed pending the result of the rehearing.

The Companies will cause the Facilities to be completed and the Companies will have complete control of the operation of the Facilities and will be



responsible for the maintenance thereof.

To the extent that the total cost of the Facilities exceeds the proceeds from the Series A and Series B Bonds (and any other obligations hereafter issued under the Agreement), the Companies will be required to pay for completion of the Facilities at their own expense.

It is expected that the County will engage Goldman, Sachs & Co. to provide financial advice and, together with such other underwriters as may be designated, underwrite the sale of the Series B Bonds. Fees, commissions and expenses of the underwriters, and legal counsel will be included in the total cost of the Facilities. The Companies have been informed that the County has legal authority to issue tax exempt revenue bonds in accordance with the proposed documents and the Companies understand that legal opinions to that effect will be delivered to appropriate parties at, or prior to, the closing date. The Series B Bonds may be in either coupon or registered form and will bear interest semi-annually at rates to be determined. The Series B Bonds will be issued pursuant to the Supplemental Indentures which will provide for redemption, sinking funds, no-call and other appropriate provisions to be determined. The Supplemental Indenture will also provide that the proceeds of the sale of the Series B Bonds by the County must be applied to the cost of the Facilities.

The proceeds to be received by the Companies will be added to each of the Companies' general funds to reimburse the treasury of each of the Companies for expenditures made or to be made in connection with the Facilities.

In addition, Monongahela may issue \$1 million of unsecured notes which would correspond to a separate issue of \$1 million of the County's bonds in respect of principal amount, interest rates, and redemption provisions and having installments of principal corresponding to any mandatory sinking fund payments and stated maturities.

This issue of bonds would be a distinct offering from the Series B Bonds and would be offered before or after the Series B Bonds through separate offering documents, copies of which will be filed by amendment.

The proceeds from the sale of this series of bonds are proposed to be used to reimburse the treasury of Monongahela in respect of which the Bonds are issued for the cost of construction of certain other facilities at the Pleasants Power Station for which the proceeds the Series B Bonds may not be applied under the terms of the Indenture.

The Companies have been advised that the annual interest rate on tax-

exempt bonds of the type to be sold by the County has been approximately 2 percent lower than the interest rate on taxable obligations of comparable quality.

A statement of the fees, commissions, and expenses to be incurred in connection with the proposed transactions will be filed by amendment. Monongahela's participation in the proposed transactions has been authorized by West Virginia Public Service Commission and the Ohio Public Utilities Commission. West Penn's participation in the proposed transaction has been authorized by the Pennsylvania Public Utility Commission. Potomac Edison's participation in the proposed transaction has been authorized by the Maryland Public Service Commission and the State Corporation Commission of Virginia. The Air Pollution Control Commission of West Virginia has certified that the Facilities are being constructed and installed for water and air quality purposes. It is stated that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 20604), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied with respect to the transactions to be entered into by Potomac Edison and West Penn and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective with respect to the transactions to be entered into by Potomac Edison and West Penn.

*It is ordered*, pursuant to the applicable provisions of the Act and rules thereunder, That said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, with respect to the transactions to be entered into by Potomac Edison and West Penn, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

*It is further ordered*, That jurisdiction be, and it hereby is, reserved with respect to the transactions to be entered into by Monongahela.

*It is further ordered*, That jurisdiction be, and it hereby is, reserved with respect to the fees, commissions, and expenses to be incurred by Monongahela, Potomac Edison, and West Penn

in connection with the proposed transactions.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

SHIRLEY E. HOLLIS,  
Assistant Secretary.

[FR Doc. 78-23239 Filed 8-17-78; 8:45 am]

[8010-01]

[Rel. No. 10357; 812-4305]

#### NATIONAL AVIATION & TECHNOLOGY CORP.

##### Application

AUGUST 11, 1978.

Notice is hereby given that National Aviation & Technology Corp. (Applicant), 630 Fifth Avenue, New York, N.Y. 10020, a closed-end investment company registered under the Investment Company Act of 1940 (Act), filed an application on May 8, 1978, and an amendment thereto on July 31, 1978, for an order pursuant to section 17(b) of the Act exempting from the provisions of section 17(a) of the Act the exercise by Applicant of a warrant for the purchase of 20,000 shares of common stock (Warrant) of Evans & Sutherland Computer Corp. (Evans & Sutherland), and pursuant to section 17(d) of the Act and Rule 17d-1 thereunder permitting the exercise of the Warrant by Applicant. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Evans & Sutherland is a Utah corporation with its principal office located in Salt Lake City. Organized in 1968, Evans & Sutherland produces advanced, computer-generated, graphic display systems.

On May 22, 1974, Applicant purchased 51,750 shares of Evans & Sutherland common stock at a price of \$4 per share. Applicant subsequently acquired 20,000 shares at a price of \$5 per share and the Warrant at a price of \$2,000 from Leopold S. Wyler on January 20, 1978. Mr. Wyler had acquired such shares and the Warrant directly from Evans & Sutherland pursuant to a Purchase Agreement, dated October 20, 1972. Mr. Wyler paid Evans & Sutherland \$5 per share for the 20,000 shares sold to him and \$2,000 for the Warrant.

Applicant represents that it presently holds 71,750 shares of Evans & Sutherland common stock, constituting approximately 8.23 percent of such shares now outstanding. The proposed purchase of 20,000 additional Evans & Sutherland shares pursuant to the Warrant would increase Applicant's holdings to 91,750 shares, or 10.28 percent of the outstanding Evans & Suth-



erland shares. Applicant claims that it does not control Evans & Sutherland. Three stockholders of Evans & Sutherland have larger holdings than Applicant, and the chief executive officer of Evans & Sutherland is a substantial shareholder in his own right and, it is alleged, a dominant force in the company.

T. F. Walkowicz, Chairman of the Board, President and Chief Executive Officer of Applicant, presently owns 1,667 shares of Evans & Sutherland common stock. Mr. Walkowicz has been a director of Evans & Sutherland since 1971. In addition, Christopher C. Demisch, a Vice President of Applicant, is also a director of Evans & Sutherland. Mr. Demisch, however, does not own any shares of Evans & Sutherland common stock. Messrs. Walkowicz and Demisch are the only Evans & Sutherland directors affiliated with Applicant.

Section 17(a) of the Act, in pertinent part, provides that it shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as a principal, knowingly to sell to or purchase from such investment company any security of other property. Section 17(b) of the Act provides that the Commission, upon application, may exempt from the provisions of section 17(a) of the Act a proposed transaction if the evidence submitted establishes that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve any overreaching on the part of any party to the transaction and that the proposed transaction is consistent with the policy of the investment company concerned and with the general purposes of the Act.

The application states that Evans & Sutherland is an affiliated person of Applicant by virtue of Applicant's ownership of more than 5 percent of the outstanding voting securities of Evans & Sutherland. The application further states that since the exercise of the Warrant by Applicant involves a sale of Evans & Sutherland common stock by Evans & Sutherland, an affiliated person of the investment company, directly to the investment company, section 17(a) would prohibit the transaction without an exemptive order.

It is represented that Applicant's proposed additional investment in Evans & Sutherland is considered advantageous by Applicant's Executive Committee. In 1974, Evans & Sutherland experienced its first profitable year, and Applicant asserts that it has made steady and impressive progress in subsequent years. Applicant states that Evans & Sutherland's sales have risen from \$4,829,102 in 1975 to

\$8,468,207 in 1977. Earnings per share (calculated before inclusion of the income tax benefit derived from utilization of an operating loss carryforward) have risen from \$0.44 in 1975 to \$1.06 in 1977. Applicant represents that in light of Evans & Sutherland's successful performance in recent years, the exercise price of \$5 per share compares very favorably with the cost basis of approximately \$4 per share for the 51,750 shares first acquired by Applicant in 1974. Applicant submits that, in accordance with the provisions of section 17(b) of the Act, the terms of the proposed transaction, including the consideration to be paid by Applicant, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of Applicant and the proposed transaction is consistent with the general purposes of the Act.

Section 17(d) of the Act and Rule 17d-1 thereunder, taken together, provide, in pertinent part, that no affiliated person of a registered investment company, and no affiliated person of any such person, acting as principal, shall participate in, or effect any transaction in connection with any joint transaction or arrangement in which such registered investment company is a participant unless an application regarding such joint enterprise or arrangement has been filed with the Commission and has been granted by an order. In passing upon such applications the Commission will consider whether the participation of such registered investment company in such joint enterprise or arrangement on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Mr. Walkowicz and Mr. Demisch are affiliated persons of Applicant by virtue of their positions in the management of Applicant and affiliated persons of an affiliated person of Applicant by virtue of their positions as directors of Evans & Sutherland. Mr. Walkowicz did not vote in the proceedings of the Executive Committee of Applicant regarding approval of the purchase of the Warrant from Mr. Wyler and the filing of the instant application. Mr. Demisch is not a director of Applicant and, accordingly, not a member of the Executive Committee. Applicant does not perceive that either Mr. Walkowicz or Mr. Demisch will participate in or effect any transaction in connection with the sale of Evans & Sutherland common stock pursuant to the exercise of the Warrant if he merely continues to hold his share of Evans & Sutherland common stock. Applicant maintains that Mr.

Walkowicz's financial interest in Evans & Sutherland, 1,667 shares of common stock, is so small as to be immaterial in the context of the proposed transaction. Applicant further submits that, in accordance with the provisions in Rule 17d-1, the participation of Applicant in the transaction on the basis proposed is consistent with the provisions, policies and purposes of the Act and such participation is not on a basis less advantageous than that of other participants.

Notice is further given that any interested person may, not later than September 5, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of this interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered and any postponements thereof).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

SHIRLEY E. HOLLIS,  
Assistant Secretary.

[FR Doc. 78-23240 Filed 8-17-78; 8:45 am]

#### [8010-01]

[Rel. No. 15062; SR-NYSE-78-171]

#### NEW YORK STOCK EXCHANGE, INC.

#### Order Approving Proposed Rule Changes

AUGUST 11, 1978.

On March 23, 1978, the New York Stock Exchange, Inc. (NYSE) filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the Act) and Rule 19b-4 thereunder, copies of proposed rule changes which make necessary modifications to the NYSE's constitution



and rules for the implementation and operation of an Intermarket Trading System.

Notice of the proposed rule changes together with the terms of substance of the proposed rule changes was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14701, Apr. 24, 1978) and by publication in the FEDERAL REGISTER (43 FR 18376, Apr. 28, 1978). All written statements with respect to the proposed rule changes which were filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of sections 6 and 11A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

SHIRLEY E. HOLLIS,  
Assistant Secretary.

[FR Doc. 78-23241 Filed 8-17-78; 8:45 am]

#### [8010-01]

[Rel. No. 15061; SR-PSE-78-10]

#### PACIFIC STOCK EXCHANGE, INC.

#### Order Approving Proposed Rule Change

AUGUST 11, 1978.

On May 30, 1978, the Pacific Stock Exchange, Inc. (PSE) filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the Act) and Rule 19b-4 thereunder, copies of proposed rule changes which make necessary modifications to the PSE's rules for the implementation and operation of an Intermarket Trading System.

Notice of the proposed rule changes together with the terms of substance of the proposed rule changes was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14915, June 30, 1978) and by publication in the FEDERAL REGISTER (43 FR 29388, July 7, 1978). All written statements with respect to the

proposed rule changes which were filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of sections 6 and 11A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

SHIRLEY E. HOLLIS  
Assistant Secretary.

[FR Doc. 78-23242 Filed 8-17-78 8:45 am]

#### [8010-01]

[Rel. No. 15060; SR-Phlx-78-5]

#### PHILADELPHIA STOCK EXCHANGE, INC.

#### Order Approving Proposed Rule Change

AUGUST 11, 1978.

On April 2, 1978, the Philadelphia Stock Exchange, Inc. (Phlx) filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the Act) and Rule 19b-4 thereunder, copies of proposed rule changes (supplemented by Amendments Nos. 1 and 2, filed on Apr. 26 and May 1, 1978, respectively) which make necessary modifications to the Phlx's rules for the implementation and operation of an Intermarket Trading System.

Notice of the proposed rule changes together with the terms of substance of the proposed rule changes was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14744, May 10, 1978) and by publication in the FEDERAL REGISTER (43 FR 21765, May 19, 1978). All written statements with respect to the proposed rule changes which were filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made avail-

able to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of sections 6 and 11A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,  
Secretary.

[FR Doc. 78-23243 Filed 8-17-78; 8:45 am]

#### [8010-01]

[Rel. No. 20669; 70-6196]

#### SOUTHERN CO., ET AL.

#### Proposed Issuance and Sale of Common Stock Pursuant to the System's Employee Stock Ownership Plan

AUGUST 11, 1978.

In the Matter of the Southern Co., 64 Perimeter Center East, P.O. Box 720071, Atlanta, Ga. 30346, Alabama Power Co., Georgia Power Co., Gulf Power Co., Mississippi Power Co., Southern Company Services, Inc., Southern Electric Generating Co.

Notice is hereby given that the Southern Co. (Southern), a registered holding company, and its above-named subsidiary companies have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 8(a), 7, 9(a), and 10 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Southern proposes to issue and sell from time to time through October 15, 1980, a maximum of \$30,000,000 of its authorized but unissued common stock, par value \$5 per share, in order to provide common stock to fund the Employee Stock Ownership Plan of the Southern Company System (Plan). Southern intends to apply the proceeds from the proposed sale of the common stock for further equity investments as authorized by this Commission (File No. 70-6117), for other corporate purposes, and as may be subsequently authorized.

The application-declaration states that in order to encourage and assist



employees of Southern's subsidiaries to acquire ownership of Southern's common stock and thereby promote in the employees a strong interest in the successful operation of the Southern Company System, Southern Company Services, Inc., Alabama Power Co., Georgia Power Co., Gulf Power Co., Mississippi Power Co., and Southern Electric Generating Co. (the Employing Companies) have adopted the Plan, effective January 1, 1978, in accordance with section 301(d) of the Tax Reduction Act of 1975, as amended, and section 401(a) of the Internal Revenue Code of 1954, as amended (HCAR No. 20165). The Employing Companies have agreed to contribute to the Trust with respect to each calendar year common stock of Southern (or cash to be used to purchase such common stock) having an aggregate value equal to 1 percent of the amount of their qualified investment in property in respect of which investment tax credit has been claimed by the Employing Companies in their consolidated Federal income tax return for that year. Contributions with respect to any Plan year may be reduced by limited amounts equal to certain expenses incurred in establishing and administering the Plan.

Under the Plan, the Employing Companies will, in each calendar year, obligate themselves to contribute cash or common stock of Southern having an aggregate value equal to 1 percent of the amount of their qualified investment in property in respect of which investment tax credit has been claimed by the Employing Companies in their consolidated Federal income tax return for the preceding year. The Plan will be administered by the Plan Committee, the members of which are appointed by the Board of Directors of Southern Company Services, Inc. Contributed cash and common stock will be held in trust (the Trust) under the Employees Stock Ownership Plan Agreement of Trust for the benefit of participating employees of the Employing Companies. Generally, each employee who has been employed at least 1 year and who is at least 25 years of age automatically participates in the Plan. (Union employees participate in the Plan only if their union representative and the Employing Company so agree.)

Cash contributed under the Plan is to be primarily invested in common stock of Southern. In addition, cash dividends paid on the common stock of Southern held in the Trust will, unless a participant elects to have dividends allocated to his account paid to him currently, be reinvested in additional shares of Southern's common stock. Common stock which the Employing Companies contribute to the Trust, as well as common stock purchased by

the Trust, may be purchased on the open market or by private purchase, including purchases directly from Southern. The purchase price per share of common stock purchased by the Employing Companies or by the Trust (with contributed cash) will: (a) If the stock is purchased on the open market, be the market price thereof; (b) if the stock is purchased directly from Southern, be either (1) an amount equal to the closing price of Southern's common stock on the New York Stock Exchange for the trading day immediately preceding the date of purchase, or (2) the 20-Day Average, or (3) such other price, if any, as may be prescribed by statute or required by the Internal Revenue Service in rules or regulations relating to plans similar to the Plan; and (c) if the stock is purchased privately other than from Southern, be no greater than the last sale price or highest current independent bid price, whichever is higher. In reinvesting cash dividends allocated to a participant's account, the Trust may purchase common stock under Southern's Dividend Reinvestment and Stock Purchase Plan (at the price provided for in such plan), on the open market, or by private purchase, including purchases directly from Southern (at the fair market value of such common stock).

All costs of establishment and administration of the Plan and the Trust, in excess of those costs allowed by the Tax Reduction Act of 1975, as amended, to be withheld from contributions or to be paid by the Trust, will be paid by the Employing Companies.

Under the Plan, the number of shares allocated to a participating employee's account with respect to any calendar year will generally be an amount which bears the same relation to the aggregate amount of all shares to be allocated with respect to that year as the amount of compensation (up to \$100,000) actually paid to such participating employee during that year bears to the total compensation (up to \$100,000 for each participating employee) paid to all participating employees during that year. Amounts credited to the account of a participant under the Plan shall be fully vested and nonforfeitable. Participants in the Plan are not allowed to make contributions thereto on their own behalf. Participants in the Plan (or their beneficiaries) receive the shares held in the Trust for their benefit only in the event that the participant ceases to be an employee or upon the showing by a participant of an unusual or special situation in his financial affairs requiring the withdrawal of shares.

Each employee who is a participant in the Plan will be entitled to direct the manner in which voting rights on

shares of common stock credited to his or her account under the Plan are to be exercised. Shares for which voting instructions are not received will not be voted.

Fees and expenses to be incurred in connection with the proposed transactions are estimated at \$13,500, including legal fees estimated at \$4,000, listing fees of \$4,000, and charges for services by Southern Company Services, Inc., estimated at \$2,000. It is stated that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than September 5, 1978, request in writing that a hearing be held in respect of such matter, stating the nature of this interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

SHIRLEY E. HOLLIS,  
Assistant Secretary.

[FR Doc. 78-23244 Filed 8-17-78; 8:45 am]

#### [8010-01]

[File No. SR-CBOE-78-24]

#### CHICAGO BOARD OPTIONS EXCHANGE, INC.

##### Filing of Proposed Rule Change

AUGUST 14, 1978.

The Chicago Board Options Exchange, Inc. ("CBOE") submitted on August 3, 1978, a proposed rule change under Rule 19b-4 to amend its disciplinary rules. The proposed changes



would: (1) make explicit the obligation of all CBOE members and associated persons to cooperate in Exchange Investigations involving possible rule violations; (2) codify the right of all CBOE members to be represented by counsel during an Exchange investigation; (3) provide that the Exchange staff submit reports to the Business Conduct Committee only with respect to investigations where the staff finds reasonable grounds to believe a violation has been committed; (4) require that the Board of Directors, as well as the subject of the investigation and the complainants, if any, be notified when the Business Conduct Committee, upon consideration of a staff report, determines not to initiate charges; (5) require parties to an investigation to exchange documents and witness lists well in advance of the hearing date and to attempt to arrive at agreement on uncontroverted issues in advance of the hearing; (6) provide the Business Conduct Committee with the authority to call for the production of witnesses and evidence; (7) make explicit that the Board of Directors, upon review of Business Conduct Committee decisions, may increase the sanctions; and (8) provide that sanctions imposed by the Business Conduct Committee will become effective upon completion of the Exchange review process, notwithstanding further appeal to the Commission.

Publication of the submission is expected to be made in the FEDERAL REGISTER during the week of August 14, 1978. In order to assist the Commission to determine whether to approve the proposed rule change or 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 submission within 21 days from the date of publication in the FEDERAL REGISTER. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-78-24.

Copies of the submission and all subsequent amendments, and copies of all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of section 552 of Title 5, United States Code, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of the filing and of any subsequent

amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,  
Secretary.

[FR Doc. 78-23245 Filed 8-17-78; 8:45 am]

#### [8025-01]

#### SMALL BUSINESS ADMINISTRATION

##### REGION III—ADVISORY COUNCIL

###### Public Meeting

The Small Business Administration, Region III Advisory Council, located in the geographical area of Washington, D.C., will hold a public meeting at 10 a.m., on Wednesday, September 13, 1978, in Suite 250, Executive Building, 1030 15th Street NW., Washington, D.C., to discuss such business as may be presented by members, staff of the Small Business Administration, or others attending.

For further information, write or call Frank H. Proudfoot, U.S. Small Business Administration, 1030 15th Street NW., Suite 250, Washington, D.C., 20417, 202-653-6960.

Dated: August 14, 1978.

K. DREW,  
Deputy Advocate for  
Advisory Councils.

[FR Doc. 78-23133 Filed 8-17-78; 8:45 am]

#### [8025-01]

##### REGION III—ADVISORY COUNCIL

###### Public Meeting

The Small Business Administration, Region III Advisory Council, located in the geographical area of Baltimore, Md., will hold a public meeting at 10:30 a.m. on Friday, September 15, 1978, in the offices of the Small Business Administration, 8600 La Salle Road, 630 Oxford Building, Towson, Md., to discuss such business as may be presented by members and the staff of the Small Business Administration or others attending. For further information, write or call Gerard J. Lang, District Director, U.S. Small Business Administration, 8600 La Salle Road, 630 Oxford Building, Towson, Md. 21204, 301-922-2054.

Dated: August 14, 1978.

K. DREW,  
Deputy Advocate for  
Advisory Councils.

[FR Doc. 78-23134 Filed 8-17-78; 8:45 a.m.]

#### [8025-01]

##### REGION VI—ADVISORY COUNCIL

###### Public Meeting

The Small Business Administration, Region VI Advisory Council, located in the geographical area of Oklahoma City, Okla., will hold a public meeting at 8:30 a.m., on Friday, September 15, 1978, in the Crystal Room, Skirvin Plaza Motel, One Park Avenue, Oklahoma City, Okla., to discuss such business as may be presented by members, the staff of the Small Business Administration or others attending.

For further information, write or call Donald D. Grose, District Director, U.S. Small Business Administration, 200 Northwest Fifth Street, Suite 670, Oklahoma City, Okla. 73102, 405-231-5237.

Dated: August 14, 1978.

K. DREW,  
Deputy Advocate for  
Advisory Councils.

[FR Doc. 78-23135 Filed 8-17-78; 8:45 am]

#### [8025-01]

##### REGION VIII—ADVISORY COUNCIL EXECUTIVE BOARD

###### Public Meeting

The Small Business Administration, Region VIII Advisory Council Executive Board will hold a public meeting at 1 p.m., on Thursday, September 21, 1978, in the Small Business Administration Conference Room, 22d Floor, Executive Tower Building, 1405 Curtis Street, Denver, Colo., to discuss such business as may be presented by members, staff of the Small Business Administration, or others attending.

For further information, write or call Dean Lupkey, Regional Director, U.S. Small Business Administration, Executive Tower Building, 1405 Curtis Street, Denver, Colo. 80202, 303-837-4021.

Dated: August 14, 1978.

K. DREW,  
Deputy Advocate for  
Advisory Councils.

[FR Doc. 78-23136 Filed 8-17-78; 8:45 am]

#### [8025-01]

##### REGION VII—ADVISORY COUNCIL

###### Public Meeting

The Small Business Administration Region VII Advisory Council, located in the geographical area of Des Moines, will hold a public meeting at 10 a.m., on Wednesday, September 6, 1978, on the 33d floor in the Briefing Center of the Bankers Trust-Ruan Building, Des Moines, Iowa, to discuss



such business as may be presented by members and the staff of the Small Business Administration or others attending. For further information, write or call J. Harold Sears, District Director, U.S. Small Business Administration, 210 Walnut Street, Des Moines, Iowa 50309, 515-284-4567.

Dated: August 14, 1978.

K. DREW,  
Deputy Advocate for  
Advisory Councils.

[FR Doc. 78-23137 Filed 8-17-78; 8:45 am]

#### [8025-01]

##### REGION VIII—ADVISORY COUNCIL

###### Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Salt Lake City, will hold a public meeting at 9 a.m., on Friday, September 15, 1978, in the Prospector Room of the Alta Club, 100 East South Temple, Salt Lake City, Utah, to discuss such business as may be presented by members and the staff of the Small Business Administration or others attending. For further information, write or call Clair R. Hopkins, District Director, U.S. Small Business Administration, 2237 Federal Building, Salt Lake City, Utah 84138, 801-524-5804.

Dated: August 14, 1978.

K. DREW,  
Deputy Advocate for  
Advisory Councils.

[FR Doc. 78-23138 Filed 8-17-78; 8:45 am]

#### [8025-01]

[License No. 02/02-0345]

##### INTERGROUP VENTURE CAPITAL CORP.

###### Issuance of a License to Operate as a Small Business Investment Company

On March 28, 1978, a Notice was published in the FEDERAL REGISTER (43 FR 12981), stating that Intergroup Venture Capital Corp., 551 Fifth Avenue, New York, N.Y. 10017, had filed an application with the Small Business Administration pursuant to § 107.702 of the SBA rules and regulations governing small business investment companies (13 CFR 107.102 (1978)), for a license to operate as a small business investment company (SBIC).

Interested parties were given to the close of business April 27, 1978, to submit their comments. No comments were received.

Notice is hereby given that, having considered the application and all other pertinent information, SBA on August 7, 1978, issued License No. 02/

02-0345 to Intergroup Venture Capital Corporation, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: August 11, 1978.

PETER F. MCNEISH,  
Deputy Associate  
Administrator for Investment.

[FR Doc. 78-23139 Filed 8-17-78; 8:45 am]

#### [8025-01]

[Delegation of Authority No. 1-A; Rev. 6]

##### ASSOCIATE ADMINISTRATOR FOR OPERATIONS ET AL.

###### Delegation of Authority; Line of Succession to the Administrator

Delegation of Authority No. 1-A (Revision 5) (39 FR 27613) is hereby revised to read as follows:

I. Pursuant to authority vested in me by the Small Business Act, 72 Stat. 384, as amended, the Small Business Investment Act of 1958, 72 Stat. 689, as amended authority is hereby delegated to the following officials in the following order:

1. Associate Administrator for Operations;
2. Assistant Administrator for Administration;
3. General Counsel;
4. Associate Administrator for Finance and Investment;

to perform, in the event of the absence or incapacity of the Administrator and the Deputy Administrator, any and all acts which the Administrator is authorized to perform, including but not limited to authority to issue, modify, or revoke delegations of authority and regulations, except exercising authority under sections 7(a)(6), 9(d), and 11 of the Small Business Act, as amended.

II. Anyone designated by the Administrator as acting due to a vacancy in one of the positions listed above remains in the line of succession; otherwise in the absence of one of the above, the authority moves to the next position.

III. This delegation is not in derogation of any authority residing in the above listed officials relating to the operations of their respective programs, nor does it affect the validity of any delegations currently in force and effect and not specifically cited as revoked or revised herein.

Effective Date: August 18, 1978.

A. VERNON WEAVER,  
Administrator.

[FR Doc. 78-23140 Filed 8-17-78; 8:45 a.m.]

#### [4710-07]

##### DEPARTMENT OF STATE

[Public Notice CM-8/93]

##### ADVISORY COMMITTEE ON THE 1979 WORLD ADMINISTRATIVE RADIO CONFERENCE

###### Meeting

The Department of State announces that the Advisory Committee on the 1979 World Administrative Radio Conference (WARC) will meet on September 20, 1978, in the main conference room of the Pan American Health Organization Building, 23d Street and Virginia Avenue NW., Washington, D.C., from 10 a.m. to 4 p.m. This will be the second meeting of the full committee. It will be a joint meeting with the members of the initial U.S. Delegation to the WARC. The committee assists in the formulation of U.S. Government positions for the Conference which will be held in Geneva in September 1979. It reports to its chairman, Mr. Glen O. Robinson, who also serves as chairman of the U.S. Delegation to the WARC.

The general agenda of the September 20 meeting will be:

- a. Report by the Committee Chairman on the current state of WARC delegation preparations, including recent consultations with foreign government representatives.
- b. Reports from members of the U.S. Initial Delegation Group on progress in developing position papers on WARC issues.
- c. Progress reports from the five Advisory Committee working groups.

Members of the general public may attend the meeting and join in the discussions, subject to instructions of the chairman. Admittance of public observers will be limited to the seating available. It is requested that prior to September 20, members of the general public who plan to attend the meeting supply their name and address to Mr. Wilson Dizard, WARC Delegation Staff, Office of International Communications Policy (EB/CTA/TD), Department of State, Washington, D.C. 20520. The telephone number is 202-632-2631.

Dated: August 8, 1978.

RUTH H. PHILLIPS,  
Executive Secretary, Advisory  
Committee on the 1979 World  
Administrative Radio Confer-  
ence.

[FR Doc. 78-23190 Filed 8-17-78; 8:45 am]



[4710-07]

[Public Notice CM-8/88]

**SHIPPING COORDINATING COMMITTEE****Subcommittee on Safety of Life at Sea;  
Meeting**

The Working Group on International Multimodal Transport and Containers of the Subcommittee on Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting from 9:30 a.m. to 5 p.m. on Wednesday, September 6, 1978, in Room 8236 of the Department of Transportation, 400 Seventh Street SW., Washington, D.C.

The purpose of the meeting is to discuss matters germane to multimodal transport and containers. The following specific issues will be addressed in the order indicated:

Debriefing of the meeting of the 19th session of the IMCO Subcommittee on Containers and Cargoes held in London, July 24-28, 1978;

Discussion of U.S. position for meeting of Group of Rapporteurs on Container Transport (GRCT) (ECE), September 18-20, 1978, in Geneva;

Briefing and update of the U.S. position regarding the 5th UNCTAD Intergovernmental Preparatory Group on International Multimodal Transport, September 18-October 6, 1978;

Status of USG action regarding the Customs Convention on Containers, 1972 and TIR Convention, 1975.

Necessary documents will be distributed as early as possible.

Any questions concerning this meeting should be directed to either Mr. Richard E. Johe, Department of State, 202-632-1313 or Mr. Charles Hockman, U.S. Coast Guard, 202-426-1577.

Comments from the public will be welcomed.

**RICHARD K. BANK,**  
*Chairman, Shipping  
Coordinating Committee.*

AUGUST 7, 1978.

[FR Doc. 78-23175 Filed 8-17-78; 8:45 am]

[4710-07]

[Public Notice CM-8/89]

**SHIPPING COORDINATING COMMITTEE****Subcommittee on Safety of Life at Sea;  
Meeting**

The Working Group on Subdivision and Stability of the Shipping Coordinating Committee's Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on Tuesday, September 12, 1978, in Room 8334 of the Department of Transportation, 400 Seventh Street SW., Washington, D.C.

The purpose of the meeting is to review documents in preparation for

the 22d session of the Subcommittee on Subdivision, Stability, and Load Lines of the Intergovernmental Maritime Consultative Organization (IMCO) to be held October 2-6, 1978, in London.

Requests for further information should be directed to Mr. Edward H. Middleton, U.S. Coast Guard (G-M/82), Washington, D.C. 20590, telephone 202-426-2170, or Mr. William A. Cleary, U.S. Coast Guard (G-MMT-5/82), Washington, D.C. 20590, telephone 202-426-2188.

The Chairman will entertain comments from the public as time permits.

**RICHARD K. BANK,**  
*Chairman, Shipping  
Coordinating Committee.*

AUGUST 8, 1978.

[FR Doc. 78-23176 Filed 8-17-78; 8:46 am]

[4710-07]

[Public Notice CM-8/90]

**SHIPPING COORDINATING COMMITTEE****Subcommittee on Safety of Life at Sea;  
Meeting**

The Working Group on Ship Design and Equipment of the Shipping Coordinating Committee's Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9 a.m. on Thursday, September 14, 1978, in Room 8236/38 of the Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C.

The purpose of this meeting is to continue preparations for the 19th session of the subcommittee on Ship Design and Equipment of the Intergovernmental Maritime Consultative Organization (IMCO) which is scheduled for November 27-December 1, 1978, in London.

The agenda includes the following:

Machinery and electrical requirements for nuclear ships and offshore supply vessels; The harmonization of machinery and electrical requirements in various IMCO instruments;

Draught requirements for segregated ballast tankers below 150 meters in length; Safety requirements for nuclear ships; Safety measures for special purpose ships; Steering systems for maneuverability; Tonnage and other parameters; Noise levels on board ships; and Safety measures for diving systems on mobile offshore drilling units

Request for further information should be directed to Capt. R. L. Brown, U.S. Coast Guard Headquarters, 400 Seventh Street SW., Washington, D.C. 20590, telephone 202-426-2167.

The Chairman will entertain comments from the public as time permits.

**RICHARD K. BANK,**  
*Chairman, Shipping  
Coordinating Committee.*

AUGUST 9, 1978.

[FR Doc. 78-23177 Filed 8-17-78; 8:45 am]

[4710-09]

[Public Notice CM-8/91]

**SHIPPING COORDINATING COMMITTEE****Committee on Ocean Dumping; Meeting**

The Committee on Ocean Dumping, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 9:30 a.m. on Tuesday, September 19, 1978, in the Administrator's Conference Room, 11th floor, West Tower, Environmental Protection Agency, 401 M Street SW., Washington, D.C.

The purpose of the meeting is to review position documents for the third consultative meeting of the Contracting Parties of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, scheduled to be held in London, October 9-13, 1978.

Requests for further information should be directed to Mrs. Norma Hughes, Oil and Special Materials Control Division (WH-548), Environmental Protection Agency, Washington, D.C. 20460. Mrs. Hughes may be reached by telephone on 202-245-3051.

The Chairman will entertain comments from the public as time permits.

**RICHARD K. BANK,**  
*Chairman, Shipping  
Coordinating Committee.*

AUGUST 9, 1978.

[FR Doc. 78-23188 Filed 8-17-78; 8:45 am]

[4710-07]

[Public Notice CM-8/94]

**SHIPPING COORDINATING COMMITTEE****Subcommittee on Safety of Life at Sea;  
Meeting**

The Working Group on Standards of Training and Watchkeeping of the Shipping Coordination Committee's Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on Thursday, September 21, 1978, in Room 8334 of the Department of Transportation, 400 Seventh Street SW., Washington, D.C.

The purpose of the meeting is to discuss the future work program of the Subcommittee on Standards of Training and Watchkeeping of the Intergovernmental Maritime Consultative Organization (IMCO).



Requests for further information should be directed to Capt. D. E. Hand, U.S. Coast Guard (G-MVP/82), Washington, D.C. 20590. He may be reached by telephone at 202-426-1500.

The Chairman will entertain comments from the public as time permits.

RICHARD K. BANK,  
Chairman,  
Shipping Coordinating Committee.

AUGUST 8, 1978.

[FR Doc. 78-23191 Filed 8-17-78; 8:45 am]

#### [4710-07]

[Public Notice CM-8/92]

#### STUDY GROUP 1 OF THE U.S. ORGANIZATION FOR THE INTERNATIONAL RADIO CONSULTATIVE COMMITTEE (CCIR)

##### Meeting

The Department of State announces that Study Group 1 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on September 20, 1978, in Room B841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C., at 9:30 a.m.

Study Group 1 deals with matters relating to efficient use of the radio frequency spectrum, and in particular, with problems of frequency sharing, taking into account the attainable characteristics of radio equipment and systems; principles for classifying emissions; and the measurement of emission characteristics and spectrum occupancy. The purpose of the meeting will be to discuss preparations for the Special Preparatory Meeting which will be held in Geneva starting in October 1978, as a preliminary to the 1979 World Administrative Radio Conference.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman.

Requests for further information should be directed to Mr. Gordon Huffcutt, State Department, Washington, D.C. 20520, telephone 202-632-2592.

Dated: August 14, 1978.

GORDON L. HUFFCUTT,  
Chairman,  
U.S. CCIR National Committee.

[FR Doc. 78-23189 Filed 8-17-78; 8:45 am]

#### [4710-07]

[CM-8/95]

#### STUDY GROUP 6 OF THE U.S. ORGANIZATION FOR THE INTERNATIONAL RADIO CONSULTATIVE COMMITTEE (CCIR)

##### Meeting

The Department of State announces that Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on September 26, 1978, at Fort Monmouth, N.J. The meeting will open at 9 a.m. at the Monmouth Room at Gibbs Hall, Fort Monmouth Officers Club on Tinton Street, Tinton, N.J.

Study Group 6 deals with matters relating to the propagation of radio waves by and through the ionosphere. The purpose of the meeting will be a review of work approved at the XIVth Plenary Assembly of the CCIR, Kyoto, June 1978, and an initialization of plans for Study Group 6 submission of documents to the CCIR for the 1978-1982 Preparatory Cycle.

Members of the general public may attend the meeting and join in the discussions subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available.

Requests for further information should be directed to Mr. Gordon Huffcutt, State Department, Washington, D.C. 20520, telephone 202-632-2592.

GORDON L. HUFFCUTT,  
Chairman,  
U.S. CCIR National Committee.

AUGUST 14, 1978.

[FR Doc. 78-23192 Filed 8-17-78; 8:45 am]

#### [1505-01]

#### DEPARTMENT OF THE TREASURY

##### Internal Revenue Service

#### PUBLIC INSPECTION OF WRITTEN DETERMINATIONS

##### Intention to Disclose

##### Corrections

In FR Doc. 78-21358, appearing at page 33992 in the issue for Wednesday, August 2, 1978; make the following corrections:

1. On page 33992, second column, second paragraph under DATES, fourth line, "3" should read "16", and in the tenth and eleventh lines of that paragraph, "December 1, 1978" should be changed to "November 27, 1978".

2. On page 33993, first column, the line above ADDITIONAL DISCLOSURE, "3" should be changed to "16"; second column, third paragraph, delete the following from the seventh and eighth

lines: "the Monday preceding December 1, 1978." and insert the following: "Monday, November 27, 1978."

#### [4810-22]

##### Office of the Secretary

#### SUGAR FROM BELGIUM, FRANCE, AND THE FEDERAL REPUBLIC OF GERMANY

##### Antidumping Proceeding

AGENCY: U.S. Treasury Department.

ACTION: Initiation of antidumping investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether imports of sugar from Belgium, France, and the Federal Republic of Germany are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. Sales at less than fair value generally occur when the prices of the merchandise sold for exportation to the United States are less than the prices in the home market.

There appears to be substantial doubt that imports of the subject merchandise allegedly sold at less than fair value have caused injury or are likely to cause injury to an industry in the United States. This case is therefore being referred to the U.S. International Trade Commission for an investigation to determine whether there is reasonable indication of injury or likelihood of injury.

EFFECTIVE DATE: August 18, 1978.

FOR FURTHER INFORMATION  
CONTACT:

John R. Kugelman, Operations Officer, U.S. Customs Service, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On July 10, 1978, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel for Florida Sugar Marketing and Terminal Associations, Inc., (FSM), indicating a possibility that raw and refined sugar from Belgium, Denmark, the Federal Republic of Germany, France, and the United Kingdom is being, or is likely to be sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.). FSM subsequently withdrew its petition as it related to sugar imported from the United Kingdom and Denmark.



The sugar under consideration includes raw and refined sugar provided for in item Nos. 155.20 and 155.30 of the Tariff Schedules of the United States (TSUS).

Petitioner alleges that a margin of dumping of 170 percent exists, based upon a comparison of estimated sugar prices from these countries to the United States and the "intervention" (minimum) price for sugar sold in each of those countries as determined under the European Communities "Common Agricultural Policy." To the extent the investigation to be undertaken reveals that actual sales prices in the home market have been at other than such determined prices, the margins, if any, will be computed on the basis of such actual transactions.

In assessing the injury caused by the alleged sales at less than fair value from these three countries of the European Community, it has been considered appropriate to cumulate the shares of the market held by imports from each of the countries named. The product appears to be fungible. Under such circumstances, it would be unrealistic to attempt to differentiate the alleged injury caused by imports from one country rather than another, when it is the cumulative effect of all, occurring within a discrete time-frame, that creates whatever problem may exist.

Petitioner has presented evidence concerning alleged injury or likelihood of injury as the result of imports of sugar from Belgium, the Federal Republic of Germany, and France at less than fair value. The information relates primarily to increased imports in the first half of 1978 compared to the same period in 1977, sales lost by virtue of the availability of lower priced imports, a margin of underselling which would be entirely eliminated by the elimination of the alleged dumping margins, suppressed prices which have resulted in an inability to make profits by its members over the last 3 years, and declining regional and total U.S. production of raw sugar. The evidence of injury contained in the petition rested primarily on the impact of the alleged less than fair value sales in the regional market in which the bulk of those sales were made, the Southeast United States. However, although imports from these three countries have increased, they still account for only approximately 1.0 percent of total U.S. raw sugar production and 0.5 percent of total U.S. consumption of sugar. Even using the regional definition of the domestic market for sugar produced by petitioner, the imports in question only represent about 6 percent of domestic production in that region.

The likelihood of future increases in imports from these countries is significantly reduced, if not totally eliminated, as the result of the imposition of a 10.8-cents-per-pound countervailing duty effective July 31, 1978, on sugar exported to the United States from all European Community (EC) member states, including that covered by this investigation. Sugar From the European Community, Final Countervailing Duty Determination, 43 FR 33237 (1978). Even at current world prices, the imposition of this duty will raise the c.i.f. duty-paid price of the subject sugar well above domestic U.S. prices.

In cases in which regional injury has been an issue, the International Trade Commission has examined the relationship between the alleged regional injury and conditions at the national level. Given the low level of import penetration by the imports from these three countries on the national level and even the regional level, the aforementioned imposition of a countervailing duty on sugar imports from all EC countries and the need for examination of the relationship between alleged regional injury and alleged injury on the national level, it has been concluded that there is substantial doubt of injury or likelihood of injury to an industry in the United States as a result of imports of such merchandise from Belgium, the Federal Republic of Germany, and France. Accordingly, the U.S. International Trade Commission is being advised of such doubt pursuant to section 201(c)(2) of the Act.

Having conducted a summary investigation as required by § 153.29 of the customs regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value. Should the International Trade Commission, within 30 days of receipt of the advice cited in the preceding paragraph advise the Secretary that there is no reasonable indication that an industry in the United States is being, or is likely to be, injured by reason of the importation of such merchandise into the United States, the Department will publish promptly in the FEDERAL REGISTER a notice terminating the investigation. Otherwise the investigation will continue to conclusion.

This notice is published pursuant to § 153.30 of the customs regulations (19 CFR 513.30).

ROBERT H. MUNDHEIM,

*General Counsel of the Treasury.*

AUGUST 11, 1978.

[FR Doc. 78-23206 Filed 8-17-78; 8:45 am]

[8320-01]

## VETERANS ADMINISTRATION

### MERIT REVIEW BOARDS FOR HEALTH SERVICES RESEARCH AND DEVELOPMENT AND REHABILITATIVE ENGINEERING RESEARCH AND DEVELOPMENT

#### Establishment

The above committees are being established, based upon a determination by the Administrator of Veterans Affairs that they are in the public interest in connection with the performance of duties imposed on the Veterans Administration. This determination follows consultation with the Committee Management Secretariat, pursuant to the Federal Advisory Committee Act (Pub. L. 92-463) and OMB Circular No. A-63, revised.

The Health Services and Rehabilitative Engineering Research and Development programs are directed toward improving health care delivery to veterans and the quality of life of disabled veterans, respectively.

Each Merit Review Board's objective is to improve the quality of the assigned research and development program, thereby contributing to the broader program goals, by providing impartial, expert advice on the scientific and technical merit of individual research and development proposals.

Interested persons may address questions or comments regarding the establishment of these committees to the Coordinator of this effort at Veterans Administration Central Office (152B), 810 Vermont Avenue NW., Washington, D.C. 20420, phone 202-389-3408.

Dated: August 10, 1978.

MAX CLELAND,  
*Administrator.*

[FR Doc. 78-23132 Filed 8-17-78; 8:45 am]



[1505-01]

# INTERSTATE COMMERCE COMMISSION

[Volume No. 97]

## MOTOR CARRIER, BROKER, WATER CARRIER, AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

### Corrections

In FR Doc. 78-17144 appearing at page 26846 in the issue for Thursday, June 22, 1978, make the following corrections:

1. On page 26867, second column, "MC 134266 (Sub-52F)" should read "MC 134286 (Sub-52F)", and in the 20th line of MC 134286 (Sub-52F), (as corrected), insert "MI" after "MA."
2. On page 26867, third column, "MC 136718 (Sub-2F)" should read "MC 136728 (Sub-2F)."

[1505-01]

[Notice No. 93]

## MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

### Correction

In FR Doc. 78-16597 appearing at page 25896 in the issue for Thursday, June 15, 1978, in the first column of page 25900, fourth line from the top of the page, "MS" should have read "MA" in the list of states in the paragraph for No. MC 144521 (Sub-No. 1TA) which begins on the preceding page.

[7035-01]

[Notice No. 700]

## ASSIGNMENT OF HEARINGS

AUGUST 15, 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.

MC F12750, Cooper Motor Lines, Inc.—Purchase (portion)—C & C Trucking Co., Inc., MC 47171 (Sub-89), Cooper Motor Lines, Inc., MC 47171 (Sub-90), Cooper Motor Lines, Inc., MC-F-12752, United Transportation Co.—Purchase (portion)—C & C Trucking Co., Inc., MC 107615 (Sub-7),

United News Transportation Co., MC-F-12759, Sorenson Transportation, Inc.—Purchase (portion)—C & C Trucking Co., Inc., MC 59457 (Sub-30), Sorenson Transportation Co., Inc., and MC-F-12854, Leroy K Trucking Co., Inc.—Purchase (portion)—C & C Trucking Co., Inc., now being assigned for prehearing conference on September 28, 1978, at the Offices of the Interstate Commerce Commission, Washington, DC.

MC 124711 (Sub-51), Becker Corp., now assigned September 6, 1978, at Cheyenne, WY, is canceled and reassigned for September 6, 1978 (3 days), at Lincoln, NE, in a hearing room to be later designated.

MC 144232, Trans-National Truck, Inc., now assigned for hearing on September 28, 1978, at the Offices of the Interstate Commerce Commission, Washington, DC.

MC 83539 (Sub-480), C & H Transportation Co., Inc., now assigned September 12, 1978, at Denver, CO, will be held in Room C-503, U.S. Courthouse, 1961 Stout Street.

MC 106398 (Sub-793), National Trailer Convoy, Inc., now assigned September 13, 1978, at Denver, CO, will be held in Room C-503, U.S. Courthouse, 1961 Stout Street.

MC 114211 (Sub-347F), Warren Transport, Inc., now being assigned for hearing on September 13, 1978 (3 days), in Room C-503, U.S. Courthouse, 1961 Stout Street, Denver, CO.

F.D. 27421, Southern Pacific Transportation Co.—Common Use Of Terminal Facilities—Union Pacific Railroad Co. & Burlington Northern, Inc., now assigned for continued hearing on September 18, 1978, at Portland, OR, will be held in Room 103, Pioneer Courthouse, 555 SW. Yamhill Street.

MC 139482 (Sub-37F), New Ulm Freight Lines, Inc., now being assigned for hearing on October 10, 1978, at Chicago, IL, in a hearing room to be later designated.

MC 2835 (Sub-40), Adirondack Transit Lines, Inc., now being assigned for hearing in October 11, 1978 (3 days), at Albany, NY, in a hearing room to be later designated.

MC 89578 (Sub-4F), Arthur Brundage, Inc., d.b.a. Oneonta Bus Lines, now being assigned for hearing on October 16, 1978 (2 days), at Albany, NY, in a hearing room to be later designated.

MC 144035 (Sub-2F), Minute Air, Inc., now being assigned for hearing on October 18, 1978 (3 days), at Albany, NY, in a hearing room to be later designated.

MC 121060 (Sub-58F), Arrow Truck Lines, Inc., now being assigned prehearing conference on September 11, 1978, at Chicago, IL, in a hearing room to be later designated.

MC 99610 (Sub-17) and MC 99610 (Sub-27), Ross Neely Express Inc., now assigned prehearing conference on September 25, 1978, at the Offices of the Interstate Commerce Commission, Washington, DC.

MC 99610 (Sub-19), Ross Neely Express, Inc., now being assigned September 25, 1978, prehearing conference, at the Offices of Interstate Commerce Commission, Washington, DC.

MC 33641 (Sub-131), IML Freight, Inc., now assigned September 11, 1978, at Boise, ID, is canceled; Application Dismissed.

MC 19157 (Sub-50F), McCormack's Highway Transportation Inc., is assigned for hearing September 7, 1978 at Nashville, TN, and will be held at Room A-961, U.S. Courthouse, 80 Broadway.

MC 73165 (Sub-435F), Eagle Motor Lines, Inc., is assigned for hearing September 11, 1978, at Nashville, TN, and will be held at Room A-961, U.S. Courthouse, 80 Broadway.

MC 115841 (Sub-578), Colonial Refrigerated Transportation, Inc., is assigned for hearing September 12, 1978, at Nashville, TN, and will be held at Room A-961, U.S. Courthouse, 80 Broadway.

MC 114569 (Sub-201), Shaffer Trucking, Inc., is assigned for hearing September 14, 1978, at Nashville, TN, and will be held at Room A-961, U.S. Courthouse, 80 Broadway, and MC 128273 (Sub-274), Midwestern Distribution, Inc., is assigned for hearing September 14, 1978 at Nashville, TN, and will be held at Room A-961, U.S. Courthouse, 80 Broadway.

MC 115654 (Sub-83F), Tennessee Cartage Co., Inc., is assigned for hearing September 8, 1978, and will be held at Room A-961, U.S. Courthouse, 80 Broadway, at Nashville, TN.

MC 143249 (Sub-2), Mid Eastern Transportation, Inc., Common Carrier Application is assigned for hearing September 6, 1978, at Nashville, TN and will be held at Room A-961 U.S. Courthouse, 801 Broadway.

MC 119789 (Sub-409), Caravan Refrigerated Cargo, Inc., is assigned for hearing September 11, 1978 at Omaha, NE and will be held at Room 616 Union Pacific Plaza, 110 North 14th Street, 14th and Dodge.

MC 114211 (Sub-343), Warren Transport, Inc., is assigned for hearing September 7, 1978 at Omaha, NE and will be held at Room 616 Union Pacific Plaza, 110 North 14th Street, 14th and Dodge.

MC 100449 (Sub-86), Malling Truck Line, Inc. is assigned for hearing September 12, 1978 at Omaha, NE and will be held at Room 616, Union Pacific Plaza, 110 North 14th Street, 14th and Dodge.

MC 11592 (Sub-19), Best Refrigerated Express, Inc., is assigned for hearing September 13, 1978 at Omaha, NE and will be held at Room 616 Union Pacific Plaza, 110 North 14th Street, 14th and Dodge.

MC 138328 (Sub-42), Clarence L. Werner Enterprises, is assigned for hearing September 14, 1978 at Omaha, NE and will be held at Room 616 Union Pacific Plaza, 110 North 14th Street, 14th and Dodge.

MC 141054 (Sub-4), B & B Packing Transport, Ltd., is assigned for hearing September 15, 1978 at Omaha, NE and will be held at Room 616, Union Pacific Plaza, 110 North 14th Street, 14th and Dodge.

MC 116915 (Sub-47F), Eck Miller Transportation Corp., now being assigned for hearing on October 30, 1978, at Dallas, TX in a hearing room to be later designated (1 day).

MC 115826 (Sub-293), W. J. Digby, Inc., now being assigned for hearing on October 31, 1978, (1 day), at Dallas, TX, in a hearing room to be later designated.

MC 136008 (Sub-94), Joe Brown Co., Inc., now being assigned November 1, 1978 (1 day), at Dallas, TX, in a hearing room to be later designated.

MC 143227 (Sub-2), Garland L. Enox Contract Application now being assigned for hearing on November 2, 1978 (2 days), at Dallas, TX in a hearing room to be later designated.

MC 134922 (Sub-24), B. J. McAdams, Inc., now being assigned for hearing on November 6, 1978 (1 day), at Dallas, TX in a hearing room to be later designated.



MC 2202 (Sub-551), Roadway Express, Inc., now being assigned for hearing on November 7, 1978 (3 days), at Dallas, TX in a hearing room to be later designated.

H. G. HOMME, JR.,  
Acting Secretary.

[FR Doc. 78-23221 Filed 8-17-78; 8:45 am]

# [7035-01]

[Docket No. ABB-19 (Sub-No. 19)]

## BALTIMORE & OHIO RAILROAD CO.

Abandonment Portion of the Ohio and Little Kanawha Branch Between Relief and Philo, in Muskingum, Morgan, and Washington Counties, Ohio; Findings<sup>1</sup>

Notice is hereby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by a decision entered on August 16, 1977, and the decision of the Commission, Division 1, acting as an Appellate Division, served April 5, 1978, as modified, adopted the decision of the Administrative Law Judge entered on August 16, 1977, which is administratively final, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R.R. Co.-Abandonment Goshen*, 354 I.C.C. 584 (1978), the present and future public convenience and necessity permit the abandonment by the Baltimore & Ohio Railroad Co. over that portion of its Ohio and Little Kanawha Branch between Valuation Station 2376+00 at or near Relief, Ohio, and Valuation Station 485+00 at or near Philo, Ohio, a distance of approximately 35.81 miles, all in Muskingum, Morgan, and Washington Counties, Ohio.

A certificate of abandonment will not be issued to The Baltimore & Ohio Railroad Co. based on the above-described finding of abandonment until final determination of the proceeding by the U.S. Court of Appeals. During the interim, however, the procedures specified in section 1a (6) and (7) of the Act will otherwise be followed. Thus, the Commission will be in a position to issue a certificate of abandonment 30 days after publication of this notice (September 18, 1978) unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a Government entity) has offered financial assistance (in the form of a rail service continuation payment), to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of

railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect.

However, as previously indicated no such certificate will be issued until the pending court proceeding has been finally resolved. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

H. G. HOMME, JR.,  
Acting Secretary.

[FR Doc. 78-23222 Filed 8-17-78; 8:45 am]

# [7035-01]

[Docket No. AB-43 (Sub-No. 34)]

## ILLINOIS CENTRAL GULF RAILROAD CO. ABANDONMENT BETWEEN GIFFORD AND POTOMAC IN CHAMPAIGN AND VERMILION COUNTIES, ILL.<sup>1</sup>

### Findings

Notice is hereby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by a decision entered April 26, 1978, a finding, which is administratively final, was made by the Commission, Division 2, acting as an Appellate Division, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.-Abandon-*

*ment Goshen*, 354 ICC 584 (1978), the present and future public convenience and necessity permit the abandonment by the Illinois Central Gulf Railroad Co. of that portion of its line of railroad extending from milepost 40.71 near Gifford, Ill., to milepost 52.36 in Potomac, Ill., a distance of 11.65 miles in Champaign and Vermilion Counties, Ill.

A certificate of abandonment will not be issued to the Illinois Central Gulf Railroad Co. based on the above-described finding of abandonment until final determination of the proceeding by the U.S. Court of Appeals. During the interim, however, the procedures specified in section 1a(6) and (7) of the Act will otherwise be followed. Thus, the Commission will be in a position to issue a certificate of abandonment 30 days after publication of this notice (September 18, 1978), unless within 30 days from the date of publication, the Commission further finds that:

(1) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment), to enable the rail service involved to be continued; and

(2) it is likely that such proffered assistance would: (a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or (b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect.

However as previously indicated no such certificate will be issued until the pending court proceeding has been finally resolved. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well

<sup>1</sup>This proceeding is pending review in the U.S. Court of Appeals for the Sixth Circuit, entitled *Philips Industries, Inc. (Malta Division) v. Interstate Commerce Commission*, No. 78-3403.

<sup>1</sup>This proceeding is pending review in the U.S. Court of Appeals for the Seventh Circuit, entitled *People of the State of Illinois v. United States of America and Interstate Commerce Commission*, No. 78-1960.



as the instructions contained in the above-referenced decision.

H. G. HOMME, Jr.,  
Acting Secretary.

[FR Doc. 78-23223 Filed 8-17-78 8:45 am]

# [7035-01]

[Notice No. 148]

## MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

AUGUST 14, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

### MOTOR CARRIERS OF PROPERTY

MC 144140 (Sub-14TA), filed May 19, published in the FEDERAL REGISTER June 16, 1978 and republished this issue. Applicant: SOUTHERN FREIGHTWAYS, INC., Highway 44W, P.O. Box 374, Eustis, FL 33726. Representative: John L. Dickerson, Highway 44W, P.O. Box 374, Eustis, FL 33726. By order entered July 18, 1978, the Motor Carrier Board granted applicant 90-day temporary authority commencing September 6, 1978, to operate as a common carrier, by motor vehicle, over irregular routes, trans-

porting: Foodstuffs (except in bulk), from the facilities of Rich Products Corp., at or near Murfreesboro, TN, to points in AL, FL, and GA. Supporting shipper: Rich Products Corp., 1145 Niagara Street, Buffalo, NY. Any interested person may file a petition for reconsideration within 20 days of the date of this publication. Within 20 days after the filing of such petition with the Commission, any interested person may file and serve a reply thereto. Purpose of this republication is to show applicant seeking authority as common carrier rather than contract carrier.

H. G. HOMME, Jr.,  
Acting Secretary.

[FR Doc. 78-23224 Filed 8-17-78; 8:45 am]

# [7035-01]

[Notice No. 144]

## MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

AUGUST 17, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

### MOTOR CARRIERS OF PROPERTY

MC 124230 (Sub-35TA), filed June 22, 1978. Applicant: C. B. JOHNSON, INC., P.O. Drawer S, Cortez, CO 81321. Representative: David E. Driggers, Suite 1600, Lincoln Center, 1660 Lincoln Street, Denver, CO 80264. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Sulfuric acid (in bulk, in tank vehicles), from Inspiration and Hayden, AZ, to Bluewater and Church Rock (located approximately 17 miles north of Ft. Wingate, NM) NM, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) The Anaconda Co., 660 Bannock Street, Denver, CO 80204, (2) Carlyle Chemical Co., Suite 2501, Fourth National Bank Bldg., Tulsa, OK 74119, (3) Chemical Marketing Services, Suite 2501, Fourth National Bank Bldg., Tulsa, OK 74119. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 127306 (Sub-10TA), filed June 22, 1978. Applicant: M. W. MCCURDY & CO., INC., 401 Nora's Lane, Houston, TX 77022. Representative: Daniel O. Hands, 205 West Touhy Avenue, Suite 200, Park Ridge, IL 60068. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: Coffee and coffee filters, from the facilities of The Coca-Cola Co., Foods Division, in Houston, TX, to Hayward and Union City, CA, and their commercial zones, under a continuing contract, or contracts, with The Coca-Cola Co., Foods Division, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Coca-Cola Co., Foods Division, P.O. Box 2079, Houston, TX 77001. Send protests to: John F. Mensing, District Supervisor, 8610 Federal Building, 515 Rusk Avenue, Houston, TX 77002.

MC 127840 (Sub-74TA), filed June 21, 1978. Applicant: MONTGOMERY TANK LINES, INC., P.O. Box 382, 17550 Fritz Drive, Lansing, IL 60438. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Soybean oil (in bulk, in tank vehicles), from the facilities of Cargill, Inc., at or near Sidney, OH, to the States of IL, IN, OH, PA, NY, NJ, MD, and KY, for 180 days. Supporting shipper: Harold E. Bernero, Traffic Manager, Cargill, Inc., 2400 Industrial Drive, Sidney, OH 45365. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South



Dearborn Street, Room 1386, Chicago, IL 60604.

MC 134755 (Sub-151TA), filed June 21, 1978. Applicant: CHARTER EXPRESS, INC., 1959 Turner Street, P.O. Box 3772, Springfield, MO 65804. Representative: Larry Knox, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pet foods* (except in bulk), from Berlin, MD, to points in OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Iams Foods Co., 3622 Delphos Avenue, Dayton, OH 45417. Send protests to: John V. Barry, District Supervisor, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 135078 (Sub-32TA), filed June 21, 1978. Applicant: AMERICAN TRANSPORT, INC., 7850 "F" Street, Omaha, NE 68127. Representative: Arthur J. Cerra, 2100 Ten Main Center, P.O. Box 19251, Kansas City, MO 64141. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Window shade rollers, slats, window shades and window shade materials*, from Ogdensburg, NY, to the facilities of Joanna Western Mills Co., at or near Chicago, IL, and Benton Harbor, MI, for 180 days. Supporting shipper: Joseph M. Whitchurch, Traffic Manager, Joanna Western Mills Co., 2141 South Jefferson, Chicago, IL 60616. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 136786 (Sub-139TA), filed June 21, 1978. Applicant: ROBCO TRANSPORTATION, INC., 4333 Park Avenue, Des Moines, IA 50321. Representative: Stanley C. Olsen, Jr., 7525 Mitchell Road, Eden Prairie, MN 55344. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cereal*, from Sharonville, OH, to Clearfield, UT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ralston Purina Co., Checkerboard Square, St. Louis, MO 63188. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 138308 (Sub-49TA), filed June 21, 1978. Applicant: KLM, INC., 2102 Old Brandon Road, P.O. Box 6098, Jackson, MS 39208. Representative: Donald B. Morrison, P.O. Box 6098, Jackson, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clay products* (except in

bulk), from the facilities of Filtril Corp., at Jackson, MS, to points in GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Filtril Corp., P.O. Box 8337, Jackson, MS, 39204. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Room 212, 145 East Amite Building, Jackson, MS 39201.

MC 139078 (Sub-11TA), filed June 13, 1978. Applicant: MIDCOAST TRUCKING, 131 Beaverbrook Road, Lincoln Park, NJ 07035. Representative: Alan Kahn, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pellets* (except in bulk), (1) From Houston, TX, to points in CT, DE, MD, NH, NJ, NY, PA, and VA; and (2) from Melrose Park, IL, to points in OH, IN, IA, MO, MI, and WI; (3) from Baltimore, MD, to points in AL, AR, FL, GA, IL, IN, KY, LA, MA, MI, MS, MO, OH, NC, PA, RI, SC, TN, TX, CT, DE, NJ, NY, VA, WV, and DC, for 180 days. Restriction: The authority granted herein is limited to a transportation service to be performed, under a continuing contract, or contracts, with Soltex-Polymer, Inc. Supporting shipper: Soltex-Polymer, Inc. P.O. Box 27328, Houston, TX 77027. Send protests to: Joel Morrows, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 139323 (Sub-4TA), filed June 27, 1978. Applicant: KARS TRANSPORT, INC., 3333 Northwest, 116th Street, Miami, FL 33167. Representative: Richard L. Austin, P.O. Box 7488, Miami, FL 33155. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except cement, those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities requiring special equipment, and commodities in bulk), between all points in the State of Florida south of the northern and western boundaries of Brevard, Orange, Polk, Hillsborough, and Pinellas Counties, FL, excluding Monroe County, for 180 days. There is no environmental impact involved in this application. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately (20) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: George M. Parker District Supervisor,

Monterey Building, Suite 101, 8410 Northwest, 53d Terrace, Miami, FL 33166.

MC 140033 (Sub-58TA), filed June 22, 1978. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75222. Representative: D. Paul Stafford, Winkle & Wells, Suite 1125, Exchange Park, P.O. Box 45538, Dallas, TX 75245. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, (except commodities in bulk), moving in vehicles equipped with mechanical refrigeration, from the plantsite of Inland Storage Distribution Center, located at Kansas City, KS, to points in TX and OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Inland Storage Distribution Center, P.O. Box 2249, Kansas City, KS 66110. Send protests to: Opal M. Jones, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 140201 (Sub-3TA), filed June 22, 1978. Applicant: SONEILL, INC., 524 Wyndmoor Avenue, Wyndmoor, PA 19118. Representative: Richard Rueda, 135 North Fourth Street, Philadelphia, PA 19106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning compounds*, (except in bulk), from facilities of Economics Laboratory, Inc., at Avenel, NJ, to points in MA and PA, in vehicles equipped with mechanical refrigeration and hydraulic lift gates, *plastic containers*, from Manchester, NH, to facilities of Economics Laboratory, Inc., at Avenel, NJ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Economics Laboratory, Inc., 255 Blair Road, Avenel, NJ 07001. Send protests to: T. M. Esposito Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 141546 (Sub-27TA), filed June 22, 1978. Applicant: BULK TRANSPORT SERVICE, INC., 1 Dundee Park, Andover, MA 01810. Representative: Kenneth B. Williams, 84 State Street, Boston, MA 02109. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gasoline and fuel oil*, in tank vehicles, from the plantsite and facilities of Gibbs Oil Co., Revere, MA, to points in RI, NH and ME, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Gibbs Oil Co., 40 Lee Burbank Hwy, Revere, MA 02151. Send protests to: Max Gorenstein, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room



501, 150 Causeway Street, Boston, MA 02114.

MC 142317 (Sub-2TA), filed June 22, 1978. Applicant: CENTRAL FLORIDA COACH LINES, INC., P.O. Box 127, Mountaintop, PA 18707. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Pickup and panel trucks*, in secondary movements, from Fermanagh Township (Juniata County), PA, to the northwest quarter of the State of OH, starting with I-70 on the OH-WV line, west to U.S. Hwy 33 at Columbus, north to OH Hwy 31 at Marysville, north on Hwy 31 to U.S. Hwy 68 at Kenton, north on Hwy 68 to I-75 at Findlay, and north on I-75 to the OH-MI line, for 150 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Barrows Enterprises, Inc., R.D. No. 3, Industrial Park, Mifflintown, PA 17059. Send protests to: Paul J. Kenworthy, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 314 U.S. Post Office Building, Scranton, PA 18503.

MC 143002 (Sub-2TA), filed June 21, 1978. Applicant: C.D.B., INC., 5170 36th Street SE., Grand Rapids, MI 49508. Representative: Karl L. Gotting, 1200 Bank of Lansing Building, Lansing, MI 48933. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Household and personal care products and related items and materials and supplies*, used in the manufacture and distribution thereof, between Ada, MI, on the one hand, and, on the other, the port of entry between the United States and Canada at Sweetgrass, MT, under a continuing contract, or contracts, with the Amway Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

Supporting shipper: Amway Corp., 7575 East Fulton Road, Ada, MI 49301. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, Room 225, Federal Building, Lansing, MI 48933.

NOTE.—Applicant is under common control with Bruce Cartage, Inc., a common carrier holding authority in MC 98154 and subnumbers thereto. Therefore, dual operations may be involved. Common control may be involved.

MC 143117 (Sub-4TA), filed June 22, 1978. Applicant: SAV-ON TRANSPORTATION, INC., 143 Frontage Road, P.O. Box 5216, Manchester, N.H. 03108. Representative: John A. Sykas, 143 Frontage Road, P.O. Box 5216, Manchester, N.H. 03108. Authority sought to operate as a contract car-

rier, by motor vehicle, over irregular routes, transporting: *Cereal, plastic articles, lunch and picnic kits, napkins, salt, pepper, sugar, condiments, and straws* (except in bulk), from the plantsite and storage facilities of Van Brode Milling Co., Inc., at or near Clinton, MA, to points in AL, AR, CO, FL, IL, IA, KS, MI, MN, MS, IN, MO, ND, OK, SD, WV, and WI, under a continuing contract, or contracts, with Van Brode Milling Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: VanBrode Milling Co., Inc., 20 Cameron Street, Clinton, MA 01510. (James J. Meehan Manager of Distribution) Send protests to: Ross J. Seymour, District Supervisor, Room 3, 6 Loudon Road, Concord, NH 03301.

MC 143465 (Sub-4TA), filed June 21, 1978. Applicant: FOREDECK TRANSPORTATION, INC., Whitewood Lane, Oak Ridge, NJ 07438. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *General commodities*, moving on bills of lading of freight forwarders as defined in section 402(a)(5) of the Interstate Commerce Act, from St. Louis, MO, to New York, NY, and points within the commercial zones thereof, under a continuing contract, or contracts, with Springmeier Shipping Co., Inc., at St. Louis, MO, for 180 days. Supporting shipper: Springmeier Shipping Co., Inc., 1123 Hadley Street, St. Louis, MO 63101. Send protests to: Joel Morricks, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Newark, NJ 07102.

MC 143500 (Sub-3TA), filed June 22, 1978. Applicant: H. B. CARRIERS, INC., 1719 Progress Way, P.O. Box 92, Jeffersonville, IN 47130. Representative: James E. Savitz, Suite 145, 4 Professional Drive, Gaithersburg, MD 20760. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Aluminum sheet, and aluminum foil with or without paper backing*, from the plantsite and warehouse facilities of the Anaconda Co., Aluminum Division, at or near Louisville, KY, and Terre Haute, IN, to points in UT, WA, OR, CA, AZ, and TX, under a continuing contract, or contracts, with the Anaconda Co., Aluminum Division, for 180 days. Supporting shipper: The Anaconda Co., Aluminum Division, P.O. Box 32860, Louisville, KY 40232. Send protests to: Beverly J. Williams, Transportation Assistant, Interstate Commerce Commission, Federal Building & U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 144771 (Sub-1TA), filed June 22, 1978. Applicant: B.G.M. TRUCKING, INC., 12634 East Freeway, Houston, TX 77015. Representative: Timothy Mashburn, P.O. Box 2207, Austin, TX 78768. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Frozen potatoes and potato products*, from Moses Lake and Othello, WA, and Nampa, ID, to Houston, Dallas, Palestine, and Lufkin, TX, under a continuing contract, or contracts, with Mims Meat Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mims Meat Co., 12634 East Freeway, Houston, TX 77015. Send protests to: John F. Mensing, District Supervisor, 8610 Federal Building, 515 Rusk Avenue, Houston, TX 77002.

MC 144926TA, filed June 22, 1978. Applicant: E. W. WYLLIE CORP., Box 1188, Fargo, ND 58102. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58102. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Sugar beet pulp pellets*, in bulk, from the facilities of Minn-Dak Farmers Cooperative, Inc., at or near Wahpeton, ND, to Minneapolis and South St. Paul, MN, under a continuing contract, or contracts, with Minn-Dak Farmers Cooperative, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Minn-Dak Farmers Cooperative, Inc., Suite 219, 400 South County Road 18, Minneapolis, MN 55426. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268, Federal Building & U.S. Post Office, Fargo, ND 58102.

MC 144953TA, filed June 21, 1978. Applicant: MULLEN TRUCKING, LTD., 6204-A Burbank Road, SE., Calgary, AB, Canada T2H 2C2. Representative: John T. Wirth, 2310 Colorado State Bank Building, 1600 Broadway, Denver, CO 80202. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Bentonite, barite and lignite*, from points at or near Lovell, Grey Bull, Upton, Casper, and Colony, WY; Belle Fourche, SD; Missoula and Malta, MT; Gascoyne, ND; and Battle Mountain, NV, to the port of entry on the International Boundary between the United States and Canada located at or near Sweetgrass, MT. Restrictions: (1) Restricted to the transportation of shipments in foreign commerce destined to points in the Canadian Provinces of AB and BC. (2) Restricted against the transportation of commodities in bulk, for 180 days. Applicant has also filed an underlying



ETA seeking up to 90 days of operating authority. Supporting shipper: There are approximately (6) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 144959TA, filed June 22, 1978. Applicant: RAINBOW TRANSPORT, 1190 East Holt, P.O. Box 366, Ontario, CA 91761. Representative: Gary Donald Lewis, 853 Lassen Way, Ontario, CA 91764. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Self-propelled motor vehicles*, from Los Angeles, Orange, Riverside, and San Bernardino Counties, CA, to points and places in the United States (except AK and HI), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Harvest Recreation Vehicle, Inc., 11262 East Rush Street, South El Monte, CA 91733. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 144960 (Sub-1 TA), filed June 28, 1978. Applicant: MR. SALT ENTERPRISES, INC., 109 Apple Creek Lane, Rochester, NY 14612. Representative: S. Michael Richards, Raymond R. Richards, 44 North Avenue, Webster, NY 14580. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Building materials* having prior or subsequent movement in interstate commerce, between Rochester, NY, and all points in NY on and west of Interstate Hwy 81, under a continuing contract, or contracts, with Grossman's, a division of Evans Products, 132 Mushroom Boulevard, Rochester, NY 14623. Send protests to: Interstate Commerce Commission, U.S. Courthouse & Federal Building, 100 South Clinton Street, Room 1259, Syracuse, NY 13260.

MC 144964TA, filed June 22, 1978. Applicant: ESSEX EXPRESS, INC., 1200 Hammondville Road, Pompano Beach, FL 33060. Representative: Clifton Peter Rose, Patton, Boggs & Blow, 1200 17th Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dried macaroni, spaghetti, vermicelli and noodles in cartons*, from C. F. Mueller Co., Jersey City, NJ, to Jacksonville, Hialeah, Lakeland, Miami,

Okalah, Orlando, Pompano Beach, and Tampa, FL, for 180 days. Supporting shipper: C. F. Mueller Co., 180 Baldwin Avenue, Jersey City, NJ 07306. Send protests to: George M. Parker, District Supervisor, Monterey Building, Suite 101, 8410 Northwest, 53d Terrace, Miami, FL 33166.

MC 144967 (Sub-1TA), filed June 27, 1978. Applicant: H. S. PURR, d.b.a. PURR TRUCKING CO., Box 151, Burnsville, WV 26351. Representative: John M. Friedman, 2930 Putnam Avenue, Hurricane, WV 25526. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sand* (in bulk, in dump vehicles), with control gate unloading devices, from Ottawa, Utica, and Weldon, IL, to Glenville, WV, and between Glenville, WV, on the one hand, and, on the other, Prestonsburg, KY, and Black Lick, PA, under a continuing contract, or contracts, with Dowell Division of Dow Chemical U.S.A., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: L. V. Montgomery, Office Supervisor, Dowell Division of Dow Chemical U.S.A., Route 71, Box 7A, Glenville, WA 26351. Send protests to: Frances A. Ciccarello, Secretary, Interstate Commerce Commission, 3108 Federal Office Building, 500 Quarrier Street, Charleston, WV 25301.

MC 144987TA, filed June 27, 1978. Applicant: BILL BREWER'S TRUCKING CO., LTD., 4724 Royal Oak Avenue, South Burnaby, BC, Canada, V5G 3N5. Representative: George R. LaBissoniere, 1100 Norton Building, Seattle, WA 98104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and wood products and plastic mouldings and laminate*, between ports of entry on the United States/Canada boundary line at or near Blaine, Lynden, and Oroville, WA, on the one hand, and, on the other, points in OR and WA, restricted to traffic moving in foreign commerce, under a continuing contract, or contracts, with Sander Industries, Ltd., for 180 days. Supporting shipper(s): Sander Manufacturing, Ltd., and Elswood Distributors, Ltd., 3003 Three Bentall Centre, Vancouver, BC, Canada V7X 1H3. Send protests to: Hugh H. Chaffee, District Supervisor, 858 Federal Building, 915 Second Avenue, Seattle, WA 98174.

By the Commission.

H. G. HOMME, Jr.,  
Acting Secretary.

[FR Doc. 78-23225 Filed 8-17-78; 8:45 am]

## [7035-01]

[Notice No. 145]

## MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

## IMPORTANT NOTICE

AUGUST 18, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

## MOTOR CARRIERS OF PROPERTY

MC 2960 (Sub-20TA), filed June 22, 1978. Applicant: ENGLAND TRANSPORTATION CO., OF TEXAS, 2301 McKinney Street, Houston, TX 77023. Representative: E. Larry Wells, Winkle & Wells, 1125 Exchange Park, P.O. Box 45538, Dallas, TX 75245. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building and roofing materials* (except in bulk), from the facilities of Bird & Son at Shreveport, LA, to Harris County, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Bird & Son, Inc., Washington Street, East Walpole, MA 02032. Send protests to: John F. Mens-



ing, District Supervisor, 8610 Federal Building, 515 Rusk Avenue, Houston, TX 77002.

MC 21866 (Sub-101TA), filed June 22, 1978. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Avenue, Boyertown, PA 19512. Representative: Alan Kahn, Suite 1920, 2 Penn Center Plaza, Philadelphia, PA 19102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, and materials and supplies* used in the manufacture or distribution of paper and paper products, between the facilities of Wyomissing Corp., at or near Reading, PA, on the one hand, and, on the other, Kansas City, KS, and points in OH and MI, for 180 days. Supporting shipper: Wyomissing Corp., P.O. Box 742, Reading, PA 19603. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 21866 (Sub-103TA), filed June 22, 1978. Applicant: WEST MOTOR FREIGHT, INC., 740 South Reading Avenue, Boyertown, PA 19512. Representative: Alan Kahn, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Forgings and castings*, from points in MI to Pottstown, PA, for 180 days. Supporting shipper: Dana Corp., 125 South Keim Street, Box F, Pottstown, PA 19464. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 35706 (Sub-10TA), filed June 22, 1978. Applicant: ATSL, INC., 6801 State Road, Philadelphia, PA 19135. Representative: Steven M. Tannenbaum, 135 North 4th Street, Philadelphia, PA 19106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from the facility of Telescope Folding Furniture Co., Inc., at Granville, NY, to points in NJ, PA, DE, MD, DC, VA, NC, and SC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Telescope Folding Furniture Co., Inc., Church Street, Granville, NY 12832. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 51146 (Sub-606TA), filed June 21, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 East Commercial Boulevard, Ft. Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting:

*Metal containers*, from Salisbury, NC, to points in the United States (except AK and HI), for 180 days. Supporting shipper: Reynolds Metals Co., P.O. Box 27003, Richmond, VA 23261. (Roy H. Grabman) Send protests to: Gail Daugherty Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 52861 (Sub-47TA), filed June 21, 1978. Applicant: WILLS TRUCKING, INC., 5955 Granger Road, Suite 615, Cleveland, OH 44131. Representative: John A. Wilson, 2535 Center Street, Cleveland, OH 44113. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Scrap metals*, in dump vehicles, from Greenville and St. Johns, MI, to Riverdale, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Philipp Brothers, 1221 Avenue of the Americas, New York, NY 10020. Send protests to: District Supervisor, Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 95540 (Sub-1026TA), filed June 21, 1978. Applicant: WATKINS MOTORLINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher, 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk, in tank vehicles), from Chicago, IL, to points in AL, FL, GA, LA, MS, NC, SC, and TN, for 180 days. Supporting shipper: There are approximately (9) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: George M. Parker, District Supervisor, Monterey Building, Suite 101, 8410 Northwest 53d Terrace, Miami, FL 33166.

MC 99614 (Sub-4TA), filed June 22, 1978. Applicant: MIKE CONROTTO TRUCKING, P.O. Box 638, 6991 Alexandria Street, Gilroy, CA 95020. Representative: William D. Taylor, 100 Pine Street, Suite 2550, San Francisco, CA 94111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packing houses*, as described in section A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except

hides and commodities in bulk), from the plantsite of Columbia Foods, Inc., at or near Wallula, WA, to points in CA, NV, and AZ, for 180 days. Supporting shipper: Columbia Foods, Inc., Dakota City, NE 68731. Send protests to: Michael M. Butler, District Supervisor, 211 Main, Suite 500, San Francisco, CA 94105.

MC 106398 (Sub-811TA), filed June 21, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull, 525 South Main, Tulsa, OK 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pickup trucks*, from the facilities of Gladiator, Inc., at Jacksonville, FL, to points in AL, AR, GA, LA, MS, NC, SC, and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Gladiator, Inc., P.O. Box 2237, Elkhart, IN 46515. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building, 215 Northwest 3d, Oklahoma City, OK 73102.

MC 106674 (Sub-329TA), filed June 21, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, U.S. Highway 24 West, Remington, IN 47977. Representative: Jerry L. Johnson, P.O. Box 123, Remington, IN 47977. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Composition board and sheets*, from the facilities of Champion International at or near Oxford, MS, to Brookville, Elkhart, Evansville, Jasper, Mishawaka, New Albany, Paoli, Richmond, and South Bend, IN; Chicago, Elgin, Franklin Park, Homewood, and Pinckneyville, IL; and Cincinnati, OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Champion International Corp., Knightsbridge Drive, Hamilton, OH 45020. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 107403 (Sub-1091TA), filed June 21, 1978. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Calcium carbonate, and ground limestone*, in bulk and bags, from Sylacauga (Grantts Junction), AL, to McGehee, AR; Columbus and Corinth, MS; Columbus and LaGrange, GA; Morristown, TN, and Gonzales, LA, for 180 days. Supporting shipper: Thomp-



son Weinman Co., P.O. Box 130, Cartersville, GA 30120. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 107403 (Sub-1094TA), filed June 21, 1978. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Diethylene glycol, dipropylene glycol, and recovered glycols*, from Tullulah, LA, and points within 5 miles thereof, to Chicago, IL; Covington, KY; Hicksville, NY; Collierville, TN; Saukville, WI; and Chatham, VA, for 180 days. Supporting shipper: Resource Economics Corp., 1742 Sherman Avenue, Evanston, IL 60201. Send protests to: T.M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA.

MC 107615 (Sub-13TA), filed June 22, 1978. Applicant: UNTCO, INC., 850 East Luzerne Street, Philadelphia, PA 19124. Representative: Richard A. Mehley, 1000 16th Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printed matter*, between points in VA, on the one hand, and, on the other, points in DE, MD, NJ, PA, and NY, and points in Rockland, Suffolk, and Westchester Counties, NY, and the District of Columbia, for 180 days. Supporting shipper(s): There are approximately (13) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 111375 (Sub-94TA), filed June 22, 1978. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC., P.O. Box 3358, Madison, WI 53704. Representative: Charles E. Dye, P.O. Box 3358, Madison, WI 53704. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Washers and gaskets, iron and steel*, from Milwaukee, WI, and its Commercial Zone to points in AZ, CA, CO, NM, UT, and WA, for 180 days. Supporting shipper: Wrought Washer Manufacturing, Inc., 2100 S. Bay Street, Milwaukee, WI 53207. Send protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 112184 (Sub-60TA), filed June 21, 1978. Applicant: THE MANFREDI

MOTOR TRANSIT CO., 11250 Kinsman Road, Newbury, OH 44065. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Soybean oil* (in bulk, in tank vehicles), from the facilities of Cargill, Inc., at or near Sidney, OH, to the States of IL, IN, KY, NC, GA, NY, PA, NJ, TN, OH, VA, MD, and MA. Said operations are limited to a transportation service to be performed under a continuing contract, or contracts, with Cargill, Inc., of Sidney, OH, for 180 days. Supporting shipper: Cargill, Inc., 2400 Industrial Drive, Sidney, OH 45365. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth, Cleveland, OH 44199.

MC 112989 (Sub-68TA), filed June 22, 1978. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr., 85647 Highway 99 South, Eugene, OR 97405. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum cans and can ends*, from the facilities of Kaiser Aluminum & Chemical Corp. located at Newark and Union City, CA, to Portland, OR, and Seattle, WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kaiser Aluminum & Chemical Corp., 300 Lakeside Drive, Oakland, CA 94643. Send protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 Southwest Yamhill Street, Portland, OR 97204.

MC 118159 (Sub-271TA), filed June 22, 1978. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sodium bicarbonate, sodium carbonate, and cleaning, scouring, and washing compounds* (except commodities in bulk), from the facilities of Church & Dwight Co., Inc., located at or near Syracuse, NY, to points in FL, for 180 days. Supporting shipper: Church & Dwight Co., Inc., P.O. Box 369, Piscataway, NJ 08854. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building, 215 Northwest 3d, Oklahoma City, OK 73102.

MC 118776 (Sub-28TA), filed June 22, 1978. Applicant: C. L. CONNORS, INC., 3820 Wisman Lane, Quincy, IL

62301. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Beer and related advertising material*, from Milwaukee, WI, Peoria, IL; Omaha, NE; and Pabst, GA, to Hannibal and Mexico, MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: James C. Williams, President, Mark Twain Beverage Co., Inc., Box 871, 305 South Eighth Street, Hannibal, MO 63401. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 119493 (Sub-212TA), filed June 21, 1978. Applicant: MONKEN CO., INC., P.O. Box 1196, West 20th Street Road, Joplin, MO 64801. Representative: Lawrence F. Kloeppel, P.O. Box 1196, Joplin, MO 64801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron, steel, and plastic articles and parts and accessories* used in the manufacture, distribution, and installation of iron, steel, and plastic articles, between Holt, AL, and IA, KS, OK, MO, and NE, nonradial, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Central Foundry Co., Holt, AL 35401. Send protests to: John V. Barry, District Supervisor, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 119555 (Sub-22TA), filed June 21, 1978. Applicant: OIL & INDUSTRY SUPPLIERS LTD., P.O. Box 3500, 640 12th Avenue, Calgary, AB, Canada T2P 2P9. Representative: D. S. Vincent (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Muriatic acid* (in bulk, in tank vehicles), from ports of entry on the International Boundary line between the United States and Canada located at or near International Falls, MN, to Cohasset, MN, restricted to traffic in foreign commerce, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): J. P. Bereziak, Manager and Distribution, Reed Ltd., 1750 Inkster Boulevard, Winnipeg, MB, Canada R2X 1R4. Send protest to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 119700 (Sub-38TA), filed June 21, 1978. Applicant: STEEL HAULERS, INC., 306 Ewing Avenue, Kansas



City, MO 64125. Representative: Frank W. Taylor, Jr., 1221 Baltimore Avenue, Kansas City, MO 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the plantsite of Jones & Laughlin Steel Corp., Putnam County, IL, to CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Jones & Laughlin Steel Corp., Hennepin, IL. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 123255 (Sub-166TA), filed June 28, 1978. Applicant: B & L MOTOR FREIGHT, INC., 140 Everett Avenue, Newark, NJ 43055. Representative: C. F. Schnee, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrapping paper, woodpulp board, woodpulp, and scrap paper*, from West Point, VA, to points in CT, DE, IL, IN, MD, MA, MI, NJ, NY, OH, PA, and WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Chesapeake Corp., VA, Box 311, West Point, VA 23181. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

MC 124078 (Sub-824TA), filed June 22, 1978. Applicant: SCHWERMANN TRUCKING CO., 611 South 28 Street, Milwaukee, WI 53215. Representative: Richard H. Prevette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, from Vassar, MI, to Decatur, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mueller Co., 500 West Eldorado Street, Decatur, IL 62525. (L. J. Fleckenstein, Sr.) Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 124078 (Sub-825TA), filed June 21, 1978. Applicant: SCHWERMANN TRUCKING CO., 611 South 28 Street, Milwaukee, WI 53215. Representative: Richard H. Prevette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bentonite clay* (in bulk, in pneumatic tank vehicles), from Sandy Ridge, AL, to Schwerman Distribution

Centers, Inc., at Milwaukee, WI, for 180 days. Supporting shipper: American Colloid Co., P.O. Box 228, Skokie, IL 60077 (Robert N. Garity). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

## PASSENGER CARRIER

MC 52362 (Sub-6TA), filed June 22, 1978. Applicant: MARINEL TRANSPORTATION, INC., Ward Way, North Chelmsford, MA 01863. Representative: Robert V. Cauchon, c/o Sullivan & Worcester, 100 Federal Street, Boston, MA 02110. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage* in the same vehicle as passengers, in regular route operations, between Westminster and Leominster, MA, and Salem, NH, via Massachusetts Hwy No. 2 and Interstate Hwy Nos. 495 and 93, for 180 days. Supporting shipper: Digital Equipment Corp., 9 Northeastern Boulevard, Salem, NH 03079. Send protest to: Paul Roberts, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Boston, MA 02214.

By the Commission.

H. G. HOMME, Jr.,  
Acting Secretary.

[FR Doc. 78-23226 Filed 8-17-78; 8:45 am]

## [7035-01]

## REROUTING TRAFFIC

[Amdt. No. 1 to Revised I.C.C. Order No. 65 under Revised Service Order No. 1252]

To All Railroads:

Upon further consideration of Revised I.C.C. Order No. 65 (CP Rail and Detroit, Toledo, and Ironton Railroad Co.), and good cause appearing therefor:

*It is ordered,*

Revised I.C.C. Order No. 65 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., August 18, 1978, unless otherwise modified, changed or suspended.

*Effective date.* This amendment shall become effective at 11:59 p.m., August 4, 1978.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the

amendment shall be filed with the Director, Office of the FEDERAL REGISTER.

Issued at Washington, D.C., August 4, 1978.

INTERSTATE COMMERCE  
COMMISSION,  
JOEL E. BURNS,

Agent.

[FR Doc. 78-23215 Filed 8-17-78; 8:45 am]

## [7035-01]

[ICC Order No. 67 Under Revised Service Order No. 1252]

## REROUTING TRAFFIC

TO: The Chesapeake & Ohio Railway Co.

In the opinion of Joel E. Burns, Agent, the Chesapeake & Ohio Railway Co. is unable to transport traffic over its line between Ashland, Ky., and Lexington, Ky., because of congestion and accumulation of cars.

*It is ordered,*

(a) *Rerouting traffic.* The Chesapeake & Ohio Railway Co., being unable to transport traffic over its line between Ashland, Ky., and Louisville, Ky., because of congestion and accumulation of cars, is authorized to divert or reroute such traffic over any available route to expedite the movement.

(b) *Concurrence of receiving road to be obtained.* The Chesapeake & Ohio Railway Co., in rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* The Chesapeake & Ohio Railway Co., when rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by



the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 8:00 a.m., August 3, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., August 6, 1978, unless otherwise modified, changed, or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., August 3, 1978.

INTERSTATE COMMERCE  
COMMISSION,  
JOEL E. BURNS,  
*Agent.*

[FR Doc. 78-23216 Filed 8-17-78; 8:45 am]

[7035-01]

I.L.C.C Order No. 68 under Revised Service  
Order No. 12521

#### REROUTING TRAFFIC

To All Railroads:

In the opinion of Joel E. Burns, Agent, the Fort Worth and Denver Railway Co. is unable to transport promptly all traffic offered for movement over its lines between Seymour, Tex., and Haskell, Tex., because of track damage from flooding.

*It is ordered,*

(a) *Rerouting traffic.* The Fort Worth and Denver Railway Co. being unable to transport promptly all traffic offered for movement over its lines between Seymour, Tex. and Haskell, Tex., because of track damage from flooding, that line is authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or

arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 11:55 a.m., August 7, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., September 30, 1978, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., August 7, 1978.

INTERSTATE COMMERCE  
COMMISSION,  
JOEL E. BURNS,

*Agent.*

[FR Doc. 78-23217 Filed 8-17-78; 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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### [6320-01]

1

[M-153, Amdt. 1; August 15, 1978]

#### CIVIL AERONAUTICS BOARD.

Notice of deletion of item from the August 17, 1978, agenda.

TIME AND DATE: 9:30 a.m., August 17, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 11. Docket 33053, Suspension of TWA's normal economy fares proposed for November travel (BPDA).

STATUS: Open.

#### PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary,  
202-673-5068.

SUPPLEMENTARY INFORMATION: Item 11 is being deleted from the August 17, 1978 agenda in order to provide the staff more time to consider the issues involved. Accordingly, the following Members have voted that agency business requires the deletion of Item 11 from the August 17, 1978 agenda and that no earlier announcement of this deletion was possible:

Chairman, Alfred E. Kahn  
Vice Chairman, G. Joseph Minetti  
Member, Richard J. O'Melia  
Member, Elizabeth E. Bailey

All amendments to previously announced agendas are publicly posted at the Board's offices, sent to the Federal Register for publication, and mailed to parties to docketed cases affected by the change. We regret any inconvenience that may be caused by these changes or the delayed receipt of our notices.

[S-1665-78 Filed 8-16-78; 3:38 pm]

### [6325-01]

2

#### CIVIL SERVICE COMMISSION.

TIME AND DATE OF MEETING: 6 p.m., August 23, 1978.

PLACE: Commissioners' Meeting Room, Room 5H09 (fifth floor), 1900 E Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Consideration of and approval of budget submission to the Office of Management and Budget for fiscal year 1980.

#### CONTACT PERSON FOR MORE INFORMATION:

Georgia Metropulos, Office of the Executive Assistant to the Commissioners, 202-632-5556.

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

[S-1660-78 Filed 8-16-78; 10 am]

### [6351-01]

3

#### COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., August 25, 1978.

PLACE: 2033 K Street, NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market surveillance matters.

#### CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-1658-78 Filed 8-16-78; 10 am]

### [6351-01]

4

#### COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., August 22, 1978.

PLACE: 5th floor hearing room, 2033 K Street NW., Washington, D.C.

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:

1. Application for designation as a contract market in Government Mortgage Securities/Amex Commodities Exchange.
2. Application for designation as a contract market in 1-year U.S. Treasury Bills/Chicago Mercantile Exchange.
3. Section 5a(12) approval of Chapter 150/Petroleum Contract, New York Mercantile Exchange.
4. Title III.

Portions closed to the public.

Enforcement matters.

#### CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-1659-78 Filed 8-16-78; 10 am]

### [6570-06]

5

#### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Monday, August 21, 1978.

PLACE: Chairman's Conference Room, No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part of the meeting will be open to the public and part will be closed to the public.

#### MATTERS TO BE CONSIDERED:

Open to the public:

1. Proposed guidelines on employee selection procedures.
2. Designation of the following five State or local agencies as "706" agencies: Lincoln (Nebraska) Commission on Human Rights, Commonwealth of Puerto Rico Department of Labor, Florida Commission on Human Relations, Augusta/Richmond County (Georgia) Human Relations Commission, and Austin (Texas) Human Relations Commission.
3. Privacy Act: Approval of proposed cancellation of two systems of records and approval of publication of annual compilation.
4. Proposed new section 411 of Compliance Manual, concerning pregnancy benefits.
5. Report on Commission operations by the Executive Director.

Closed to the public:



1. Report on operation of new procedures for seeking temporary relief.
2. Litigation Authorization; General Counsel Recommendations; Matters closed to the public under the Commission's regulations at 29 CFR 1612.13.
3. Presentation of fiscal year 1980 budget.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required that this meeting be held and that no earlier announcement was possible.

The vote was as follows:

In the affirmative: Eleanor Holmes Norton, Chair; Daniel E. Leach, Vice Chair; and Ethel Bent Walsh, Commissioner.

In the negative: None.

NOTE.—Any matter not discussed or concluded may be carried over to a later meeting.

#### CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat at 202-634-6748.

[S-1661-78 Filed 8-16-78; 11:21 am]

[6715—01]

6

#### FEDERAL ELECTION COMMISSION.

DATE AND TIME: Wednesday, August 23, 1978, at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Audit Reports, Compliance, Personnel.

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DATE AND TIME: Thursday, August 24, 1978, at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

#### MATTERS TO BE CONSIDERED:

Portions open to the public:

Setting of future meetings.

Correction and approval of minutes.

Advisory opinions: AO 1978-32. AO 1978-37. AO 1978-10. AO 1978-45. AO 1978-47. AO 1978-49. AO 1978-40.

Policy regarding transfers to registered entities from unregistered.

Organizations: Office of the General Counsel Analysis of Parts A and B of Agenda Document 78-205 and Agenda Document 78-231.

Resolution of particulars questions.

Budget for fiscal year 1980.

Appropriations and budget.

Interpretation and application of 2 U.S.C. § 438(b) Regarding Clearinghouse.

Pending legislation.  
Pending litigation.  
Liaison with other Federal agencies.  
Classification actions.  
Routine administrative matters.

Portions closed to the public (executive session):

Any matters not concluded at the meeting of August 23, 1978.

#### PERSON TO CONTACT FOR INFORMATION:

Mr. David Fiske, Press Officer, telephone 202-523-4065.

MARGARET E. CHANEY,  
*Acting Secretary  
to the Commission.*

[S-1666-78 Filed 8-16-78; 3:38 pm]

[6740—02]

7

#### FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published August 14, 1978, 43 FR 36030.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., August 16, 1978.

CHANGE IN THE MEETING: The following item has been added:

*Item No., Docket No., and Company*

M-3(A). Establishment of advisory committee to advise commission on revision of its rules of practice and procedure, Part I, Title 18, Code of Federal Regulations.

M-3(B). Revision of Part I, Title 18, Code of Federal Regulations rules of practice and procedure.

KENNETH F. PLUMB,  
*Secretary.*

[S-1662-78 Filed 8-16-78; 11:21 am]

[6740—02]

8

AUGUST 16, 1978.

#### FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: August 16, 1978, approximately 11:30 a.m.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pending civil litigation.

#### CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

[S-1664-78 Filed 8-16-78; 3:38 pm]

[8010—01]

9

#### 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 August 21, 1978, in Room 825, 500 North Capitol Street, Washington, D.C.

A closed meeting will be held on Wednesday, August 23, 1978, at 10 a.m. and on Thursday, August 24, 1978, following a 10 a.m. open meeting. An open meeting will be held on Thursday, August 24, 1978, at 10 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. 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 meeting 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, and Commissioners Pollack and Karmel determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Wednesday, August 23, 1978, at 10 a.m., will be:

Access to investigative files by Federal, State, or Self-Regulatory authorities.

Formal orders of investigation.

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions. Regulatory matter bearing enforcement implications.

Settlement of injunctive actions.

Subpoena enforcement actions.

Other litigation matters.

The subject matter of the closed meeting scheduled for Thursday, August 24, 1978, following the 10 a.m. open meeting, will be:

Opinions.

The subject matter of the open meeting scheduled for Thursday, August 24, 1978, at 10 a.m., will be:

1. Consideration of an application by National Propane Corp. for exemption from the Public Utility Holding Company Act of 1935 pursuant to section 3(a)(3) thereof.

2. Consideration of a proposed rule change filed by the Municipal Securities Rulemaking Board, pursuant to section 19(b) of the Securities Exchange Act of 1934, to establish terms and conditions for the sale of new issue municipal securities during the underwriting period. The proposed rule, among other things, would require a syndicate formed to underwrite municipal securities



## SUNSHINE ACT MEETINGS

to establish allocation procedures and to disclose certain information to syndicate members and, upon request, to others.

3. Affirmation of the action of Commissioner Irving M. Pollack as Duty Officer in sending a letter to the Office of Management and Budget supporting the enactment into law of H.R. 7581, a bill to amend the Internal Revenue Code of 1954.

**FOR FURTHER INFORMATION,  
PLEASE CONTACT:**

Michael P. Rogan at 202-755-1638.

AUGUST 15, 1978.

[S-1663-78 Filed 8-16-78; 11:21 am]



**FRIDAY, AUGUST 18, 1978**

**PART II**



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**DEPARTMENT OF  
LABOR**

**Employment Standards  
Administration**



**BLACK LUNG BENEFITS  
PROGRAM**

**Standards for Processing,  
Adjudication, and Payment of  
Claims**

Registered  
prior



[4510-27]

## Title 20—Employees' Benefits

## CHAPTER VI—EMPLOYMENT STANDARDS ADMINISTRATION, DEPARTMENT OF LABOR

## SUBCHAPTER B—FEDERAL MINE SAFETY AND HEALTH ACT OF 1977, AS AMENDED

## BLACK LUNG BENEFITS PROGRAM

## Standards for Processing, Adjudication, and Payment of Claims

AGENCY: Employment Standards Administration, Department of Labor.

ACTION: Final rulemaking.

**SUMMARY:** On April 25, 1978, the Department of Labor published a notice of proposed rulemaking in the *FEDERAL REGISTER* (43 FR 17732-17765) which set forth proposed procedures to be applied in the filing, adjudication, and payment of claims for benefits under part C of title IV of the Act. The revised part 725 is also applicable in certain respects to claims subject to review under section 435 of the Act (see part 727 of this title published elsewhere in this issue). In several provisions of this part, reference is made to 20 CFR Part 718. Notice of final rulemaking regarding 20 CFR Part 718 will be published following the expiration of the comment period and after a review of the testimonial and documentary comments received. As a result of these revisions, parts 715, 717 and 720 are repealed. This revised part 725 establishes procedures and standards to be applied in the processing, adjudication and payment of claims for black lung benefits under part C of title IV of the Federal Mine Safety and Health Act of 1977, as amended by the Black Lung Benefits Reform Act of 1977 and the Black Lung Benefits Revenue Act of 1977.

**DATES:** The revision of part 725 and the repeal of parts 715, 717, and 720 are effective August 18, 1978.

## FOR FURTHER INFORMATION CONTACT:

Robert B. Dorsey, Chief, Branch of Claims Determination, Division of Coal Mine Workers' Compensation, U.S. Department of Labor, Room C-3526, 200 Constitution Avenue NW., Washington, D.C. 20210, telephone 202-523-6727.

**SUPPLEMENTARY INFORMATION:** The Black Lung Benefits Reform Act of 1977 and the Black Lung Benefits Revenue Act of 1977 significantly amend title IV of the Federal Mine Safety and Health Act. Among other things, the 1977 amendments establish the Black Lung Disability Trust Fund for the payment of all claims predicated

upon coal mine employment which terminated prior to January 1, 1970, and for other claims for which no operator liability can be established. This fund is financed by a tax upon coal produced by individual coal mine operators.

Other provisions of the Act as now amended substantially amend the standards for determining eligibility for benefits, modify the evidentiary requirements necessary to establish entitlement to benefits, eliminate certain restrictions on the filing of claims, establish penalties to be imposed if a coal mine operator fails to meet its obligations, and make technical, correcting, and other administrative, procedural, and substantive changes which make it necessary to repeal parts 715, 717, and 720, and completely revise part 725, of this subchapter.

Comments were received on the proposed part 725 from individual black lung claimants, groups which assist claimants in obtaining benefits, claimant representatives, Members of Congress, attorneys, coal mine operators and their representatives, and coal mine construction companies and their representatives. The vast majority of comments received were substantive, detailed and very useful to the Department.

The Department has responded to all relevant and substantive comments and has made changes in the rules where necessary. Following each final rule set forth, the Department has responded, in discussion form, to the comments received and changes made in the rules. These discussions are entitled Comments Received and Discussion and Changes. Our purpose is to respond to all relevant and substantive comments and to specify those changes made in the rules. Wherever possible, comments which are essentially similar are considered together.

The discussion following each rule contained in this document shall not be considered a part of the rule and will not be published in the Code of Federal Regulations.

A few of the revisions made reflect technical, clarifying, and correcting changes felt to be necessary by Department of Labor personnel.

Since these rules implement the recent amendments to title IV of the Act and because of the need to immediately commence the processing and adjudication of claims for benefits, I find that good cause exists for making these rules effective immediately.

Accordingly, 20 CFR Chapter VI, subchapter B is revised as follows:

## PART 715—BLACK LUNG BENEFITS PROGRAM UNDER TITLE IV OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT; GENERAL PROVISIONS [REPEALED]

## PART 717—FILING AND PRELIMINARY PROCESSING OF CLAIMS FOR BLACK LUNG BENEFITS AFTER JUNE 30, 1973, UNDER TITLE IV, PART B, SECTION 415 OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT AS AMENDED [REPEALED]

## PART 720—DETERMINATION OF BLACK LUNG BENEFITS CLAIMS UNDER SECTION 415 OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT AND PAYMENT OF BENEFITS TO CLAIMANTS [REPEALED]

1. Parts 715, 717, and 720 are repealed.

2. Part 725 is revised to read as follows:

## PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

## Subpart A—General

## Sec.

- 725.1 Statutory provisions.
- 725.2 Purpose and applicability of this part.
- 725.3 Contents of this part.
- 725.4 Applicability of other parts in this title.
- 725.101 Definitions and use of terms.
- 725.102 Disclosure of program information.

## Subpart B—Persons Entitled to Benefits, Conditions, and Duration of Entitlement

- 725.201 Who is entitled to benefits; contents of this subpart.

## CONDITIONS AND DURATION OF ENTITLEMENT

- 725.202 Miner defined, condition of entitlement; miner.
- 725.203 Duration of entitlement; miner.

## BENEFITS ON ACCOUNT OF LIVING DEPENDENTS (AUGMENTED BENEFITS)

- 725.204 Determination of relationship; spouse.
- 725.205 Determination of dependency; spouse.
- 725.206 Determination of relationship; divorced spouse.
- 725.207 Determination of dependency; divorced spouse.
- 725.208 Determination of relationship; child.
- 725.209 Determination of dependency; child.
- 725.210 Duration of augmented benefits.
- 725.211 Time of determination of relationship and dependency of spouse or child for purposes of augmentation of benefits.



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- 725.212 Conditions of entitlement; surviving spouse or surviving divorced spouse.
- 725.213 Duration of entitlement; surviving spouse or surviving divorced spouse.
- 725.214 Determination of relationship; surviving spouse.
- 725.215 Determination of dependency; surviving spouse.
- 725.216 Determination of relationship; surviving divorced spouse.
- 725.217 Determination of dependency; surviving divorced spouse.
- 725.218 Conditions of entitlement; child.
- 725.219 Duration of entitlement; child.
- 725.220 Determination of relationship; child.
- 725.221 Determination of dependency; child.
- 725.222 Conditions of entitlement; parent, brother or sister.
- 725.223 Duration of entitlement; parent, brother or sister.
- 725.224 Determination of relationship; parent, brother or sister.
- 725.225 Determination of dependency; parent, brother or sister.
- 725.226 "Good cause" for delayed filing of proof of support.
- 725.227 Time of determination of relationship and dependency of survivors.
- 725.228 Effect of conviction of felonious and intentional homicide on entitlement to benefits.

**TERMS USED IN THIS SUBPART**

- 725.229 Intestate personal property.
- 725.230 Legal impediment.
- 725.231 Domicile.
- 725.232 Member of the same household—"living with," "living in the same household," and "living in the miner's household," defined.
- 725.233 Support and contributions.

**Subpart C—Filing of Claims**

- 725.301 Who may file a claim.
- 725.302 Evidence of authority to file a claim on behalf of another.
- 725.303 Date and place of filing of claims.
- 725.304 Forms and initial processing.
- 725.305 When a written statement is considered a claim.
- 725.306 Withdrawal of a claim.
- 725.307 Cancellation of a request for withdrawal.
- 725.308 Time limits for filing claims.
- 725.309 Duplicate claims.
- 725.310 Modification of awards and denials.
- 725.311 Communications with respect to claims; time computations.

**Subpart D—Adjudication of Claims; Adjudication Officers**

- 725.350 Who are the adjudication officers.
- 725.351 Powers of adjudication officers.
- 725.352 Disqualification of adjudication officers.

**PARTIES AND REPRESENTATIVES**

- 725.360 Parties to proceedings.
- 725.361 Party amicus curiae.
- 725.362 Representation of parties.
- 725.363 Qualification of representative.
- 725.364 Authority of representative.

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- 725.365 Approval of representative's fees; lien against benefits.
- 725.366 Fees for representatives.
- 725.367 Payment of a claimant's attorney's fee by responsible operator.
- 725.401 Claims development—general.
- 725.402 Approved State workers' compensation law.
- 725.403 Requirement to file under State workers' compensation law—section 415 claims.
- 725.404 Development of evidence—general.
- 725.405 Development of medical evidence; scheduling of medical examinations and tests.
- 725.406 Medical examinations and tests.
- 725.407 Additional medical evidence.
- 725.408 Refusal to submit to medical examinations or tests.
- 725.409 Denial of a claim by reason of abandonment.

**ADJUDICATION BY THE DEPUTY COMMISSIONER**

- 725.410 Initial findings by the deputy commissioner.
- 725.411 Adjudication upon initial findings of eligibility and no operator responsibility.
- 725.412 Identification and notification of responsible operator.
- 725.413 Operator's response to notification.
- 725.414 Development of operator's evidence; claimant's rebuttal evidence.
- 725.415 Action by the deputy commissioner after development of operator's evidence.
- 725.416 Conferences.
- 725.417 Action at the conclusion of conference.
- 725.418 Proposed decision and order.
- 725.419 Response to proposed decision and order.
- 725.420 Initial determinations.
- 725.421 Referral of claim to the Office of Administrative Law Judges.
- 725.422 Legal assistance.

**Subpart E—Hearings**

- 725.450 Right to a hearing.
- 725.451 Request for hearing.
- 725.452 Type of hearing; parties.
- 725.453 Notice of hearing.
- 725.453A Time and place of hearing.
- 725.454 Change of time and place for hearing; transfer of cases.
- 725.455 Hearing procedures; generally.
- 725.456 Introduction of documentary evidence.
- 725.457 Witnesses.
- 725.458 Depositions; interrogatories.
- 725.459 Witness fees.
- 725.459A Oral argument and written allegations.
- 725.460 Consolidated hearings.
- 725.461 Waiver of right to appear and present evidence.
- 725.462 Withdrawal of controversion of issues set for formal hearing; effect.
- 725.463 Issues to be resolved at hearing; new issues.
- 725.464 Record of hearing.
- 725.465 Dismissals for cause.
- 725.466 Order of dismissal.
- 725.475 Termination of hearings.
- 725.476 Issuance of decision and order.
- 725.477 Form and contents of decision and order.
- 725.478 Filing and service of decision and order.
- 725.479 Finality of decisions and orders.

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- 725.480 Modification of decisions and orders.
- 725.481 Right to appeal to the Benefits Review Board.
- 725.482 Judicial review.
- 725.483 Costs in proceedings brought without reasonable grounds.

**Subpart F—Responsible Coal Mine Operators**

**GENERAL PROVISIONS**

- 725.490 Statutory provisions and scope.
- 725.491 Operator defined.
- 725.492 Responsible operator defined.
- 725.493 Criteria for identifying a responsible operator.
- 725.494 Insurance coverage.
- 725.495 Penalty for failure to insure.

**Subpart G—Payment of Benefits**

- 725.501 Payment provisions generally.
- 725.502 Manner of payment; payment periods.
- 725.503 Date from which benefits are payable.
- 725.503A Payments to a claimant employed as a miner.
- 725.504 Payees.
- 725.505 Payment on behalf of another; "legal guardian" defined.
- 725.506 Guardian for minor or incompetent.
- 725.510 Representative payee.
- 725.511 Use and benefit defined.
- 725.512 Support of legally dependent spouse, child, or parent.
- 725.513 Accountability; transfer.
- 725.514 Certification to dependent of augmentation portion of benefit.
- 725.515 Assignment and exemption from claims of creditors.

**BENEFIT RATES**

- 725.520 Computation of benefits.
- 725.521 Commutation of payments; lump sum awards.
- 725.522 Payments prior to final adjudication.

**SPECIAL PROVISIONS FOR OPERATOR PAYMENTS**

- 725.530 Operator payments; generally.
- 725.531 Receipt for payment.
- 725.532 Suspension, reduction or termination of payments.

**INCREASES AND REDUCTIONS OF BENEFITS**

- 725.533 Modification of benefits amounts; general.
- 725.534 Reduction of State benefits.
- 725.535 Reduction; receipt of State or Federal benefit.
- 725.536 Reductions; excess earnings.
- 725.537 Reductions; retroactive effect of an additional claim for benefits.
- 725.538 Reductions; effect of augmentation of benefits based on subsequent qualification of individual.
- 725.539 More than one reduction event.

**OVERPAYMENTS; UNDERPAYMENTS**

- 725.540 Overpayments.
- 725.541 Notice of waiver of adjustment or recovery of overpayment.
- 725.542 When waiver of adjustment or recovery may be applied.
- 725.543 Standards for waiver of adjustment or recovery.
- 725.544 Collection and compromise of claims for overpayment.
- 725.545 Underpayments.



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- 725.546 Relation to provisions for reductions or increases.  
 725.547 Applicability of overpayment and underpayment provisions to operator or carrier.

**Subpart H—Enforcement of Liability; Reports**

- 725.601 Enforcement generally.  
 725.602 Reimbursement of the fund.  
 725.603 Payments by the fund on behalf of an operator; liens.  
 725.604 Enforcement of final awards.  
 725.605 Defaults.  
 725.606 Security for the payment of benefits.  
 725.607 Payments in addition to compensation.  
 725.608 Interest.  
 725.620 Failure to secure benefits; other penalties.  
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**Subpart I—Medical Benefits and Vocational Rehabilitation**

- 725.701 Availability of medical benefits.  
 725.701A Claims for medical benefits only under section 11 of the Reform Act.  
 725.702 Physician defined.  
 725.703 Notification of right to medical benefits; authorization of treatment.  
 725.704 Arrangements for medical care.  
 725.705 Authorization to provide medical services.  
 725.706 Reports of physicians and supervision of medical care.  
 725.707 Disputes concerning medical benefits.  
 725.710 Objective of vocational rehabilitation.  
 725.711 Requests for referral to vocational rehabilitation assistance.

AUTHORITY: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 934, 936, 945; 33 U.S.C. 901 et seq.

**Subpart A—General****§ 725.1 Statutory provisions.**

(a) *General.* Title IV of the Federal Mine Safety and Health Act of 1977, as amended by the Black Lung Benefits Reform Act of 1977 and the Black Lung Benefits Revenue Act of 1977, provides for the payment of benefits to a coal miner who is totally disabled due to pneumoconiosis (black lung disease) and to certain survivors of a miner who was totally (or in accordance with section 411(c)(5) of the Act, partially) disabled due to pneumoconiosis, or who died due to pneumoconiosis.

(b) *Part B.* Part B of title IV of the Act provided that all claims filed between December 30, 1969, and June 30, 1973, are to be filed with, processed, and paid by the Secretary of Health, Education, and Welfare through the Social Security Administration; claims filed by the survivor of a miner before January 1, 1974, or within 6 months of the miner's death if death occurred before January 1, 1974, and claims filed by the survivor of a miner who was receiving benefits under part B of title IV of the Act at the time of

death, if filed within 6 months of the miner's death, are also adjudicated and paid by the Social Security Administration.

(c) *Section 415.* Claims filed by a miner between July 1 and December 31, 1973, are adjudicated and paid under section 415. Section 415 provides that a claim filed between the appropriate dates shall be filed with and adjudicated by the Secretary of Labor under certain incorporated provisions of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.). A claim approved under section 415 is paid under part B of title IV of the Act for periods of eligibility occurring between July 1 and December 31, 1973, by the Secretary of Labor and for periods of eligibility thereafter, is paid by a coal mine operator which is determined liable for the claim or the Black Lung Disability Trust Fund if no operator is identified or if the miner's last coal mine employment terminated prior to January 1, 1970. An operator which may be found liable for a section 415 claim is notified of the claim and allowed to participate fully in the adjudication of such claim. A claim filed under section 415 is for all purposes considered as if it were a part C claim (see paragraph (d) of this section) and the provisions of part C of title IV of the Act are fully applicable to a section 415 claim except as is otherwise provided in section 415.

(d) *Part C.* Claims filed by a miner or survivor on or after January 1, 1974, are filed, adjudicated, and paid under the provisions of part C of title IV of the Act. Part C requires that a claim filed on or after January 1, 1974, shall be filed under an applicable approved State workers' compensation law, or if no such law has been approved by the Secretary of Labor, the claim may be filed with the Secretary of Labor under section 422 of the Act. Claims filed with the Secretary of Labor under part C are processed and adjudicated by the Secretary and paid by a coal mine operator. If the miner's last coal mine employment terminated before January 1, 1970, or if no responsible operator can be identified, benefits are paid by the Black Lung Disability Trust Fund. Claims adjudicated under part C are subject to certain incorporated provisions of the Longshoremen's and Harbor Workers' Compensation Act.

(e) *Section 435.* Section 435 of the Act affords each person who filed a claim for benefits under part B, section 415, or part C, and whose claim had been denied or was still pending as of March 1, 1978, the effective date of the Black Lung Benefits Reform Act of 1977, the right to have his or her claim reviewed on the basis of the 1977 amendments to the Act, and

under certain circumstances to submit new evidence in support of the claim.

(f) *Changes made by the Black Lung Benefits Reform Act of 1977.* In addition to those changes which are reflected in paragraphs (a)-(e) of this section, the Black Lung Benefits Reform Act of 1977 contains a number of significant amendments to the Act's standards for determining eligibility for benefits. Among these are: (1) A provision which clarifies the definition of "pneumoconiosis" to include any "chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment"; (2) a provision which defines "miner" to include any person who works or has worked in or around a coal mine or coal preparation facility, and in coal mine construction or coal transportation under certain circumstances; (3) a provision which limits the denial of a claim solely on the basis of employment in a coal mine; (4) a provision which authorizes the Secretary of Labor to establish standards and develop criteria for determining total disability or death due to pneumoconiosis with respect to a part C claim; (5) a new presumption which requires the payment of benefits to the survivors of a miner who was employed for 25 or more years in the mines under certain conditions; (6) provisions relating to the treatment to be accorded a survivor's affidavit, certain X-ray interpretations, and certain autopsy reports in the development of a claim; and (7) other clarifying, procedural, and technical amendments.

(g) *Changes made by the Black Lung Benefits Revenue Act of 1977.* The Black Lung Benefits Revenue Act of 1977 establishes the Black Lung Disability Trust Fund which is financed by a specified tax imposed upon each ton of coal (except lignite) sold in the United States after March 31, 1978. The Secretary of the Treasury is the managing trustee of the fund and benefits are paid from the fund upon the direction of the Secretary of Labor. The fund is liable for the payment of all claims approved under section 415, part C and section 435 of the Act for all periods of eligibility occurring on or after January 1, 1974, with respect to claims where the miner's last coal mine employment terminated before January 1, 1970, or where individual liability cannot be assessed against a coal mine operator due to bankruptcy, insolvency, or the like. The fund is also authorized to pay certain claims which a responsible operator has refused to pay within a reasonable time, and seek reimbursement from such operator. The purpose of the fund and the Black Lung Benefits Revenue Act of 1977 is to insure that coal operators or the coal industry will fully bear the cost of black lung dis-



ease for the present time and in the future. The Black Lung Benefits Revenue Act of 1977 also contains other provisions relating to the fund and authorizes a coal mine operator to establish its own trust fund for the payment of certain claims.

(h) *Longshoremen's Act provisions.* The adjudication of claims filed under sections 415, 422, and 435 of the Act is governed by various procedural and other provisions contained in the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), as amended from time to time, which are incorporated within the Act by sections 415 and 422. The incorporated LHWCA provisions are applicable under the Act except as is otherwise provided by the Act or as provided by regulations of the Secretary. Although occupational disease benefits are also payable under the LHWCA, the primary focus of the procedures set forth in that Act is upon a time definite of traumatic injury or death. Because of this and other significant differences between a black lung and longshore claim, it is determined, in accordance with the authority set forth in section 422 of the Act, that certain of the incorporated procedures prescribed by the LHWCA must be altered to fit the circumstances ordinarily confronted in the adjudication of a black lung claim. The changes made are based upon the Department's experience in processing black lung claims since July 1, 1973, and all such changes are specified in this part or part 727 of this subchapter. No other departure from the incorporated provisions of the LHWCA is intended.

*Comments received:* One comment suggests that the definition of pneumoconiosis in paragraph (f) should more accurately reflect the language of the Act.

*Discussion and changes:* The suggestion is accepted although the Department does not consider this a substantive change.

#### § 725.2 Purpose and applicability of this part.

(a) It is the purpose of this part to set forth the procedures to be followed and standards to be applied in the filing, processing, adjudication, and payment of claims filed under part C of title IV of the Act.

(b) This part is applicable to all claims filed under part C of title IV of the Act on or after the effective date of this part and shall also be applicable to claims pending on the effective date of this part as provided in part 727 of this subchapter. This part is applicable to claims considered under section 435 of the Act and part 727 of this subchapter.

*Comments received:* None.

#### § 725.3 Contents of this part.

(a) This subpart A describes the statutory provisions which relate to claims considered under this part, the purpose and scope of this part, definitions and usages of terms applicable to this part, and matters relating to the availability of information collected by the Department of Labor in connection with the processing of claims.

(b) Subpart B contains criteria for determining who may be found entitled to benefits under this part and other provisions relating to the conditions and duration of eligibility of a particular individual.

(c) Subpart C describes the procedures to be followed and action to be taken in connection with the filing of a claim under this part.

(d) Subpart D of this part sets forth the duties and powers of the persons designated by the Secretary of Labor to adjudicate claims, provisions relating to the rights of parties and representatives of parties, and the procedure to be followed in the informal processing and adjudication of a claim under this part.

(e) Subpart E describes the procedures to be followed if a hearing is required with respect to a claim.

(f) Subpart F contains provisions governing the identification of a coal mine operator which may be liable for the payment of a claim under this part.

(g) Subpart G contains provisions governing the payment of benefits with respect to an approved claim.

(h) Subpart H describes the statutory mechanisms provided for the enforcement of a coal mine operator's liability, sets forth the penalties which may be applied in the case of a defaulting coal mine operator, and describes the obligation of coal operators and their insurance carriers to file certain reports.

(i) Subpart I describes the right of certain beneficiaries to receive medical treatment benefits and vocational rehabilitation under the Act.

*Comments received:* None.

#### § 725.4 Applicability of other parts in this title.

(a) *Part 718.* Part 718 of this subchapter, which contains the criteria and standards to be applied in determining whether a miner is or was totally disabled due to pneumoconiosis, or whether a miner died due to pneumoconiosis, shall be applicable to the determination of claims under this part. Until a revised part 718 is promulgated by the Secretary in accordance with section 402(f)(1) of the act, the criteria contained in subpart C of part 727 of this subchapter shall be applicable in determining claims under this part, and such criteria shall be ap-

plicable at all times with respect to claims filed under this part and under section 11 of the Black Lung Benefits Reform Act of 1977.

(b) *Parts 715, 717, and 720.* Parts 715, 717, and 720 of this subchapter, which established the procedures for the filing, processing, and payment of claims filed under section 415 of the Act, are repealed and pertinent provisions of these parts which retain significance are incorporated within this part as appropriate.

(c) *Part 726.* Part 726 of this subchapter, which sets forth the obligations imposed upon a coal operator to insure or self-insure its liability for the payment of benefits to certain eligible claimants, is applicable to this part as appropriate.

(d) *Part 727.* Part 727 of this subchapter, which governs the review, adjudication and payment of pending and denied claims under section 435 of the Act, is applicable to this part as provided in such part 727. The criteria contained in subpart C of part 727 for determining a claimant's eligibility for benefits shall be applicable under this part with respect to all claims filed before a revised part 718 of this subchapter is promulgated by the Secretary in accordance with section 402(f)(1) of the Act, and shall also be applicable to all claims filed under this part, and under section 11 of the Black Lung Benefits Reform Act of 1977.

(e) *Part 410.* Part 410 of this title, which sets forth provisions relating to a claim for black lung benefits under part B of title IV of the Act, is inapplicable to this part except as is provided in this part, or in part 718 of this subchapter.

*Comments Received:* None for which a response is required.

#### § 725.101 Definitions and use of terms.

(a) *Definitions.* For purposes of this subchapter, except where the content clearly indicates otherwise, the following definitions apply:

(1) The "Act" means the Federal Coal Mine Health and Safety Act, Pub. L. 91-173, 83 Stat. 742, 30 U.S.C. 801-960, as amended by the Black Lung Benefits Act of 1972, the Mine Safety and Health Act of 1977, the Black Lung Benefits Reform Act of 1977, and the Black Lung Benefits Revenue Act of 1977.

(2) The "Longshoremen's Act" or "LHWCA" means the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, c. 509, 44 Stat. 1424, 33 U.S.C. 901-950, as amended from time to time.

(3) The "Social Security Act" means the Social Security Act, Act of August 14, 1935, c. 531, 49 Stat. 620, 42 U.S.C. 301-431, as amended from time to time.



(4) A "workers' compensation law" means a law providing for payment of benefits to employees, and their dependents and survivors, for disability on account of injury, including occupational disease, or death, suffered in connection with their employment.

(5) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and prior to January 3, 1959, and August 21, 1959, respectively, the territories of Alaska and Hawaii.

(6) "Department" means the United States Department of Labor.

(7) "Secretary" means the Secretary of Labor, United States Department of Labor, or a person, authorized by him or her to perform his or her functions under title IV of the Act.

(8) "Office" or "OWCP" means the Office of Workers' Compensation Programs, United States Department of Labor.

(9) "Director" means the Director, OWCP, or his or her designee.

(10) "Division" of "DCMWC" means the Division of Coal Mine Workers' Compensation in the OWCP, United States Department of Labor.

(11) "Deputy Commissioner" means a person appointed as provided in Sections 39 and 40 of the LHWCA, or his or her designee, who is authorized to develop and adjudicate claims as provided in this subchapter (see § 725.350).

(12) "Office of Administrative Law Judges" means the Office of Administrative Law Judges, U.S. Department of Labor.

(13) "Chief Administrative Law Judge" means the Chief Administrative Law Judge of the Office of Administrative Law Judges, U.S. Department of Labor, 1111 20th Street, NW., Washington, D.C. 20036.

(14) "Administrative law judge" means a person qualified under 5 U.S.C. 3105 to conduct hearings and adjudicate claims for benefits filed pursuant to section 415 and part C of the Act. Until March 1, 1979, it shall also mean an individual appointed to conduct such hearings and adjudicate such claims under Pub. L. 94-504.

(15) "Benefits Review Board" or "Board" means the Benefits Review Board, U.S. Department of Labor, an appellate tribunal appointed by the Secretary of Labor pursuant to the provisions of section 21(b)(1) of the LHWCA. See parts 801, 802 of this title.

(16) "Claim" means a written assertion of entitlement to benefits under section 415 or part C of title IV of the Act, submitted in a form and manner authorized by the provisions of this subchapter.

(17) "Claimant" means an individual who files a claim for benefits under this part.

(18) "Benefits" means all money or other benefits paid or payable under section 415 or part C of title IV of the Act on account of disability or death due to pneumoconiosis.

(19) "Beneficiary" means a miner or any surviving spouse, divorced spouse, child, parent, brother or sister, who is entitled to benefits under either section 415 or part C of title IV of the Act.

(20) "Pneumoconiosis" means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment (see part 718 of this subchapter).

(21) "Total disability" and "partial disability," for purposes of this part, have the meaning given them as provided in part 718 of this subchapter.

(22) "The Nation's coal mines" means all coal mines located in any State.

(23) "Coal mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations and other property, real or personal, placed upon, under or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite or anthracite from its natural deposits in the earth by any means or method, and in the work of preparing the coal so extracted, and includes custom coal preparation facilities.

(24) "Underground coal mine" means a coal mine in which the earth and other materials which lie above and around the natural deposit of coal (i.e., overburden) are not removed in mining; including all land, structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations and other property, real or personal, appurtenant thereto.

(25) "Coal preparation" means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous coal, lignite or anthracite, and such other work of preparing coal as is usually done by the operator of a coal mine.

(26) "Miner" or "coal miner" means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. The term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment (see § 725.202(a)).

(27) "Operator" means any owner, lessee, or other person who operates, controls or supervises a coal mine, in-

cluding a prior or successor operator as defined in section 422 of the Act and certain transportation and construction employers (see subpart F of this part).

(28) "Responsible operator" means an operator which has been determined to be liable for the payment of benefits to a claimant for periods of eligibility after December 31, 1973, with respect to a claim filed under section 415 or part C of title IV of the Act or reviewed under section 435 of the Act.

(29) "Person" means an individual, partnership, association, corporation, firm, subsidiary or parent of a corporation, or other organization or business entity.

(30) "Insurer" or "carrier" means any private company, corporation, mutual association, reciprocal or inter-insurance exchange, or any other person or fund, including any State fund, authorized under the laws of a State to insure employers' liability under workers' compensation laws. The term also includes the Secretary of Labor in the exercise of his or her authority under section 433 of the Act.

(31) "Black Lung Disability Trust Fund" or the "Fund" means the Black Lung Disability Trust Fund established by the Black Lung Benefits Revenue Act of 1977 for the payment of certain claims adjudicated under this part (see subpart G of this part).

(b) *Statutory terms.* The definitions contained in this section shall not be construed in derogation of terms of the Act.

(c) *Dependents and survivors.* Dependents and survivors are those persons described in subpart B of this part.

*Comments received:* (a) One comment suggests that paragraph (a)(27) be clarified to indicate the inclusion of independent contractors in the term "operator." (b) One comment argues that operator liability is not allowed in the case of a claim originally filed under part B of title IV and reviewed and approved under section 435 of the Act. (c) A few comments were supportive.

*Discussion and changes:* (a) The Act and subpart F of this part 725 clarify the liability of certain independent contractors. While the Department agrees that certain independent contractors may be considered operators and held liable for claims under the Act, no change in this general definition section is necessary to reflect that view.

(b) The argument that coal operators may not be found liable for claims reviewed by the Secretary of HEW under section 435 of the Act is incorrect. The language of the Act and the report of the conferees leave no doubt that an operator may be found liable for the payment of a part B reviewed claim, if the miner's employment occurred on or after January 1, 1970. The further argument in this regard that operators will be denied the right to contest such claims is similarly incorrect. An HEW determination is binding only as an "initial determination" of eligibility. This determination can be re-



versed upon the presentation of an operator's evidence to an administrative law judge, the Benefits Review Board, or an appropriate court.

**§ 725.102 Disclosure of program information.**

(a) All reports, records, or other documents filed with the OWCP with respect to claims are the records of the OWCP. The Director or his or her designee shall be the official custodian of those records maintained by the OWCP at its national office.

(b) The official custodian of any record sought to be inspected shall permit or deny inspection in accordance with the Department of Labor's regulations pertaining thereto (see 29 CFR Part 70). The original record in any such case shall not be removed from the Office of the custodian for such inspection. The custodian may, in his or her discretion, deny inspection of any record or part thereof which is of a character specified in 5 U.S.C. 552(b) if in his or her opinion such inspection may result in damage, harm, or harassment to the beneficiary or to any other person. For special provisions concerning release of information regarding injured employees undergoing vocational rehabilitation, see § 702.508, of this title.

(c) Any person may request copies of records he or she has been permitted to inspect. Such requests shall be addressed to the official custodian of the records sought to be copied. The official custodian shall provide the requested copies under the terms and conditions specified in the Department of Labor's regulations relating thereto (see 29 CFR Part 70).

(d) Any party to a claim (§ 725.360) or his or her duly authorized representative shall be permitted upon request to inspect the file which has been compiled in connection with such claim. Any party to a claim or representative of such party shall upon request be provided with a copy of any or all material contained in such claim file. A request for information by a party or representative made under this paragraph shall be answered within a reasonable time after receipt by the Office. Internal documents prepared by the deputy commissioner which do not constitute evidence of a fact which must be established in connection with a claim shall not be routinely provided or presented for inspection in accordance with a request made under this paragraph.

*Comments received:* A number of comments criticize this section for not clearly establishing a claimant's right to inspect and copy his or her file soon after a request to do so is made.

*Discussion and changes:* This section was not intended to govern a claimant's access to his or her own file. It is intended only to indicate that the Department of Labor's

regulations (20 CFR Part 70) governing disclosure to the public generally are applicable to black lung files. This section is revised to clarify a claimant's right to inspect his or her file.

**Subpart B—Persons Entitled to Benefits, Conditions and Duration of Entitlement**

*General comments received on this subpart:* (a) One comment argues that the provisions which authorize the payment of benefits in certain circumstances to or on behalf of, a surviving divorced spouse (§§ 725.201, 725.206, 725.207, 725.212-725.217) are not in accordance with law. (b) A few comments strongly disagree with the provisions of the proposed rules which eliminate sex-based classifications, arguing the such rules amend that statutory language and are therefore not authorized.

*Discussion and changes:* (a) Section 402(e) of the Act defines the term "widow" to include a surviving divorced wife. The comment is rejected.

(b) The Department has carefully reviewed the Act, applicable case law, and the policy and intent of the law in determining that sex-based discriminations in providing benefits to coal miners and their survivors are not justified or intended as a matter of law. In 1969, when the Act was first set in motion, there were virtually no women coal miners in the United States. That is no longer the case. The Department has recently undertaken a program to prohibit discrimination against women who wish to work as coal miners for operators who have certain Federal Government contracts. In order to carry forth the Department's view of congressional intent manifested in the Act, it has been determined that the Secretary has adequate authority to end sex-based discrimination in black lung benefits.

**§ 725.201 Who is entitled to benefits; contents of this subpart.**

(a) Section 415 and part C of the Act provide for the payment of periodic benefits in accordance with this part to:

(1) A miner (see § 725.202) who is determined to be totally disabled due to pneumoconiosis; or

(2) The surviving spouse or surviving divorced spouse or, where neither exists, the child of a deceased miner, where the deceased miner:

(i) Was receiving benefits under section 415 or part C of title IV of the Act; or

(ii) Is determined to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis (see part 718 of this chapter); or

(3) The child of a miner's surviving spouse who was receiving benefits under section 415 or part C of title IV of the Act at the time of such spouse's death; or

(4) The surviving dependent parents, where there is no surviving spouse or child, or the surviving dependent brothers or sisters, where there is no surviving spouse, child, or parent, of a

miner who was receiving benefits under section 415 or part C of title IV of the Act at the time of death; or who was totally or partially disabled due to pneumoconiosis at the time of death; or whose death was due to pneumoconiosis.

(b) Section 411(c)(5) of the Act provides for the payment of benefits to the eligible survivors of a miner employed for 25 or more years in the mines prior to June 30, 1971, if the claim for benefits was filed before March 1, 1978, unless it is established that at the time of death, the miner was not totally or partially disabled due to pneumoconiosis. For the purposes of this part the term "total disability" shall mean partial disability with respect to a claim for which eligibility is established under section 411(c)(5) of the Act.

(c) The provisions contained in this subpart describe the conditions of entitlement to benefits applicable to a miner, or a surviving spouse, child, parent, brother, or sister, and the events which establish or terminate entitlement to benefits.

(d) In order for an entitled miner or surviving spouse to qualify for augmented benefits because of one or more dependents, such dependents must meet relationship and dependency requirements with respect to such beneficiary prescribed by or pursuant to the Act. Such requirements are also set forth in this subpart.

*Comments received:* See general comments received on this subpart.

**CONDITIONS AND DURATION OF ENTITLEMENT**

**§ 725.202 Miner defined; condition of entitlement, miner.**

(a) *Miner defined.* A "miner" for the purposes of this part is any person who works or has worked in or around a coal mine or coal preparation facility in the extraction, preparation, or transportation of coal, and any person who works or has worked in coal mine construction or maintenance in or around a coal mine or coal preparation facility. A coal mine construction or transportation worker shall be considered a miner to the extent such individual is or was exposed to coal mine dust as a result of employment in or around a coal mine or coal preparation facility. In the case of an individual employed in coal transportation or coal mine construction, there shall be a rebuttable presumption that such individual was exposed to coal mine dust during all periods of such employment occurring in or around a coal mine or coal preparation facility for purposes of: (1) Determining whether such individual is or was a miner; (2) establishing the applicability of any of the presumptions described in section 411(c)



of the Act and part 718 of this subchapter; and (3) determining the identity of a coal mine operator liable for the payment of benefits in accordance with § 725.493. The presumption may be rebutted by evidence which demonstrates: (1) That the individual was not regularly exposed to coal mine dust during his or her employment in or around a coal mine or preparation facility; or (2) that the individual was not regularly employed in or around a coal mine or coal preparation facility. An individual employed by a coal mine operator, regardless of the nature of such individual's employment, shall be considered a miner unless such individual was not employed in or around a coal mine or coal preparation facility.

A person who is or was a self-employed miner or independent contractor, and who otherwise meets the requirements of this paragraph, shall be considered a miner for the purposes of this part (see § 725.494).

(b) *Conditions of entitlement; miner.* An individual is eligible for benefits under this subchapter if the individual:

- (1) Is a miner as defined in this section; and
- (2) Is totally disabled due to pneumoconiosis (see part 718 of this subchapter; see also § 725.503A); and
- (3) Has filed a claim for benefits in accordance with the provisions of this part.

*Comments received:* (a) A number of coal mine construction employers argue that their employees are not exposed to coal mine dust and should not, therefore, be covered by the Act. It is suggested in this connection that a construction employer's liability should be made contingent upon proof of exposure to dust conditions which are "substantially similar" to those encountered in underground mining. (b) The construction employers also argue that the presumption of continuous exposure is both unreasonable and unauthorized for the reason that only the miner has knowledge of the conditions under which he or she has worked. (c) One comment requests that the language of this section be clarified to clearly indicate that surface miners and auger miners are covered by the Act. (d) One comment urges that the term "coal dust" be changed to "coal mine dust." (e) Many comments support this provision and urge its retention.

*Discussion and changes:* (a) Congress has determined that coal mine construction workers are to be included within the Act's definition of "miner" and has clearly so indicated in section 402(d) of the Act. There is no statutory authority to limit the coverage of construction employees only to situations in which there is exposure to dust conditions substantially similar to those encountered in underground mining. (See discussion and changes following § 725.491.)

(b) The presumption of continuous exposure is neither contrary to law nor unfair to coal mine construction employers. Section 422(h) of the Act authorizes the Secretary of Labor to "by regulation establish stand-

ards, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular coal mine, or mines." Under this presumption, the coal mine construction employer need only show that the employee was not exposed to coal dust for a cumulative 1-year period during his or her employment with the contractor, in order to avoid liability (see § 725.493). It is the employer rather than the employee who is expected to keep records of where the employee worked, and it is the supervisory personnel employed by the employer who are responsible for controlling and supervising the conditions under which an employee works. The presumption should not be eliminated. The burden of coming forward with information is properly with the employer, who can more easily obtain such information.

Continuous or long-term employment in or around a coal mine or preparation facility forms a reasonable basis for presuming exposure to coal dust. If the exposure presumption were not included, the construction employer would be likely to demand strict proof of a year of employment, with a day-by-day description of exposure. Such an approach would not be in keeping with the language and intent of the Act. The construction employer is capable of developing enough information, using the discovery mechanisms contained in this part, to either verify or refute the claimant's allegation of years of exposure and whether such exposure took place entirely while the claimant was employed by the construction employer.

In extending the coverage of the Act to construction employees, Congress was aware of special problems this would create for construction employers and accordingly exempted them from both the coal tax and the obligation to purchase insurance. This action by no means detracts from Congress' commitment to extend the Act's coverage to construction employees who regularly work in or around coal mines or preparation facilities.

(c) The Act is clear on the point that all coal miners (underground, surface, auger, etc.) are covered regardless of the type of mine in which employment took place. The 1972 amendments to the Act eliminated the term "underground" from the definition of "miner" and that change is included throughout these rules by the absence of any language limiting the term "miner" to any type of mine. The Department believes that the addition of the terms "strip," "surface" or "auger" to define the type of mine in which employment must occur would itself limit the broad meaning of the term mine, and declines to make such a change.

(d) The Department accepts the comment that the term "coal dust" should be changed to "coal mine dust." The Act defines pneumoconiosis as a "dust disease of the lung . . . arising out of coal mine employment." Accordingly, exposure to any coal-mine-generated dust and ensuing disease or disability form a proper basis for entitlement.

#### § 725.203 Duration of entitlement; miner.

(a) An individual is entitled to benefits as a miner for each month beginning with the first month in which all of the conditions for entitlement prescribed in § 725.202 are satisfied.

(b) The last month for which such individual is entitled to benefits is the

month before the month during which either of the following events first occurs:

- (1) The miner dies; or
- (2) The miner's total disability ceases (see § 725.503A).

*Comments received:* A few comments recommend that this section make clear that the first month of eligibility is the month of onset of total disability rather than the month in which evidence of total disability is received.

*Discussion and changes:* The month of onset of total disability is nowhere limited to the date when evidence of total disability is obtained. However, the actual date of onset must be determined on a case-by-case basis and the Department does not consider a general rule on this point necessary.

#### BENEFITS ON ACCOUNT OF LIVING DEPENDENTS (AUGMENTED BENEFITS)

#### § 725.204 Determination of relationship; spouse.

For the purpose of augmenting benefits, an individual will be considered to be the spouse of a miner if:

(a) The courts of the State in which the miner is domiciled would find that such individual and the miner validly married; or

(b) The courts of the State in which the miner is domiciled would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual is the miner's spouse; or

(c) Under State law, such individual would have the right of a spouse to share in the miner's intestate personal property; or

(d)(1) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which, but for a legal impediment, would have been a valid marriage, unless the individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household in the month in which a request is filed that the miner's benefits be augmented because such individual qualifies as the miner's spouse. The provisions of this paragraph shall not apply, however, if the miner's benefits are or have been augmented under § 725.520(c) because another person qualifies or has qualified as the miner's spouse and such other person is, or is considered to be, the spouse of such miner under paragraph (a), (b), or (c) of this section at the time such request is filed.

(2) The qualification of an individual for augmentation purposes under this paragraph shall end with the month before the month in which:

(i) The Office determines that the benefits of the miner should be augmented on account of another person,



if such other person is (or is considered to be) the spouse of the miner under paragraph (a), (b), or (c) of this section, or

(ii) If the individual who previously qualified as a spouse for purposes of § 725.520(c), entered into a valid marriage without regard to this paragraph, with a person other than the miner.

*Comments received:* See General comments received on this subpart.

**§ 725.205 Determination of dependency; spouse.**

For the purposes of augmenting benefits, an individual who is the miner's spouse (see § 725.204) will be determined to be dependent upon the miner if:

(a) The individual is a member of the same household as the miner (see § 725.232); or

(b) The individual is receiving regular contributions from the miner for support (see § 725.233(c)); or

(c) The miner has been ordered by a court to contribute to such individual's support (see § 725.233(c)); or

(d) The individual is the natural parent of the son or daughter of the miner; or

(e) The individual was married to the miner (see § 725.204) for a period of not less than 1 year.

*Comments received:* See General comments received on this subpart.

**§ 725.206 Determination of relationship; divorced spouse.**

For the purposes of augmenting benefits with respect to any claim considered or reviewed under this part or part 727 of this subchapter, an individual will be considered to be the divorced spouse of a miner if the individual's marriage to the miner has been terminated by a final divorce on or after the 10th anniversary of the marriage unless, if such individual was married to and divorced from the miner more than once, such individual was married to the miner in each calendar year of the period beginning 10 years immediately before the date on which any divorce became final.

*Comments received:* (a) Many comments suggest that this section be changed to reflect the 1977 amendments to the Social Security Act, which reduce the original 20 years of marriage requirement to 10 years on or after January 1, 1979. A few comments suggest an across-the-board 10-year rule. A few others suggest that a reapplication for benefits should be allowed if the prospective change in the law operates to deny benefits to persons who would otherwise be eligible under the 10-year provision but were denied while eligibility was governed by the 20-year provision. (b) See also General comments received on this subpart.

*Discussion and changes:* On December 20, 1977, Pub. L. 95-216 amended, among other provisions, section 216(d)(2) of the Social Security Act (which is incorporated in the

later-enacted Black Lung Benefits Reform Act of 1977) to reduce from 20 to 10 the number of years of marriage necessary to qualify a surviving divorced wife for certain benefits under title II of the Social Security Act. These incorporated provisions of the Social Security Act materially alter a surviving divorced wife's entitlement to benefits. However, because black lung payments, unlike Social Security payments, are ordinarily made retroactively, the Department believes that the 10-years-of-marriage requirement should be adopted for all claims, whether newly filed or subject to review under section 435 of the Act.

**§ 725.207 Determination of dependency; divorced spouse.**

For the purpose of augmenting benefits, an individual who is the miner's divorced spouse (§ 725.206) will be determined to be dependent upon the miner if:

(a) The individual is receiving at least one-half of his or her support from the miner (see § 725.233(g)); or

(b) The individual is receiving substantial contributions from the miner pursuant to a written agreement (see § 725.233 (c), (f)); or

(c) A court order requires the miner to furnish substantial contributions to the individual's support (see § 725.233(c)).

*Comments received:* A few comments urge the Department to consider third party payments to a divorced spouse in determining dependency.

*Discussion and changes:* The Department will consider third party payments on a case-by-case basis as necessary.

**§ 725.208 Determination of relationship; child.**

As used in this section, the term "beneficiary" means only a surviving spouse entitled to benefits at the time of death (see § 725.212), or a miner. An individual will be considered to be the child of a beneficiary if:

(a) The courts of the State in which the beneficiary is domiciled (see § 725.231) would find, under the law they would apply, that the individual is the beneficiary's child; or

(b) The individual is the legally adopted child of such beneficiary; or

(c) The individual is the stepchild of such beneficiary by reason of a valid marriage of the individual's parent or adopting parent to such beneficiary; or

(d) The individual does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, but would, under State law, have the same right as a child to share in the beneficiary's intestate personal property; or

(e) The individual is the natural son or daughter of a beneficiary but is not a child under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) of this section if

the beneficiary and the mother or the father, as the case may be, of the individual went through a marriage ceremony resulting in a purported marriage between them which but for a legal impediment (see § 725.230) would have been a valid marriage; or

(f) The individual is the natural son or daughter of a beneficiary but is not a child under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) or (e) of this section, such individual shall nevertheless be considered to be the child of the beneficiary if:

(1) The beneficiary, prior to his or her entitlement to benefits, has acknowledged in writing that the individual is his or her son or daughter, or has been decreed by a court to be the parent of the individual, or has been ordered by a court to contribute to the support of the individual (see § 725.233(c)) because the individual is his or her son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father of the individual and was living with or contributing to the support of the individual at the time the beneficiary became entitled to benefits.

*Comments received:* Only supportive comments received.

**§ 725.209 Determination of dependency; child.**

(a) For purposes of augmenting the benefits of a miner or surviving spouse, the term "beneficiary" as used in this section means only a miner or surviving spouse entitled to benefits (see § 725.202 and § 725.212). An individual who is the beneficiary's child (§ 725.208) will be determined to be, or to have been dependent on the beneficiary, if the child:

(1) Is unmarried; and

(2)(i) Is under 18 years of age; or  
(ii) Is 18 years of age or older and is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d); or

(iii) Is 18 years of age or older and is a student.

(b)(1) The term "student" means a "full-time student" as defined in section 202(d)(7) of the Social Security Act, 42 U.S.C. 402(d)(7) (see § 404.320(c) of this title), or an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(i) A school, college, or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof; or

(ii) A school, college, or university which has been accredited by a State



or by a State-recognized or nationally-recognized accrediting agency or body; or

(iii) A school, college, or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited; or

(iv) A technical, trade, vocational, business, or professional school accredited or licensed by the Federal or a State government or any political subdivision thereof, providing courses of not less than 3 months' duration that prepare the student for a livelihood in a trade, industry, vocation, or profession.

(2) A student will be considered to be "pursuing a full-time course of study or training at an institution" if the student is enrolled in a noncorrespondence course of at least 13 weeks duration and is carrying a subject load which is considered full-time for day students under the institution's standards and practices. A student beginning or ending a full-time course of study or training in part of any month will be considered to be pursuing such course for the entire month.

(3) A child is considered not to have ceased to be a student:

(i) During any interim between school years, if the interim does not exceed 4 months and the child shows to the satisfaction of the office that he or she has a bona fide intention of continuing to pursue a full-time course of study or training; or

(ii) During periods of reasonable duration in which, in the judgment of the office, the child is prevented by factors beyond the child's control from pursuing his or her education.

(4) A student whose 23d birthday occurs during a semester or other enrollment period in which such student is pursuing a full-time course of study or training shall continue to be considered a student until the end of such period, unless eligibility is otherwise terminated.

*Comments received:* None.

#### § 725.210 Duration of augmented benefits.

Augmented benefits payable on behalf of a spouse or divorced spouse, or a child, shall begin with the first month in which the dependent satisfies the conditions of relationship and dependency set forth in this subpart. Augmentation of benefits on account of a dependent continues through the month before the month in which the dependent ceases to satisfy these conditions, except in the case of a child who qualifies as a dependent because such child is a student. In the latter case, benefits continue to be augmented through the month before the first month during no part of which such child qualifies as a student.

*Comments received:* None.

#### § 725.211 Time of determination of relationship and dependency of spouse or child for purposes of augmentation of benefits.

With respect to the spouse or child of a miner entitled to benefits, and with respect to the child of a surviving spouse entitled to benefits, the determination as to whether an individual purporting to be a spouse or child is related to or dependent upon such miner or surviving spouse shall be based on the facts and circumstances present in each case, at the appropriate time.

*Comments received:* See general comments received on this subpart.

#### SURVIVORS' ENTITLEMENT

#### § 725.212 Conditions of entitlement; surviving spouse or surviving divorced spouse.

An individual who is the surviving spouse or surviving divorced spouse of a miner is eligible for benefits if such individual:

- (1) Is not married;
- (2) Was dependent on the miner at the pertinent time; and
- (3) The deceased miner either:

(i) Was receiving benefits under section 415 or part C of title IV of the Act at the time of death; or

(ii) Is determined to have been totally disabled due to pneumoconiosis at the time of death or to have died due to pneumoconiosis (see part 718 of this subchapter).

*Comments received:* See general comments received on this subpart.

#### § 725.213 Duration of entitlement; surviving spouse or surviving divorced spouse.

(a) An individual is entitled to benefits as a surviving spouse, or as a surviving divorced spouse, for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 725.212 are satisfied.

(b) The last month for which such individual is entitled to such benefits is the month before the month in which either of the following events first occurs:

- (1) The surviving spouse or surviving divorced spouse marries; or
- (2) The surviving spouse or surviving divorced spouse dies; or
- (3) Where the individual qualifies as the surviving spouse of a miner under § 725.212(d), such individual ceases to qualify as provided in that paragraph.

*Comments received:* See general comments received on this subpart.

#### § 725.214 Determination of relationship; surviving spouse.

An individual shall be considered to be the surviving spouse of a miner if:

(a) The courts of the State in which the miner was domiciled (see § 725.231) at the time of his or her death would find that the individual and the miner were validly married; or

(b) The courts of the State in which the miner was domiciled (see § 725.231) at the time of the miner's death would find that the individual was the miner's surviving spouse; or

(c) Under State law, such individual would have the right of the spouse to share in the miner's intestate personal property; or

(d) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which but for a legal impediment (see § 725.330) would have been a valid marriage, unless such individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household at the time of the miner's death. The provisions of this paragraph shall not apply if another person is or has been entitled to benefits as the surviving spouse of the miner and such other person is, or is considered to be, the surviving spouse of such miner under paragraph (a), (b), or (c) of this section at the time such individual files a claim for benefits.

*Comments received:* See General comments received on this subpart.

#### § 725.215 Determination of dependency; surviving spouse.

An individual who is the miner's surviving spouse (see § 725.214) shall be determined to have been dependent on the miner if, at the time of the miner's death:

(a) The individual was living with the miner (see § 725.232); or

(b) The individual was dependent upon the miner for support or the miner has been ordered by a court to contribute to such individual's support (see § 725.233); or

(c) The individual was living apart from the miner because of the miner's desertion or other reasonable cause; or

(d) The individual is the natural parent of the miner's son or daughter; or

(e) The individual had legally adopted the miner's son or daughter while the individual was married to the miner and while such son or daughter was under the age of 18; or

(f) The individual was married to the miner at the time both of them legally adopted a child under the age of 18; or

(g) (1) The individual was married to the miner for a period of not less than 9 months immediately before the day on which the miner died, unless the miner's death:



(i) Is accidental (as defined in paragraph (2) of this subsection), or

(ii) Occurs in line of duty while the miner is a member of a uniformed service serving on active duty (as defined in § 404.1013(f) (2) and (3) of this title), and the surviving spouse was married to the miner for a period of not less than 3 months immediately prior to the day on which such miner died.

(2) For purposes of paragraph (g) (1) (i) of this section, the death of a miner is accidental if such individual received bodily injuries solely through violent, external, and accidental means, and as a direct result of the bodily injuries and independently of all other causes, dies not later than 3 months after the day on which such miner receives such bodily injuries. The term "accident" means an event that was unpremeditated and unforeseen from the standpoint of the deceased individual. To determine whether the death of an individual did, in fact, result from an accident the adjudication officer will consider all the circumstances surrounding the casualty. An intentional and voluntary suicide will not be considered to be death by accident; however, suicide by an individual who is so incompetent as to be incapable of acting intentionally and voluntarily will be considered to be a death by accident. In no event will the death of an individual resulting from violent and external causes be considered a suicide unless there is direct proof that the fatal injury was self-inflicted.

(3) The provisions of this section shall not apply if the adjudication officer determines that at the time of the marriage involved, the miner would not reasonably have been expected to live for 9 months.

*Comments received: See General comments received on this subpart.*

**§ 725.216 Determination of a relationship; surviving divorced spouse.**

An individual will be considered to be the surviving divorced spouse of deceased miner in a claim considered under this part or reviewed under part 727 of this subchapter, if such individual's marriage to the miner had been terminated by a final divorce on or after the 10th anniversary of the marriage unless, if such individual was married to and divorced from the miner more than once, such individual was married to such miner in each calendar year of the period beginning 10 years immediately before the date on which any divorce became final and ending with the year in which the divorce became final.

*Comments received: See § 725.206.*

**§ 725.217 Determination of dependency; surviving divorced spouse.**

An individual who is the miner's surviving divorced spouse (see § 725.216) shall be determined to have been dependent on the miner if, for the month before the month in which the miner died:

(1) The individual was receiving at least one-half of his or her support from the miner (see § 725.733(g)); or

(2) The individual was receiving substantial contributions from the miner pursuant to a written agreement (see § 725.233 (e) and (f)); or

(3) A court order required the miner to furnish substantial contributions to the individual's support (see § 725.233 (c) and (f)).

*Comments received: See § 725.207.*

**§ 725.218 Conditions of entitlement; child.**

(a) An individual is entitled to benefits where he or she meets the required standards of relationship and dependency under this subpart (see § 725.220 and § 725.221) and is the child of a deceased miner who:

(1) Was receiving benefits under section 415 or part C of title IV of the act; or

(2) Is determined to have been totally disabled due to pneumoconiosis at the time of his or her death, or to have died due to pneumoconiosis (see part 718 of this chapter).

(b) A child is not entitled to benefits for any month for which a miner, or the surviving spouse or surviving divorced spouse of a miner, establishes entitlement to benefits.

*Comments received: None.*

**§ 725.219 Duration of entitlement; child.**

(a) An individual is entitled to benefits as a child for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 725.218 are satisfied.

(b) The last month for which such individual is entitled to such benefits is the month before the month in which any one of the following events first occurs:

(1) The child dies;

(2) The child marries;

(3) The child attains age 18; and

(i) Is not under a disability at that time, and

(ii) Is not a student (as defined in § 725.221) during any part of the month in which the child attains age 18;

(4) If the child's entitlement is based on his or her status as a student, the earlier of:

(i) The first month during no part of which the individual is a student; or

(ii) The month in which the individual attains age 23 and is not under a disability at that time;

(5) If a child's entitlement is based on disability, the first month in no part of which such individual is under a disability.

(c) A child whose entitlement to benefits terminated with the month before the month in which the child attained age 18, or later, may thereafter (provided such individual is not married) again become entitled to such benefits upon filing application for such reentitlement, beginning with the first month after termination of benefits in which such individual is a student and has not attained the age of 23.

*Comments received: None.*

**§ 725.220 Determination of relationship; child.**

For purposes of determining whether an individual may qualify for benefits as the child of a deceased miner, the provisions of § 725.208 shall be applicable. As used in this section, the term "beneficiary" means only a surviving spouse entitled to benefits at the time of such surviving spouse's death (see § 725.212), or a miner. For purposes of a survivor's claim, an individual will be considered to be a child of a beneficiary if:

(a) The courts of the State in which such beneficiary is domiciled (see § 725.231) would find, under the law they would apply in determining the devolution of the beneficiary's intestate personal property, that the individual is the beneficiary's child; or

(b) Such individual is the legally adopted child of such beneficiary; or

(c) Such individual is the stepchild of such beneficiary by reason of a valid marriage of such individual's parent or adopting parent to such beneficiary; or

(d) Such individual does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, but would, under State law, have the same right as a child to share in the beneficiary's intestate personal property; or

(e) Such individual is the natural son or daughter of a beneficiary but does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if the beneficiary and the mother or father, as the case may be, of such individual went through a marriage ceremony resulting in a purported marriage between them which but for a legal impediment (see § 725.230) would have been a valid marriage; or

(f) Such individual is the natural son or daughter of a beneficiary but does not have the relationship of child to



such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) or (e) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if:

(1) Such beneficiary, prior to his or her entitlement to benefits, has acknowledged in writing that the individual is his or her son or daughter, or has been decreed by a court to be the father or mother of the individual, or has been ordered by a court to contribute to the support of the individual (see § 725.233(a)) because the individual is a son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father or mother of the individual and was living at the time such beneficiary became entitled to benefits.

*Comments received:* None.

**§ 725.221 Determination of dependency; child.**

For the purposes of determining whether a child was dependent upon a deceased miner, the provisions of § 725.209 shall be applicable, except that for purposes of determining the eligibility of a child who is under a disability as defined in section 223(d) of the Social Security Act, such disability must have begun before the child attained age 18, or in the case of a student, before the child ceased to be a student.

*Comments received:* None.

**§ 725.222 Conditions of entitlement; parent, brother, or sister.**

(a) An individual is eligible for benefits as a surviving parent, brother or sister if all of the following requirements are met:

(1) The individual is the parent, brother, or sister of a deceased miner;

(2) The individual was dependent on the miner at the pertinent time;

(3) Proof of support is filed within 2 years after the miner's death, unless the time is extended for good cause (§ 725.226);

(4) In the case of a brother or sister, such individual also:

(i) Is under 18 years of age; or

(ii) Is 18 years of age or older and is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d), which began before such individual attained age 18, or in the case of a student, before the student ceased to be a student; or

(iii) Is a student (see § 725.209(b)); or

(iv) Is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d), at the time of the miner's death;

(5) The deceased miner:

(i) Was entitled to benefits under section 415 or part C of title IV of the Act; or

(ii) Is determined to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis (see part 718 of this chapter).

(b)(1) A parent is not entitled to benefits if the deceased miner was survived by a spouse or child at the time of such miner's death.

(2) A brother or sister is not entitled to benefits if the deceased miner was survived by a spouse, child, or parent at the time of such miner's death.

*Comments received:* See General comments received on this subpart.

**§ 725.223 Duration of entitlement; parent, brother, or sister.**

(a) A parent, sister, or brother is entitled to benefits beginning with the month all the conditions of entitlement described in § 725.222 are met.

(b) The last month for which such parent is entitled to benefits is the month in which the parent dies.

(c) The last month for which such brother or sister is entitled to benefits is the month before the month in which any of the following events first occurs:

(1) The individual dies;

(2)(i) The individual marries or remarries; or

(ii) If already married, the individual received support in any amount from his or her spouse;

(3) The individual attains age 18, and

(i) Is not under a disability at that time, and (ii) Is not a student (see § 725.209(b)) during any part of the month in which such individual attains age 18;

(4) If the individual's entitlement is based on his or her status as a student, the earlier of:

(i) The first month during no part of which he or she is a student; or

(ii) The month in which he or she attains age 23 and is not under a disability at that time;

(5) If the individual's entitlement is based on disability, the first month in no part of which the individual is under a disability.

*Comments received:* None.

**§ 725.224 Determination of relationship; parent, brother, or sister.**

(a) An individual will be considered to be the parent, brother, or sister of a miner if the courts of the State in which the miner was domiciled (see § 225.231) at the time of death would find, under the law they would apply, that the individual is the miner's parent, brother, or sister.

(b) Where, under State law, the individual is not the miner's parent, brother,

or sister, but would, under State law, have the same status (i.e., right to share in the miner's intestate personal property) as a parent, brother, or sister, the individual will be considered to be the parent, brother, or sister as appropriate.

*Comments received:* None.

**§ 725.225 Determination of dependency; parent, brother, or sister.**

An individual who is the miner's parent, brother, or sister will be determined to have been dependent on the miner if, during the 1-year period immediately prior to the miner's death:

(a) The individual and the miner were living in the same household (see § 725.232); and

(b) The individual was totally dependent on the miner for support (see § 725.232(b)).

*Comments received:* None.

**§ 725.226 "Good cause" for delayed filing of proof of support.**

(a) *What constitutes "good cause."* "Good cause" may be found for failure to file timely proof of support where the parent, brother, or sister establishes to the satisfaction of the Office that such failure to file was due to:

(1) Circumstances beyond the individual's control, such as extended illness, mental, or physical incapacity, or communication difficulties; or

(2) Incorrect or incomplete information furnished the individual by the Office; or

(3) Efforts by the individual to secure supporting evidence without a realization that such evidence could be submitted after filing proof of support.

(b) *What does not constitute "good cause."* "Good cause" for failure to file timely proof of support (see § 725.222(a)(3)) does not exist when there is evidence of record in the Office that the individual was informed that he or she should file within the prescribed period and he or she failed to do so deliberately or through negligence.

*Comments received:* (a) One comment recommends a more detailed statement of what constitutes good cause for filing proof of support. (b) One comment suggests that the claimant be contacted before a finding of a failure to show good cause is made.

*Discussion and changes:* Good cause must be determined on a case-by-case basis and general rules will hinder the application of this principle.

(b) Every effort will be made to assist claimants to file necessary documents, including telephone and personal contact where appropriate. This is an internal matter, and no change in the rule is necessary.



§ 725.227 Time of determination of relationship and dependency of survivors.

The determination as to whether an individual purporting to be an entitled survivor of a miner or beneficiary was related to, or dependent upon, the miner is made after such individual files a claim for benefits as a survivor. Such determination is based on the facts and circumstances with respect to a reasonable period of time ending with the miner's death. A prior determination that such individual was, or was not, a dependent for the purposes of augmenting the miner's benefits for a certain period, is not determinative of the issue of whether the individual is a dependent survivor of such miner.

*Comments received:* A few commentators express concern that a miner's illness immediately before death should not preclude a finding of dependency at the time of death.

*Discussion and changes:* It is not intended that extraordinary circumstances immediately before death should affect a dependency determination. A change is made to reflect this intent.

§ 725.228 Effect of conviction of felonious and intentional homicide on entitlement to benefits.

An individual who has been convicted of the felonious and intentional homicide of a miner or other beneficiary shall not be entitled to receive any benefits payable because of the death of such miner or other beneficiary, and such person shall be considered nonexistent in determining the entitlement to benefits of other individuals.

*Comments received:* None.

TERMS USED IN THIS SUBPART

§ 725.229 Intestate personal property.

References in this subpart to the "same right to share in the intestate personal property" of a deceased miner (or surviving spouse) refer to the right of an individual to share in such distribution in the individual's own right and not the right of representation.

*Comments received:* None.

§ 725.230 Legal impediment.

For purposes of this subpart, "legal impediment" means an impediment resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution or resulting from a defect in the procedure followed in connection with the purported marriage ceremony—for example, the solemnization of a marriage only through a religious ceremony in a country which requires a civil ceremony for a valid marriage.

*Comments received:* None.

§ 725.231 Domicile.

(a) For purposes of this subpart, the term "domicile" means the place of an individual's true, fixed, and permanent home.

(b) The domicile of a deceased miner or surviving spouse is determined as of the time of death.

(c) If an individual was not domiciled in any State at the pertinent time, the law of the District of Columbia is applied.

*Comments received:* None.

§ 725.232 Member of the same household—"living with," "living in the same household," and "living in the miner's household," defined.

(a) *Defined.* (1) The term "member of the same household" as used in section 402(a)(2) of the Act (with respect to a spouse); the term "living with" as used in section 402(e) of the Act (with respect to a surviving spouse); and the term "living in the same household" as used in this subpart, means that a husband and wife were customarily living together as husband and wife in the same place. (2) The term "living in the miner's household" as used in section 412(a)(5) of the Act (with respect to a parent, brother, or sister) means that the miner and such parent, brother, or sister were sharing the same residence.

(b) *Temporary absence.* The temporary absence from the same residence of either the miner, or the miner's spouse, parent, brother, or sister (as the case may be), does not preclude a finding that one was "living with" the other, or that they were "members of the same household." The absence of one such individual from the residence in which both had customarily lived shall, in the absence of evidence to the contrary, be considered temporary:

(1) If such absence was due to service in the Armed Forces of the United States; or

(2) If the period of absence from his or her residence did not exceed 6 months and the absence was due to business or employment reasons, or because of confinement in a penal institution or in a hospital, nursing home, or other curative institution; or

(3) In any other case, if the evidence establishes that despite such absence they nevertheless reasonably expected to resume physically living together.

(c) *Relevant period of time.* (1) The determination as to whether a surviving spouse had been "living with" the miner shall be based upon the facts and circumstances as of the time of the death of the miner.

(2) The determination as to whether a spouse is a "member of the same household" as the miner shall be based upon the facts and circumstances with respect to the period or

periods of time as to which the issue of membership in the same household is material.

(3) The determination as to whether a parent, brother, or sister was "living in the miner's household" shall take account of the 1-year period immediately prior to the miner's death.

*Comments received:* (a) One comment recommends that the definitions of "Death during absence," and "Absences other than temporary" which appeared in the Department's earlier rules but which are omitted from these rules should be revived. (b) See *General comments received on this subpart.*

*Discussion and changes:* The terms "Death during absence" and "Absences other than temporary" are common terms which can be defined on a case-by-case basis by an appropriate finder of fact. Inflexible definitions are unnecessary.

§ 725.233 Support and contributions.

(a) *"Support" defined.* The term "support" includes food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for the maintenance of the person supported.

(b) *"Contributions" defined.* The term "contributions" refers to contributions actually provided by the contributor from such individual's property, or the use thereof, or by the use of such individual's own credit.

(c) *"Regular contributions" and "substantial contributions" defined.* The terms "regular contributions" and "substantial contributions" mean contributions that are customary and sufficient to constitute a material factor in the cost of the individual's support.

(d) *Contributions and community property.* When a spouse receives and uses for his or her support income from services or property, and such income, under applicable State law, is the community property of the wife and her husband, no part of such income is a "contribution" by one spouse to the other's support regardless of the legal interest of the donor. However, when a spouse receives and uses for support, income from the services and the property of the other spouse and, under applicable State law, such income is community property, all of such income is considered to be a contribution by the donor to the spouse's support.

(e) *"Court order for support" defined.* References to a support order in this subpart means any court order, judgement, or decree of a court of competent jurisdiction which requires regular contributions that are a material factor in the cost of the individual's support and which is in effect at the applicable time. If such contributions are required by a court order, this condition is met whether or not the contributions were actually made.

(f) *"Written agreement" defined.* The term "written agreement" in the



## RULES AND REGULATIONS

phrase "substantial contributions pursuant to a written agreement", as used in this subpart means an agreement signed by the miner providing for substantial contributions by the miner for the individual's support. It must be in effect at the applicable time but it need not be legally enforceable.

(g) "One-half support" defined. The term "one-half support" means that the miner made regular contributions, in cash or in kind, to the support of a divorced spouse at the specified time or for the specified period, and that the amount of such contributions equalled or exceeded one-half the total cost of such individual's support at such time or during such period.

(h) "Totally dependent for support" defined. The term "totally dependent for support" as used in § 725.225(b) means that the miner made regular contributions to the support of the miner's parents, brother, or sister, as the case may be, and that the amount of such contributions at least equalled the total cost of such individual's support.

Comments received: See § 725.207.

### Subpart C—Filing of Claims

#### § 725.301 Who may file a claim.

(a) Any person who believes he or she may be entitled to benefits under the Act may file a claim in accordance with this subpart.

(b) A claimant who has attained the age of 18, is mentally competent and physically able, may file a claim on his or her own behalf.

(c) If a claimant is unable to file a claim on his or her behalf because of a legal or physical impairment, the following rules shall apply:

(1) A claimant between the ages of 16 and 18 years who is mentally competent and not under the legal custody or care of another person, or a committee or institution, may upon filing a statement to the effect, file a claim on his or her own behalf. In any other case where the claimant is under 18 years of age, only a person, or the manager or principal officer of an institution having legal custody or care of the claimant may file a claim on his or her behalf.

(2) If a claimant over 18 years of age has a legally appointed guardian or committee, only the guardian or committee may file a claim on his or her behalf.

(3) If a claimant over 18 years of age is mentally incompetent or physically unable to file a claim and is under the care of another person, or an institution, only the person, or the manager or principal officer of the institution responsible for the care of the claimant, may file a claim on his or her behalf.

(4) For good cause shown, the Office may accept a claim executed by a person other than one described in paragraphs (2) or (3) of this section.

(b) Except as provided in § 725.305 of this part, in order for a claim to be considered, the claimant must be alive at the time the claim is filed.

Comments received: None.

#### § 725.302 Evidence of authority to file a claim on behalf of another.

A person filing a claim on behalf of a claimant shall submit evidence of his or her authority to so act at the time of filing or at a reasonable time thereafter in accordance with the following:

(1) A legally appointed guardian or committee shall provide the Office with certification of appointment by a proper official of the court.

(2) Any other person shall provide a statement describing his or her relationship to the claimant, the extent to which he or she has care of the claimant, or his or her position as an officer of the institution of which the claimant is an inmate. The Office may, at any time, require additional evidence to establish the authority of any such person.

Comments received: None.

#### § 725.303 Date and place of filing of claims.

(a) (1) Claims for benefits shall be delivered, mailed to, or presented at, any of the various district offices of the Social Security Administration, or any of the various offices of the Department of Labor authorized to accept claims, or, in the case of a claim filed by or on behalf of a claimant residing outside the United States, mailed or presented to any office maintained by the Foreign Service of the United States. A claim shall be considered filed on the day it is received by the office in which it is first filed.

(2) A claim submitted to a Foreign Service Office or any other agency or subdivision of the U.S. Government shall be forwarded to the Office and considered filed as of the date it was received at the Foreign Service Office or other governmental agency or unit.

(b) A claim submitted by mail shall be considered filed as of the date of delivery unless a loss or impairment of benefit rights would result, in which case a claim shall be considered filed as of the date of its postmark. In the absence of a legible postmark, other evidence may be used to establish the mailing date.

Comments received: None.

#### § 725.304 Forms and initial processing.

(a) Claims shall be filed on forms prescribed and approved by the Office.

The district office at which the claim is filed will assist claimants in completing their forms.

(b) If the place at which a claim is filed is an office of the Social Security Administration, such office shall forward the completed claim form to an office of the DCMWC, which is authorized to process the claim.

Comments received: None.

#### § 725.305 When a written statement is considered a claim.

(a) The filing of a statement signed by an individual indicating an intention to claim benefits shall be considered to be the filing of a claim for the purposes of this part under the following circumstances:

(1) The claimant or a proper person on his or her behalf (see § 725.301) executes and files a prescribed claim form with the Office during the claimant's lifetime within the period specified in paragraph (b) of this section.

(2) Where the claimant dies within the period specified in paragraph (b) of this section without filing a prescribed claim form, and a person acting on behalf of the deceased claimant's estate executes and files a prescribed claim form within the period specified in paragraph (c) of this section.

(b) Upon receipt of a written statement indicating an intention to claim benefits, the Office shall notify the signer in writing that to be considered the claim must be executed by the claimant or a proper party on his or her behalf on the prescribed form and filed with the Office within six months from the date of mailing of the notice.

(c) If before the notice specified in paragraph (b) of this section is sent, or within six months after such notice is sent, the claimant dies without having executed and filed a prescribed form, or without having had one executed and filed in his or her behalf, the Office shall upon receipt of notice of the claimant's death advise his or her estate, or those living at his or her last known address, in writing that for the claim to be considered, a prescribed claim form must be executed and filed by a person authorized to do so on behalf of the claimant's estate within six months of the date of the later notice.

(d) Claims based upon written statements indicating an intention to claim benefits not perfected in accordance with this section shall not be processed.

Comments received: None.

#### § 725.306 Withdrawal of a claim.

(a) A claimant or an individual authorized to execute a claim on a claimant's behalf or on behalf of claimant's



estate under § 725.305, may withdraw a previously filed claim provided that:

(1) He or she files a written request with the appropriate adjudication officer indicating the reasons for seeking withdrawal of the claim;

(2) The appropriate adjudication officer approves the request for withdrawal on the grounds that it is in the best interests of the claimant or his or her estate, and;

(3) Any benefits previously paid with respect to the claim are reimbursed.

(b) When a claim had been withdrawn under paragraph (a) of this section, the claim will be considered not to have been filed.

*Comments received:* A few comments recommended that a claimant should not be required to refund any benefits paid before a request for withdrawal can be approved.

*Discussion and changes:* A withdrawn claim is as a matter of law considered as though it was never filed. The Act does not authorize the payment of benefits to an individual who refuses, for any reason, to allow a full and complete adjudication of a claim.

#### § 725.307 Cancellation of a request for withdrawal.

At any time prior to approval, a request for withdrawal may be canceled by a written request of the claimant or a person authorized to act on the claimant's behalf or on behalf of the claimant's estate.

*Comments received:* None.

#### § 725.308 Time limits for filing claims.

(a) A claim for benefits filed under this part by, or on behalf of, a miner shall be filed within three years after a medical determination of total disability due to pneumoconiosis which has been communicated to the miner or a person responsible for the care of the miner, or within three years after the date of enactment of the Black Lung Benefits Reform Act of 1977, whichever is later. There is no time limit on the filing of a claim by the survivor of a miner.

(b) A miner who is receiving benefits under part B of title IV of the Act and who is notified by HEW of the right to seek medical benefits, may file a claim for medical benefits under part C of title IV of the Act and this part. The Secretary of Health, Education, and Welfare is required to notify each miner receiving benefits under part B of this right. Notwithstanding the provisions of paragraph (a) of this section, a miner notified of his or her rights under this paragraph may file a claim under this part within 6 months from the date such notice was mailed unless the period is extended for good cause shown.

(c) There shall be a rebuttable presumption that every claim for benefits is timely filed. However, except as pro-

vided in paragraph (b) of this section, the time limits in this section are mandatory and may not be waived or tolled except upon a showing of extraordinary circumstances.

*Comments received:* (a) A few comments recommend that the time limits for filing claims should be waived or tolled for good cause shown. (b) One comment suggests that an individual who files for medical benefits under Section 11 of the Act should be presumed entitled to those benefits and should not have to contend with the fear that a Part C adjudication of medical benefits entitlement could jeopardize an earlier part B award.

*Discussion and changes:* (a) The 1977 Act eliminates those limitations on filing which previously caused an inequitable denial of many claims. All other limitations on filing, except those applicable to medical benefits claims, are suspended until March 1, 1981. The six month period allowed for medical benefits filings may be extended for good cause shown. The only remaining limitation, apart from the limitation on medical benefit filings, is that a miner must file by March 1, 1981, or within three years from a medical determination of total disability due to pneumoconiosis, whichever is later. The language of the provision is changed to permit a waiver or tolling of the limitation in extraordinary circumstances, and to require knowledge by the claimant of the medical determination before the three year period begins to run.

(b) See § 725.701A.

#### § 725.309 Duplicate claims.

(a) A claimant whose claim for benefits was previously approved under part B of title IV of the Act may file a claim for benefits under this part as provided in § 725.308(b) and § 725.701A.

(b) A claimant who has filed a claim for benefits under both parts B and C of title IV of the Act or who has filed more than one claim for benefits under part C of title IV of the Act before March 1, 1978, and whose claims are pending or have been denied (§ 727.102 of this subchapter) shall have his or her claims considered in accordance with § 727.103 of this subchapter.

(c) A claimant who filed a claim for benefits under part B of title IV of the Act or part C of title IV of the Act before March 1, 1978, and whose previous claim(s) are pending or have been finally denied, who files an additional claim under this part, shall have the later claim merged with any earlier claim subject to review under part 727 of this subchapter. If an earlier claim subject to review under part 727 of this subchapter has been denied after review, a new claim filed under this part shall also be denied, on the grounds of the prior denial, unless the deputy commissioner determines that there has been a material change in conditions or the later claim is a request for modification and the requirements of § 725.310 are met. If an earli-

er survivor's claim subject to review under part 727 of this subchapter has been denied, the new claim filed under this part shall also be denied unless the deputy commissioner determines that the later claim is a request for modification and the requirements of § 725.310 are met.

(c) In the case of a claimant who files more than one claim for benefits under this part, the later claim shall be merged with the earlier claim for all purposes if the earlier claim is still pending. If the earlier miner's claim has been finally denied, the later claim shall also be denied, on the grounds of the prior denial, unless the deputy commissioner determines that there has been a material change in conditions or the later claim is a request for modification and the requirements of § 725.310 are met. If an earlier survivor's claim filed under this part has been finally denied, the new claim filed under this part shall also be denied unless the deputy commissioner determines that the later claim is a request for modification and the requirements of § 725.310 are met.

(e) Notwithstanding any other provision of this part or part 727 of this subchapter, a person may exercise the right of review provided in paragraph (c) of § 727.103 at the same time such person is pursuing an appeal of a previously denied part B claim under the law as it existed prior to March 1, 1978. If the part B claim is ultimately approved as a result of the appeal, the claimant must immediately notify the Secretary of Labor and, where appropriate, the coal mine operator, and all duplicate payments made under part C shall be considered an overpayment and arrangements shall be made to insure the repayment of such overpayments to the fund or an operator, as appropriate.

(f) In a case involving duplicate claims, under no circumstances are duplicate benefits payable for concurrent periods of eligibility. Any duplicate benefits paid shall be subject to collection or offset under subpart G of this part.

*Comments received:* (a) Many commentators argue that this section prohibits the filing of a new claim by a miner who has previously been denied, and whose condition has worsened or progressed to total disability. (b) Some commentators urge the Department to simultaneously adjudicate a claim which is also pending under part B.

*Discussion and changes:* (a) The Department agrees that a miner whose claim has once been finally denied either by the Social Security Administration or the Department should be allowed to file a new claim on the grounds of a progression to total disability. Changes to reflect this result are contained in the revised provision.

(b) See *Discussion and changes* in connection with § 727.103 of this subchapter. Confirming changes are reflected in this section.



**§ 725.310 Modification of awards and denials.**

(a) Upon his or her own initiative, or upon the request of any party on grounds of a change in conditions or because of a mistake in a determination of fact, the deputy commissioner may, at any time before one year from the date of the last payment of benefits, or at any time before one year after the denial of a claim, reconsider the terms of an award or denial of benefits.

(b) Modification proceedings shall be conducted in accordance with the provisions of this part as appropriate. Additional evidence may be submitted by any party or requested by the deputy commissioner. Modification proceedings shall not be initiated before an administrative law judge or the Benefits Review Board.

(c) At the conclusion of modification proceedings the deputy commissioner may issue a proposed decision and order (§ 725.418), forward the claim for a hearing (§ 725.421) or, if appropriate, deny the claim by reason of abandonment (§ 725.409).

(d) An order issued following the conclusion of modification proceedings may terminate, continue, reinstate, increase or decrease benefit payments or award benefits. Such order shall not affect any benefits previously paid, except that an order increasing or decreasing the amount of benefits payable may be made effective on the date from which benefits were determined payable by the terms of an earlier award. In the case of an award which is decreased, any payment made in excess of the decreased rate shall be subject to collection or offset under subpart G of this part.

*Comments received:* Many comments criticize the provisions in this section which allow 1 year for the modification of a denial but an indefinite time for the modification of an award.

*Discussion and changes:* This section reflects the incorporation by the Act of section 22 of the Longshoremen's Act. Moreover, in the case of an approved claim, the Department has a continuing responsibility to insure that the correct amount of benefits is being paid. This section provides a mechanism to adjust benefit payments in the case of termination of an augmentee's status or the occurrence of an event, such as a State compensation award for pneumoconiosis, which otherwise affects a claimant's eligibility for benefits or the amount of benefits payable. The section does not authorize a readjudication of any fact already established unless there has been a mistake or a material change in conditions.

A miner whose claim has been finally denied may file a new claim at any time, and such claim may be approved if new evidence establishes that the miner has become totally disabled due to pneumoconiosis.

**§ 725.311 Communications with respect to claims; time computations.**

(a) Unless otherwise specified by this part, all requests, responses, notices, decisions, orders, or other communications required or permitted by this part shall be in writing.

(b) If required by this part, any document, brief, or other statement submitted in connection with the adjudication of a claim under this part shall be sent to each party to the claim by the submitting party. If proof of service is required with respect to any communication, such proof of service shall be submitted to the appropriate adjudication officer and filed as part of the claim record.

(c) Whenever any notice, document, brief or other statement is served by mail, 7 days shall be added to the time within which a reply or response is required to be submitted.

(d) In computing any period of time described in this part, by any applicable statute, or by the order of any adjudication officer, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period extends until the next day which is not a Saturday, Sunday, or legal holiday. "Legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by the President or the Congress of the United States.

*Comments received:* (a) A few comments urge the Department to indicate in this section whether the date of mailing or receipt of a document begins the running of any applicable time period. (b) One comment recommends that the date of receipt, in the case of a document serviced by mail, should be considered to be 7 rather than 3 days after the date of mailing.

*Discussion and changes:* (a) In connection with various response times, this document indicates where appropriate whether the date of receipt or mailing is the operative date. It is not necessary to reflect each of these time periods in this section.

(b) In view of the difficulties encountered in mail deliveries in many rural coal mining areas, the Department agrees that the date of receipt should be considered to occur 7 days after the mailing date. It should be noted that this change does not affect time periods prescribed in connection with proceedings before the Benefits Review Board or a United States court of appeals.

**Subpart D—Adjudication of Claims; Adjudication Officers****§ 725.350 Who are the adjudication officers.**

(a) *General.* The persons authorized by the Secretary of Labor to accept

evidence and decide claims on the basis of such evidence are called "adjudication officers." This section describes the status of black lung claims adjudication officers.

(b) *Deputy commissioner.* The deputy commissioner is that official of the DCMWC or his designee who is authorized to perform functions with respect to the development, processing, and adjudication of claims in accordance with this part.

(c) *Administrative law judge.* An administrative law judge is that official appointed pursuant to 5 U.S.C. 3105 (or Pub. L. 94-504) who is qualified to preside at hearings under 5 U.S.C. 557 and is empowered by the Secretary to conduct formal hearings with respect to, and adjudicate, claims in accordance with this part. A person appointed under Pub. L. 94-504 shall not be considered an administrative law judge for purposes of this part for any period after March 1, 1979.

*Comments received:* None for which a response is required.

**§ 725.351 Powers of adjudication officers.**

(a) *Deputy commissioner.* The deputy commissioner is authorized to: (1) make determinations with respect to claims as is provided in this part; (2) conduct conferences and informal discovery proceedings as provided in this part; (3) compel the production of documents by the issuance of a subpoena, with the written approval of the Director; (4) prepare documents for the signature of parties; (5) issue appropriate orders as provided in this part; (6) do all other things necessary to enable him or her to discharge the duties of the office.

(b) *Administrative Law Judge.* An administrative law judge is authorized to: (1) conduct formal hearings in accordance with the provisions of this part; (2) administer oaths and examine witnesses; (3) compel the production of documents and appearance of witnesses by the issuance of subpoenas; (4) issue decisions and orders with respect to claims as provided in this part; and (5) do all other things necessary to enable him or her to discharge the duties of the office.

(c) If any person in proceedings before an adjudication officer disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the deputy commissioner with the approval of the Director, or the administrative law judge responsible for the adjudication



of the claim, shall certify the facts to the Federal district court having jurisdiction in the place in which he or she is sitting (or to the U.S. District Court for the District of Columbia if he or she is sitting in the District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same condition as if the doing of the forbidden act had occurred with reference to the process or in the presence of the court.

*Comments received:* (a) A few comments suggest that the deputy commissioner should be granted the power to compel a claimant to authorize an operator to obtain pertinent medical records, without the use of compulsory process (subpoenas). (b) One comment recommends that a deputy commissioner or claims examiner be required to obtain the approval of the Director before contempt proceedings may be instituted.

*Discussion and changes:* (a) Any party to a claim has the right to obtain relevant evidence in the possession of any other party to the same claim. All evidence submitted to the deputy commissioner will be routinely submitted to all parties to the claim. However, where a party seeks to withhold evidence or will not voluntarily authorize an adverse party to obtain relevant evidence, the subpoena is the proper device to use in securing this evidence. Compulsory process protects the rights of all parties and allows the claims adjudicator to prevent a "fishing expedition" by a party or an unjustified delay in the adjudication of the claim.

(b) The Department agrees that a claims examiner or deputy commissioner should not be authorized to institute contempt proceedings without the approval of the Director. Only the deputy commissioner may request such approval. A change is made to reflect this view.

#### § 725.352 Disqualification of adjudication officer.

(a) No adjudication officer shall conduct any proceedings in a claim in which he or she is prejudiced or partial, or where he or she has any interest in the matter pending for decision. A decision to withdraw from the consideration of a claim shall be within the discretion of the adjudication officer. If that adjudication officer withdraws, another officer shall be designated by the Director or the Chief Administrative Law Judge, as the case may be, to complete the adjudication of the claim.

(b) No adjudication officer shall be permitted to appear or act as a representative of a party under this part while such individual is employed as an adjudication officer. No adjudication officer shall be permitted at any time to appear or act as a representative in connection with any case or claim in which he or she was personally involved. No fee or reimbursement

shall be awarded under this part to an individual who acts in violation of this paragraph.

(c) No adjudication officer shall act in any claim involving a party which employed such adjudication officer within one year before the adjudication of such claim.

(d) Notwithstanding paragraph (a) of this section, no adjudication officer shall be permitted to act in any claim involving a party who is related to the adjudication officer by consanguinity or affinity within the third degree as determined by the law of the place where such party is domiciled. Any action taken by an adjudication officer in knowing violation of this paragraph shall be void.

*Comments received:* (a) One comment recommends that an adjudication officer should be required to automatically withdraw upon the request of a claimant and a showing of good cause. (b) Other comments point out that the blanket prohibition barring an adjudicator from appearing as a representative of a party for two years after the termination of such individual's employment as an adjudicator is inconsistent with Department of Labor regulations applicable to all other areas.

*Discussion and changes:* (a) A claims adjudicator should not be required to automatically withdraw at the request of a claimant. The decision to withdraw from an adjudication is traditionally reserved to the judgment of the adjudicator.

(b) The Department agrees that the black lung conflict of interest provisions should be consistent with the several provisions applicable to Department of Labor employees (29 CFR Part O), and conforming changes are made.

#### PARTIES AND REPRESENTATIVES

##### § 725.360 Parties to proceedings.

(a) Except as provided in § 725.361, no person other than the Secretary of Labor and authorized personnel of the Department of Labor shall participate at any stage in the adjudication of a claim for benefits under this part, unless such person is determined by the appropriate adjudication officer to qualify under the provisions of this section as a party to the claim. The following persons shall be parties:

- (1) The claimant;
- (2) A person other than a claimant, authorized to execute a claim on such claimant's behalf under § 725.301;
- (3) Any coal mine operator notified under § 725.412 of its possible liability for the claim;
- (4) Any insurance carrier of such operator; and
- (5) The Director in all proceedings relating to a claim for benefits under this part.

(b) A widow, child, parent, brother, or sister, or the representative of a decedent's estate, who makes a showing in writing that his or her rights with respect to benefits may be prejudiced

by a decision of an adjudication officer, may be made a party.

(c) Any coal mine operator or prior operator or insurance carrier which has not been notified under § 725.412 and which makes a showing in writing that its rights may be prejudiced by a decision of an adjudication officer may be made a party.

(d) Any other individual may be made a party if that individual's rights with respect to benefits may be prejudiced by a decision to be made.

*Comments received:* None for which a response is required.

##### § 725.361 Party amicus curiae.

At the discretion of the Chief Administrative Law Judge or the administrative law judge assigned to the case, a person or entity which is not a party may be allowed to participate amicus curiae in a formal hearing only as to an issue of law. A person may participate amicus curiae in a formal hearing upon written request submitted with supporting arguments prior to the hearing. If the request is granted, the administrative law judge hearing the case will inform the party of the extent to which participation will be permitted. The request may, however, be denied summarily and without explanation.

*Comments received:* One comment requests the deletion of this section.

*Discussion and changes:* The comment is rejected.

##### § 725.362 Representation of parties.

(a) Except for the Secretary of Labor, whose interests shall be represented by the Solicitor of Labor or his or her designee, each of the parties may appoint an individual to represent his or her interest in any proceeding for determination of a claim under this part. Such appointment shall be made in writing or on the record at the hearing. A written notice appointing a representative shall be signed by the party or his or her legal guardian and shall be sent to the Office or, for representation at a formal hearing, to the Chief Administrative Law Judge. In any case, such representative must be qualified under § 725.363. No authorization for representation or agreement between a claimant and representative as to the amount of a fee, filed with the Social Security Administration in connection with a claim under Part B of Title IV of the Act, shall be valid under this part. A claimant who has previously authorized a person to represent him or her in connection with a claim originally filed under Part B of Title IV may renew such authorization by filing a statement to such effect with the Office or appropriate adjudication officer.



(b) Any party may waive his or her right to be represented in the adjudication of a claim. If an adjudication officer determines, after an appropriate inquiry has been made, that a claimant who has been informed of his or her right to representation does not wish to obtain the services of a representative, such adjudication officer shall proceed to consider the claim in accordance with this part, unless it is apparent that the claimant is, for any reason, unable to continue without the help of a representative. However, it shall not be necessary for an adjudication officer to inquire as to the ability of a claimant to proceed without representation in any adjudication taking place without a hearing. The failure of a claimant to obtain representation in an adjudication taking place without a hearing shall be considered a waiver of the claimant's right to representation. However, at any time during the processing or adjudication of a claim, any claimant may revoke such waiver and obtain a representative.

*Comments received:* (a) One comment recommends that the language of the repealed 20 CFR § 720.252, which required the administrative law judge to inquire into the claimant's ability to proceed without a representative, be substituted for similar language in this section. (b) A few comments express concern that this provision will prohibit a claimant from obtaining a representative if there has been an earlier waiver of that right. (c) A few comments object to a waiver of the right to representation under any circumstances.

*Discussion and changes:* It is not the purpose of this section to deprive any claimant of the right to obtain representation at any time during the processing or adjudication of a claim. Moreover, it is intended that the requirement that an administrative law judge fully inquire into a claimant's ability to proceed without representation, before conducting a hearing, is unchanged in substance. In order to clarify these points changes have been made.

However, the provision is intended to preclude a readjudication of a claim in those cases where the claimant knowingly waives the right to representation, and it is determined by an administrative law judge that the claimant is reasonably capable of proceeding without representation. In the case of a claim which may be adjudicated without a hearing, it is not feasible to personally inquire into the claimant's ability to proceed, and the Department and administrative law judges must rely on the claimant's own judgment. All claimants are informed by the Department of their right to obtain representation, and in especially complex cases, Department of Labor officials may encourage a claimant to obtain representation.

#### § 725.363 Qualification of representative.

(a) *Attorney.* Any attorney in good standing who is admitted to practice before a court of a State, territory, district, or insular possession, or before the Supreme Court of the United States or other Federal court and is

not, pursuant to any provision of law, prohibited from acting as a representative, may be appointed as a representative.

(b) *Other person.* With the approval of the adjudication officer, any other person may be appointed as a representative so long as that person is not, pursuant to any provision of law, prohibited from acting as a representative.

*Comments received:* None.

#### § 725.364 Authority of representative.

A representative, appointed and qualified as provided in §§ 725.362 and 725.363, may make or give on behalf of the party he or she represents, any request or notice relative to any proceeding before an adjudication officer, including formal hearing and review, except that such representative may not execute a claim for benefits, unless he or she is a person designated in § 725.301 as authorized to execute a claim. A representative shall be entitled to present or elicit evidence and make allegations as to facts and law in any proceeding affecting the party represented and to obtain information with respect to the claim of such party to the same extent as such party. Notice given to any party of any administrative action, determination, or decision, or request to any party for the production of evidence shall be sent to the representative of such party and such notice or request shall have the same force and effect as if it had been sent to the party represented.

*Comments received:* One comment urges that this section specify the right of a representative to promptly obtain information from the Department.

*Discussion and changes:* The representative's right to promptly obtain requested information from the Department is fully set forth in § 725.102. No change in this section is necessary.

#### § 725.365 Approval of representative's fees; lien against benefits.

No fee charged for representation services rendered to a claimant with respect to any claim under this part shall be valid unless approved under this subpart. No contract or prior agreement for a fee shall be valid. In cases where the obligation to pay the attorney's fee is upon the claimant, the amount of the fee awarded may be made a lien upon the benefits due under an award and the adjudication officer shall fix, in the award approving the fee, such lien and the manner of payment of the fee. Any representative who is not an attorney may be awarded a fee for services under this subpart, except that no lien may be imposed with respect to such representative's fee.

*Comments received:* (a) A number of comments urge the Department to impose a lien on compensation with respect to the fees of representatives who are not attorneys. (b) One comment requests clarification of this provision with respect to a fee charged by an attorney representing a coal operator or insurance carrier.

*Discussion and changes:* (a) Section 28(c) of the Longshoremen's Act provides that in any case in which the obligation to pay an attorney's fee is on the claimant, a lien on compensation payable may be imposed in favor of the attorney. The Department does not have the authority to extend by regulation the statutory lien, provided for attorneys only, to representatives who are not attorneys.

(b) This section does not govern the payment of an operator's or carrier's attorney's fee. A correcting change is made.

#### § 725.366 Fees for representatives.

(a) A representative seeking a fee for services performed on behalf of a claimant shall make application therefor to the deputy commissioner, administrative law judge, or appropriate appellate tribunal, as the case may be, before whom the services were performed. The application shall be filed and served upon the claimant and all other parties within the time limits allowed by the deputy commissioner, administrative law judge, or appropriate appellate tribunal. The application shall be supported by a complete statement of the extent and character of the necessary work done, and shall indicate the professional status (e.g., attorney, paralegal, law clerk, lay representative or clerical) of the person performing such work, and the customary billing rate for each such person. The application shall also include a listing of reasonable unreimbursed expenses, including those for travel, incurred by the representative or an employee of a representative in establishing the claimant's case. Any fee requested under this paragraph shall also contain a description of any fee requested, charged, or received for services rendered to the claimant before any State or Federal court or agency in connection with a related matter.

(b) Any fee approved under paragraph (a) of this section shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the qualifications of the representative, the complexity of the legal issues involved, the level of proceedings to which the claim was raised, the level at which the representative entered the proceedings, and any other information which may be relevant to the amount of fee requested. No fee approved shall include payment for time spent in preparation of a fee application. No fee shall be approved for work done on claims filed between December 30, 1969, and June 30, 1973.



under part B of title IV of the Act, except for services rendered on behalf of the claimant in regard to the review of the claim under section 435 of the Act and part 727 of this subchapter.

(c) In awarding a fee, the appropriate adjudication officer shall consider, and shall add to the fee, the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. Reimbursement for travel expenses incurred by an attorney shall be determined in accordance with the provisions of § 725.459(a). No reimbursement shall be permitted for expenses incurred in obtaining medical or other evidence which has previously been submitted to the Office in connection with the claim.

(d) Upon receipt of a request for approval of a fee, such request shall be reviewed and evaluated by the appropriate adjudication officer and a fee award issued. Any party may request reconsideration of a fee awarded by the adjudication officer. A revised or modified fee award may then be issued, if appropriate.

(e) Each request for reconsideration or review of a fee award shall be in writing and shall contain supporting statements or information pertinent to any increase or decrease requested. If a fee awarded by a deputy commissioner is disputed, such award shall be appealable directly to the Benefits Review Board. In such a fee dispute case, the record before the Board shall consist of the order of the deputy commissioner awarding or denying the fee, the application for a fee, any written statement in opposition to the fee and the documentary evidence contained in the file which verifies or refutes any item claimed in the fee application.

*Comments received:* (a) A few comments urge the Department to reinstate the prohibition contained in the earlier rules, to the effect that no representative would be awarded a fee for time spent preparing a fee petition or pursuing a fee awarded. (b) A number of comments object to the prohibition against awarding a fee for work done between December 30, 1969 and June 30, 1973. (c) A few comments urge the deletion of the prohibition against the reimbursement of a representative for expenses incurred in obtaining evidence already submitted in connection with the claim.

*Discussion and changes:* (a) The Department agrees that no reimbursement should be permitted for time spent by a representative in the preparation of a fee application. This expense is ordinarily included as a part of a representative's hourly charge for services rendered, together with clerical time and overhead expenses, and special reimbursement for it would be duplicative. A change is made to reflect this view. If a representative is required to pursue a fee award in court, the court will determine whether fees can be properly awarded.

(b) Fees may be awarded by a Department of Labor claims adjudicator only for work done before such adjudicator. This view is

supported by the Act's requirement that no benefits are payable under section 435, part C of the Act "for any period prior to January 1, 1974." No payments of any kind are authorized under the Act by either the fund or an operator for any period prior to January 1, 1974. The Department does not feel that an exception for representatives fees is permitted.

(c) The Department believes that reimbursement should not be permitted for expenses incurred in obtaining evidence or information already submitted in connection with the claim. All information previously submitted in connection with a claim can, under this part, be retrieved upon request.

#### § 725.367 Payment of a claimant's attorney's fee by responsible operator.

If an operator declines to pay any benefits on or before the 30th day after receiving written notice of its liability for a claim on the ground that there is no liability for benefits within the provisions of the Act, and the person seeking benefits shall thereafter have utilized the services of an attorney in the successful prosecution of the claim, there shall be awarded, in addition to the award of benefits, in an order, a reasonable attorney's fee against the operator or carrier in an amount approved by the deputy commissioner, administrative law judge, Board, or court as the case may be, which shall be paid promptly and directly by the operator or carrier to the claimant's attorney in a lump sum after the order becomes final.

*Comments received:* (a) A number of comments urge that this section be changed to require an operator or carrier to pay the fee of a representative who is not an attorney at law. (b) One comment suggests that the section should specify that fee awards may be made to legal aid societies. (c) A few comments urge deletion of the limiting term "on the ground that there is no liability for benefits." (d) Comments recommend that a time limit be placed upon payment of attorney's fees following a favorable decision. (e) Some comments argue that operators should be required to pay a fee for the work done by a claimant's attorney in receiving medical benefits, past due benefits and the like. (f) Some comments recommend clarification of the fund's liability for a claimant's attorney's fee.

*Discussion and changes:* (a) Section 28 of the Longshoremen's Act, which authorizes an award of fees in addition to compensation, provides that under specified circumstances, an employer may be required to pay the fee of an attorney at law. This provision authorizes an exception to the general rule that each party to an action must bear the cost of his or her own attorney's fees. While the Department recognizes the excellent service to claimants provided by nonattorney representatives, it does not believe that an award of fees to be paid by the operator to such individuals in addition to compensation is authorized by statute.

(b) The Department does not regard it appropriate to single out legal aid attorneys for special rules. The Act contains no distinction affecting legal aid attorneys, and, no such distinction is appropriate in these rules.

(c) The term "on the ground that there is no liability for benefits" is a statutory term which conditions an award of attorney's fees in addition to compensation and cannot be altered by the Department.

(d) Section 28 of the Longshoremen's Act provides that attorney's fees are payable after an award of benefits becomes final. No earlier liability is imposed. It is the Department's view that payment should be made promptly and a change is made to effect this result.

(e) An operator's liability for the work done by an attorney on behalf of a claimant is not limited only to the initial award of benefits. Neither this section nor the Longshoremen's Act provision authorizing an award of an attorney's fee contains any such limitation, and it is the Department's view that an award of an attorney's fee under this section might be appropriate in connection with an adjudication concerning medical benefits, nonpayment of monthly benefits, or like matters. No change is necessary.

(f) It is the position of the Department that the Black Lung Disability Trust Fund is not authorized under any circumstances to pay a claimant's attorney's fee in addition to compensation. There is no statutory authorization for such expenses in determining the amount of the tax necessary to keep the Fund solvent. The obligations of the fund are carefully set forth in the act and legislative history, and no mention of a claimant's attorney's fees is made. In the absence of specific statutory authority, a claimant's attorney's fees cannot and will not be paid by the fund (see also 28 U.S.C. 2412).

#### § 725.401 Claims development—General.

After a claim has been received by the deputy commissioner, the deputy commissioner shall take such action as is necessary to develop, process, and make determinations with respect to the claim as provided in this subpart.

*Comments received:* None.

#### § 725.402 Approved State workers' compensation law.

If a deputy commissioner determines that any claim filed under this part is one subject to adjudication under a workers' compensation law approved under part 722 of this subchapter, he or she shall advise the claimant of this determination and of the Act's requirement that the claim must be filed under the applicable State workers' compensation law. The deputy commissioner shall then prepare a proposed decision and order dismissing the claim for lack of jurisdiction pursuant to § 725.418 and proceed as appropriate.

*Comments received:* None.

#### § 725.403 Requirement to file under State workers' compensation law—Section 415 claims.

(a) No benefits shall be payable to or on behalf of a claimant who has filed a claim under section 415 of part B of title IV of the Act, for any period of



eligibility occurring between July 1, and December 31, 1973, unless the claimant has filed and diligently pursued a claim for benefits under an applicable State workers' compensation law. A State workers' compensation claim need not be filed where filing would be futile. It shall be determined that the filing of a State claim would be futile when:

(1) The period within which the claim may be filed under such law has expired; or

(2) Pneumoconiosis as defined in part 718 of this subchapter is not compensable under such law; or

(3) The maximum amount of compensation or the maximum number of compensation payments allowable under such law has already been paid; or

(4) The claimant does not meet one or more conditions of eligibility for workers' compensation payments under applicable State law; or

(5) The claimant otherwise establishes to the satisfaction of the Office that the filing of a claim under State law would be futile.

(b) Where the Office determines that a claimant is required to file a State claim under this section, the Office shall so notify the claimant. Such notice shall instruct the claimant to file a State claim within 30 days of such notice. If no such State claim is filed within the 30-day period, no benefits shall be payable under this part to the claimant for any period between July 1, and December 31, 1973.

(c) The failure of a claimant to comply with paragraph (a) of this section shall not absolve any operator of its liability for the payment of benefits to a claimant for periods of eligibility occurring on or after January 1, 1974.

(d) The deputy commissioner may determine that a claimant is ineligible for benefits under section 415 of part B of title IV of the Act without requiring the claimant to file a claim under a State workers' compensation law.

*Comments received:* (a) A few comments recommend deletion of this section in view of a section 435 claimant's inability to obtain benefits for the July 1-December 31, 1973 period. (b) One comment argues that an operator should be allowed the benefit of this section.

*Discussion and changes:* (a) Although a claimant whose claim is reviewed and approved under section 435 of the act is unaffected by this section (20 CFR § 727.303), there are some claims with respect to which benefits for the July 1-December 31, 1973 period were awarded prior to the enactment of the Black Lung Benefits Reform Act of 1977 (i.e., March 1, 1978). The State filing requirement remains applicable to those claims, as may be appropriate.

(b) This section precludes an operator from asserting the State filing requirement as a defense to liability, in recognition of the fact that this filing requirement was in-

tended only to diminish the liability of the Federal treasury if an alternate source of black lung benefits was available under a State compensation law. There is no authorization in the act to allow an operator to adjust its liability for periods after January 1, 1974, on account of the operator's obligation to meet the requirements of a State law. An operator, in any event, is adequately protected by the act's offset provisions from the possibility of duplicate payments.

#### § 725.404 Development of evidence—General.

(a) *Employment history.* Each claimant shall furnish the deputy commissioner with a complete and detailed history of the coal miner's employment and, upon request, supporting documentation.

(b) *Matters of record.* Where it is necessary to obtain proof of age, marriage or termination of marriage, death, family relationship, dependency (see subpart B of this part), or any other fact which may be proven as a matter of public record, the claimant shall furnish such proof to the deputy commissioner upon request.

(c) *Documentary evidence.* If a claimant is required to submit documents to the deputy commissioner, the claimant shall submit either the original, a certified copy or a clear readable copy thereof. The Deputy commissioner or administrative law judge may require the submission of an original document or certified copy thereof, if necessary.

(d) *Submission of insufficient evidence.* In the event a claimant submits insufficient evidence regarding any matter, the deputy commissioner shall inform the claimant of what further evidence is necessary and request that such evidence be submitted within a specified reasonable time which may, upon request, be extended for good cause.

*Comments received:* (a) Comments recommend that the Department not require the submission of original documents. (b) One comment recommends that the Department specify the evidence necessary to establish a claim.

*Discussion and changes:* (a) The Department agrees that original documents may not be necessary and conforming changes are made.

(b) The Department does not consider it appropriate to specify in these rules exactly what evidence is necessary for establishing an individual claim. No changes are made.

#### § 725.405 Development of medical evidence; scheduling of medical examinations and tests.

(a) Upon receipt of a claim, the deputy commissioner shall ascertain whether the claim was filed by or on account of a miner as defined in § 725.202(a), and in the case of a claim filed on account of a deceased miner, whether the claim was filed by an eli-

gible survivor of such miner as defined in subpart B of this part.

(b) In the case of a claim filed by or on behalf of a miner, the deputy commissioner shall, where necessary, schedule the claimant for a medical examination and testing under § 725.406.

(c) In the case of a claim filed by or on behalf of a survivor of a miner, the deputy commissioner shall obtain whatever medical evidence is necessary and available for the development and evaluation of the claim.

(d) The deputy commissioner shall, where appropriate, collect other evidence necessary to establish:

(1) The nature and duration of the miner's employment; and

(2) All other matters relevant to the determination of the claim.

(e) If at any time during the processing of the claim by the deputy commissioner, the evidence establishes that the claimant is not entitled to benefits under the Act, the deputy commissioner may terminate evidentiary development of the claim and proceed as appropriate.

*Comments received:* One comment recommends that the Department specify guidelines for the resolution of conflicting medical evidence.

*Discussion and changes:* The resolution of conflicting medical evidence is solely within the discretion of the adjudicator. The adjudicator will weigh the evidence and consider the qualifications of the physician or other person submitting the evidence, and any other relevant information. Guidelines are not appropriate.

#### § 725.406 Medical examinations and tests.

(a) Medical examinations and tests authorized by the deputy commissioner shall be conducted, if possible, in the vicinity of the miner's residence by physicians or in medical facilities selected from a list compiled by the Secretary, or by a physician or medical facility approved by the deputy commissioner at the miner's request.

(b) If any medical examination or test conducted under paragraph (a) of this section is not administered or reported in compliance with the provisions of part 718 of this subchapter, the deputy commissioner shall schedule the miner for further examination and testing where necessary and appropriate.

(c) The cost of any medical examination or test authorized under this section, including the cost of travel to and from the examination, shall be paid by the fund. No reimbursement for overnight accommodations shall be authorized unless the deputy commissioner determines that an adequate testing facility is unavailable within one day's round trip travel by automobile from the miner's residence. The fund shall be reimbursed for such payments by an operator, if any,



found liable for the payment of benefits to the claimant.

**Comments received:** Comments urge that this section specify a miner's right to be examined by a physician or facility selected by such miner. (b) A number of comments recommend that this section specify that payment will be made for travel and overnight accommodation. (c) One comment suggests that an operator should not be required to reimburse the fund for medical reports obtained on behalf of the claimant unless the report is in compliance with 20 CFR Part 718 and is admitted into evidence in the claim.

**Discussion and changes:** (a) A miner has a right to choose any physician or medical facility to conduct a medical examination. However, medical examinations and tests authorized and paid for by the deputy commissioner shall be conducted by a physician or facility selected by the deputy commissioner, or approved by the deputy commissioner. The deputy commissioner will ordinarily approve any physician or facility selected by the miner. Prior approval is necessary to ensure that good quality evidence is obtained.

(b) Payment will be made for travel which is necessary in connection with approved medical examination or testing. However, payment for overnight accommodations will be authorized only if an adequate medical testing facility is unavailable within one day's round trip travel from the miner's residence. A change is made to reflect this decision.

(c) Under Department of Labor practice, no operator is required to reimburse the fund for poor quality evidence. The Department does not authorize payment for such evidence and there is no reimbursement for an operator to make.

#### § 725.407 Additional medical evidence.

(a) If, at any time after the completion of initial medical examinations and tests, unresolved medical questions remain, the deputy commissioner may cause the claimant to be examined by a physician selected by the deputy commissioner.

(b) Any miner dissatisfied with the results of the medical examinations or tests conducted under § 725.406 may obtain further medical examinations or tests and submit them to the deputy commissioner. Such further examinations or tests shall be reimbursable by the fund, or by a responsible coal operator where appropriate, if the claimant is finally adjudicated entitled to benefits and if such further examinations or tests were relevant to the determination of the claim.

(c) If additional medical evidence is obtained in accordance with paragraph (a) of this section, the deputy commissioner may order the physician selected to retest or reexamine the miner to do so without the presence or participation of any other physician who previously examined the miner, and without benefit of the conclusions of any other physician who has examined the miner.

**Comments received:** Comments request that reimbursement for overnight accommodation should be authorized.

**Discussion and changes:** See paragraph (b) of *Discussion and changes* following § 725.406.

#### § 725.408 Refusal to submit to medical examinations or tests.

If an adjudication officer determines that a miner has unreasonably refused to submit to medical examinations or tests scheduled under §§ 725.406 or 725.407(a), all evidentiary development of the claim shall be suspended and the adjudication officer shall proceed to deny the claim by reason of abandonment (§ 725.409) or by dismissal (§ 725.465) as is appropriate.

**Comments received:** One comment suggests that a miner should be allowed to explain a refusal to submit to a medical examination or test.

**Discussion and changes:** No action will be taken with respect to a miner's refusal to submit to examinations or tests until the miner has been offered the opportunity to explain the reasons for the refusal. No change is necessary.

#### § 725.409 Denial of a claim by reason of abandonment.

(a) A claim may be denied at any time by the deputy commissioner by reason of abandonment where the claimant fails:

- (1) To undergo a required medical examination without good cause; or,
- (2) To submit evidence sufficient to make a determination of the claim; or,
- (3) To pursue the claim with reasonable diligence.

(b) If the deputy commissioner determines that a denial by reason of abandonment is appropriate, he or she shall notify the claimant of the reasons for such denial and of the action which must be taken to avoid a denial by reason of abandonment. If there is no response to the notice within 30 days after such notice is sent, the claim shall be considered denied by reason of abandonment. If the claimant responds in a timely fashion, indicating a desire to pursue the claim, by requesting a hearing or indicating the intent to submit additional evidence, the deputy commissioner shall, if a hearing is requested, proceed in accordance with § 725.412 or allow a reasonable time of not less than 60 days for the claimant to take the specified remedial action. If the claimant completes the action requested within the time allowed, the claim shall be developed, processed and adjudicated as specified in this part. If the claimant does not fully comply with the action requested by the deputy commissioner, the deputy commissioner shall so notify the claimant. If the claimant does not request a hearing or fully comply with the action requested by the deputy commissioner within 30

days of such notification, the claim shall be considered denied by reason of abandonment, except that a new claim may be filed at any time and new evidence submitted where the requirements of § 725.310 are not met.

**Comments received:** None for which a response is required.

**Discussion and changes:** This section is changed to reflect the right of a previously denied claimant to file and pursue a new claim at any time.

#### ADJUDICATION BY THE DEPUTY COMMISSIONER

**General comments received on this subpart:** Many comments were received concerning the provisions relating to the adjudication of claims by the deputy commissioner. Sections 725.410-725.422 of the proposed rules were considered by some of the commentators to be difficult to understand and too complex for the unrepresented claimant. A number of comments criticize the range of alternatives available to the deputy commissioner in adjudicating claims. Almost all the comments received consider the time periods allowed for submission of evidence, or for taking specified action to be too short and burdensome for claimants and coal operators alike. Throughout the comments, the Department is urged to begin the payment of benefits at the earliest possible time, whether or not a coal operator has been identified and allowed to participate in the claim. The Department is also urged to immediately involve coal operators in a claim.

**Discussion and changes:** The Department has made some changes in the proposed rules in an effort to remove unnecessarily complex provisions. A particularly difficult problem arises in connection with the early identification and notification of a coal mine operator. When a claim is first filed with the Department, sufficient evidence to permit an identification of a possibly liable coal operator is almost never available. The majority of Department of Labor claimants were last employed in the mines some years before filing, and the task of verifying the identity of the last employer is usually a difficult one. While the 1977 Act imposes operator liability only if there was employment after January 1, 1970, the 1972 Act contained no employer liability cutoff date. The Department was, therefore, in the past required to conduct an extensive investigation before an operator could be identified.

Under the 1977 Act, in view of the January 1, 1970, operator liability cutoff date, the identification process should be substantially contracted and, with respect to new claims, the Department intends to identify and involve an operator at the earliest possible time. However, with respect to claims subject to review under Section 435, many obstacles to early operator involvement will remain. In many of those claims, the Department never completed the operator identification process due to the claimant's choice not to pursue the claim after being informed of an initial denial. In many of those cases, an informal approval will now be possible, in light of the new law, without the submission of any additional evidence. However, the Department must then complete the operator identification process. While the January 1, 1970, cutoff will greatly ease this task, it remains a task which must be completed with respect to may previously filed claims.



With respect to the time periods for the submission of evidence or response to notices etc., the Department has determined that reasonable response periods are necessary to expedite the processing of claims. All such periods are subject to enlargement for good cause; therefore, the rights of all parties are adequately protected. The time periods allowed for the submission of evidence are retained although the partial prohibition against the submission of new evidence to the administrative law judge, contained in § 725.456 is largely eliminated.

A more detailed discussion of particular comments and changes may be found in the "Comments" and "Discussion" sections following each of the provisions between §§ 725.410 and 725.422.

#### § 725.410 Initial findings by the deputy commissioner.

(a) Based upon the evidence developed, the deputy commissioner may make an initial finding with respect to the claim.

(b) If the evidence supports an initial finding of eligibility, and it has been determined that a coal mine operator may be liable for the claim, the deputy commissioner shall proceed in accordance with § 725.412. If no operator can be identified, the deputy commissioner shall proceed in accordance with § 725.411.

(c) If the evidence submitted does not support an initial finding of eligibility, the deputy commissioner shall so notify the claimant in writing. This notification shall specify the reasons why the claim cannot be approved, the additional evidence necessary to establish entitlement, the right of the claimant to submit additional evidence, and the right to request a hearing. Within 60 days from the mailing of such notice, unless such period is extended by the deputy commissioner for good cause shown, the claimant may submit new evidence or request a hearing. If the claimant:

(1) Takes no action within the specified 60 day period, the claim shall be considered denied by reason of abandonment (see § 725.409).

(2) Submits new evidence within the specified 60 day period, the deputy commissioner shall reconsider the initial finding, taking into account the additional evidence submitted. If the new evidence supports a finding of entitlement the deputy commissioner shall proceed in accordance with paragraph (b) of this section. If the new evidence does not support a finding of entitlement, the deputy commissioner shall notify the claimant in writing of this fact and the reasons therefor, and that he or she may request a hearing within 60 days after receipt of such notice unless the period is extended by the deputy commissioner for good cause shown. If no hearing is requested, the claim shall be deemed denied by reason of abandonment (see § 725.409).

(d) Unless an earlier operator identification has been made, if a hearing is requested under paragraph (c) of this section, the deputy commissioner shall identify the coal mine operator, if any, which may be liable for the payment of benefits to the claimant and proceed in accordance with § 725.412. If no such operator can be identified, the deputy commissioner may schedule a conference (see § 725.416) or refer the claim to the Office of Administrative Law Judges for appropriate proceedings.

*Comments received:* (a) A number of comments suggest that the 60 day period following an initial finding of ineligibility within which to submit additional evidence or request a hearing and the 30 day period for requesting a hearing after a second initial finding of ineligibility, should be enlarged to 90 days. (b) One comment argues that this section is too complicated. (c) One comment requests that the deputy commissioner should be required to send the claimant a detailed written analysis of why he or she was considered ineligible, and a detailed list of the additional evidence necessary for the claim to be approved.

*Discussion and changes:* (a) The 60 day period allowed for a response to an initial denial letter, which period can be extended for good cause shown, is an adequate response period. The 30 day period contained in the proposed rules within which a hearing may be requested after a second initial denial is enlarged to 60 days, and may be further enlarged for good cause shown.

(b) The Department does not agree that this section is particularly complex, after having reviewed it carefully to determine whether any extraneous or complicated language is used. The vast majority of claimants are able to explain why a particular action was or was not taken within a specified time period. Moreover, in the correspondence sent to the claimant, whether represented or not, the claimant is told what he or she may do next in pursuit of the claim.

(c) The Department does not believe that a more detailed analysis of each informal denial is necessary. In the letter which the Department will send to claimants in this posture, the element or elements of proof which the claimant failed to meet will be specified.

#### § 725.411 Adjudication upon initial findings of eligibility and no operator responsibility.

Where the deputy commissioner has found that the claimant is eligible and that there is no operator responsible for the payment of benefits, the deputy commissioner shall issue a proposed decision and order including findings of fact and conclusions of law as required by § 725.418 and authorize the payment of benefits. The claimant shall have 30 days after the date of issuance of the proposed decision and order within which to reject any or all of its terms. If the claimant does not reject the proposed decision and order, either in whole or in part, within this 30-day period, it will become final and

effective. If for any reason the claimant rejects a proposed decision and order, the deputy commissioner may take such action as is appropriate including adjustment of the benefits to the level authorized by the uncontested portion of the proposed decision and order, if appropriate.

*Comments received:* (a) One comment argues that the trustees of the Fund should be allowed to contest a determination of entitlement made by the Department. (b) A few comments urge that this section specify when the payment of benefits will begin after a proposed decision and order becomes final in an uncontested case.

*Discussion and changes:* (a) Section 424(b) of the Act provides in part that "In a case where no operator responsibility is assigned pursuant to section 422 and 423, a determination by the Secretary [of Labor] that the fund is liable for the payment of benefits shall be final." It is incongruous to suggest that the Secretary could contest the Department's determination of eligibility and no such statutory authority exists.

(b) The Department agrees that this section should specify when the payment of benefits will begin in an uncontested approval. A change is made to accomplish this result.

#### § 725.412 Identification and notification of responsible operator.

(a) At any time during the processing of a claim under this part, after sufficient evidence has been made available to the deputy commissioner, the deputy commissioner may identify a coal miner operator (see § 725.491) which may be liable for the payment of the claim in accordance with the criteria contained in subpart F of this part. Such identification shall be made as soon after the filing of the claim as the evidence obtained permits. If the claim is subject to review under Part 727 of this subchapter, the deputy commissioner may proceed to make initial findings (§ 725.410) with respect to a claim before identifying a potentially liable coal mine operator. In the case of a claim subject to review under Part 727 of the subchapter which is denied by reason of abandonment (see § 725.409), the deputy commissioner may decline to identify and notify an operator, unless a timely request for a hearing is made by the claimant.

(b) After the deputy commissioner identifies an operator which may be liable for payment of benefits, the deputy commissioner shall notify such operator in writing. Such notification shall include a copy of the claimant's claim form and a copy of all documentary evidence pertaining to the claim obtained by the deputy commissioner, if any, and the initial findings of the deputy commissioner, if any. All documents sent to an operator in accordance with this paragraph shall also be provided by the deputy commissioner to the claimant or his or her authorized representative.



(c) If within one year after the final adjudication of a claim, the adjudication officer determines that an operator which may be liable for the payment of benefits has not been notified under this section, such adjudication officer shall give notice of possible liability and an opportunity to respond to such operator. The adjudication officer shall then take such further action on the claim as may be appropriate. There shall be no time limit applicable to a later identification of an operator under this paragraph if the operator fraudulently concealed its identity as an employer of the miner.

(d) If, in any case, there is a dispute between two or more operators as to which may be liable for the payment of benefits to the claimant, all such operators shall be notified under this section and the issue of which operator is liable shall be determined by the appropriate adjudication officer.

*Comments received:* (a) Many comments urge the Department to identify and notify an operator as early in the process as is possible. (b) A number of comments recommend that the Department forward the material sent to an operator to the claimant as well.

*Discussion and changes:* (a) Changes are made in accordance with the discussion of *General Comments Received on this subpart* preceding § 725.410.

(b) The Department agrees that it would be useful to provide claimants with copies of the materials sent to an operator, and a change is made to reflect this view.

#### § 725.413 Operator's response to notification.

(a) Within 30 days after receipt of notification issued under § 725.412, unless such period is extended by the deputy commissioner for good cause shown, or in the interest of justice, a notified operator shall indicate an intent to accept or contest liability. If notice is given to the operator after initial findings have been made, the operator shall indicate its agreement or disagreement with each such finding. If notice is given to the operator before initial findings have been made, the operator shall indicate agreement or disagreement with the operator's identification as a potentially liable coal mine operator. An operator's response to notification shall be in writing and shall be sent to the deputy commissioner, the claimant, and all other parties to the claim.

(b)(1) If the operator accepts liability for the claim after initial findings have been made, the deputy commissioner shall issue a proposed decision and order under § 725.418.

(2) If the operator contests its liability or any of the initial findings of the deputy commissioner, if any, or if the deputy commissioner has determined the claimant to be ineligible for benefits, the deputy commissioner shall

proceed to adjudicate the claim in accordance with this subpart.

(3) If the operator fails to respond within the specified period, such operator shall be deemed to have accepted the initial findings of the deputy commissioner when made and shall not, except as provided in § 725.463, be permitted to raise issues or present evidence with respect to issues inconsistent with the initial findings in any further proceeding conducted with respect to the claim. In a case where an operator has failed to respond to notification, such failure shall be considered a waiver of such operator's right to contest the claim, unless the operator's failure to respond to notice is excused for good cause shown, and the deputy commissioner may proceed to issue a proposed decision and order pursuant to § 725.418, undertake further development, hold a conference, or refer the claim for a hearing.

(c) Any operator or carrier may in writing designate an office or person authorized to receive notice of a claim on behalf of such operator or carrier. All such notices to the operator or carrier shall thereafter be sent to the designated office or person.

*Comments received:* (a) Comments recommend that this section should be revised to require a notified operator to provide a copy of its response to the claimant. (b) One comment requests that an operator or carrier should be allowed to designate an office or person where notification should be sent. (c) One comment recommends that this section be revised to define the term "good cause." (d) Many comments support the proposition that an operator's failure to respond to notification should be considered a waiver of such operator's right to contest the claim.

*Discussion and changes:* (a) The Department agrees that an operator or carrier's response to notification should be sent to the claimant or claimant's representative.

(b) The Department agrees that an operator or carrier should be allowed to designate an office or person authorized to receive notice of a claim.

(c) The Department does not agree that a definition of "good cause" is either necessary or useful. The adjudicator must have sufficient flexibility to respond to all factual circumstances on a case-by-case basis.

(d) A change is made to further clarify the consequence of an operator's unexcused failure to respond to notice of a claim, in light of the changes made in § 725.456.

#### § 725.414 Development of operator's evidence, claimant's rebuttal evidence.

(a) If an operator notified of its possible liability for a claim after the deputy commissioner has made initial findings (§ 725.410) with respect to the claim contests the claim, such operator shall be allowed a reasonable time, to be determined by the deputy commissioner from the date on which the notice of contest is sent, within which to submit to the deputy commissioner and exchange with all other parties all available evidence relevant to any con-

tested issue in the claim. During this period, a notified operator may have the miner examined by a physician selected by such operator, except that no miner shall be required to travel more than 100 miles from his or her place of residence for the purpose of submitting to a medical examination requested by an operator, unless a trip of greater distance is authorized in writing by the deputy commissioner.

(b) If an operator is notified of its possible liability for a claim before the deputy commissioner has made initial findings with respect to the claim or if no initial findings are made, and such operator indicates its intent to contest the claim, such operator shall promptly undertake the development of its evidence, including any medical evidence which may be obtained, if the operator seeks to have the miner examined by a physician which it selects. Any evidence obtained by an operator shall be sent to the deputy commissioner and all other parties to the claim. On the basis of the operator's evidence and all other evidence submitted to the deputy commissioner, the deputy commissioner may make initial findings with respect to the claim or may take such other action as is appropriate. If the deputy commissioner makes an initial finding that the claimant is ineligible for benefits, the deputy commissioner shall proceed to consider the claim as provided in § 725.410(c). If the deputy commissioner makes an initial finding that the claimant is eligible for benefits and that the notified operator is liable for such benefits, the parties shall be so notified. Within 30 days from the date on which notice of the deputy commissioner's initial findings of eligibility and liability is sent to the parties, each party shall either accept or contest any or all of such initial findings and shall, except as provided in paragraph (d) of this section, submit any available evidence not previously submitted, to the deputy commissioner. The deputy commissioner shall then proceed to adjudicate the claim under § 725.415. The failure by an operator to respond to initial findings of eligibility made under this paragraph shall have the same consequences as an operator's failure to respond to notice of a claim (see § 725.413(b)(3)).

(c) The report of any medical examination or test conducted under this section, or any other evidence submitted, shall be submitted to the deputy commissioner and sent to the other parties to the claim within the applicable period set forth in this section, unless the deputy commissioner enlarges such period for good cause shown or in the interest of justice.

(d) Upon receipt of a medical report obtained by an operator under this section, a claimant shall, upon request,



be allowed a reasonable time, as determined by the deputy commissioner from the date on which the operator's report is received, to obtain additional evidence in support of the claim. Such evidence shall be obtained, submitted to the deputy commissioner, and exchanged with the other parties within the period allowed, unless the period is enlarged by the deputy commissioner for good cause shown.

(e) (1) Any documentary evidence obtained by a party during the time a claim is pending before a deputy commissioner, which is withheld from the deputy commissioner or any other party to the claim, shall not be admitted in any later proceedings held with respect to the claim in the absence of extraordinary circumstances, unless the admission of such evidence is requested by the Director or such other party.

(2) If an operator notified of a claim does not undertake a good faith effort to develop its evidence while the claim is pending before the deputy commissioner, the deputy commissioner shall proceed to adjudicate the claim in accordance with § 725.415. A notified operator which does not undertake a good faith effort to develop its evidence before the deputy commissioner shall be considered to have waived its right to either have the claimant examined by a physician of its choosing or have the claimant's evidence submitted for review by a physician of its choosing.

*Comments received:* (a) Numerous comments urge the removal of time limitations for the submission of either an operator's or claimant's evidence, and the sanctions imposed for the failure to submit evidence within these time periods. (b) One comment argues that an operator should be limited to obtaining a "cardio-pulmonary" examination of the claimant by a physician selected by the operator.

*Discussion and changes:* (a) One of the most significant reasons for the delays which have occurred in the adjudication of claims in the past has been the failure of claimants and operators alike to obtain and submit evidence in a timely fashion. In some instances evidence was obtained and withheld pending the transferral of a claim to the Office of Administrative Law Judges. The strategies employed in the presentation of evidence in many cases by both operator and claimant representatives, whether intentional or not, has in the past seriously impaired efforts made by the Department to expedite the processing and adjudication of claims, and has delayed the prompt payment of benefits to eligible claimants.

The comments received on both this section and § 725.456 were uniformly adverse. Operator comments complained that the time periods imposed for the submission of an operator's evidence were unrealistic, unduly restrictive, and were not similarly imposed on claimants and the Director. Moreover, many operator comments expressed the view that the rules excluding the presentation of evidence to an administrative law judge were not in keeping with

the Administrative Procedure Act and denied operators an opportunity to present a meaningful defense to liability. A number of comments from claimant groups and representatives note that many claimants do not have the services of a representative until a claim is forwarded for a hearing, and may easily overlook or be unaware of evidence which might be obtained. In view of the universal dissatisfaction with the Department's attempt to speed the claims process by imposing time limits for the submission of evidence, the Department agrees that the specified limitations and sanctions imposed by the proposed rules should be modified.

Some limitations and sanctions must, however, be retained. Except in the case of certain Social Security Administration approvals processed under §§ 727.104-727.105 of this subchapter, no benefits shall be paid by the Fund or otherwise in a claim with respect to which individual operator liability may be determined, until the operator has had an opportunity to present its evidence and arguments to the deputy commissioner. No party should be permitted to obtain and withhold evidence until the hearing. This could impair the ability of any other party to review and respond to such evidence. Neither the act, nor the Administrative Procedure Act, to the extent that it is incorporated, prohibits the Department from designing rules which diminish the element of surprise from black lung claims procedures.

This section is revised to reflect this discussion.

(b) The request that the Department limit an operator to a "cardio-pulmonary" examination of the miner is rejected. In order to prove a claimant's eligibility for benefits, total disability due to pneumoconiosis arising out of coal mine employment must be established. Any medical findings relating to the miner's physical condition may be relevant to a claim determination.

#### § 725.415 Action by the deputy commissioner after development of operator's evidence.

(a) At the end of the period permitted under § 725.414 for the submission of evidence, the deputy commissioner shall review the claim on the basis of all evidence submitted.

(b) After review of all evidence submitted, the deputy commissioner may schedule a conference in accordance with § 725.416, issue a proposed decision and order in accordance with § 725.418, forward the claim to the Office of Administrative Law Judges in accordance with § 725.421, or take such other action as the deputy commissioner considers appropriate.

*Comments received:* A few comments urge the Department to indicate with greater specificity what happens to a claim after the development of an operator's evidence.

*Discussion and changes:* After the development of a claimant's and operator's evidence is completed, any number of courses of action may be pursued depending upon the facts proved by the evidence and willingness of an operator to accept liability. Moreover, if a claim is to be sent for a hearing, the deputy commissioner must have the flexibility to attempt to narrow the issues, request that the parties fill gaps in the evi-

dence, or if none of these actions would be useful, send the claim directly for a hearing.

#### § 725.416 Conferences.

(a) At the conclusion of the period permitted by § 725.414 for the submission of evidence, the deputy commissioner may conduct an informal conference in any claim where it appears that such conference will assist in the voluntary resolution of any issue raised with respect to the claim. The conference proceedings shall not be stenographically reported and sworn testimony shall not be taken.

(b) The deputy commissioner shall notify the parties of a definite time and place for the conference and may in his or her discretion, or on the motion of any party, cancel or reschedule a conference.

(c) Any representative of an operator, of an operator's insurance carrier, or of a claimant must have sufficient authority to stipulate facts or issues or agree to a final disposition of the claim.

(d) Procedures to be followed at a conference shall be within the discretion of the deputy commissioner. In the case of a conference involving an unrepresented claimant the deputy commissioner shall fully inform the claimant of the consequences of any agreement the claimant is asked to sign. If it is apparent that the unrepresented claimant does not understand the nature or effect of the proceedings, the deputy commissioner shall not permit the execution of any stipulation or agreement in the claim unless it is clear that the best interests of the claimant are served thereby.

*Comments received:* (a) A number of comments urge the Department to do away with conferences altogether, or to permit any party to waive a conference. (b) One comment recommends that operators should not be allowed to use a conference for discovery purposes. (c) Some comments suggest that the use of the term "settlement" is improper, and that a claimant's representative should also be required to have sufficient authority to agree on matters discussed at the conference. Concern is also expressed over an unrepresented claimant's ability to stipulate to facts or issues.

*Discussion and changes:* (a) The conference is an informal proceeding at which the parties are afforded an opportunity to discuss the evidence and issues and crystallize their positions. Conferences are an integral part of the claims process. Although they are not in themselves adjudicatory, they greatly aid in narrowing issues, eliminating surprise, and in some instances dispensing with the need for formal proceedings. Contrary to some of the comments, in most instances conferences expedite rather than delay the final disposition of claims by achieving the objectives outlined. Moreover, the Department does not agree that a party should be able to waive a conference. Because of his or her experience in dealing with issues and parties, the deputy commis-



sioner is in the best position to determine when a conference would be useful.

(b) While conferences are not intended to provide a discovery forum, it has been the Department's experience that new information coming to light in conferences is often very useful to all parties. The conference is also, in most cases, the only opportunity the parties have to discuss the case before a formal hearing. The Department does not think it appropriate to foreclose the use of the conference as a discovery forum.

(c) The Department agrees that the term "settlement" is inappropriate and a change has been made. However, the Department does not share the view that an unrepresented claimant would be unable to participate intelligently at a conference. Before allowing an unrepresented claimant to stipulate to any matter, it is the responsibility of the deputy commissioner to fully inform the claimant concerning the actions taken, and a change is accordingly made.

**§725.417 Action at the conclusion of conference.**

(a) At the conclusion of a conference, the deputy commissioner shall prepare a stipulation of contested and uncontested issues which shall be signed by the parties and the deputy commissioner. If a hearing is conducted with respect to the claim, this stipulation shall be submitted to the Office of Administrative Law Judges and placed in claim record.

(b) In any case, where appropriate, the deputy commissioner may permit a reasonable time for the submission of additional evidence following a conference.

(c) Within 20 days after the termination of all conference proceedings, the deputy commissioner shall prepare and send to the parties a memorandum of conference, on a form prescribed by the Office, summarizing the conference and including the following:

- (1) Date, time and place of conference;
- (2) Names, addresses, telephone numbers, and status (i.e., claimant, attorney, operator, carrier's representative, etc.);
- (3) Issues discussed at conference;
- (4) Additional material presented (i.e., medical reports, employment reports, marriage certificates, birth certificates, etc.);
- (5) Issues resolved at conference; and
- (6) Deputy commissioner's recommendation.

(d) Each party shall, in writing, either accept or reject, in whole or in part, the deputy commissioner's recommendation, stating the reasons for such rejection. If no reply is received within 30 days from the date on which the recommendation was sent to parties, the recommendation shall be deemed accepted.

*Comments received:* (a) One comment questions the ability of an unrepresented

claimant to effectively participate in a conference. (b) One comment recommends that additional time be given for response to the memorandum of conference.

*Discussion and changes:* (a) Many claimants are unrepresented. It would not be useful or appropriate to preclude the unrepresented claimant who is fully able to represent himself or herself from doing so. The changes made in § 725.416 serve to adequately protect the claimant in this regard. We do not agree that a stipulation signed by an unrepresented claimant should be easily discarded.

(b) Additional response time is provided.

**§725.418 Proposed decision and order.**

(a) A proposed decision and order is a document, issued by the deputy commissioner after the evidentiary development of the claim is completed and all contested issues, if any, are joined, which purports to resolve a claim on the basis of the evidence submitted to or obtained by the deputy commissioner. A proposed decision and order shall be considered a final adjudication of a claim only as provided in § 725.419. A proposed decision and order may be issued by the deputy commissioner in any claim and at any time during the adjudication of a claim if:

(1) Issuance is authorized or required by this part; or,

(2) The deputy commissioner determines that its issuance will expedite the adjudication of the claim.

(b) A proposed decision and order shall contain findings of fact and conclusions of law and an appropriate order shall be served on all parties to the claim.

*Comments received:* None for which a response is required.

*Discussion and changes:* Clarifying changes are made in this section.

**§725.419 Response to proposed decision and order.**

(a) Within 30 days after the date of issuance of a proposed decision and order, any party may, in writing, request a revision of the proposed decision and order or a hearing. If a hearing is requested, the deputy commissioner shall refer the claim to the Office of Administrative Law Judges (see § 725.421).

(b) Any response made by a party to a proposed decision and order shall specify the findings and conclusions with which the responding party disagrees, and shall be served on the deputy commissioner and all other parties to the claim.

(c) If a timely request for revision of a proposed decision and order is made, the deputy commissioner may amend the proposed decision and order, as circumstances require, and serve the revised proposed decision and order on all parties or take such other action as is appropriate. If a revised proposed decision and order is issued, each

party to the claim shall have 30 days from the date of issuance of that revised proposed decision and order within which to request a hearing.

(d) If no response to a proposed decision and order is sent to the deputy commissioner within the period described in paragraph (a) of this section, or if no response to a revised proposed decision and order is sent to the deputy commissioner within the period described in paragraph (c) of this section, the proposed decision and order shall become a final decision and order, which is effective upon the expiration of the applicable 30-day period. Once a proposed decision and order or revised proposed decision and order becomes final and effective, all rights to further proceedings with respect to the claim shall be considered waived, except as provided in § 725.310.

*Comments received:* (a) Some comments consider this section to be too complex and confusing. The number of alternatives is also criticized. (b) One comment urges the Department to run the 30-day response period from date of receipt of a proposed decision and order.

*Discussion and changes:* (a) The proposed decision and order is intended to serve as the document which concludes the adjudication of an uncontested approved case. If it accurately reflects the expectations of the parties, the procedure is very simple. The order becomes final and benefits are paid. If, however, there is a remaining dispute, over dependency or attorneys fees for example, it should not be necessary to force the claim into formal proceedings. A further effort to gain an informal final resolution of the case is appropriate. The additional steps in this section relate primarily to the claim where only a few minor contested issues remain. Alternative approaches to resolving these minor disputes are necessary. However, some clarifying language changes are made.

(b) Section 725.419 prescribes the date of mailing plus 7 days as the date which begins the running of a time period. If date of receipt is not presumed by this method, the Department would have no way of knowing, without further inquiry, whether a time period had run. The Department considers the 7-day mailing period fair and appropriate.

**§725.420 Initial determinations.**

(a) Section 424(a)(1)(A)(i) of the Act provides that the Black Lung Disability Trust Fund shall begin the payment of benefits on behalf of an operator in any case in which the operator liable for such payments "has not commenced payment of such benefits within 30 days after the date of an initial determination of eligibility by the Secretary \* \* \*."

(b) Except as provided in § 725.105 of this subpart, after the deputy commissioner has determined that a claimant is eligible for benefits, on the basis of all evidence submitted by a claimant and operator, and has determined that a hearing will be necessary to resolve the claim, the deputy commissioner



shall in writing so inform the parties and direct the operator to begin the payment of benefits to the claimant in accordance with § 725.522. The date on which this writing is sent to the parties shall be considered the date of initial determination of the claim.

(c) If a notified operator refuses to commence payment of a claim within 30 days from the date on which an initial determination is made under this section, benefits shall be paid by the fund to the claimant in accordance with § 725.522, and the operator shall be liable to the fund, if such operator is determined liable for the claim, for all benefits paid by the fund on behalf of such operator, and, in addition, such penalties and interest as are appropriate.

*Comments received:* (a) Many comments criticize this section on the grounds that it is confusing, and can serve only to delay the payment of benefits to an eligible claimant. (b) A few comments argue that the administrative law judge should not be made aware of the initial determination, as this awareness might affect the administrative law judge's impartiality.

*Discussion and changes:* (a) The initial determination is a device to begin the payment of benefits to claimants who are probably eligible without making the claimant wait for the conclusion of lengthy formal adjudication procedures. In order to achieve this objective, section 424(a)(1)(A)(i) of the Act requires the payment of benefits by the fund in a claim where an operator has refused to begin payments within 30 days "after the date of an initial determination of eligibility by the Secretary" (see also section 435(a)(2)(A) of the Act). "Initial determination" was not a term used in the Department's rules issued under the 1972 Act, nor is the term elsewhere defined by Congress. Accordingly, because of the statutory change, the point in time when an initial determination is made must be fixed. It would not be appropriate to fix the time of an initial determination until all evidence submitted during the informal stage of proceedings is considered, and a decision on the basis of this evidence is made.

While the Department continues in its belief that the procedures specified in the proposed rules are consistent with the law and the Secretary's obligations as a trustee of the fund, it is clear from the public comments that the section was too confusing, and it is simplified in this document.

(b) The Department does not agree that the initial determination should not be communicated to the administrative law judge. The initial determination is the only document which is readily available to support a finding that an operator is liable to reimburse the fund for payments made as a result of such operator's refusal to pay an approved claim at the end of informal proceedings. As such, the inclusion of the initial determination in the record is wholly appropriate. The initial determination does not analyze the merits of the claim or indicate the evidence relied upon by the deputy commissioner in reaching a decision, and consideration of the findings of the deputy commissioner, even if they were known, is precluded (§ 725.455).

#### § 725.421 Referral of a claim to the Office of Administrative Law Judges.

(a) In any claim for which a formal hearing is requested or ordered, and with respect to which the deputy commissioner has completed development and adjudication without having resolved all contested issues in the claim, the deputy commissioner shall refer the claim to the Office of Administrative Law Judges for a hearing. If the deputy commissioner with jurisdiction over the claim is located at any place outside Washington, D.C., such deputy commissioner shall forward a claim with respect to which a hearing is required by this part to the DCMWC in Washington, D.C., which shall refer the claim to the Office of Administrative Law Judges for appropriate proceedings.

(b) In any case referred to the Office of Administrative Law Judges under this section, the deputy commissioner shall transmit to that office the following documents, which shall be placed in the record at the hearing subject to the objection of any party: (1) Copies of the claim form of forms; (2) any statement, document, or pleading submitted by a party to the claim; (3) a copy of the notification to an operator of its possible liability for the claim; (4) all evidence submitted to the deputy commissioner under this part; (5) any written stipulation of law or fact or stipulation of contested and uncontested issues entered into by the parties; (6) any pertinent forms submitted to the deputy commissioner; (7) the statement by the deputy commissioner of contested and uncontested issues in the claim; and (8) the deputy commissioner's initial determination of eligibility or other documents necessary to establish the right of the fund to reimbursement, if appropriate. Copies of the transmittal notice shall also be sent to all parties to the claim.

(c) A party may at any time request and obtain from the deputy commissioner copies of documents transmitted to the Office of Administrative Law Judges under paragraph (b) of this section. If the party has previously been provided with such documents, additional copies may be sent to the party upon the payment of a copying fee to be determined by the deputy commissioner.

*Comments received:* (a) A number of comments oppose the automatic inclusion in the hearing record of documents previously submitted to the deputy commissioner. (b) In particular, there is one objection to the transmittal of the initial determination.

*Discussion and changes:* (a) It is the opinion of the Department that the transmittal of evidentiary material already submitted to the deputy commissioner to the administrative law judge for inclusion in the record will both expedite the hearing and eliminate the need for additional unnecessary preparation by the parties. It will also

reduce the possibility that relevant evidence will be omitted from the record or overlooked, and should be of significant assistance to unrepresented claimants and all other parties alike.

Hearsay rules and similar rules which might be used to exclude evidence in a court proceeding are not applicable to the adjudication of a black lung claim (see § 725.455(b)), and are clearly inconsistent with the intent of the Act. It would be virtually impossible for a claimant to afford the cost of compliance with formal rules of evidence and the Department will not impose any such rules. If an operator or other party desires to challenge any other party's evidence, the rules provide ample opportunity to do so, and similarly, any objection to evidence transmitted shall be considered in the course of the proceedings (§ 725.455(b)).

(b) See paragraph (b) of the discussion and changes, following § 725.420. Conforming changes are made in this section. The automatic transmittal of the memorandum of conference is also omitted. This should not be construed to preclude the introduction into evidence of the memorandum of conference in appropriate cases.

#### § 725.422 Legal assistance.

The Secretary or his or her designee may, upon request, provide a claimant with legal assistance in processing a claim under the Act. Such assistance may be made available to a claimant in the discretion of the Solicitor of Labor or his or her designee at any time prior to or during the time in which the claim is being adjudicated and shall be furnished without charge to the claimant. Representation of a claimant in adjudicatory proceedings shall not be provided by the Department of Labor unless it is determined by the Solicitor of Labor that such representation is in the best interests of the black lung benefits program. In no event shall representation be provided to a claimant in a claim with respect to which the claimant's interests are adverse to those of the Secretary of Labor or the fund.

*Comments received:* (a) One comment objects to the use of fund resources for the purpose of providing legal assistance to claimants, and challenges the legal authority for such representation. (b) One comment disagrees that the Solicitor should be allowed to determine when legal assistance will be provided, and urges the use of the legal assistance provision appearing in the 1973 rules.

*Discussion and changes:* (a) Section 39(c)(1) of the Longshoremen's Act authorizes the Secretary to provide legal assistance to claimants. This provision is unaffected by the obligation of the fund to pay for all administrative services provided by the Department in connection with the Black Lung Benefits program.

(b) This section is not more restrictive than the former legal assistance provision (20 CFR § 725.416 (1973)). Under both the old rule and this rule, legal information and assistance, but not representation, were routinely made available to claimants. Although not specified in the prior rule, the decision to commit resources to a claimant's case was always within the discretion of the



Solicitor, as the Solicitor is in the best position to authorize the allocation of Department of Labor legal staff resources. The language of the section is changed to conform to the Department's legal assistance policy in the black lung area with that in the Longshoremen's Act area.

### Subpart E—Hearings

#### § 725.450 Right to a hearing.

Any party to a claim (see § 725.360) shall have a right to a hearing concerning any contested issue of fact or law unresolved by the deputy commissioner. There shall be no right to a hearing until the processing and adjudication of the claim by the deputy commissioner has been completed. There shall be no right to a hearing in a claim with respect to which a determination of the claim made by the deputy commissioner has become final and effective in accordance with this part.

*Comments received:* None for which a response is required.

#### § 725.451 Request for hearing.

After the completion of proceedings before the deputy commissioner, or as is otherwise indicated in this part, any party may in writing request a hearing on any contested issue of fact or law. A deputy commissioner may on his or her own initiative refer a case for hearing. If a hearing is requested, or if a deputy commissioner determines that a hearing is necessary to the resolution of any issue, the claim shall be referred to the Chief Administrative Law Judge for a hearing under § 725.421.

*Comments received:* (a) One comment recommends that a claimant should be allowed to request a hearing by telephone. (b) One comment recommends that the deputy commissioner should be required to terminate the processing of a claim as soon as a hearing is requested, and immediately forward the claim for a hearing.

*Discussion and changes:* (a) In order to preserve the rights of all parties, a written request for a hearing is necessary.

(b) A party should not be allowed to proceed to a hearing before informal procedures are completed. It is not appropriate for a hearing to go forward until the issues are fully identified and most evidentiary development completed. These preliminary activities are within the purview of the deputy commissioner, and not the administrative law judge.

#### § 725.452 Type of hearing; parties.

(a) A hearing held under this part shall be conducted by an administrative law judge designated by the Chief Administrative Law Judge. Except as otherwise provided by this part, all hearings shall be conducted in accordance with the provisions of 5 U.S.C. 554 et seq.

(b) All parties to a claim shall be permitted to participate fully at a

hearing held in connection with such claim.

(c) A full evidentiary hearing need not be conducted if a party moves for summary judgment and the administrative law judge determines that there is no genuine issue as to any material fact and that the moving party is entitled to the relief requested as a matter of law. All parties shall be entitled to respond to the motion for summary judgment prior to decision thereon.

*Comments received:* A number of comments recommend that summary judgment procedures should not be available in the case of an unrepresented claimant.

*Discussion and changes:* Summary judgment without an oral proceeding is appropriate only where there is no genuine issue of material fact to be resolved. In such a case, the oral proceeding can serve no useful purpose to either the represented or unrepresented claimant. A similar procedure was included in the prior rules and proved effective.

#### § 725.453 Notice of hearing.

All parties shall be given at least 30 days written notice of the date and place of a hearing and the issues to be resolved at the hearing. Such notice shall be sent to each party or representative by certified mail.

*Comments received:* A number of comments argue that 10 days notice of hearing is too short a period to permit adequate preparation.

*Discussion and changes:* The Department agrees and the period is extended to 30 days.

#### § 725.453A Time and place of hearing.

(a) The Chief Administrative Law Judge shall assign a definite time and place for a formal hearing, and shall, where possible, schedule the hearing to be held at a place within 75 miles of the claimant's residence unless an alternate location is requested by the claimant.

(b) If the claimant's residence is not in any State, the Chief Administrative Law Judge may, in his or her discretion, schedule the hearing in the country of the claimant's residence.

(c) The Chief Administrative Law Judge or the administrative law judge assigned the case may in his or her discretion direct that a hearing with respect to a claim shall begin at one location and then later be reconvened at another date and place.

*Comments received:* (a) A few comments recommend that the hearing should be held within 25 or 50 miles of the claimant's residence rather than 75, or that a claimant should be allowed to request a specific location for a hearing. (b) One comment recommends that a hearing should be conducted within a limited time after the claim is forwarded to the Office of Administrative Law Judges.

*Discussion and changes:* (a) Under most circumstances, hearings will be held much

closer than 75 miles from the claimant's residence. In extraordinary circumstances, an administrative law judge will hold a hearing in a claimant's home, and this has been done in the past. However, in order to preserve flexibility in scheduling and to maximize the use of limited resources, an outside limit of 75 miles is considered necessary by the Department. Any claimant may request a specific location for a hearing, and that request will be honored if possible.

(b) In view of limited resources, the Department cannot require that a hearing be conducted within a specified time from the date the claim is forwarded for a hearing. Every effort will be made to conduct a hearing as soon as possible after the request for hearing is transmitted to the Office of Administrative Law Judges.

#### § 725.454 Change of time and place for hearing; transfer of cases.

(a) The Chief Administrative Law Judge or administrative law judge assigned the case may change the time and place for a hearing, either on his or her own motion or for good cause shown by a party. The administrative law judge may adjourn or postpone the hearing, or reopen the hearing for the receipt of additional evidence, for good cause shown, at any time prior to the mailing to the parties of the decision in the case. Unless otherwise agreed, at least 10 days notice shall be given to the parties of any change in the time or place of hearing.

(b) The Chief Administrative Law Judge may for good cause shown transfer a case from one administrative law judge to another.

*Comments received:* None.

#### § 725.455 Hearing procedures; generally.

(a) *General.* The purpose of any hearing conducted under this subpart shall be to resolve contested issues of fact or law. Except as provided in § 725.421(b)(8), any findings or determinations made with respect to a claim by a deputy commissioner shall not be considered by the administrative law judge.

(b) *Evidence.* The administrative law judge shall at the hearing inquire fully into all matters at issue, and shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, except as provided by 5 U.S.C. 554 and this subpart. The administrative law judge shall receive into evidence the testimony of the witnesses and parties, the evidence submitted to the Office of Administrative Law Judges by the deputy commissioner under § 725.421, and such additional evidence as may be submitted in accordance with the provisions of this subpart. The administrative law judge may entertain the objections of any party to the evidence submitted under this section.

(c) *Procedure.* The conduct of the hearing and the order in which allegations and evidence shall be presented



shall be within the discretion of the administrative law judge and shall afford the parties an opportunity for a fair hearing.

*Comments received:* (a) A few comments suggest the development of separate rules to be applied in the case of an unrepresented claimant. (b) One comment recommends that hearings should not be de novo.

*Discussion and changes:* (a) Separate rules for an unrepresented claimant are neither necessary nor justified. The administrative law judge has ample authority to protect the rights of the unrepresented claimant and is required to do so.

(b) The Administrative Procedure Act, as incorporated, requires de novo hearings.

#### § 725.456 Introduction of documentary evidence.

(a) All documents transmitted to the Office of Administrative Law Judges under § 725.421 shall be placed into evidence by the administrative law judge as exhibits of the Director, subject to objection by any party.

(b)(1) Any other documentary material, including medical reports, which was not submitted to the deputy commissioner, may be received in evidence subject to the objection of any party, if such evidence is sent to all other parties within 20 days before a hearing is held in connection with the claim.

(2) Documentary evidence, which is not exchanged with the parties in accordance with this paragraph, may be admitted at the hearing with the written consent of the parties or on the record at the hearing, or upon a showing of good cause why such evidence was not exchanged in accordance with this paragraph. If documentary evidence is not exchanged in accordance with paragraph (b)(1) of this section and the parties do not waive the 20-day requirement or good cause is not shown, the administrative law judge shall either exclude the late evidence from the record or remand the claim to the deputy commissioner for consideration of such evidence.

(3) A medical report which is not made available to the parties in accordance with paragraph (b)(1) of this section shall not be admitted into evidence in any case unless the hearing record is kept open for at least 30 days after the hearing to permit the parties to take such action as each considers appropriate in response to such evidence. If, in the opinion of the administrative law judge, evidence is withheld from the parties for the purpose of delaying the adjudication of the claim, the administrative law judge may exclude such evidence from the hearing record and close the record at the conclusion of the hearing.

(4) Notwithstanding any other provision of this paragraph, documentary evidence other than medical reports which is presented or discovered in connection with the testimony of a

witness at the hearing may be admitted into the hearing record, subject to the objection of any party.

(c) All medical records and reports submitted by any party shall be considered by the administrative law judge in accordance with the quality standards contained in part 718 of this subchapter as amended from time to time.

(d) Documentary evidence which is obtained by any party during the time a claim is pending before the deputy commissioner, and which is withheld by such party until the claim is forwarded to the Office of Administrative Law Judges shall, notwithstanding paragraph (b) of this section, not be admitted into the hearing record in the absence of extraordinary circumstances, unless such admission is requested by any other party to the claim (see § 725.414(e)).

(e) If, during the course of a hearing, it is determined by the administrative law judge that the documentary evidence submitted in accordance with this section is incomplete as to any issue which must be adjudicated, the administrative law judge may, in his or her discretion, remand the claim to the deputy commissioner with instructions to develop only such additional evidence as is required, or allow the parties a reasonable time to obtain and submit such evidence, before the termination of the hearing.

*Comments received:* (a) Many objections to this section have been received. In sum, the commentators did not think it fair or appropriate to limit the right of any party to submit evidence to the administrative law judge if it was not previously submitted to the deputy commissioner. A few comments recommend various alternatives, including a requirement that evidence be exchanged 20 days or more prior to a hearing. (b) Some comments object to the requirement limiting the admissibility of medical reports without first submitting them for quality review. (c) Some comments object to the privilege which protects the deputy commissioner's work product.

*Discussion and changes:* (a) As indicated in paragraph (b) of the *Discussion and changes* following § 725.420, in designing the proposed procedures, the Department intended to expedite the claims process, eliminate surprise, and require the parties to undertake a timely development of their positions. The Department has been much criticized for delays in the claims process, and it was hoped that the proposed procedures would help to eliminate some of this delay. The proposed procedures were not intended to exclude any evidence, but were designed to impose severe consequences for a party who simply did nothing until the claim was set for a hearing. However, the Department recognizes that many claimants do not obtain representation until shortly before a hearing. Once representation is secured, new evidence is often obtained. The Department does not think it appropriate to place a previously unrepresented claimant at a disadvantage, and accordingly, this section has been significantly revised.

The revision requires each party to obtain and exchange evidence within 20 days before the hearing. Evidence which was withheld may still be excluded.

(b) The Department is required by the Act to issue and enforce quality standards to be applied to all medical evidence collected in connection with a claim. This responsibility does not diminish when a claim comes before an administrative law judge. Some changes are made, however, to make the quality control function consistent with revised procedures.

(c) Upon consideration of the comments, the Department has removed the privilege exempting the deputy commissioner's work product from discovery. This revision should not be construed as a general waiver of the Director's right to oppose the discovery of any document in his or her custody which is either privileged, irrelevant, or otherwise inappropriate for admission into evidence in any claim.

#### § 725.457 Witnesses.

(a) Witnesses at the hearing shall testify under oath or affirmation. The administrative law judge and the parties may question witnesses with respect to any matters relevant and material to any contested issue. Any party who intends to present the testimony of an expert witness at a hearing shall so notify all other parties to the claim at least 10 days before the hearing. The failure to give notice of the appearance of an expert witness in accordance with this paragraph, unless notice is waived by all parties, shall preclude the presentation of testimony by such expert witness.

(b) No person shall be required to appear as a witness in any proceeding before an administrative law judge at a place more than 100 miles from his or her place of residence, unless the lawful mileage and witness fee for 1 day's attendance is paid in advance of the hearing date.

*Comments received:* Comments object to the prohibition against the appearance of Department of Labor personnel as witnesses.

*Discussion and changes:* (a) The Department agrees that the blanket prohibition against the appearance of Department of Labor personnel as witnesses is inappropriate, and it has been deleted from the rule. The change should not be construed as a waiver of the Department's right to oppose a request for Department of Labor personnel to appear as witnesses, on a case-by-case basis.

(b) A change is made to require prior notice of an appearance by an expert witness, consistent with the revision of § 725.456.

#### § 725.458 Deposition; interrogatories.

The testimony of any witness or party may be taken by deposition or interrogatory according to the rules of practice of the Federal district court for the judicial district in which the case is pending (or of the U.S. District Court for the District of Columbia if the case is pending in the District or



outside the United States), except that at least 30 days prior notice of any deposition shall be given to all parties unless such notice is waived. No post-hearing deposition or interrogatory shall be permitted unless authorized by the administrative law judge upon the motion of a party to the claim.

*Comments received:* (a) Comments recommend that the 30-day notice requirement should be subject to waiver. (b) One comment urges that the Department pay for depositions or interrogatories obtained by a claimant. (c) One comment recommends clarification of the post-hearing procedures for obtaining evidence by deposition or interrogatory.

*Discussion and changes:* (a) The Department agrees that the notice requirement should be subject to waiver and this change is made.

(b) The Department is not authorized, nor are any funds available, to pay for a deposition or interrogatory obtained by any party.

(c) The Department agrees that the post-hearing procedures for obtaining evidence by deposition or interrogatory need clarification and this clarification is reflected in this rule.

#### § 725.459 Witness fees.

(a) A witness summoned to hearing before an administrative law judge, or whose deposition is taken, shall receive the same fees and mileage as witnesses in courts of the United States. Except as provided in paragraph (c) of this section, such fees shall be paid by the party summoning the witness.

(b) No claimant shall be required to bear the financial responsibility for producing an expert witness for cross-examination if such expert witness, regardless of his or her availability to attend the hearing, has previously submitted depositions, interrogatories, or medical reports. Such expert witness, if he or she is required to attend the hearing, respond to interrogatories or give a deposition, shall be summoned and shall have his or her expert witness fee paid by the party who summons such witness.

(c) If a claimant is determined entitled to benefits, there may be assessed as costs against a responsible operator, if any, fees and mileage for necessary witnesses attending the hearing at the request of the claimant. Both the necessity for the witness and the reasonableness of the fees of any expert witness shall be approved by the administrative law judge. The amounts awarded against a responsible operator as attorney's fees, or costs, fees and mileage for witnesses, shall not in any respect affect or diminish benefits payable under the Act.

*Comments received:* One comment argues that this section denies an operator the right to cross-examine a claimant's expert witness and recommends that the section specify an operator's right to obtain the testimony of a claimant's expert witness by deposition or interrogatory.

*Discussion and changes:* This section does not deny an operator the right to cross-examine a claimant's expert witness either by deposition, interrogatory, or at the hearing. It provides only that the operator must pay for such evidence if it is sought. Few claimants will have the financial resources to pay the high cost of cross-examination of an expert witness. The operator may, of course, have the claimant examined by a physician which it selects, and have the claimant's evidence reviewed by a physician which it selects.

#### § 725.459A Oral argument and written allegations.

The parties, upon request, may be allowed a reasonable time for the presentation of oral argument at the hearing. Briefs or other written statements or allegations as to facts or law may be filed by any party with the permission of the administrative law judge. Copies of any brief or other written statement shall be filed with the administrative law judge and served on all parties by the submitting party.

*Comments received:* None for which a response is required.

#### § 725.460 Consolidated hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the Chief Administrative Law Judge may, upon motion by any party or on his or her own motion, order that a consolidated hearing be conducted. Where consolidated hearings are held, a single record of the proceedings shall be made and the evidence introduced in one claim may be considered as introduced in the others, and a separate or joint decision shall be made, as appropriate.

*Comments received:* None for which a response is required.

#### § 725.461 Waiver of right to appear and present evidence.

(a) If all parties waive their right to appear before the administrative law judge, it shall not be necessary for the administrative law judge to give notice of, or conduct, an oral hearing. A waiver of the right to appear shall be made in writing and filed with the Chief Administrative Law Judge or the administrative law judge assigned to hear the case. Such waiver may be withdrawn by a party for good cause shown at any time prior to the mailing of the decision in the claim. Even though all of the parties have filed a waiver of the right to appear, the administrative law judge may, nevertheless, after giving notice of the time and place, conduct a hearing if he or she believes that the personal appearance and testimony of the party or parties would assist in ascertaining the facts in issue in the claim. Where a waiver has been filed by all parties,

and they do not appear before the administrative law judge personally or by representative, the administrative law judge shall make a record of the relevant documentary evidence submitted in accordance with this part and any further written stipulations of the parties. Such documents and stipulations shall be considered the evidence of record in the case and the decision shall be based upon such evidence.

(b) Except as provided in § 725.456(a), the unexcused failure of any party to attend a hearing shall constitute a waiver of such party's right to present evidence at the hearing, and may result in a dismissal of the claim (see § 725.465).

*Comments received:* One comment recommends that the Department explain the consequences of a waiver of appearance to claimants.

*Discussion and changes:* A claimant who fails to appear at a hearing is always given the opportunity to explain why he or she did not appear before the record is closed or the claim is dismissed (§ 725.465). The consequences of a claimant's failure to attend a hearing are generally described in the administrative law judge's order to show cause requesting an explanation why the claimant failed to appear at a hearing.

#### § 725.462 Withdrawal of controversion of issues set for formal hearing; effect.

A party may, on the record, withdraw his or her controversion of any or all issues set for hearing. If a party withdraws his or her controversion of all issues, the administrative law judge shall remand the case to the deputy commissioner for the issuance of an appropriate order.

*Comments received:* None.

#### § 725.463 Issues to be resolved at hearing; new issues.

(a) Except as otherwise provided in this section, the hearing shall be confined to those contested issues which have been identified by the deputy commissioner (see § 725.421) or any other issue raised in writing before the deputy commissioner.

(b) An administrative law judge may consider a new issue only if such issue was not reasonably ascertainable by the parties at the time the claim was before the deputy commissioner. Such new issue may be raised upon application of any party, or upon an administrative law judge's own motion, with notice to all parties, at any time after a claim has been transmitted by the deputy commissioner to the Office of Administrative Law Judges and prior to decision by an administrative law judge. If a new issue is raised, the administrative law judge may, in his or her discretion, either remand the case to the deputy commissioner with instructions for further proceedings,



hear and resolve the new issue, or refuse to consider such new issue.

(c) If a new issue is to be considered by the administrative law judge, a party may, upon request, be granted an appropriate continuance.

*Comments received:* A few comments recommend that the consideration of new issues should be allowed, especially in the case of an unrepresented claimant.

*Discussion and changes:* The Department does not agree that a party should be allowed to raise at a hearing, new issues which could have and should have been raised before the deputy commissioner. The right to raise new issues when a claim is forwarded for a hearing has been a cause of needless delay in the adjudication of some claims, and is inappropriate in light of the claims procedure established by these rules.

This section is not intended to prevent a new issue from being raised if new evidence brings the issue to light, nor should this section be construed to, in any way, impair any party's right or ability to address a previously raised issue or properly submitted evidence.

The deputy commissioner is responsible for ensuring that all issues in a claim are properly formulated, regardless of whether the claimant is represented. This approach has worked well in the past and there is no reason to believe that a special rule for unrepresented claimants is appropriate.

#### § 725.464 Record of hearing.

All hearings shall be open to the public and shall be mechanically or stenographically reported. All evidence upon which the administrative law judge relies for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All medical reports, exhibits, and any other pertinent document or record, either in whole or in material part, introduced as evidence, shall be marked for identification and incorporated into the record.

*Comments received:* None for which a response is required.

#### § 725.465 Dismissals for cause.

(a) The administrative law judge may, at the request of any party, or on his or her own motion, dismiss a claim:

(1) Upon the failure of the claimant or his or her representative to attend a hearing without good cause;

(2) Upon the failure of the claimant to comply with a lawful order of the administrative law judge; or

(3) Where there has been a prior final adjudication of the claim or defense to the claim under the provisions of this subchapter and no new evidence is submitted (except as provided in part 727 of this subchapter).

(b) A party who is not a proper party to the claim (see § 725.360) shall be dismissed by the administrative law judge.

(c) In any case where a dismissal of a claim, defense, or party is sought, the administrative law judge shall issue an

order to show cause why the dismissal should not be granted and afford all parties a reasonable time to respond to such order. After the time for response has expired, the administrative law judge shall take such action as is appropriate to rule on the dismissal, which may include an order dismissing the claim, defense or party.

(d) No claim shall be dismissed in a case with respect to which payments prior to final adjudication have been made to the claimant in accordance with § 725.522, except upon the motion or written agreement of the Director.

*Comments received:* None.

*Discussion and changes:* A change is made to reflect the right of a previously denied claimant to file a new claim on the basis of new evidence. (See *Discussion and Changes* following § 725.310.)

#### § 725.466 Order of dismissal.

(a) An order dismissing a claim shall be served on the parties in accordance with § 725.477. The dismissal of a claim shall have the same effect as a decision and order disposing of the claim on its merits, except as provided in paragraph (b) of this section. Such order shall advise the parties of their right to request review by the Benefits Review Board.

(b) Where the Chief Administrative Law Judge or the presiding administrative law judge issues a decision and order dismissing the claim after a show cause proceeding, the deputy commissioner shall terminate any payments being made to the claimant under § 725.522, and the order of dismissal shall, if appropriate, order the claimant to reimburse the Fund for all benefits paid to the claimant.

*Comments received:* One comment argues that a claimant should not be required to reimburse the Fund unless there is fault or fraud.

*Discussion and changes:* The Act in certain specified situations requires the payment of benefits to an eligible claimant prior to the final adjudication of the claim (Act, section 424(a)(1)). If an earlier determination of entitlement is reversed, payments made by the Fund prior to final adjudication were invalid and it is the responsibility of the Secretary as trustee of the Fund to recoup whatever has been paid.

#### § 725.475 Termination of hearings.

Hearings are officially terminated when all the evidence has been received, witnesses heard, pleadings and briefs submitted to the administrative law judge, and the transcript of the proceedings has been printed and delivered to the administrative law judge.

*Comments received:* None.

#### § 725.476 Issuance of decision and order.

Within 20 days after the official termination of the hearing (see § 725.475), the administrative law

judge shall issue a decision and order with respect to the claim making an award to the claimant, rejecting the claim, or taking such other action as is appropriate.

*Comments received:* None.

#### § 725.477 Form and contents of decision and order.

(a) Orders adjudicating claims for benefits shall be designated by the term "decision and order" or "supplemental decision and order" as appropriate, followed by a descriptive phrase designating the particular type of order, such as "award of benefits," "rejection of claim," "suspension of benefits," "modification of award."

(b) A decision and order shall contain a statement of the basis of the order, the names of the parties, findings of fact, conclusions of law, and an award, rejection or other appropriate paragraph containing the action of the administrative law judge, his or her signature and the date of issuance. A decision and order shall be based upon the record made before the administrative law judge.

*Comments received:* None.

#### § 725.478 Filing and service of decision and order.

On the date of issuance of a decision and order under § 725.477, the administrative law judge shall serve the decision and order on all parties to the claim by certified mail. On the same date, the original record of the claim shall be returned to the DCMWC in Washington, D.C., and the decision and order shall be considered to be filed in the office of the deputy commissioner. Immediately upon receipt of a decision and order awarding benefits, the deputy commissioner shall compute the amount of benefits due, including any interest or penalties, and the amount of reimbursement owed the Fund, if any, and so notify the parties. Any computation made by the deputy commissioner under this paragraph shall strictly observe the terms of the award made by the administrative law judge.

*Comments received:* Comments support this procedure. One comment recommends clarification of the manner in which benefits due are computed.

*Discussion and changes:* The Department agrees that there should be a clarification of the manner in which benefits due are computed. The deputy commissioner is responsible for computing the amount of benefits or reimbursement due in accordance with the administrative law judge's order. It would not be possible for the administrative law judge to compute exact amounts, especially in view of the complex computations which may be involved and the passage of time between the hearing and an award of benefits. This responsibility is properly placed with the deputy commissioner, who will utilize the resources of the Department



to see that the computation is properly made, and immediately notify the parties. A change is made to reflect this procedure.

**§ 725.479 Finality of decisions and orders.**

(a) A decision and order shall become effective when filed in the office of the deputy commissioner (see § 725.478), and unless proceedings for suspension or setting aside of such order are instituted within 30 days of such filing, the order shall become final at the expiration of the 30th day after such filing (see § 725.481).

(b) Any party may, within 30 days after the filing of a decision and order under § 725.478, request a reconsideration of such decision and order by the administrative law judge. The procedures to be followed in the reconsideration of a decision and order shall be determined by the administrative law judge.

(c) The time for appeal to the Benefits Review Board shall be suspended during the consideration of a request for reconsideration. After the administrative law judge has issued and filed a denial of the request for reconsideration, or a revised decision and order in accordance with this part, any dissatisfied party shall have 30 days within which to institute proceedings to set aside the new decision and order or affirmation of the original decision and order.

*Comments received:* None.

**§ 725.480 Modification of decisions and orders.**

(a) A party who is dissatisfied with a decision and order which has become final in accordance with § 725.479 may request a modification of the decision and order if the conditions set forth in § 725.310 are met.

*Comments received:* One comment requests clarification of the official authorized to modify a decision and order of an administrative law judge.

*Discussion and changes:* This section provides, in accordance with Section 22 of the Longshoremen's Act, that a modification of a decision and order may be sought as provided in § 725.310. Section 725.310 requires that a request for modification be first addressed to the deputy commissioner who is properly responsible for the investigation of the basis on which a modification is requested. Contested issues unresolved by the deputy commissioner may be referred to the Office of Administrative Law Judges for a hearing.

**§ 725.481 Right to appeal to the Benefits Review Board.**

Any party dissatisfied with a decision and order issued by an administrative law judge may, before the decision and order becomes final (see § 725.479), appeal the decision and order to the Benefits Review Board. A notice of appeal shall be filed with the Board. Proceedings before the Board

shall be conducted in accordance with Part 802 of this title.

*Comments received:* One comment points out that appeals to the Board are, according to the Board rules, filed with the deputy commissioner.

*Discussion and changes:* The change contained in these rules reflects a change in Board procedures which will be set out in the forthcoming revision of the Board's rules. Until revised rules are published by the Board, appeals may be filed either with the Board or the deputy commissioner.

**§ 725.482 Judicial review.**

(a) Any person adversely affected or aggrieved by a final order of the Benefits Review Board may obtain a review of that order in the U.S. court of appeals for the circuit in which the injury occurred by filing in such court within 60 days following the issuance of such Board order a written petition praying that the order be modified or set aside. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay shall be issued unless the court finds that irreparable injury would otherwise ensue to an operator or carrier.

(b) The Director, Office of Workers' Compensation Program, as designee of the Secretary of Labor responsible for the administration and enforcement of the Act, shall be considered the proper party to appear and present argument on behalf of the Secretary of Labor in all review proceedings conducted pursuant to this part and the Act, either as petitioner or respondent.

*Comments received:* None for which a response is required.

**§ 725.483 Costs in proceedings brought without reasonable grounds.**

If a United States court having jurisdiction of proceedings regarding any claim or final decision and order, determines that the proceedings have been instituted or continued before such court without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

*Comments received:* None.

**Subpart F—Responsible Coal Mine Operators**

**GENERAL PROVISIONS**

**§ 725.490 Statutory provisions and scope.**

(a) One of the major purposes of the black lung benefits amendments of 1977 is to provide a more effective means of transferring the responsibility for the payment of benefits from the Federal government to the coal industry with respect to claims filed under this part. In furtherance of this

goal, a Black Lung Disability Trust Fund financed by the coal industry was established by the Black Lung Benefits Revenue Act of 1977. The primary purpose of the Fund is to pay benefits with respect to all claims in which the last coal mine employment of the miner on whose account the claim was filed occurred before January 1, 1970. With respect to claims in which the miner's last coal mine employment occurred after January 1, 1970, individual coal mine operators will be liable for the payment of benefits. Where no such operator exists or the operator determined to be liable is in default in any case, the Fund shall pay the benefits due and seek reimbursement as is appropriate. In addition, the Black Lung Benefits Reform Act of 1977 amended certain provisions affecting the scope of coverage under the Act and describing the effects of particular corporate transactions on the liability of operators.

(b) The provisions of this subpart define the term "operator," prescribe the manner in which the identity of an operator which may be liable for the payment of benefits—referred to herein as a "responsible operator"—will be determined, and briefly describe the obligations of operators to secure the payment of benefits. (See also Part 726 of this subchapter.)

*Comments received:* See *Discussion and Changes* following §§ 725.491-725.493.

*Discussion and changes:* None.

**§ 725.491 Operator defined.**

(a) In accordance with Section 3(d) of the Act, an operator for purposes of this part is "any owner, lessee or other person who operates, controls, or supervises a coal mine or any independent contractor performing services or construction at such mine." In accordance with Sections 402(d) and 422(b) of the Act, certain other employers, including those engaged in coal mine construction, maintenance, and transportation, shall also be considered to be operators for purposes of this part. An independent contractor or self-employed miner, construction worker, coal preparation worker, or transportation worker may also be considered a coal mine operator for purpose of this part. It is Congress' intent that any employer of a miner as defined in § 725.202(a) shall, to the extent appropriate, be considered an operator for the purposes of this part, and the provisions of this part shall be construed in accordance with this intent.

(b)(1) In determining which operator or other employer is the employer of a particular miner, primary consideration shall be given to the identity of the employer which is directly responsible for the supervision, operation and control of the mine or mines or other facilities where the miner was



employed. However, Congress has made it clear that such supervision or control may be directly or indirectly exercised. Therefore, in appropriate cases where, for example, the individual or business entity most directly connected with the mine site is not capable of assuming liability for the payment of benefits (§ 725.492(d)) or is no longer in business and such individual or business entity is a subsidiary of a parent company, a member of a joint venture, a partner in a partnership, or is substantially owned or controlled by another business entity, such parent entity or other member of a joint venture or partner or controlling business entity may be considered an operator for purposes of this part, regardless of the nature of its business activities.

(2) Where a coal mine is leased, and the lease empowers the lessor to make decisions with respect to the terms and conditions under which coal is to be extracted or prepared, such as, but not limited to, the manner of extraction or preparation or the amount of coal to be produced, the lessor may be considered an operator with respect to employees of the lessee. An individual land owner or others who lease coal lands or mineral rights, who have never been coal mine operators or are not in the regular business of leasing coal mines, shall not be considered a coal mine operator in accordance with the terms of this section. Where a lessor previously operated a coal mine, it may be considered an operator with respect to employees of any lessee of such mine, particularly where the leasing arrangement was executed or renewed after the effective date of this part and does not require the lessee to secure benefits provided by the Act.

(3) In any claim in which the liability of a lessor for claims arising out of employment with a lessee is brought into question, the lessee shall be considered primarily liable for the claim, and the liability of the lessor may be established only after it has been determined that the lessee is unable to provide for the payment of benefits to a successful claimant. In any case involving the liability of a lessor for a claim arising out of employment with a lessee, any determination of lessor liability shall be made on the basis of the facts present in the case in consideration of the terms and intent of the act and this part.

(4) A former coal mine operator which has become a lessor of coal miner shall be liable for approved claims arising out of coal mine employment with such lessor during the time the lessor was a coal mine operator, if such employment terminated on or after January 1, 1970, and the conditions for liability contained in § 725.492 are met.

(c) (1) An independent contractor which performs or performed services or engages or engaged in construction at a mine or preparation or transportation facility may be held liable for the payment of benefits under this part as a coal mine operator with respect to its employees who work or have worked in or around a coal mine or coal preparation or transportation facility in the extraction, preparation, or transportation of coal or in coal mine construction in any period during which such employees were exposed to coal dust during their employment with such contractor. Such contractor's status as an operator shall not be contingent upon the amount or percentage of its work or business related to activities in or around a mine, nor upon the number or percentage of its employees engaged in such activities.

(2) (i) Any individual who works or has worked as a sole proprietor, a partner in a partnership, a member of a family business or who is otherwise self-employed in or around a coal mine or coal preparation or transportation facility in the extraction, preparation, or transportation of coal or in coal mine construction during any period such individual was exposed to coal dust may be considered an operator under this part.

(ii) A self-employed operator, depending upon the facts of the case, may be considered an employee of any other operator, person, or business entity which substantially controls, supervises, or is financially responsible for the activities of the self-employed operator.

(iii) For the purposes of this part, a lessor of a coal mine which leases such mine to a self-employed operator shall be considered the employer of such self-employed operator and its employees if the lease or agreement is executed or renewed after the effective date of this part and such lease or agreement does not require the lessee to guarantee the payment of benefits which may be required under this part.

*Comments received:* (a) Coal mine construction employer comments: (1) Many comments were received from coal mine construction employers urging the Department to exempt such employers from the provisions of the Act, on the ground that coal mine construction workers are not exposed to coal dust in the course of their employment; (2) a number of construction employers argue that their employees should be required to provide "documented evidence" of exposure to coal dust in their construction employment as a precondition to holding a construction employer liable for benefits; (3) some comments recommend that a showing of conditions "substantially similar to those in an underground mine" should be required before a construction employer may be found liable for the payment of benefits.

(b) Coal mine lessor comments: Comments received from the lessors of coal mines express vigorous opposition to the provisions by which a lessor of coal mines may be considered a coal mine operator, or liable for the employees of a lessee operator. Some comments urge the absolute exclusion of owners of coal lands or mineral rights or any other person or entity that is not involved in the actual day-to-day supervision and control of mining or leased property. Comments also urge that the rules make clear that any liability which might be imposed on a lessor should be secondary to that of a lessee.

*Discussion and changes:* (a) Construction employer comments: (1) Section 2(d) of the amendments to the Act defines the term "miner" to include "an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment." Section 7(b) of amendments to the Act exempts construction employers from the insurance purchase requirements of the Act and penalties for noncompliance, but clearly sets forth the proposition that coal mine construction employers are otherwise liable for benefits awarded on account of pneumoconiosis arising out of coal mine construction employment (Act, section 422(b)). Moreover, section 3(d) of the Act (the Federal Mine Safety and Health Act of 1977) was amended to include in the definition of "operator," "any independent contractor performing services or construction at [a] mine."

During consideration of these amendments, Congress heard testimony from coal mine construction business representatives and others, who urged that coal mine construction employers should be required to both observe safety and health standards when working on jobs in or around coal mines and to provide adequate compensation benefits to employees who were affected by pneumoconiosis as a result of such work. In order to avoid the imposition of an unnecessary financial hardship on construction employers, Congress exempted them from the coal tax, as well as the black lung insurance requirements of the Act.

Upon consideration of information received, Congress determined to settle the previously litigated coverage question, and unequivocally did so in favor of coal mine construction employees by explicitly covering coal mine construction employers. The Department cannot, by regulation, reconsider Congress determination.

(2) One comment addressed the presumption of exposure to coal dust contained in § 725.492(c). The presumption is established on the basis of authority contained in section 422(h) of the Act and is intended to reallocate the burden of proving exposure by placing this burden on the employer. Exposure to coal dust is, of course, an important element in a claim involving an operator since, with only a few exceptions, an operator's liability is contingent upon proof that the miner's pneumoconiosis arose at least in part out of employment with such operator (Act, section 422 (c)). It is the Department of Labor's responsibility to establish that the liability for a particular claim lies with an operator rather than the trust fund. The Department has no independent knowledge of the specific conditions of a miner's employment. Only the employer has the information which might serve to ab-



solve it of liability under section 422(c) of the Act. The exposure presumption is authorized by section 422(h) of the Act. It is a rebuttable presumption and may be overcome by testimony of supervisory personnel and work records kept by the operator, demonstrating little or no exposure to coal dust.

The contractors object to the presumption primarily on the ground that there is no exposure to coal dust in coal mine construction, and suggest that the claimant bear the burden of proving continuous exposure with "documented evidence." The Department is not aware of any documented evidence a claimant is likely to have relating to his or her coal dust exposure. On the other hand, a construction employer is now required by the safety and health provisions of the Act to monitor construction employees' working conditions where work is done in or around a coal mine. Moreover, a construction employer is required by various other laws to keep work records, and has supervisory personnel within its control who would most likely be able to testify to the conditions under which an employee worked.

(3) The Department received a recommendation that the proposed rules be revised to require a showing of "conditions substantially similar to conditions in underground coal mines" in the miner's employment before a contractor can be found liable for benefits. The Department does not believe that use of the term "substantially similar to conditions in underground employment," which appears in the Senate report, but which does not appear in the Act, evidences an intent to establish a special test of liability to be applied in the claims involving coal mine construction employers and employees. There is no common or industry usage for this term and it is nowhere defined. In view of each of these considerations, the presumption of dust exposure may be rebutted on a case-by-case basis.

(b) Lessor comments: Section 3(d) of the Act defines an operator as "any owner, lessee, or other person who operates, controls, or supervises a coal mine \* \* \*." The legislative history of both the 1969 and 1972 Acts instructed the Secretary of Labor to apply this definition in a manner which would maximize the occasions on which greater operator liability, rather than Federal liability, could be established.

The 1977 amendments to the black lung provisions of the Act were motivated in significant part by the inability of the Secretary of Labor to assess coal operator liability in the vast majority of part C claims under the then existing law. This difficulty was caused primarily by the many and intricate corporate changes which characterized business in the coal industry during the late 1950's and 1960's. During this time, many large and medium size coal operators terminated their own mining operations, diversified their interests and began leasing their coal land to other operators both large and small. Many claims were received from the former employees of coal operators turned lessors, and the Department experienced considerable difficulty in assessing liability against these businesses.

In response to the difficulties encountered by the Department in assessing operator liability in lessor cases, as well as many other cases involving corporate changes, Congress established the coal tax and Black Lung Disability Benefits Trust Fund, terminating Federal liability for black lung claims, and significantly amended section 422(i) of the

Act to clearly require the payment of benefits by an operator which had undergone substantial corporate changes. In order to decrease the burden on operators and former operators, the Act established that liability would not be imposed on an operator if the miner's last employment with the operator occurred before January 1, 1970.

While the cutoff date would absolve most coal lessors of liability for their former miners, the lessor problem remained. Accordingly, in the development of the revised section 422(i), the Senate report contained the following language: "In addition, a number of business entities which previously engaged in extensive coal mining operations, although no longer directly involved in the extraction of coal, still derive substantial revenues from the leasing of coal properties \* \* \*. It was originally the intent of Congress that such entities should bear the liability for each lung disease arising out of employment in their mines." The explanation of section 422(i)(2) provides, "It is the intention of this section to require the payment of benefits by the prior operator where, for example, such operator now derives revenues from the leasing of coal mines \* \* \*." (S. Rept. 95-209, 95th Cong., 1st sess., 8-10 (1977)). The Senate amendments to section 422(i) were adopted by the Conference Committee unchanged. There can be little doubt that Congress confirmed the view held by the Department concerning the potential liability of certain lessors.

Coal mine lessors are most likely to be former operators with extensive land or mineral rights holdings or other large commercial enterprises, and some of them have the capability to mine their own coal when conditions are favorable. While few lessors exercise day-to-day control over their leased properties, standard coal leases frequently demand a specified level of production and royalties, and retain numerous rights for the lessor. Many newer leases require the lessee to obtain worker's compensation and other similar coverage for miners employed by the lessee. Many lessees are themselves substantial coal operators, and in these cases the coverage of miners under the Federal black lung program is provided by the immediate employer. Some other lessees simply ignored Federal black lung coverage requirements. Department of Labor estimates indicate that in excess of 30 percent of all active coal mine operators failed to obtain insurance coverage under the prior act.

The rules were designed in consideration of these factors, with a view towards informing coal mine lessors of the circumstances under which they might be found liable to pay benefits to either a miner formerly employed as such by the lessor or a miner employed by a lessee of the lessor.

The comments received argue that the use of the term "lessee" in section 3(d) of the act precludes the assessment of liability against a lessor. The Department does not agree. The definition extends to any owner or other person who "operates, controls or supervises a coal mine." The history of the act specifies that indicia of ownership, supervision and control may be established either "directly or indirectly." Moreover, the revised section 422(i) of the act and the explanations of that section further clarify the potential liability of a lessor in the black lung benefits context of the act. It is the opinion of the Department that a lessor of coal mines is an owner of a coal mine and,

depending upon the facts of each case, may, either directly or indirectly, supervise and control the lessee's mining of coal. Actual day-to-day supervision and control is not required by the Act.

The Department agrees that not all owners of coal lands or mineral rights could be found to be liable coal mine operators. Each case must be determined on the basis of its own facts measured against the requirements of the act.

The Department also agrees that the liability of the lessor should be secondary to that of the lessee. In order to effectuate this intent, the rules encourage lessors to require lessees to obtain Federal black lung insurance or to self insure, as a condition of any lease entered into or renewed after the effective date of this part. This type of lease provision is not now uncommon and can serve to fully relieve the lessor of any liability for a claim arising out of employment with the lessee.

#### § 725.492 Responsible operator defined.

(a) A "responsible operator" is the operator which is determined liable for the payment of benefits under this part for any period after December 31, 1973. In order for an employer to be considered a responsible operator in any case, the following shall be established:

(1) The miner's disability or death shall have arisen at least in part out of employment in or around a mine or other facility during a period when the mine or facility was operated by such operator, except as provided in § 725.493(a)(2);

(2) The operator shall have been an operator of a coal mine or other facility for any period after June 30, 1973;

(3) The miner's employment with the operator or other employer shall have included at least 1 working day (§ 725.493(b)) after December 31, 1969; and

(4) The operator or the employer shall be capable of assuming its liability for the payment of continuing benefits under this part, through any of the following means:

(i) By obtaining a policy or contract of insurance under section 423 of the act and part 726 of this subchapter; or

(ii) By qualifying as a self-insurer under section 423 of the act and part 726 of this subchapter; or

(iii) By possessing any assets that may be available for the payment of benefits under this part or through an action under subpart H of this part.

(b) In the absence of evidence to the contrary, a showing that a business or corporate entity exists shall be deemed sufficient evidence of an operator's capability of assuming liability under this part.

(c) For the purposes of determining whether an employer is or was an operator or other employer covered by the Act which may be found liable for the payment of benefits to an employee of such employer under this part, there shall be a rebuttable presumption



tion that during the course of an individual's employment such individual was regularly and continuously exposed to coal dust during the course of employment. The presumption may be rebutted by a showing that the employee was not exposed to coal dust for significant periods during such employment.

For purposes of § 725.493(a), a year of coal mine employment may be established by accumulating intermittent periods of coal mine employment.

*Comments received:* A number of comments object to the presumption of exposure as it applies in the claim of a coal mine construction employee.

*Discussion and changes:* See paragraph (a)(2) of Discussion and changes following § 725.491. No change is necessary in view of that discussion.

**§ 725.493 Criteria for identifying a responsible operator.**

(a)(1) Subject to the provisions of subparagraphs (2) and (3) of this section, and provided that the conditions of § 725.492(a)(2)-(a)(4) are met, the operator or other employer with which the miner had the most recent periods of cumulative employment of not less than 1 year, as determined in accordance with paragraph (b) of this section, shall be the responsible operator.

(2)(i) Except as otherwise provided in this paragraph, if the operator described in paragraph (a)(1) of this section was an operator of a mine or mines or the owner of the assets thereof on or after January 1, 1970, (a "prior operator") and on or after January 1, 1970, transferred such mine or mines or substantially all of the assets thereof to another operator (a "successor operator"), such successor operator shall be liable for and shall secure the payment of all benefits which would have been payable by the prior operator with respect to miners previously employed by such prior operator as if the acquisition had not occurred and the prior operator had continued to be a coal mine operator. A lessor of a coal mine may be considered a prior or successor operator in accordance with this subpart.

(ii) The stated congressional objective supporting section 422(i) of the Act is to prevent a coal operator from circumventing liability under this part by entering into corporate or other business transactions which make the assessment of liability against that operator a financial or legal impossibility. Accordingly, a prior operator under paragraph (a)(2)(i) of this section, which transfers a mine or mines or substantially all the assets thereof, shall remain primarily liable for the payment of benefits under this part predicated on employment with the prior operator if such prior operator meets the conditions of § 725.492(a)(2)

and (a)(4). If the conditions in § 725.492(a)(2) and (a)(4) are not met, the successor operator shall, if appropriate, be liable for the payment of such benefits.

(iii) Except as is provided in paragraph (a)(2)(ii) of this section, if the operator described in paragraph (a)(1) of this section is a prior operator which, on or after January 1, 1970, transferred its coal mining business or substantially all the assets thereof to a successor operator, or if such business or assets was subsequently transferred to a successor of such successor operator, such successor operator which has most recently acquired the coal mining operations in question or substantially all of the assets thereof shall be deemed the responsible operator if it meets the conditions of § 725.492(a)(2) and (a)(4). If such successor operator fails to meet such conditions, any prior operator or any operator in the chain of succession, beginning with the most recent operator, which acquired the coal mining business in question or substantially all of the assets thereof on or after January 1, 1970, and which meets the conditions of § 725.492(a)(2) and (a)(4), may be determined to be the responsible operator. Wherever possible the employer of the miner shall be considered the responsible operator. However, any successor operator may be determined to be the responsible operator with respect to a claim whether or not the miner on whose total disability or death the claim is predicated was employed by such successor operator for any period of time.

(3) For purposes of paragraph (a)(2) of this section, the following shall apply to corporate reorganizations, liquidations, and such other transactions as are enumerated in this section, occurring on or after January 1, 1970:

(i) If an operator ceases to exist by reason of a reorganization which involves a change in identity, form, or place of business or organization, however effected, the resulting entity shall be treated as the operator to which this section applies;

(ii) If an operator ceases to exist by reason of a liquidation into a parent or successor corporation, the parent or successor corporation shall be treated as the operator to which this section applies;

(iii) If an operator ceases to exist by reason of a sale of substantially all its assets, merger, consolidation, or division, the successor operator or corporation, or business entity shall be treated as the operator to which this section applies.

(4) If there is no operator which meets the conditions of paragraphs (a)(1) or (2) of this section, the responsible operator shall be considered to be the operator with which the miner

had the latest periods of cumulative employment of not less than 1 year, subject to the provisions of paragraph (a)(2) of this section and provided that the conditions of § 725.492(a)(2)-(a)(4) are met.

(5) No determination of responsibility made under paragraphs (a)(1)-(b)(4) of this section shall be construed to limit the authority of the Secretary to determine that any individual or business entity is an operator under the Act.

(6) In the event an operator or other employer is determined to be a responsible operator under the provisions of paragraph (a)(1)-(b)(4) of this section, there shall be a rebuttable presumption that the miner's pneumoconiosis arose in whole or in part out of his or her employment with such operator. Unless this presumption is rebutted, the responsible operator shall be liable to pay benefits to the claimant on account of the disability or death of the miner in accordance with this part. A miner's pneumoconiosis, or disability therefrom, shall be considered to have arisen in whole or in part out of work in or around a mine if such work contributed to or aggravated the progression or advancement of a miner's loss of ability to perform his or her regular coal mine employment or comparable employment.

(b) From the evidence presented, the identity of the operator or other employer with which the miner had the most recent periods of cumulative employment of not less than 1 year and, to the extent the evidence permits, the beginning and ending dates of such periods, shall be ascertained. For purposes of this section, a year of employment means a period of 1 year, or partial periods totalling 1 year, during which the miner was regularly employed in or around a coal mine by the operator or other employer. Regular employment may be established on the basis of any evidence presented, including the testimony of a claimant or other witnesses, and shall not be contingent upon a finding of a specific number of days of employment within a given period. However, if an operator or other employer proves that the miner was not employed by it for a period of at least 125 working days, such operator or other employer shall be determined to have established that the miner was not regularly employed for a cumulative year by such operator or employer for the purposes of paragraph (a) of this section. A "working day" means any day or part of a day for which a miner received pay for work as a miner (see § 725.202(a)).

*Comments received:* (a) A few comments reiterate concerns expressed by coal mine construction employers and coal mine lessors in connection with §§ 725.491-725.492. (b) A great many comments object to the



Department's definition of a "year." Coal mine construction employers object in particular to the applicability of the definition to them. Many other comments argue that the 150 day provision is either too long or too short or that it is simply arbitrary. *Discussion and changes:* (a) See *discussion and changes* following § 725.491. No change is necessary in consideration of that discussion.

(b) One of the most difficult questions which has arisen in connection with the Department's effort to establish workable rules to be applied in the adjudication of claims centers around the meaning of the term "one year." The term "one year" is significant in claims determinations for two reasons. First, it is necessary to establish length of employment for purposes of the presumptions contained in section 411(c) of the Act. That section sets forth various presumptions available in the case of a miner who was employed for 10, 15 or 25 years as a miner. Neither the Act nor the legislative history gives any indication of how one year of employment is to be defined.

In addition, in developing the criteria for determining the liability of a coal mine operator under the 1972 Act, the Department selected 1 year as the length of employment which would be required in order to trigger an operator's liability. There was no definition of a year in the rule issued under the 1972 Act (20 CFR § 725.311 (1976)).

Section 7(j) of S. 1538, the Senate-passed version of the 1977 amendments, contained a definition of a year which relied primarily upon four calendar quarters of coverage under Section 213 of the Social Security Act or continuous employment as a miner on the payroll of a coal company. The provision was dropped in conference.

In its effort to give some certainty to the meaning of the term "one year," the Department explored all available information. In the workers' compensation area a year has been variously defined by statute to consist of a specified number of hours or shifts worked during a calendar period. Where a year is not defined by statute, courts have considered regular, continuous, or full-time employment over a given calendar period to constitute a year. A few courts have found a year of employment even though the employment was not regular over the calendar period, so long as it was the only employment undertaken by the claimant.

The 1975 *Bureau of Mines Minerals Yearbook* (table 15) indicates that during 1975 the average number of days worked by coal miners ranged by State from 138-324 days, the national average being 228 days for underground miners and 241 for surface miners. Other sources, including Bureau of Mines data, the *Keystone Coal Industry Manual*, and coal industry figures indicate that the average number of days worked by miners in any given year from 1890-1977 ranges from 146 in 1932 to 278 in 1944. During the last 10 years the average ranges from 206 days in 1974 to 233 days in 1975 (Prepared by Bureau of Mines, Mineral Supply—Division of Fossil Fuels, Branch of Coal).

The National Bituminous Coal Wage Agreement of 1978, upon which the Department relies in defining "one year," credits a miner with a full year of service for welfare and pension fund purposes if the miner has worked 1000 or more hours (125 working days) in a calendar year. The agreement was

a product of collective bargaining between labor and industry and therefore represents a reasonable basis for the definition in these rules.

Some changes are made in the section to more clearly reflect the placement of the burden of proving the actual days worked on the operator, which is in a much better position to have the records necessary to establish proof of days worked.

The coal mine contractors have strongly objected to the application of the one-year rule to them, on the ground that their employees are not exposed to coal dust and that they will not be able to prove non-exposure during periods of coal mine construction employment. In order to avoid liability, a contractor need only prove that its employee was not exposed to coal dust for one-year period during his or her employment with the contractor. There is no limitation on the evidence which can be presented to prove non-exposure, and if the contractor's claims of non-exposure of its employees is correct, the contractor could never be found liable for any claim. If the contractor does not keep records, it may rely on the testimony of current and former employees or the testimony of the miner. While a contractor's failure to keep records of where its employees work might lead to liability in such a case, this failure is not, in the Department's opinion, a reason to invoke trust fund liability or otherwise absolve the contractor.

The contractors also point out that they will be unable to establish proof of a miner's prior employment. This problem is considered particularly acute by the contractors in view of the transient nature of coal mine construction employment. However, this issue is not relevant to this section.

#### § 725.494 Insurance coverage.

(a) Any operator which may be liable for the payment of benefits under this part shall secure such liability pursuant to section 423 of the act by:

(1) Qualifying as a self-insurer or establishing a qualified self-insurance trust as provided in part 726 of this chapter; or

(2) Insuring and keeping insured the payment of such benefits with an authorized insurance carrier or fund in accordance with the provisions of part 726 of this subchapter.

(b) A coal mine construction or transportation employer which is not also a coal mine operator shall not be required to purchase insurance or qualify as a self-insurer in accordance with this part and part 726 of this subchapter. However, such employer shall be liable for the payment of benefits to any of its employees who are exposed to coal dust in the course of their employment, if eligibility is established under this part or part 727 of this subchapter and it is determined that such employer is a responsible operator within the meaning of this part. An employer other than a coal mine operator which may be liable for the payment of benefits under this part or part 727 of this subchapter shall take such action as may be appropriate to

guarantee the discharge of such liability. In connection with the liability of an employer described in this paragraph, the deputy commissioner or other adjudication officer may require a deposit of security in accordance with § 725.606. A coal mine construction or transportation employer which also operates a coal mine or coal preparation facility shall not be excused from its obligation to purchase insurance or self-insure its potential liability under the act with respect to all covered employees, as described in paragraph (a) of this section. Any attempt by a coal mine operator to alter its corporate structure or reassign employees within such structure for the purpose of avoiding the insurance obligations of the act shall be considered void for the purpose of determining whether such operator is in compliance with the insurance requirements of the act, or is the employer of such employees.

*Comments received:* None for which a response is required.

#### § 725.495 Penalty for failure to insure.

(a) Any employer required to secure the payment of benefits under the act and § 725.494 which fails to secure such benefits shall be subject to a civil penalty to be assessed by the Secretary of Labor of not more than \$1,000 for each day during which such failure occurs; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable for such civil penalty as herein provided for the failure of such corporation to secure the payment of benefits; and such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any payments or other benefit which may accrue under the act in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of benefits as required by the act.

(b) If the Director determines that an operator has not fully discharged its insurance obligations imposed by the act, the Director shall notify the operator of its violation, and if corrective action is not taken within a reasonable time specified by the Director, the Director shall forward the case to the Chief Administrative Law Judge for appropriate proceedings. The administrative law judge assigned the case shall schedule and conduct a hearing with respect to the liability of the operator for the penalty described in this section. A penalty hearing conducted in accordance with this paragraph shall be subject to the provisions of 5 U.S.C. 554 and proceedings shall be determined in the discretion of the administrative law judge.



(c) An action may be commenced under this section at any time after information supporting such action becomes known to the Director.

(d) In determining the amount of any penalty assessed under this section, the administrative law judge shall consider the circumstances of the failure of an operator to comply with paragraph (a) of this section and shall, in the absence of mitigating circumstances, assess the maximum penalty allowed.

(e) Any penalty owed under this section shall be paid to the fund and may be enforced by the Secretary on behalf of the fund as appropriate.

(f) An appeal from a decision issued by an administrative law judge under this section shall be taken in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 553 *et seq.* The Board shall not have jurisdiction to consider an appeal of a case adjudicated under this part.

*Comments received:* None.

### Subpart G—Payment of Benefits

#### § 725.501 Payment provisions generally.

The provisions of this subpart govern the payment of benefits to claimants whose claims are approved for payment under section 415 and part C of title IV of the act or approved after review under section 435 of the act and part 727 of this subchapter.

*Comments received:* One comment recommends that a part B (Social Security Administration) beneficiary should be presumed entitled to medical benefits provided under section 11 of the act.

*Discussion and changes:* See *Discussion and changes* following § 725.701.

#### § 725.502 Manner of payment, payment periods.

(a) Benefits under the act shall be paid periodically, promptly, and directly to the person entitled thereto or his or her representative payee (see § 725.510).

(b) Benefits are payable for monthly periods and shall be paid to an eligible claimant beginning with the month during which eligibility begins and shall terminate with the month before the month during which eligibility terminates. If a claimant dies in the first month during which all requirements for eligibility are met, benefits shall be paid for that month.

(c) Except as is otherwise provided in this part, all past due benefits shall be paid during the month in which the first benefit payment is made.

*Comments received:* None.

#### § 725.503 Date from which benefits are payable.

(a) In accordance with the provisions of section 6(a) of the Longshoremen's

Act as incorporated by section 422(a) of the act, and except as provided in § 725.503A, the provisions of this section shall be applicable in determining the date from which benefits are payable to an eligible claimant.

(b) In the case of a miner who is totally disabled due to pneumoconiosis, benefits are payable to such miner beginning with the month of onset of total disability. Where the evidence does not establish the month of onset, benefits shall be payable to such miner beginning with the month during which the claim was filed, or the month during which the claimant elected review under part 727 of this subchapter.

(c) Except as is provided in part 727 of this subchapter, in the case of a survivor of a miner who died due to or while totally disabled by pneumoconiosis, benefits shall be payable beginning with the month of the miner's death, or January 1, 1974, whichever is later.

(d) No benefits shall be payable with respect to a claim filed between July 1 and December 31, 1973 (a section 415 claim), for any period of eligibility prior to July 1, 1973 (or January 1, 1974 if the claim is approved under part 727 of this subpart), nor shall any benefits be payable with respect to such claim pursuant to the provisions of section 415 of part B of title IV of the act for any period of eligibility after December 31, 1973. Where in the case of a section 415 claim, eligibility continues beyond December 31, 1973, benefits for periods of eligibility occurring after such date shall be payable under part C of title IV of the act.

(e) No benefits shall be payable with respect to a claim filed after December 31, 1973 (a part C claim), for any period of eligibility occurring before January 1, 1974.

(f) Each decision and order awarding benefits shall indicate the month from which benefits are payable to the eligible claimant.

*Comments received:* One comment urges the Department to determine the actual month of onset in every case.

*Discussion and changes:* See *Discussion and changes* following § 727.302 of this subchapter. No change is made in this section on the basis of that discussion, although it should be noted once again, that a reasonable effort will always be made to establish the month of onset.

#### § 725.503A Payments to a claimant employed as a miner.

(a) In the case of a claimant who is employed as a miner (see § 725.202(a)) at the time of a final determination of such miner's eligibility for benefits, no benefits shall be payable unless: (1) the miner's eligibility is established under section 411(c)(3) of the act; or (2) the miner terminates his or her coal mine employment within 1 year

from the date of the final determination of the claim.

(b) If the eligibility of a working miner is established under section 411(c)(3) of the act, benefits shall be payable as is otherwise provided in this part. If eligibility cannot be established under section 411(c)(3), and the miner continues to be employed as a miner in any capacity for a period of less than 1 year after a final determination of the claim, benefits shall be payable beginning with the month during which the miner ends his or her coal mine employment. If the miner's employment continues for more than 1 year after a final determination of eligibility, such determination shall be considered a denial of benefits on the basis of the miner's continued employment, and the miner may seek benefits only as provided in § 725.310, if applicable, or by filing a new claim under this part. The provisions of subparts D and E of this part shall be applicable to claims considered under this section as is appropriate.

(c) In any case where the miner returns to coal mine or comparable and gainful work, the payments to such miner shall be suspended and no benefits shall be payable (except as provided in section 411(c)(3) of the act) for the period during which the miner continues to work. If the miner again terminates employment, the deputy commissioner may require the miner to submit to further medical examination before authorizing the payment of benefits.

*Comments received:* One comment argues that a miner who stops work within 1 year from an eligibility determination should not be required to undergo additional medical examination.

*Discussion and changes:* This section permits further medical examination only if the miner stops work within 1 year from an eligibility determination, is awarded benefits and later returns to coal mine or comparable and gainful work and then again terminates his or her employment. A further medical examination may be warranted in such a case.

#### § 725.504 Payees.

Benefits may be paid, as appropriate, to a beneficiary, to a qualified dependent, or to a representative authorized under this subpart to receive payments on behalf of such beneficiary or dependent.

*Comments received:* None.

#### § 725.505 Payment on behalf of another; "legal guardian" defined.

Benefits are paid only to the beneficiary, his or her representative payee (see § 725.510) or his or her legal guardian. As used in this section, "legal guardian" means an individual who has been appointed by a court of competent jurisdiction or otherwise



appointed pursuant to law to assume control of and responsibility for the care of the beneficiary, the management of his or her estate, or both.

*Comments received:* None.

**§ 725.506 Guardian for minor or incompetent.**

An adjudication officer may require that a legal guardian or representative be appointed to receive benefit payments payable to any person who is mentally incompetent or a minor and to exercise the powers granted to, or to perform the duties otherwise required of such person under the act.

*Comments received:* None.

**§ 725.510 Representative payee.**

(a) If the deputy commissioner determines that the best interests of a beneficiary are served thereby, the deputy commissioner may certify the payment of such beneficiary's benefits to a representative payee.

(b) Before any amount shall be certified for payment to any representative payee for or on behalf of a beneficiary, such representative payee shall submit to the deputy commissioner such evidence as may be required of his or her relationship to, or his or her responsibility for the care of, the beneficiary on whose behalf payment is to be made, or of his or her authority to receive such a payment. The deputy commissioner may, at any time thereafter, require evidence of the continued existence of such relationship, responsibility, or authority. If a person requesting representative payee status fails to submit the required evidence within a reasonable period of time after it is requested, no further payments shall be certified to him or her on behalf of the beneficiary unless the required evidence is thereafter submitted.

(c) All benefit payments made to a representative payee shall be available only for the use and benefit of the beneficiary, as defined in § 725.511.

*Comments received:* None.

**§ 725.511 Use and benefit defined.**

(a) Payments certified to a representative payee shall be considered as having been applied for the use and benefit of the beneficiary when they are used for the beneficiary's current maintenance—i.e., to replace current income lost because of the disability of the beneficiary. Where a beneficiary is receiving care in an institution, current maintenance shall include the customary charges made by the institution and charges made for the current and foreseeable needs of the beneficiary which are not met by the institution.

(b) Payments certified to a representative payee which are not needed

for the current maintenance of the beneficiary, except as they may be used under § 725.512, shall be conserved or invested on the beneficiary's behalf. Preferred investments are U.S. savings bonds which shall be purchased in accordance with applicable regulations of the U.S. Treasury Department (31 CFR Part 315). Surplus funds may also be invested in accordance with the rules applicable to investment of trust estates by trustees. For example, surplus funds may be deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association if the account is either federally insured or is otherwise insured in accordance with State law requirements. Surplus funds deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association must be in a form of account which clearly shows that the representative payee has only a fiduciary, and not a personal, interest in the funds. The preferred forms of such accounts are as follows:

Name of beneficiary \_\_\_\_\_  
by (Name of representative payee) representative payee,  
or (Name of beneficiary)  
by (Name of representative payee) trustee.  
U.S. savings bonds purchased with surplus funds by a representative payee for an incapacitated adult beneficiary should be registered as follows: (Name of beneficiary) (Social Security No.), for whom (Name of payee) is representative payee for black lung benefits.

*Comments received:* None.

**§ 725.512 Support of legally dependent spouse, child, or parent.**

If current maintenance needs of a beneficiary are being reasonably met, a relative or other person to whom payments are certified as representative payee on behalf of the beneficiary may use part of the payments so certified for the support of the legally dependent spouse, a legally dependent child, or a legally dependent parent of the beneficiary.

*Comments received:* None.

**§ 725.513 Accountability; transfer.**

(a) The deputy commissioner may require a representative payee to submit periodic reports including a full accounting of the use of all benefit payments certified to a representative payee. If a requested report or accounting is not submitted within the time allowed, the deputy commissioner shall terminate the certification of the representative payee and thereafter payments shall be made directly to the beneficiary. A certification which is terminated under this section may be reinstated for good cause, provided that all required reports are supplied to the deputy commissioner.

(b) A representative payee who has conserved or invested funds from payments under this part shall, upon the direction of the deputy commissioner, transfer any such funds (including interest) to a successor payee appointed by the deputy commissioner or, at the option of the deputy commissioner, shall transfer such funds to the Office for recertification to a successor payee or the beneficiary.

*Comments received:* None.

**§ 725.514 Certification to dependent of augmentation portion of benefit.**

(a) If the basic benefit of a miner or of a surviving spouse is augmented because of one or more dependents, and it appears to the deputy commissioner that the best interests of such dependent would be served thereby, or that the augmented benefit is not being used for the use and benefit (as defined in this subpart) of the augmentee, the deputy commissioner may certify payment of the amount of such augmentation (to the extent attributable to such dependent) to such dependent directly, or to a legal guardian or a representative payee for the use and benefit of such dependent.

(b) Any request to the deputy commissioner to certify separate payment of the amount of an augmentation in accordance with paragraph (a) of this section shall be in writing on such form and in accordance with such instructions as are prescribed by the Office.

(c) The deputy commissioner shall specify the terms and conditions of any certification authorized under this section and may terminate any such certification where appropriate.

(d) Any payment made under this section, if otherwise valid under the Act, is a complete settlement and satisfaction of all claims, rights, and interests in and to such payment, except that such payment shall not be construed to abridge the rights of any party to recoup any overpayment made.

*Comments received:* None.

**§ 725.515 Assignment and exemption from claims of creditors.**

Except as provided by the act and this part, no assignment, release, or commutation of benefits due or payable under this part shall be valid, and all benefits shall be exempt from claims of creditors and from levy, execution, and attachment or other remedy or recovery or collection of a debt, which exemption may not be waived.

*Comments received:* None.



## BENEFIT RATES

## § 725.520 Computation of benefits.

(a) *Basic rate.* The amount of benefits payable to a beneficiary for a month is determined, in the first instance, by computing the "basic rate." The basic rate is equal to 50 percent of the minimum monthly payment to which a totally disabled Federal employee in Grade GS-2 would be entitled for such month under the Federal Employees' Compensation Act, Chapter 81, Title 5, United States Code. That rate for a month is determined by:

(1) Ascertaining the lowest annual rate of pay (step 1) for Grade GS-2 of the General Schedule applicable to such month (see 5 U.S.C. 5332);

(2) Ascertaining the monthly rate thereof by dividing the amount determined in paragraph (a)(1) of this section by 12;

(3) Ascertaining the minimum monthly payment under the Federal Employees' Compensation Act by multiplying the amount determined in paragraph (a)(2) of this section by 0.75 (that is, by 75 percent) (see 5 U.S.C. 8112); and

(4) Ascertaining the basic rate under the act by multiplying the amount determined in paragraph (a)(3) of this section by 0.50 (that is, by 50 percent).

(b) *Basic benefit.* When a miner or surviving spouse is entitled to benefits for a month for which he or she has no dependents who qualify under this part and when a surviving child of a miner or spouse, or a parent, brother, or sister of a miner, is entitled to benefits for a month for which he or she is the only beneficiary entitled to benefits, the amount of benefits to which such beneficiary is entitled is equal to the basic rate as computed in accordance with this section (raised, if not a multiple of 10 cents, to the next higher multiple of 10 cents). This amount is referred to as the "basic benefit."

(c) *Augmented benefit.* (1) When a miner or surviving spouse is entitled to benefits for a month for which he or she has one or more dependents who qualify under this part, the amount of benefits to which such miner or surviving spouse is entitled is increased. This increase is referred to as an "augmentation."

(2) The benefits of a miner or surviving spouse are augmented to take account of a particular dependent beginning with the first month in which such dependent satisfies the conditions set forth in this part, and continues to be augmented through the month before the month in which such dependent ceases to satisfy the conditions set forth in this part, except in the case of a child who qualifies as a dependent because he or she is a student. In the latter case, such

benefits continue to be augmented through the month before the first month during no part of which he or she qualifies as a student.

(3) The basic rate is augmented by 50 percent for one such dependent, 75 percent for two such dependents, and 100 percent for three or more such dependents.

(d) *Survivor benefits.* As used in this section, "survivor" means a surviving child of a miner or surviving spouse, or a surviving parent, brother, or sister of a miner, who establishes entitlement to benefits under this part.

(e) *Computation and rounding.* (1) Any computation prescribed by this section is made to the third decimal place.

(2) Monthly benefits are payable in multiples of 10 cents. Therefore, a monthly payment of amounts derived under paragraph (c)(3) of this section which is not a multiple of 10 cents is increased to the next higher multiple of 10 cents.

(3) Since a fraction of a cent is not a multiple of 10 cents, such an amount which contains a fraction in the third decimal place is raised to the next higher multiple of 10 cents.

(f) *Eligibility based on the coal mine employment of more than one miner.* Where an individual, for any month, is entitled (and/or qualifies as a dependent for purposes of augmentation of benefits) based on the disability or death due to pneumoconiosis arising out of the coal mine employment of more than one miner, the benefit payable to or on behalf of such individual shall be at a rate equal to the highest rate of benefits for which entitlement is established by reason of eligibility as a beneficiary, or by reason of his or her qualification as a dependent for augmentation of benefit purposes.

*Comments received:* None.

## § 725.521 Commutation of payments; lump sum awards.

(a) Whenever the deputy commissioner determines that it is in the interest of justice, the liability for benefits or any part thereof as determined by a final adjudication, may, with the approval of the Director, be discharged by the payment of a lump sum equal to the present value of future benefit payments commuted, computed at 4 percent true discount compounded annually.

(b) Applications for commutation of future payments of benefits shall be made to the deputy commissioner in the manner prescribed by the deputy commissioner. If the deputy commissioner determines that an award of a lump sum payment of such benefits would be in the interest of justice, he or she shall refer such application, together with the reasons in support of

such determination, to the Director for consideration.

(c) The Director shall, in his or her discretion, grant or deny the application for commutation of payments. Such decision may be appealed to the Benefits Review Board.

(d) The computation of all commutations of such benefits shall be made by the OWCP. For this purpose the file shall contain the date of birth of the person on whose behalf commutation is sought, as well as the date upon which such commutation shall be effective.

(e) For purposes of determining the amount of any lump sum award, the probability of the death of the disabled miner and/or other persons entitled to benefits before the expiration of the period during which he or she is entitled to benefits, shall be determined in accordance with the most current United States Life Tables, as developed by the Department of Health, Education, and Welfare, and the probability of the remarriage of a surviving spouse shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

(f) In the event that an operator or carrier is adjudicated liable for the payment of benefits, such operator or carrier shall be notified of and given an opportunity to participate in the proceedings to determine whether a lump sum award shall be made. Such operator or carrier shall, in the event a lump sum award is made, tender full and prompt payment of such award to the claimant as though such award were a final payment of monthly benefits. Except as provided in paragraph (g) of this section, such lump sum award shall forever discharge such operator or carrier from its responsibility to make monthly benefit payments under the act to the person who has requested such lump-sum award. In the event that an operator or carrier is adjudicated liable for the payment of benefits, such operator or carrier shall not be liable for any portion of a commuted or lump sum award predicated upon benefits due any claimant prior to January 1, 1974.

(g) In the event a lump-sum award is approved under this section, such award shall not operate to discharge an operator carrier, or the Fund from any responsibility imposed by the act for the payment of medical benefits to an eligible miner.

*Comments received:* (a) A number of comments urge deletion of this section on the grounds that lump sum awards are not appropriate in black lung claims. (b) A few comments urge the Department to adopt Section 8 of the Longshoremen's Act which allows the parties to settle the claim for less



than the full discounted value of future benefits.

**Discussion and changes:** (a) Section 14(j) of the Longshoremen's Act, which is incorporated by the Black Lung Act, authorizes the deputy commissioner to approve lump-sum awards. While no lump-sum award has ever been approved in connection with a black lung claim, the Department does not agree that the statutorily authorized possibility of obtaining a lump-sum award should be absolutely foreclosed.

(b) The authority to approve a settlement of a claim for less than its full discounted future value is contained in section 8 of the Longshoremen's Act. That section is not incorporated for use in the black lung program, and the Department is not convinced by the comments that any settlement procedure is otherwise appropriate for these rules.

**§ 725.522 Payments prior to final adjudication.**

(a) Unless a stay of payments is ordered by the Board or appropriate court under section 21 of the LHWCA, the payment of benefits to a claimant who has been determined eligible therefor by a deputy commissioner, administrative law judge, the Board, or a court shall commence within no more than 30 days following an initial determination of eligibility by such deputy commissioner, or the filing of an award of benefits by such administrative law judge, Board, or court, notwithstanding the pendency of further proceedings before an administrative law judge or an appeal to the Board or court.

(b) If an operator or carrier has been initially determined liable for the payment of benefits to an eligible claimant by the deputy commissioner (see § 725.420), or ordered to pay benefits by an administrative law judge, the Board, or an appropriate court, and such operator or carrier fails or refuses to commence the payment of benefits (including all past due benefits and medical expenses) within the 30-day period specified in paragraph (a) of this section, the fund shall commence the payments due and owing and shall continue such payments as appropriate. In the event that the fund undertakes the payment of benefits on behalf of an operator or carrier, the provisions of §§ 725.601-725.608 shall be applicable to such operator or carrier.

(c) If benefit payments are commenced prior to the final adjudication of the claim and it is later determined by an administrative law judge, the Board, or court that the claimant was ineligible to receive such payments, such payments shall be considered overpayments pursuant to § 725.540 of this subpart which may be recovered in accordance with the provisions of this subpart.

**Comments received:** (a) A few comments argue that no cause for a stay of payments

is appropriate. (b) One comment recommends that an operator should be allowed to recoup payments made prior to final adjudication from the fund, if an earlier determination of eligibility is reversed.

**Discussion and changes:** (a) A stay of payments may be authorized by the Board in accordance with the provisions of section 21 of the Longshoremen's Act. While stays are rarely, if ever, granted, the Department does not think it appropriate to foreclose the possibility that an operator might obtain a stay if proper grounds for a stay are present. It should be noted that courts have refused to find that difficulty or even impossibility of obtaining reimbursement from a claimant constitutes irreparable harm sufficient to support a stay of payments.

(b) If an operator is determined liable for the payment of benefits to a claimant prior to final adjudication, the Act and the rules require the operator to begin the payment of benefits prior to final adjudication, notwithstanding the possibility that the operator may ultimately prevail on the merits. Any operator which refuses to undertake these payments shall, in addition to the payments due and past due, be liable for the payment of penalties, interest, and the claimant's attorney's fees and costs, in most instances. It is the policy of the Act that operators must bear the risk of overpayments. The trust fund is not, and can in no way be construed as, the insurer of the risks involved in an operator's legal obligation to make payments in a timely fashion. The fund is not intended to be used, nor is it funded, for this purpose. If an operator makes an overpayment to a claimant it, like the fund, must seek reimbursement from the claimant.

**SPECIAL PROVISIONS FOR OPERATOR PAYMENTS**

**§ 725.530 Operator payments; generally.**

(a) An operator or carrier which has been determined liable for the payment of benefits to a claimant by the deputy commissioner, or ordered to pay such benefits by an administrative law judge, the Board, or a court, or an operator who has agreed that it is liable for the payment of benefits to a claimant, shall commence the payment of benefits (including past due benefits, medical costs, penalties and interest, if any) within 30 days of such determination, order, or agreement. Thereafter, monthly benefit payments shall be made for the duration of the claimant's eligibility. Arrangements for the payment of medical costs shall be made by such operator or carrier in accordance with the provisions of subpart I of this part.

(b) Benefit payments made by an operator or carrier shall be made directly to the person entitled thereto or a representative payee if authorized by the deputy commissioner. The payment of a claimant's attorney's fee, if any is awarded, shall be made directly to such attorney. Reimbursement of the fund, including interest, shall be paid directly to the Secretary on behalf of the fund.

**Comments received:** A few comments express concern that no sanction is set forth for the failure of an operator to make payments in accordance with this section.

**Discussion and changes:** Other sections of these rules specify the sanctions imposed if an operator refuses to make timely payments and the obligation of the fund to make payments on behalf of an operator under certain circumstances.

**§ 725.531 Receipt for payment.**

Any individual receiving benefits under the act in his or her own right, or as a representative payee, or as the duly appointed agent for the estate of a deceased beneficiary, shall execute receipts for benefits paid by any operator which shall be produced by such operator for inspection whenever the deputy commissioner requires. A canceled check shall be considered adequate receipt of payment for purposes of this section. No operator or carrier shall be required to retain receipts for payments made for more than 5 years after the date on which such receipt was executed.

**Comments received:** (a) Comments recommend that a canceled check should constitute adequate receipt for payment. (b) One comment notes that there is no time limitation on the retention of receipts and suggests that an operator should be allowed to dispose of receipts after 5 years.

**Discussion and changes:** (a) The Department agrees that canceled checks constitute adequate receipt of payment and a clarifying change is made.

(b) The Department agrees that operators should not be required to retain receipts of payment for an indefinite time. The 5-year recommendation is adopted.

**§ 725.532 Suspension, reduction, or termination of payments.**

(a) No suspension, reduction, or termination in the payment of benefits is permitted unless authorized by the deputy commissioner, administrative law judge, Board, or court. No suspension, reduction, or termination shall be authorized except upon the occurrence of an event which terminates a claimant's eligibility for benefits (see subpart B of this part) or as is otherwise provided in this subpart (see also §§ 725.533-725.546).

(b) Any unauthorized suspension in the payment of benefits by an operator or carrier shall be treated as provided in subpart H.

(c) Unless suspension, reduction, or termination of benefits payments is required by an administrative law judge, the Benefits Review Board or a court, the deputy commissioner, after receiving notification of the occurrence of an event that would require the suspension, reduction, or termination of benefits, shall follow the procedures for the determination of claims set forth in subparts D and E.

**Comments received:** One comment recommends that there should be no suspension



of benefits allowed without prior notice and hearing.

*Discussion and changes:* No ex parte suspension of benefits is authorized by this section.

#### INCREASES AND REDUCTIONS OF BENEFITS

##### § 725.533 Modification of benefits amounts; general.

(a) Under certain circumstances the amount of monthly benefits as computed in § 725.520 or lump-sum award (§ 725.521) shall be modified to determine the amount actually to be paid to a beneficiary. With respect to any benefits payable for all periods of eligibility after January 1, 1974, a reduction of the amount of benefits payable shall be required on account of:

(1) Any compensation or benefits received under any State workers' compensation law because of death or partial or total disability due to pneumoconiosis; or

(2) Any compensation or benefits received under or pursuant to any Federal law including part B of title IV of the act because of death or partial or total disability due to pneumoconiosis; or

(3) In the case of benefits payable to a parent, brother, or sister, the excess earnings from wages and from net earnings from self-employment (see § 410.530 of this title) of such parent, brother, or sister, respectively; or

(4) The fact that a claim for benefits from an additional beneficiary is filed, or that such claim is effective for a payment during the month of filing, or a dependent qualifies under this part for an augmentation portion of a benefit of a miner or widow for a period in which another dependent has previously qualified for an augmentation.

(b) With respect to periods of eligibility occurring after June 30, 1973, but before January 1, 1974, benefits shall be reduced in months of eligibility occurring during such period only:

(1) By an amount equal to any payment received under the workers' compensation, unemployment compensation, or disability insurance laws of any State on account of the disability or death of the miner due to pneumoconiosis; and

(2) On account of excess earnings under section 203 (b) through (l) of the Social Security Act; and

(3) For failure to report earnings from work in employment and self-employment within the prescribed period of time; and

(4) By reason of the fact that a claim for benefits from an additional beneficiary is filed, or that such a claim is effective for a month prior to the month of filing, or a dependent qualifies under this part or this chapter for an augmentation portion of a benefit of a miner or surviving spouse

for a month for which another dependent has previously qualified for an augmentation.

(c) With respect to claims filed between July 1 and December 31, 1973, and paid for periods of eligibility occurring during such period, there shall be no retroactive adjustment of benefits paid in light of the amendments enacted by the Black Lung Benefits Reform Act of 1977 insofar as such amendments affect events which cause a reduction in benefits.

(d) An adjustment in a beneficiary's monthly benefit may be required because an overpayment or underpayment has been made to such beneficiary (see §§ 725.540-725.546).

(e) A suspension of a beneficiary's monthly benefits may be required when the Office has information indicating that reductions on account of excess earnings may reasonably be expected.

(f) Monthly benefit rates are payable in multiples of 10 cents. Any monthly benefit rate which, after the applicable computations, augmentations, and reductions is not a multiple of 10 cents, is increased to the next higher multiple of 10 cents. Since a fraction of a cent is not a multiple of 10 cents, a benefit rate which contains such a fraction in the third decimal is raised to the next higher multiple of 10 cents.

(g) Any individual entitled to a benefit, who is aware of any circumstances which could affect entitlement to benefits, eligibility for payment, or the amount of benefits, or result in the termination, suspension, or reduction of benefits, shall promptly report these circumstances to the Office. The Office may at any time require an individual receiving, or claiming entitlement to, benefits, either on his or her own behalf or on behalf of another, to submit a written statement giving pertinent information bearing upon the issue of whether or not an event has occurred which would cause such benefit to be terminated, or which would subject such benefit to reductions or suspension under the provisions of the Act. The failure of an individual to submit any such report or statement, properly executed, to the Office shall subject such benefit to reductions, suspension, or termination as the case may be.

*Comments received:* (a) One comment requests clarification of the applicability of the modification provisions to lump sum awards. (b) One comment requests clarification of a claimant's right to a hearing before suspension or termination of benefits.

*Discussion and changes:* (a) The Department agrees that lump sum awards are subject to the act's offsets and a clarifying change is made.

(b) See § 725.532(c) and the *Discussion and changes* following that section.

##### § 725.534 Reduction of State benefits.

No benefits under section 415 of part B of title IV of the Act shall be payable to the residents of a State which, after December 31, 1969, reduces the benefits payable to persons eligible to receive benefits under section 415 of the Act under State laws applicable to its general work force with regard to workers' compensation (including compensation for occupational disease), unemployment compensation, or disability insurance benefits which are funded in whole or in part out of employer contributions.

*Comments received:* None.

##### § 725.535 Reduction; receipt of State or Federal benefit.

(a) As used in this section the term "State or Federal benefit" means a payment to an individual on account of total or partial disability or death due to pneumoconiosis only under State or Federal laws relating to workers' compensation. With respect to a claim for which benefits are payable for any month between July 1 and December 31, 1973, "State benefit" means a payment to a beneficiary made on account of disability or death due to pneumoconiosis under State laws relating to workers' compensation (including compensation for occupational disease), unemployment compensation, or disability insurance.

(b) Benefit payments to a beneficiary for any month are reduced (but not below zero) by an amount equal to any payments of State or Federal benefits received by such beneficiary for such month.

(c) Where a State or Federal benefit is paid periodically but not monthly, or in a lump sum as a commutation of or a substitution for periodic benefits, the reduction under this section is made at such time or times and in such amounts as the Office determines will approximate as nearly as practicable the reduction required under paragraph (b) of this section. In making such a determination, a weekly State or Federal benefit is multiplied by 4½ and a biweekly benefit is multiplied by 2½ to ascertain the monthly equivalent for reduction purposes.

(d) Amounts paid or incurred or to be incurred by the individual for medical, legal, or related expenses in connection with this claim for State or Federal benefits (defined in paragraph (a) of this section) are excluded in computing the reduction under paragraph (b) of this section, to the extent that they are consistent with State or Federal Law. Such medical, legal, or related expenses may be evidenced by the State or Federal benefit awards, compromise agreement, or court order in the State or Federal benefit pro-



ceedings, or by such other evidence as the Office may require. Such other evidence may consist of:

(1) A detailed statement by the individual's attorney, physician, or the employer's insurance carrier; or

(2) Bills, receipts, or canceled checks; or

(3) Other evidence indicating the amount of such expenses; or

(4) Any combination of the foregoing evidence from which the amount of such expenses may be determinable. Such expenses shall not be excluded unless established by evidence as required by the Office.

*Comments received:* One comment argues that if an offset exceeds the amount of benefits payable under the Act in a given month, these should be a carryover of the excess to offset amounts applied in future months.

*Discussion and changes:* The purpose of the Act is to guarantee minimum monthly benefits to eligible persons who, because of the effects of black lung disease, are in need of financial assistance in meeting ordinary living expenses. The Act is not intended to, and does not set monthly or lifetime maximum benefit levels to which a claimant might be entitled from all sources. The primary concern of Congress, that eligible persons be provided with assistance in meeting monthly living costs, would be subverted if the comment were accepted.

**§ 725.536 Reductions; excess earnings.**

In the case of a surviving parent, brother, or sister, benefit payments are reduced as appropriate by an amount equal to the deduction which would be made with respect to excess earnings under the provisions of sections 203 (b), (f), (g), (h), (j), and (l) of the Social Security Act (42 U.S.C. 403 (b), (f), (g), (h), (j), and (l)), as if such benefit payments were benefits payable under section 202 of the Social Security Act (42 U.S.C. 402) (see §§ 404.428-404.456 of this title).

*Comments received:* None.

**§ 725.537 Reductions; retroactive effect of an additional claim for benefits.**

Beginning with the month in which a person other than a miner files a claim and becomes entitled to benefits, the benefits of other persons entitled to benefits with respect to the same miner, are adjusted downward, if necessary, so that no more than the permissible amount of benefits (the maximum amount for the number of beneficiaries involved) will be paid.

*Comments received:* None.

**§ 725.538 Reductions; effect of augmentation of benefits based on subsequent qualification of individual.**

(a) Ordinarily, a written request that the benefits of a miner or surviving spouse be augmented on account of a qualified dependent is made as part of

the claim for benefits. However, it may also be made thereafter.

(b) In the latter case, beginning with the month in which such a request is filed on account of a particular dependent and in which such dependent qualifies for augmentation purposes under this part, the augmented benefits attributable to other qualified dependents (with respect to the same miner or surviving spouse), if any, are adjusted downward, if necessary, so that the permissible amount of augmented benefits (the maximum amount for the number of dependents involved) will not be exceeded.

(c) Where, based on the entitlement to benefits of a miner or surviving spouse, a dependent would have qualified for augmentation purposes for a prior month of such miner's or surviving spouse's entitlement had such request been filed in such prior month, such request is effective for such prior month. For any month before the month of filing such request, however, otherwise correct benefits previously certified by the Office may not be changed. Rather the amount of the augmented benefit attributable to the dependent filing such request in the later month is reduced for each month of the retroactive period to the extent that may be necessary. This means that for each month of the retroactive period, the amount payable to the dependent filing the later augmentation request is the difference, if any, between:

(1) The total amount of augmented benefits certified for payment for other dependents for that month, and

(2) The permissible amount of augmented benefits (the maximum amount for the number of dependents involved) payable for the month for all dependents, including the dependent filing later.

*Comments received:* None.

**§ 725.539 More than one reduction event.**

If a reduction for receipt of State or Federal benefits and a reduction on account of excess earnings are chargeable to the same month, the benefit for such month is first reduced (but not below zero) by the amount of the State or Federal benefits, and the remainder of the benefit for such month, if any, is then reduced (but not below zero) by the amount of excess earnings chargeable to such month.

*Comments received:* None.

**OVERPAYMENTS; UNDERPAYMENTS**

**§ 725.540 Overpayments.**

(a) General. As used in this subpart, the term "overpayment" includes:

(1) Payment where no amount is payable under this part;

(2) Payment in excess of the amount payable under this part;

(3) A payment under this part which has not been reduced by the amounts required by the Act (see § 725.533);

(4) A payment under this part made to a resident of a State whose residents are not entitled to benefits (see §§ 725.402 and 725.403);

(5) Payment resulting from failure to terminate benefits to an individual no longer entitled thereto;

(6) Duplicate benefits paid to a claimant on account of concurrent eligibility under this part and parts 410 or 727 of this title or as provided in § 725.309.

(b) *Overpaid beneficiary is living.* If the beneficiary to whom an overpayment was made is living at the time of a determination of such overpayment, is entitled to benefits at the time of the overpayment, or at any time thereafter becomes so entitled, no benefit for any month is payable to such individual, except as provided in paragraph (c) of this section, until an amount equal to the amount of the overpayment has been withheld or refunded.

(c) *Adjustment by withholding part of a monthly benefit.* Adjustment under paragraph (b) of this section may be effected by withholding a part of the monthly benefit payable to a beneficiary where it is determined that:

(1) Withholding the full amount each month would deprive the beneficiary of income required for ordinary and necessary living expenses;

(2) The overpayment was not caused by the beneficiary's intentionally false statement or representation, or willful concealment of, or deliberate failure to furnish, material information; and

(3) Recoupment can be effected in an amount of not less than \$10 a month and at a rate which would not unreasonably extend the period of adjustment.

(d) *Overpaid beneficiary dies before adjustment.* If an overpaid beneficiary dies before adjustment is completed under the provisions of paragraph (b) of this section, recovery of the overpayment shall be effected through repayment by the estate of the deceased overpaid beneficiary, or by withholding of amounts due the estate of such deceased beneficiary, or both.

*Comments received:* One comment recommends that there should be a hearing before an overpayment is declared.

*Discussion and changes:* See § 725.532(c) and *Discussion and changes* following that section.

**§ 725.541 Notice of waiver of adjustment or recovery of overpayment.**

Whenever a determination is made that more than the correct amount of payment has been made, notice of the provisions of section 204(b) of the Social Security Act regarding waiver



of adjustment or recovery shall be sent to the overpaid individual, to any other individual against whom adjustment or recovery of the overpayment is to be effected, and to any operator or carrier which may be liable to such overpaid individual.

*Comments received:* None.

**§ 725.542 When waiver of adjustment or recovery may be applied.**

There shall be no adjustment or recovery of an overpayment in any case where an incorrect payment has been made with respect to an individual:

- (a) Who is without fault, and where
- (b) Adjustment or recovery would either:

- (1) Defeat the purpose of title IV of the Act, or
- (2) Be against equity and good conscience.

*Comments received:* One comment suggests that a hearing should be conducted to determine the applicability of this section in any case.

*Discussion and changes:* See *Discussion and changes* following § 725.532.

**§ 725.543 Standards for waiver of adjustment or recovery.**

The standards for determining the applicability of the criteria listed in § 725.542 shall be the same as those applied by the Social Security Administration under §§ 410.561-410.561h of this title.

*Comments received:* None.

**§ 725.544 Collection and compromise of claims for overpayment.**

(a) *General effect of the Federal Claims Collection Act of 1966.* In accordance with the Federal Claims Collection Act of 1966 and applicable regulations, claims by the Office against an individual for recovery of an overpayment under this part not exceeding the sum of \$20,000, exclusive of interest, may be compromised, or collection suspended or terminated, where such individual or his or her estate does not have the present or prospective ability to pay the full amount of the claim within a reasonable time (see paragraph (c) of this section), or the cost of collection is likely to exceed the amount of recovery (see paragraph (d) of this section), except as provided under paragraph (b) of this section.

(b) *When there will be no compromise, suspension, or termination of collection of a claim for overpayment.*

(1) In any case where the overpaid individual is alive, a claim for overpayment will not be compromised, nor will there be suspension or termination of collection of the claim by the Office, if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such individual

or on the part of any other party having any interest in the claim.

(2) In any case where the overpaid individual is deceased:

(i) A claim for overpayment in excess of \$5,000 will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such deceased individual; and

(ii) A claim for overpayment, regardless of the amount, will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication that any person other than the deceased overpaid individual had a part in the fraudulent action which resulted in the overpayment.

(c) *Inability to pay claim for recovery of overpayment.* In determining whether the overpaid individual is unable to pay a claim for recovery of an overpayment under this part, the Office shall consider the individual's age, health, present and potential income (including inheritance prospects), assets (e.g., real property, savings account), possible concealment or improper transfer of assets, and assets or income of such individual which may be available in enforced collection proceedings. The Office will also consider exemptions available to such individual under the pertinent State or Federal law in such proceedings. In the event the overpaid individual is deceased, the Office shall consider the available assets of the estate, taking into account any liens or superior claims against the estate.

(d) *Cost of collection or litigative probabilities.* Where the probable costs of recovering an overpayment under this part would not justify enforced collection proceedings for the full amount of the claim, or where there is doubt concerning the Office's ability to establish its claim as well as the time which it will take to effect such collection, a compromise or settlement for less than the full amount may be considered.

(e) *Amount of compromise.* The amount to be accepted in compromise of a claim for overpayment under this part shall bear a reasonable relationship to the amount which can be recovered by enforced collection proceedings, giving due consideration to the exemption available to the overpaid individual under State or Federal law and the time which collection will take.

(f) *Payment.* Payment of the amount the Office has agreed to accept as a compromise in full settlement of a claim for recovery of an overpayment under this part shall be made within the time and in the manner set by the Office. A claim for the overpayment

shall not be considered compromised or settled until the full payment of the compromised amount has been made within the time and manner set by the Office. Failure of the overpaid individual or his or her estate to make such payment as provided shall result in reinstatement of the full amount of the overpayment less any amounts paid prior to such default.

*Comments received:* None.

**§ 725.545 Underpayments.**

(a) *General.* As used in this subpart, the term "underpayment" includes a payment in an amount less than the amount of the benefit due for such month, and nonpayment where some amount of such benefits is payable.

(b) *Underpaid individual is living.* If an individual to whom an underpayment was made is living, the deficit represented by such underpayment shall be paid to such individual either in a single payment (if he or she is not entitled to a monthly benefit or if a single payment is requested by the claimant in writing) or by increasing one or more monthly benefit payments to which such individual becomes entitled.

(c) *Underpaid individual dies before adjustment of underpayment.* If an individual to whom an underpayment was made dies before receiving payment of the deficit or negotiating the check or checks representing payment of the deficit, such payment shall be distributed to the living person (or persons) in the highest order of priority as follows:

(1) The deceased individual's surviving spouse who was either:

(i) Living in the same household with the deceased individual at the time of such individual's death; or

(ii) In the case of a deceased miner, entitled for the month of death to black lung benefits as his or her surviving spouse or surviving divorced spouse.

(2) In the case of a deceased miner or spouse his or her child entitled to benefits as the surviving child of such miner or surviving spouse for the month in which such miner or spouse died (if more than one such child, in equal shares to each such child).

(3) In the case of a deceased miner, his parent entitled to benefits as the surviving parent of such miner for the month in which such miner died (if more than one such parent, in equal shares to each such parent).

(4) The surviving spouse of the deceased individual who does not qualify under paragraph (c)(1) of this section.

(5) The child or children of the deceased individual who do not qualify under paragraph (c)(2) of this section (if more than one such child, in equal shares to each such child).



(6) The parent or parents of the deceased individual who do not qualify under paragraph (c)(3) of this section (if more than one such parent, in equal shares to each such parent).

(7) The legal representative of the estate of the deceased individual as defined in paragraph (e) of this section.

(d) *Deceased beneficiary.* In the event that a person, who is otherwise qualified to receive payments as the result of a deficit caused by an underpayment under the provisions of paragraph (c) of this section, dies before receiving payment or before negotiating the check or checks representing such payment, his or her share of the underpayment shall be divided among the remaining living person(s) in the same order or priority. In the event that there is (are) no other such person(s), the underpayment shall be paid to the living person(s) in the next lower order of priority under paragraph (c) of this section.

(e) *Definition of legal representative.* The term "legal representative," for the purpose of qualifying for receipt of an underpayment, generally means the executor or the administrator of the estate of the deceased beneficiary. However, it may also include an individual, institution or organization acting on behalf of an unadministered estate, provided the person can give the Office good acquittance (as defined in paragraph (f) of this section). The following persons may qualify as legal representative for purposes of this section, provided they can give the Office good acquittance:

- (1) A person who qualifies under a State's "small estate" statute; or
- (2) A person resident in a foreign country who under the laws and customs of that country, has the right to receive assets of the estate; or
- (3) A public administrator; or
- (4) A person who has the authority under applicable law to collect the assets of the estate of the deceased beneficiary.

(f) *Definition of "good acquittance."* A person is considered to give the Office "good acquittance" when payment to that person will release the Office from further liability for such payment.

*Comments received:* One comment suggests that any underpaid claimant should be allowed to elect payment of the deficiency in a lump sum.

*Discussion and changes:* The Department agrees and a change is made.

**§725.546 Relation to provisions for reductions or increases.**

The amount of an overpayment or an underpayment is the difference between the amount to which the beneficiary was actually entitled and the amount paid. Overpayment and underpayment simultaneously outstanding against the same beneficiary shall first

be adjusted against one another before adjustment pursuant to the other provisions of this subpart.

*Comments received:* None.

**§725.547 Applicability of overpayment and underpayment provisions to operator or carrier.**

(a) The provisions of this subpart relating to overpayments and underpayments shall be applicable to overpayments and underpayments made by responsible operators or their insurance carriers, as appropriate. However, if an overpayment has been made by an operator, the provisions of §§725.541-725.544 shall not be applicable.

(b) No operator or carrier may make an adjustment of an overpayment without prior application to, and approval by, the Office which shall exercise full supervisory authority over the adjustment of all overpayments.

(c) In any case involving either overpayments or underpayments, the Office may take any necessary action, and deputy commissioners may issue appropriate orders to protect the rights of the parties.

(d) Disputes arising out of orders so issued shall be resolved by the procedures set out in subpart E of this part.

*Comments received:* None.

**SUBPART H—ENFORCEMENT OF LIABILITY; REPORTS**

**§725.601 Enforcement generally.**

(a) The Act, together with certain incorporated provisions from the Longshoremen's and Harbor Workers' Compensation Act, contains a number of provisions which subject an operator or other employer, claimants and others to penalties for failure to comply with certain provisions of the Act, or failure to commence and continue prompt periodic payments to a beneficiary.

(b) It is the policy and intent of the Department to vigorously enforce the provisions of this part through the use of the remedies provided by the Act. Accordingly, if an operator refuses to pay benefits with respect to a claim for which the operator has been adjudicated liable, the Director shall invoke and execute the lien on the property of the operator as described in §725.603. Enforcement of this lien shall be pursued in an appropriate U.S. district court. If the Director determines that the remedy provided by §725.603 may not be sufficient to guarantee the continued compliance with the terms of an award or awards against the operator, the Director shall in addition seek an injunction in the U.S. district court to prohibit future noncompliance by the operator and such other relief as the court considers appropriate (see §725.604). If an operator unlawfully suspends or termi-

nates the payment of benefits to a claimant, the deputy commissioner shall declare the award in default and proceed in accordance with §725.605. In all cases payments in addition to compensation (see §725.607) and interest (see §725.608) shall be sought by the Director or awarded by the deputy commissioner.

(c) In certain instances the remedies provided by the Act are concurrent; that is, more than one remedy might be appropriate in any given case. In such a case, the Director shall select the remedy or remedies appropriate for the enforcement action. In making this selection, the Director shall consider the best interests of the claimant as well as those of the Fund.

*Comments received:* (a) One comment suggests that this subpart should make clear what a claimant or attorney should do in the case of a suspension or termination by an operator. (b) A few comments support the Department's approach.

*Discussion and changes:* If an operator defaults, the claimant may request the deputy commissioner to declare a default which can be pursued in a U.S. district court, or in a case where the award is final, seek relief in court in accordance with §725.604. The deputy commissioner should be notified in any case. The steps to be taken in the pursuit of court enforcement of an award are prescribed by the Federal Rules of Civil Procedure and the local rules of the court. Those rules are extensive and varied and cannot be set forth in this part.

**§725.602 Reimbursement of the fund.**

(a) In any case in which the fund has paid benefits, including medical benefits, on behalf of an operator or other employer which is determined liable therefore, or liable for a part thereof, such operator or other employer shall simultaneously with the first payment of benefits made to the beneficiary, reimburse the fund (with interest) for the full amount of all benefit payments made by the fund with respect to the claim.

(b) In any case where benefit payments have been made by the fund, the fund shall be subrogated to the rights of the beneficiary. The Secretary of Labor may, as appropriate, exercise such subrogation rights.

*Comments received:* None.

**§725.603 Payments by the fund on behalf of an operator; liens.**

(a) If an amount is paid out of the fund to an individual entitled to benefits under this part or part 727 of this subchapter on behalf of an operator or other employer which is or was required to pay or secure the payment of all or a portion of such amount (see §725.522), the operator or other employer shall be liable to the United States for repayment to the fund of the amount of benefits properly at-



tributable to such operator or other employer.

(b) If an operator or other employer liable to the fund refuses to pay, after demand, the amount of such liability, there shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such operator or other employer. The lien arises on the date on which such liability is finally determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

(c) (1) Except as otherwise provided under this section, the priority of the lien shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954.

(2) In the case of a bankruptcy or insolvency proceeding, the lien imposed under this section shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191).

(3) For purposes of applying section 6323(a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under this section and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(4) For purposes of the section, notice of the lien imposed hereunder shall be filed in the same manner as under section 6323(f) (disregarding paragraph (4) thereof) and (g) of the Internal Revenue Code of 1954.

(5) In any case where there has been a refusal or neglect to pay the liability imposed under this section, the Secretary of Labor may bring a civil action in a district court of the United States to enforce the lien of the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator, or in which it has any right, title, or interest, to the payment of such liability.

(b) The liability imposed by this paragraph may be collected at a proceeding in court if the proceeding is commenced within 6 years after the date upon which the liability was finally determined, or prior to the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such 6-year period. This period of limitation shall be suspended for any period during which the assets of the operator are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for 6 months thereafter, and for any period during which the operator is outside the United States if such period of absence is for

a continuous period of at least 6 months.

*Comments received:* None.

#### § 725.604 Enforcement of final awards.

Notwithstanding the provisions of § 725.603, if an operator or other employer or its officers or agents fails to comply with an order awarding benefits that has become final, any beneficiary of such award or the deputy commissioner may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the U.S. District Court for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such operator or other employer or its officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such operator or other employer and its officers or agents compliance with the order.

*Comments received:* None.

#### § 725.605 Defaults.

(a) Except as is otherwise provided in this part, no suspension, termination or other failure to pay benefits awarded to a claimant is permitted. If an employer found liable for the payment of such benefits fails to make such payments within 30 days after any date on which such benefits are due and payable, the person to whom such benefits are payable may, within one year after such default, make application to the deputy commissioner for a supplementary order declaring the amount of the default.

(b) If after investigation, notice and hearing as provided in subparts D and E of this part, a default is found, the deputy commissioner or the administrative law judge, if a hearing is requested, shall issue a supplementary order declaring the amount of the default, if any. In cases where a lump-sum award has been made, if the payment in default is an installment, the deputy commissioner or administrative law judge, may, in his or her discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Federal district court for the judicial district in which the operator has its principal place of business or maintains an office or for the judicial district in which the injury occurred. In case such principal place of business or office is in the District of Columbia, a copy of such supplementary order may be filed with the clerk of the U.S. District Court for the District of Columbia. Such supplementary order

shall be final and the court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. Review of the judgment may be had as in civil suits for damages at common law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later benefits order upon presentation of a certified copy thereof to the court.

(c) In cases where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the deputy commissioner shall make payment from the fund, and in addition, provide any necessary medical, surgical, and other treatment required by subpart I of this part. A defaulting employer shall be liable to the Fund for payment of the amounts paid by the fund under this section; and for the purpose of enforcing this liability, the fund shall be subrogated to all the rights of the person receiving such payments or benefits.

*Comments received:* None.

#### § 725.606 Security for the payment of benefits.

Whenever an adjudication officer deems it advisable, he or she may require any operator or other employer to make a deposit with the Treasurer of the United States to secure the prompt and convenient payment of benefits to eligible claimants. Payments may be made from such deposit, or such deposit may be returned to an operator or other employer, only upon the order of such adjudication officer. The adjudication officer shall require the deposit of security pursuant to this section in any case where an operator or other liable employer is uninsured or has failed to secure the payment of benefits.

*Comments received:* None.

#### § 725.607 Payments in addition to compensation.

(a) If any benefits payable under the terms of (1) an award by a deputy commissioner (§ 725.419(d)), (2) a decision and order filed and served by an administrative law judge (§ 725.478), or (3) a decision filed by the Board or a U.S. court of appeals, are not paid by an operator or other employer ordered to make such payments within 10 days



after such payments become due, there shall be added to such unpaid benefits an amount equal to 20 percent thereof, which shall be paid to the claimant at the same time as, but in addition to, such benefits, unless review of the order making such award is sought as provided in section 21 of the LHWCA and an order staying payments has been issued.

(b) If, on account of an operator's or other employer's failure to pay benefits as provided in paragraph (a) of this section, benefit payments are made by the fund, the eligible claimant shall nevertheless be entitled to receive such additional compensation to which he or she may be eligible under paragraph (a) of this section, with respect to all amounts paid by the fund on behalf of such operator or other employer.

(c) The fund shall not be liable for payments in addition to compensation under any circumstances.

*Comments received:* (a) Some comments request clarification of the relationship between interest payments and the 20 percent penalty. (b) One comment suggests that the Fund should not be exempt from the 20 percent penalty.

*Discussion and changes:* (a) The 20 percent penalty is required in appropriate cases where the employer does not begin the payment of benefits after the issuance of an award by the deputy commissioner, or after being ordered to pay benefits by an administrative law judge, the Board, or a court. The penalty is intended to encourage the prompt payment of benefits by operators whether or not additional proceedings are pursued. Because by the terms of section 14(f) of the Longshoremen's Act, as incorporated, the 20 percent penalty is added to compensation benefits due and owing, those additional benefits should be considered in computing the amount of interest due. A change is made in § 725.608 to clarify this result.

(b) Section 424 of the act, which sets out the obligations of the fund, explicitly exempts the fund from payment of penalties, and such obligation cannot be assumed by these rules.

#### § 725.608 Interest.

(a) If an operator or other employer fails or refuses to pay any or all benefits due under the terms of an initial determination by a deputy commissioner (§ 725.420), a decision and order filed and served by an administrative law judge (§ 725.478) or a decision filed by the Board or a United States court of appeals, including any penalty awarded in addition to benefits in accordance with § 725.607, such operator shall be liable for 6 percent simple annual interest on all past due benefits computed from the date on which such benefits were due and payable, in addition to such operator's or other employer's liability as is otherwise provided in this part. Except as provided in paragraph (b) of this section, interest payments owed under this para-

graph shall be made directly to the beneficiary.

(b) If an operator or other employer fails or refuses to pay any or all benefits due pursuant to an award of benefits or an initial determination of eligibility made by the deputy commissioner, and the Fund undertakes such payments, such operator or other employer shall be liable to the fund in an amount equal to six percent simple annual interest on all payments made by the Fund for which such operator is determined liable, computed from the first date on which such benefits are paid by the fund, in addition to such operator's liability to the fund, as is otherwise provided in this part. Interest payments owed pursuant to this paragraph shall be paid directly to the fund.

(c) The fund shall not be liable for the payment of interest under any circumstances.

*Comments received:* (a) Some comments request clarification of the relationship between interest payments and the 20 percent penalty described in § 725.607. (b) A few comments argue that the Fund should be liable for the payment of interest.

*Discussion and changes:* (a) See paragraph (a) of

*Discussion and changes* following § 725.607. A change is made to reflect that discussion.

(b) It has long been the law that an award of interest against an instrumentality of the United States, such as the fund, is not allowed unless specifically authorized by statute. There being no such authorization in the Act, despite other specific language which indicates when interest is owed to the fund (section 424(a)(6), (b)(2)), no payment of interest can be made by the Fund. See also paragraph (a) of the *Discussion and changes* following § 725.607, which contains other discussions pertinent to this matter. Conforming language changes are made in accordance with such discussion.

#### § 725.620 Failure to secure benefits; other penalties.

(a) If an operator fails to discharge its insurance obligations under the Act, the provisions of § 725.495 shall apply.

(b) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secrets, or destroys any property belonging to such employer, after one of its employees has been injured within the purview of the Act, and with intent to avoid the payment of benefits under the Act to such miner or his or her dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both. In any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable for such penalty or imprisonment as well as jointly

liable with such corporation for such fine.

(c) No agreement by a miner to pay any portion of a premium paid to a carrier by such miner's employer or to contribute to a benefit fund or department maintained by such employer for the purpose of providing benefits or medical services and supplies as required by this part shall be valid; and any employer who makes a deduction for such purpose from the pay of a miner entitled to benefits under the Act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000.

(d) No agreement by a miner to waive his or her right to benefits under the Act and the provisions of this part shall be valid.

(e) This section shall not affect any other liability of the employer under this part.

*Comments received:* None.

#### § 725.621 Reports.

(a) Upon making the first payment of benefits and upon suspension, reduction, or increase of payments, the operator or other employer responsible for making payments shall immediately notify the deputy commissioner of the action taken, in accordance with a form prescribed by the Office.

(b) Within 16 days after final payment of benefits has been made by an employer, such employer shall so notify the deputy commissioner, in accordance with a form prescribed by the Office, stating that such final payment, has been made, the total amount of benefits paid, the name of the beneficiary, and such other information as the Office deems pertinent.

(c) The Director may from time to time prescribe such additional reports to be made by operators, other employers, or carriers as the Director may consider necessary for the efficient administration of the Act.

(d) Any employer who fails or refuses to file any report required of such employer under this section shall be subject to a civil penalty not to exceed \$500 for each failure or refusal, which penalty shall be determined in accordance with the procedures set forth in § 725.495, as appropriate.

(e) No request for information or response to such request shall be considered a report for purposes of this section or the Act, unless it is so designated by the Director or by this section.

*Comments received:* None.

#### Subpart I—Medical Benefits and Vocational Rehabilitation

#### § 725.701 Availability of medical benefits.

(a) A miner who is determined to be eligible for benefits under this part or part 727 of this subchapter is entitled



to medical benefits as set forth in this subpart as of the date of his or her claim, but in no event before January 1, 1974. No medical benefits shall be provided to the survivor or dependent of a miner under this part.

(b) A responsible operator, other employer, or where there is neither, the Fund, shall furnish a miner entitled to benefits under this part with such medical, surgical, and other attendance and treatment, nursing and hospital services, medicine and apparatus, and any other medical service or supply, for such periods as the nature of the miner's pneumoconiosis and ancillary pulmonary conditions and disability require.

(c) The medical benefits referred to in paragraphs (a) and (b) of this section shall include palliative measures useful only to prevent pain or discomfort associated with the miner's pneumoconiosis or attendant disability.

(d) The costs recoverable under this subpart shall include the reasonable cost of travel necessary for medical treatment (to be determined in accordance with prevailing United States government mileage rates) and the reasonable documented cost to the miner or medical provider incurred in communicating with the employer, carrier, or deputy commissioner on matters connected with medical benefits.

*Comments received:* (a) A few comments urge that the rate of reimbursement for travel by automobile should be specified. (b) One comment recommends that fees should be awarded if a miner needs to retain representation in pursuit of medical benefits. (c) A few comments note that the proposed rules do not contain provisions implementing Section 11 of the Reform Act relating to the availability of medical benefits for Part B beneficiaries. Some of these comments urge that Part B beneficiaries should be automatically awarded medical benefits or presumed entitled thereto.

*Discussion and changes:* (a) The Department agrees that the rate of reimbursement for travel by private automobile should be specified, and this is done.

(b) A representative's fee may be awarded for services rendered in connection with a dispute over a miner's entitlement to a medical treatment benefit. If the representative is an attorney and the conditions set forth in section 28 of the Longshoremen's Act are present, the fee may be assessed against a coal mine operator. No change is necessary to clarify this result.

(c) The Department agrees that the proposed rules do not adequately treat claims for medical benefits filed under section 11 of the Reform Act. A new § 725.701A is added to correct this deficiency.

In connection with this new section some explanation is appropriate:

1. A Part B beneficiary who files for section 11 benefits does not jeopardize the prior part B award, regardless of the outcome of the section 11 claim, unless fraud or concealment in the earlier claim is revealed.

2. The interim presumption contained in 20 CFR § 727.203 is applicable to all section 11 claims.

3. All filing and adjudication rules and proceedings prescribed in this part are applicable to section 11 claims.

4. A difficult question arises in connection with the retroactive application of section 11.

Unlike the provisions relating to the review of pending and denied part B and part C claims, Congress did not specifically make section 11 benefits retroactive. It could have done so, or it could have automatically extended benefits under the part B program to include medical benefits in all previously approved claims, and authorized payments from general revenues. In such a case there would ordinarily be a presumption in law that the section was prospective only. However, section 7(a) of the Longshoremen's Act (which is incorporated by the Act) provides that in an approved claim medical benefits are to be paid "for such period as the nature of the injury . . . may require." No benefits of any kind are payable under part C (all section 11 claims are part C claims) for any period prior to January 1, 1974. These conflicts in the law cannot easily be resolved in keeping with the spirit and intent of the Act. Medical benefits, unlike monthly dollar benefits, are not provided to assist a beneficiary in meeting ordinary expenses of life by replacing wages lost as a result of black lung disease. They are provided in recognition of the principle that an injured worker is likely to require medical attention as the result of the injury and that payment for the cost of this medical attention is properly a part of whatever compensation is provided on account of the injury.

The approved part B miner/beneficiary was found to be totally disabled due to pneumoconiosis as of some date between December 31, 1969, and June 30, 1973, although this individual may well have been totally disabled due to the disease for some period of time before December 31, 1969. If medical treatment is sought or required on any occasion either before or during the term of a part B award, it is almost certain that the cost of that treatment has already been paid, either by some governmental source, private or group insurance, or out of pocket by the miner. Moreover, if there is a dispute over a claimant's entitlement to reimbursement for a medical service already rendered, it would be very difficult to resolve.

If the cost was borne out of pocket by the miner, the language and intent of the Act should be construed to allow a reimbursement of the miner on the basis of an approved section 11 claim, if the liability for the cost in question accrued on or after January 1, 1974. If the cost was borne by a public or private source, some part of the benefits provided may be attributable to premiums, taxes, or deductions paid by the miner and some other part is probably attributable to government or employer subsidies. In some instances, the public or private insurance liability would not have provided first dollar payments if the miner was the beneficiary of a workers' compensation award which required the payment of the medical treatment costs. If the Department were to adopt the view that section 11 provides full retroactive benefits for all medical treatment costs incurred on account of pneumoconiosis back to January 1, 1974

(that cut-off date for the retroactive payment of part C benefits is absolute) a number of serious difficulties would be present. The accounting, paperwork and diversion of limited resources which such an undertaking would require would be prohibitive. Approximately 200,000 miners' claims were approved under part B. In many instances, all this effort would be of no benefit to the miner, since the money paid would have to be reimbursed to the original source which paid the cost when it was incurred. The Department does not believe that Congress intended the Department to devote the considerable resources necessary to effect such a result which would be of no benefit to the individual miner and which would be significantly detrimental to the Department's efforts to promptly process and determine other claims. Moreover the cost of such an effort was not considered in the evolution of the coal tax.

If the Department adopted the view that reimbursement should be provided to the extent that the miner contributed to a public or private health insurance fund, the accounting and paperwork job to be done would be even more difficult, if not impossible. Once again, if any part of the miner's payments were made before January 1, 1974, this would not be reimbursable. It is unlikely that a miner who was totally disabled before July 1, 1973 (the relevant date in a part B approval), would have been making payments to a health insurance fund after January 1, 1974. These payments in the case of a salaried employee are almost always deducted or paid directly from wages earned. There would, therefore, be little or no benefit gained by the adoption of the more limited approach.

Accordingly, the Department has determined that section 11 benefits should be paid on a prospective basis from the date of filing with the exception that a miner may be reimbursed for out-of-pocket medical treatment expenses incurred after January 1, 1974, if documented proof of any such expense is provided.

#### § 725.701A Claims for medical benefits only under section 11 of the Reform Act.

(a) Section 11 of the Reform Act directs the Secretary of Health, Education, and Welfare to notify each miner receiving benefits under part B of title IV of the Act that he or she may file a claim for medical treatment benefits described in this subpart. Section 11 and § 725.308(b) provide that a claim for medical treatment benefits shall be filed within 6 months from the date notice was mailed, unless the period is enlarged for good cause shown. This section sets forth the rules governing the processing, adjudication, and payment of claims filed under section 11.

(b)(1) A claim filed pursuant to the notice described in paragraph (a) of this section shall be considered a claim for medical benefits only, and shall be filed, processed, and adjudicated in accordance with the provisions of this part, except as provided in this section. While a claim for medical benefits must be treated as any other claim filed under part C of title IV of the



Act, the Department shall accept the Social Security Administration's finding of entitlement as its initial determination.

(2) In the case of a part B beneficiary whose coal mine employment terminated before January 1, 1970, the Secretary shall make an immediate award of medical benefits. Where the part B beneficiary's coal mine employment terminated on or after January 1, 1970, the Secretary shall immediately authorize the payment of medical benefits and thereafter inform the responsible operator, if any, of the operator's right to contest the claimant's entitlement for medical benefits.

(c) A miner on whose behalf a claim is filed under this section (see § 725.301) must have been alive on March 1, 1978, in order for the claim to be considered.

(d) The criteria contained in subpart C of part 727 of this subchapter are applicable to claims for medical benefits filed under this section.

(e) No determination made with respect to a claim filed under this section shall affect any determination previously made by the Social Security Administration. The Social Security Administration may, however, reopen a previously approved claim if the conditions set forth in § 410.672(c) of this chapter are present. These conditions are generally limited to fraud or concealment.

(f) If medical benefits are awarded under this section, such benefits shall be payable by a responsible coal mine operator (see §§ 725.491-725.493), if the miner's last employment occurred on or after January 1, 1970, and in all other cases by the fund. An operator which may be required to provide medical treatment benefits to a miner under this section shall have the right to participate in the adjudication of the claim as is otherwise provided in this part.

(g) Any miner whose coal mine employment terminated after January 1, 1970, may be required to submit to a medical examination requested by an identified operator. The unreasonable refusal to submit to such an examination shall have the same consequences as are provided under § 725.408.

(h) If a miner is determined eligible for medical benefits in accordance with this section, such benefits shall be provided from the date of filing, except that such benefits may also include payments for any unreimbursed medical treatment costs incurred personally by such miner during the period from January 1, 1974, to the date of filing which are attributable to medical care required as a result of the miner's total disability due to pneumoconiosis. No reimbursement for health insurance premiums, taxes attributable to any public health in-

surance coverage, or other deduction or payments made for the purpose of securing third party liability for medical care costs is authorized by this section. If a miner seeks reimbursement for medical care costs personally incurred before the filing of a claim under this section, the deputy commissioner shall require documented proof of the nature of the medical service provided, the identity of the medical provider, the cost of the service, and the fact that the cost was paid by the miner, before reimbursement for such cost may be awarded.

*Comments received:* This is a new section adopted in response to comments received concerning § 725.701.

#### § 725.702 Physician defined.

The term "physician" includes only doctors of medicine (MD) and osteopathic practitioners within the scope of their practices as defined by State law. No treatment or medical services performed by any other practitioner of the healing arts is authorized by this part, unless such treatment or service is authorized and supervised both by a physician as defined in this section and the deputy commissioner.

*Comments received:* None.

#### § 725.703 Notification of right to medical benefits; authorization of treatment.

(a) Upon notification to a miner of such miner's entitlement to benefits, the Office shall provide the miner with a list of authorized treating physicians and medical facilities in the area of the miner's residence. The miner may select a physician from this list or may select another physician with approval of the Office. Where emergency services are necessary and appropriate, authorization by the Office shall not be required.

(b) The Office may, on its own initiative, or at the request of a responsible operator, order a change of physicians or facilities, but only where it has been determined that the change is desirable or necessary in the best interest of the miner. The miner may change physicians or facilities subject to the approval of the Office.

(c) If adequate treatment cannot be obtained in the area of the claimant's residence, the Office may authorize the use of physicians or medical facilities outside such area as well as reimbursement for travel expenses and overnight accommodations.

*Comments received:* One comment recommends that this section specify that payment will be made for travel and overnight accommodations.

*Discussion and changes:* The Department agrees, if adequate medical care is not available in the area of the miner's residence.

#### § 725.704 Arrangements for medical care.

(a) *Operator liability.* If an operator has been determined liable for the payment of benefits to a miner, the Office shall notify such operator or insurer of the names, addresses, and telephone numbers of the authorized providers of medical benefits chosen by an entitled miner, and shall require the operator or insurer to:

(1) Notify the miner and the providers chosen that such operator will be responsible for the cost of medical services provided to the miner on account of the miner's total disability due to pneumoconiosis;

(2) Designate a person or persons with decisionmaking authority with whom the Office, the miner and authorized providers may communicate on matters involving medical benefits provided under this subpart and notify the Office, miner and providers of such designation;

(3) Make arrangements for the direct reimbursement of providers for their services.

(b) *Fund liability.* If there is no operator found liable for the payment of benefits, the Office shall make necessary arrangements to provide medical care to the miner, notify the miner and medical care facility selected of the liability of the fund, designate a person or persons with whom the miner or provider may communicate on matters relating to medical care, and make arrangements for the direct reimbursement of the medical provider.

*Comments received:* One comment urges that a similar section be developed in those cases where medical treatment is paid by the fund.

*Discussion and changes:* This section has been revised in accordance with the comment received.

#### § 725.705 Authorization to provide medical services.

(a) Except as provided in paragraph (b) of this section, medical services from an authorized provider which are payable under § 725.701 shall not require prior approval of the Office or the responsible operator.

(b) Except where emergency treatment is required, prior approval of the Office or the responsible operator shall be obtained before any hospitalization or surgery, or before ordering an apparatus for treatment where the purchase price exceeds \$100. A request for approval of non-emergency hospitalization or surgery shall be acted upon expeditiously, and approval or disapproval will be given by telephone if a written response cannot be given within 7 days following the request. No employee of the Department of Labor, other than a deputy commissioner or the Chief, Branch of Medical Analysis and Services, DCMWC, is au-



thorized to approve a request for hospitalization or surgery by telephone.

(c) Payment for medical services, treatment, or an apparatus shall be made at no more than the rate prevailing in the community in which the providing physician, medical facility or supplier is located.

*Comments received:* A number of comments object to the requirement of prior approval in the case of nonemergency hospitalization or surgery or ordering an apparatus for treatment costing in excess of \$100, and some suggest in the alternative that an expedited approval procedure be instituted.

*Discussion and changes:* Prior approval for nonemergency services is an essential part of the Department's responsibility to administer the program. It is agreed, however, that an expedited procedure is appropriate and such a procedure is added to this section. The procedure shall not be applicable to request for permission to purchase an apparatus which costs more than \$100. Past abuses, considerable doubt concerning the usefulness of certain expensive equipment, and in some instances a potential hazard to the claimant's health, require closer review of a request to purchase an apparatus costing more than \$100.

#### § 725.706 Reports of physicians and supervision of medical care.

(a) Within 30 days following the first medical or surgical treatment provided under § 725.701, the treating physician or facility shall furnish to the Office and the responsible operator, if any, a report of such treatment.

(b) In order to permit continuing supervision of the medical care provided to the miner with respect to the necessity, character and sufficiency of any medical care furnished or to be furnished, the treating physician, facility, employer or carrier shall provide such reports in addition to those required by paragraph (a) of this section as the Office may from time to time require. Within the discretion of the deputy commissioner, payment may be refused to any medical provider who fails to submit any report required by this section.

*Comments received:* A few comments object to any provision requiring a treating physician to submit reports of treatment.

*Discussion and changes:* Supervision of medical care provided for a miner by the Act is an important part of the Department's responsibility to properly administer the Act. These reports are necessary to ensure that medical treatment benefits are provided in accordance with law. Moreover, the Department does not agree that these reporting requirements will significantly discourage qualified physicians from treating disabled miners or that filing the required reports will be particularly burdensome.

#### § 725.707 Disputes concerning medical benefits.

(a) Whenever a dispute develops concerning medical services under this part, the deputy commissioner shall

attempt to informally resolve such dispute. In this regard the deputy commissioner may, on his or her own initiative or at the request of the responsible operator order the claimant to submit to an examination by a physician selected by the deputy commissioner.

(b) If no informal resolution is accomplished, the deputy commissioner shall refer the case to the Office of Administrative Law Judges for hearing in accordance with this part. Any such hearing shall be scheduled at the earliest possible time and shall take precedence over all other requests for hearing except for prior requests for hearing arising under this section and as provided by § 727.405 of this subchapter. During the pendency of such adjudication, the Director may order the payment of medical benefits prior to final adjudication under the same conditions applicable to benefits awarded under § 725.522.

(c) In the development or adjudication of a dispute over medical benefits, the adjudication officer is authorized to take whatever action may be necessary to protect the health of a totally disabled miner.

(d) Any interested medical provider may, if appropriate, be made a party to a dispute over medical benefits.

*Comments received:* None.

#### § 725.710 Objective of vocational rehabilitation

The objective of vocational rehabilitation is the return of a miner who is totally disabled for work in or around a coal mine and who is unable to utilize those skills which were employed in the miner's coal mine employment to gainful employment commensurate with such miner's physical impairment. This objective may be achieved through a program of re-evaluation and redirection of the miner's abilities, or retraining in another occupation, and selective job placement assistance.

*Comments received:* None.

#### § 725.711 Requests for referral to vocational rehabilitation assistance.

Each miner who has been determined entitled to receive benefits under part C of title IV of the Act shall be informed by the OWCP of the availability and advisability of vocational rehabilitation services. If such miner chooses to avail himself or herself of vocational rehabilitation, his or her request shall be processed and referred by OWCP vocational rehabilitation advisors pursuant to the provisions of §§ 702.501-702.508 of this chapter as is appropriate.

Signed this 11th day of August at Washington, D.C.

RAY MARSHALL,  
Secretary of Labor.

[FR Doc. 78-23004 Filed 8-17-78; 8:45 am]

[4510-27]

### PART 727—REVIEW OF PENDING AND DENIED CLAIMS UNDER THE BLACK LUNG BENEFITS REFORM ACT OF 1977

AGENCY: Employment Standards Administration, Department of Labor.

ACTION: Final rulemaking.

**SUMMARY:** On April 25, 1978, the Department of Labor published a notice of proposed rulemaking in the *FEDERAL REGISTER* (43 FR 17765-17773) which contained detailed procedures to be applied in the prompt processing and adjudication of all previously denied and pending claims for which review by the Department of Labor is required. The notice also set forth the criteria and standards to be applied to review claims for the purpose of determining total disability or death due to black lung disease. This new part 727 establishes procedures for the processing of pending and denied claims under part C of title IV of the Federal Mine Safety and Health Act of 1977, as amended by the Black Lung Benefits Reform Act of 1977 and the Black Lung Benefits Revenue Act of 1977.

**EFFECTIVE DATE:** August 18, 1978.

**FOR FURTHER INFORMATION CONTACT:**

Robert B. Dorsey, Chief, Branch of Claims Determination, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room C-3526, NDOL Building, 200 Constitution Avenue NW., Washington, D.C. 20210, telephone 202-523-6727.

**SUPPLEMENTARY INFORMATION:** On March 1, 1978, title IV of the Federal Mine Safety and Health Act of 1977, formerly the Federal Coal Mine Health and Safety Act of 1969, which provides benefits to coal miners who are totally disabled by black lung disease and to the survivors of coal miners who died due to or while totally disabled by that disease, was significantly amended by the enactment of the Black Lung Benefits Reform Act of 1977 and the Black Lung Benefits Revenue Act of 1977. Among other things, the new Acts require a review of claims which were previously denied or are still pending, by either the Department of Health, Education,



and Welfare or the Department of Labor.

The new act also requires that less stringent standards are to be applied in the review of pending and denied claims, as well as in the consideration of new claims. It is expected that the application of these new standards will allow a greater number of victims of black lung disease to obtain benefits under the law.

Many comments were received on the proposed part 727 from black lung claimants, groups which assist claimants in obtaining benefits, claimant representatives, Members of Congress, attorneys, coal mine operators and their representatives, and coal mine construction companies and their representatives. The vast majority of comments received were substantive, detailed, and very useful to the Department.

The Department has responded to all relevant and substantive comments and has made changes in the rules where necessary. Following each final rule set forth, the Department has responded, in discussion form, to the comments received and changes made in the rules. These discussions are entitled "Comments Received" and "Discussion and Changes." Our purpose is to respond to all relevant and substantive comments and to specify those changes made in the rules. Wherever possible, comments which are essentially similar are considered together.

The discussion following each rule contained in this document shall not be considered a part of the rule and will not be published in the Code of Federal Regulations.

A few of the revisions made reflect technical, clarifying and correcting changes felt to be necessary by Department of Labor personnel.

Since these rules implement the recent amendments to title IV of the act and because of the need to immediately commence the processing and adjudication of claims for benefits, I find that good cause exists for making these rules effective immediately.

Accordingly, 20 CFR Part 727 is adopted as follows:

**Subpart A—General**

- Sec.  
727.1 Statutory provisions, purpose of this part.  
727.2 Applicability and content of this part.  
727.3 Definitions, use of terms.  
727.4 Applicability of other parts in this subchapter.

**Subpart B—Initial Review of Pending and Denied Claims**

- 727.101 Who is entitled to review.  
727.102 "Pending" and "denied" claim defined.  
727.103 Duplicate claims.

- Sec.  
727.104 Review by the Social Security Administration.  
727.105 Action by the Office, Social Security approval.  
727.106 Action by the Office, insufficient evidence for Social Security approval.  
727.107 Action by the Office, Social Security referral without prior review.  
727.108 Action by the Office, Department of Labor pending or denied claim.  
727.109 Hearings and appeals, parties.

**Subpart C—Criteria for Determining Eligibility for Benefits**

- 727.200 Basis for criteria.  
727.201 Persons entitled to benefits, dependents.  
727.202 Definition of pneumoconiosis.  
727.203 Interim presumption.  
727.204 Presumption of entitlement applicable to certain death claims.  
727.205 Effect of current coal mine employment or coal mine employment at the time of death.  
727.206 Quality standards applicable to evidence.

**Subpart D—Payment of Benefits/Liability**

- 727.300 Conditions and duration of eligibility.  
727.301 Amounts payable, other payment provisions.  
727.302 Date from which benefits are payable after review and approval.  
727.303 Claims filed under section 415 of the act.  
727.304 Liability for benefit payments.

**Subpart E—Special Review Provisions Relating to Claims Pending Before an Administrative Law Judge or the Benefits Review Board**

- 727.401 General.  
727.402 Claims pending in the Office of Administrative Law Judges.  
727.403 Claims pending before the Benefits Review Board.  
727.404 Claims pending in a U.S. Court of Appeals.  
727.405 Expedited review of claims.

AUTHORITY: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174; 30 U.S.C. 901 et seq., 902(f), 925, 932, 934, 936, 945; 33 U.S.C. 901 et seq.

**Subpart A—General**

§ 727.1 Statutory provisions, purpose of this part.

(a) Under title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, benefits were provided to coal miners and certain survivors of coal miners on account of the miners' total disability or death due to pneumoconiosis. Part B of title IV of the act as amended provided that all claims for benefits filed between December 30, 1969, and June 30, 1973, would be filed with, processed by, and paid from Federal funds by the Secretary of Health, Education, and Welfare, through the Social Security Administration. The survivor of a miner was permitted to file a claim with the Secretary of Health, Education, and Welfare under part B until

January 1, 1974, or within 6 months of the miner's death, if death occurred before January 1, 1974, or in the case of a part B beneficiary, within 6 months of the beneficiary's death. Section 415 of part B of title IV of the act provides that a claim filed by a miner between July 1 and December 31, 1973, would be filed with and processed by the Secretary of Labor and paid, if appropriate, by the Secretary of Labor from Federal funds for all periods of eligibility between July 1 and December 31, 1973. For periods of eligibility after December 31, 1973, an approved section 415 claim was to be paid by a coal mine operator found liable pursuant to the act or the Secretary of Labor as appropriate. A claim filed after December 31, 1973, was to be filed under an approved State workers' compensation law or, if no such law was available in an appropriate State, the claim was to be filed with the Secretary of Labor under part C of title IV of the act. Claims were to be adjudicated under certain provisions of the Longshoremen's and Harbor Workers' Compensation Act, as amended, 33 U.S.C. 901 et seq., and paid by a coal mine operator found liable pursuant to the act. If no such operator could be identified benefits were to be paid by the Secretary of Labor from Federal funds.

(b) The Black Lung Benefits Revenue Act of 1977 and the Black Lung Benefits Reform Act of 1977 significantly amend the provisions of title IV of the act to, among other things, establish the black lung disability trust fund (the fund) for the payment of all claims predicated upon coal mine employment which terminate prior to January 1, 1970, and for other claims for which no operator liability can be established. The fund is financed by individual coal mine operators. Other provisions of the act as amended modify the evidentiary requirements necessary to establish entitlement to benefits, eliminate certain restrictions on the filing of claims, establish penalties to be applied if a coal operator fails to meet its obligations under the act, and make technical, correcting, and other administrative or procedural and substantive changes.

(c) Section 435 of the act as amended directs the Secretary of Health, Education, and Welfare and the Secretary of Labor to undertake a review of all previously denied and pending claims in light of the amendments made by such act. The Secretary of Health, Education, and Welfare is directed to perform this review at the request of the claimant on all denied and pending claims filed under part B of title IV of the act, exclusive of those claims filed under section 415. The Secretary of Labor is directed to perform this review automatically on



all claims filed under section 415 and part C of title IV of the act, which were denied or pending as of the effective date of the Black Lung Benefits Reform Act of 1977, and in addition is required to review certain claims originally filed with the Secretary of Health, Education, and Welfare.

(d) The new section 435 contains provisions setting forth the scope of the claims review, the procedures to be followed and the consequences which accrue depending upon the results of any particular review. It is the purpose of this part to set forth and implement the provisions of section 435 as those provisions apply to the Secretary of Labor, and inform all interested parties of the manner in which a right to review will be extended with respect to all denied and pending claims for black lung benefits under the act by the Secretary of Labor.

*Comments received:* None.

#### § 727.2 Applicability and content of this part.

(a) This part is designed to apply to, and set forth the role of, the Secretary of Labor in carrying out the provisions of section 435 of the act. The action to be taken and the procedure to be followed by the Secretary of Health, Education, and Welfare and the Social Security Administration under section 435 is detailed elsewhere. This part will, however, describe what will be done by the Secretary of Health, Education, and Welfare and the Social Security Administration in general terms and will detail the responsibilities assigned to the Secretary of Labor with respect to a claim reviewed by the Secretary of Health, Education, and Welfare.

(b) This subpart A describes generally the statutory framework established to facilitate the review of all pending and denied black lung claims, the applicability and content of this part and other relevant parts contained in this Title 20 of the Code of Federal Regulations, and sets forth applicable definitions and usages.

(c) Subpart B of this part sets forth the procedures to be followed in the review of various types of claims subject to review under this part.

(d) Subpart C of this part contains the criteria to be applied in determining a claimant's eligibility for benefits under this part. Such criteria shall also be applicable to all claims for medical services filed under section 11 of the Black Lung Benefits Reform Act of 1977 (see § 725.308(b) of this subchapter), and shall also be applicable to all other claims filed under part 725 of this subpart until such time as the Secretary promulgates new criteria for determining total disability or death due to pneumoconiosis in ac-

cordance with section 402(f)(1) of the act.

(e) Subpart D of this part contains provisions relating to the liability for, and conditions governing, the payment of benefits under this part.

(f) Subpart E of this part sets forth special provisions relating to the processing of claims subject to review under this part which are within the jurisdiction of an administrative law judge or the Benefits Review Board.

*Comments received:* (1) Commentators support the requirement of paragraph (d) that the interim presumption be applied to claims for medical benefits filed by miners receiving benefits under part B of the act and to claims filed before the Department of Labor establishes new medical standards. (2) One person expressed the view that the Department should clarify what is meant by the term "the filing of a claim."

*Discussion and changes:* It is and has always been the view of the Department of Labor that a claim is "filed" when a completed claim form is submitted to the appropriate office, and this view we believe is reflected in this part and part 725 of this subchapter (see §§ 725.301-725.305 of this subchapter). No change is, therefore, necessary.

#### § 727.3 Definitions, use of terms.

Except as is otherwise provided by this part, the definitions and usages of terms contained in subpart A of part 725 of this title, as amended from time to time, shall be applicable to this part.

*Comments received:* None.

#### § 727.4 Applicability of other parts in this subchapter.

(a) *Part 725.* Part 725 of this subchapter, which sets forth: (1) The procedure for filing a claim for black lung benefits under part C of title IV of the act, (2) the procedure to be followed in the adjudication of claims so filed, (3) standards for determining whether a particular individual is a miner, or a qualified dependent or survivor of a miner, (4) the criteria to be applied in determining the liability of a coal operator or the fund for the payment of approved claims so filed, and (5) the manner in which the payment of benefits shall be made with respect to part C claims, shall not be applicable to the processing, adjudication, or payment of claims under this part unless applicability is specifically provided by part 725 or this part.

(b) *Part 718.* Part 718 of this subchapter, which contains the criteria and standards to be applied in determining whether a miner is totally disabled due to pneumoconiosis or whether a miner died due to or while totally or partially disabled by pneumoconiosis, shall not be applicable to the determination of claims under this part unless applicability is provided by part 718 or this part. Until such time as part 718 of this subchapter is re-

vised in accordance with the 1977 amendments to the act, the provisions of subpart D of part 410 of this title which are not inconsistent with the 1977 amendments to the act, shall be applicable to the adjudication of claims under this part, unless otherwise provided by this part (see subpart C of this part).

(c) *Parts 715, 717, and 720.* Parts 715, 717, and 720 of this subchapter, which parts established the procedures for the filing, processing, and payment of claims filed under section 415 of the act, are repealed and pertinent provisions of those parts which retain vitality are incorporated within part 725 of this subchapter as amended.

(d) *Part 726.* Part 726 of this subchapter, which contains provisions setting forth a coal operator's obligations to insure or self-insure its liability for the payment of benefits to certain eligible claimants, is applicable to this part insofar as it bears upon the responsibility of a coal operator to secure the payment of benefits to certain claimants who may be determined eligible for benefits under this part.

*Comments received:* None.

### Subpart B—Initial Review of Pending and Denied Claims

#### § 727.101 Who is entitled to review.

(a) *By the Secretary of HEW.* Any person who filed a claim for benefits under part B of title IV of the act, excluding miners who filed under section 415 of the act between July 1 and December 31, 1973, and whose claim was either pending or had been denied as of March 1, 1978 (see § 727.102), may upon notification by the Secretary of Health, Education, and Welfare, elect to have the claim reviewed by the Secretary of Health, Education, and Welfare.

(b) *By the Secretary of Labor.* (1) Any person who elects review by the Social Security Administration under paragraph (a) of this section and whose claim cannot be approved after such review shall have the claim reviewed by the Secretary of Labor.

(2) Any person who is eligible to have his or her claim reviewed under paragraph (a) of this section may elect to have the claim referred directly to the Secretary of Labor for review.

(3) Any person who has filed a claim for benefits under section 415 or part C of title IV of the act and whose claim was pending or had been denied (see § 727.102) on or before March 1, 1978, shall have the claim automatically reviewed by the Secretary of Labor. (But see § 727.103.)

(4) Any claimant whose claim is subject to review by the Secretary of Labor under this paragraph shall have the right to submit additional evi-



dence to the Secretary of Labor in support of such claim.

*Comments received:* One comment considered the description of the types of claims which are to be reviewed by the Secretary of HEW to be unclear.

*Discussion and changes:* The Department does not agree that the description of claims subject to HEW review is unclear. A further explanation of the procedures to be followed by the Department of HEW can be found in that Department's own regulations, 20 CFR Part 410, as amended. No change is necessary.

**§ 727.102 "Pending" and "denied" claim defined.**

(a) *Applicability.* This section defines the terms "pending" and "denied" claims for purposes of this part only, and the following definitions shall be applicable only to claims filed with the Secretary of Labor under section 415 and part C of title IV of the act.

(b) *Denied claim defined.* For the purposes of this part, a claim filed with the Secretary of Labor shall be considered a denied claim if:

(1) The claim was filed before March 1, 1978; and

(2) The claimant's entitlement to benefits has been denied for any reason by a deputy commissioner in the Office of Workers' Compensation Programs, U.S. Department of Labor, an administrative law judge assigned to determine black lung claims by the Secretary of Labor, the Benefits Review Board in the U.S. Department of Labor, or an appropriate U.S. court of appeals; and

(3) No further proceedings before a deputy commissioner, administrative law judge, the Benefits Review Board, or a U.S. court of appeals are pending; and

(4) The time has expired to seek further consideration of such denial; or

(5) The claim has been declared abandoned by a deputy commissioner or administrative law judge (see § 725.409 of this subchapter which replaces 38 FR 26059).

(c) *Pending claim defined.* For the purposes of this part and except as provided in §§ 727.402 and 727.403, a claim filed with the Secretary of Labor shall be considered a pending claim if:

(1) The claim was filed before March 1, 1978; and

(2) The claim is before a deputy commissioner, administrative law judge, the Board, or a U.S. court of appeals for consideration; or

(3) The time permitted to seek further consideration of the claim has not expired.

(d) *Withdrawn claims.* A claim for benefits which has been previously withdrawn at the request of the claimant (see § 725.306 of this subchapter) shall not be considered a pending or

denied claim for purposes of this part. Any person who has voluntarily withdrawn his or her claim from consideration may file a new claim for benefits under part 725 of this subchapter.

*Comments received:* (a) It is argued by some commentators that claims which have been considered by the Benefits Review Board or a U.S. court of appeals and which have been denied by either, and claims which have been declared abandoned, should not be subject to review under the new law. (b) Another comment urges that coal operators be allowed to submit additional evidence in connection with a reviewed claim.

*Discussion and changes:* (a) It is the opinion of the Department that all claims which are pending or have been denied (except voluntarily withdrawn claims) are automatically subject to review under the new law, regardless of the level of adjudication at which the denial took place. Moreover, an abandonment is in reality a denial in which no hearing was requested and is clearly subject to the review provisions relating to denied claims. The comments relating to these matters are, therefore, rejected. (b) An operator is allowed to submit evidence in connection with any claim first reviewed by the Secretary of HEW, with respect to which an operator has been notified of its potential liability. (§ 727.105(b)(5)). In connection with a claim reviewed by the Secretary of Labor, an operator is also allowed to submit evidence (see §§ 727.106(c), 727.107(c), 727.108(d), cross-referencing 20 CFR §§ 725.409-725.421). No changes are, therefore, necessary.

**§ 727.103 Duplicate claims.**

(a) A person who filed a claim for benefits with the Social Security Administration and whose claim has been approved by that agency and who has also filed a claim with the Secretary of Labor which was pending or had been denied as of March 1, 1978, shall be entitled to a review of such claim under this part.

(b) A person who has filed a claim with the Social Security Administration which was pending or had been denied by that agency as of March 1, 1978, and who has also filed a claim with the Secretary of Labor that has been approved, shall be entitled to elect review of the pending or denied claim by the Social Security Administration or by the Department of Labor subject to the limitation contained in paragraph (e) of this section.

(c) A person who has filed a claim both with the Social Security Administration and the Department of Labor and whose claims were either pending with or denied by both agencies as of March 1, 1978, shall have the claim reviewed by the Social Security Administration if such review is requested by the claimant. If the claim is not approved by the Social Security Administration it shall be forwarded to the Secretary of Labor for further review as provided in § 727.106. During the pendency of review proceedings by the

Social Security Administration, if any, no action shall be taken by the Secretary of Labor with respect to the claim which is pending or had been denied by the Secretary of Labor. If the claimant does not respond to notification of his or her right to review by the Social Security Administration within 6 months of such notice (see § 727.104), unless the period is enlarged for good cause shown, the Secretary of Labor shall proceed under this part to complete processing of the claim originally filed with the Secretary of Labor. If the claimant, upon notification of his or her right to review by the Social Security Administration (see § 727.104) requests that the claim originally filed with the Administration be forwarded to the Department of Labor for review, or if more than one claim has been filed with the Secretary of Labor by the same claimant, such claims shall be merged and processed with the first claim filed with the Department of Labor.

(d) A person may exercise the right of review provided in paragraph (c) of this section at the same time such person is pursuing an appeal of a previously denied part B claim under the law as it existed prior to March 1, 1978. If the part B claim is ultimately approved as a result of the appeal, the claimant must immediately notify the Secretary of Labor and, where appropriate, the coal mine operator, and all duplicate payments made under part C shall be considered an overpayment and arrangements shall be made to insure the repayment of such overpayments to the fund or an operator as appropriate.

(e) In the case of a claimant who has filed one or more claims with both the Social Security Administration and the Department of Labor, under no circumstances are duplicate benefits payable for concurrent periods of eligibility.

*Comments received:* A number of comments urge the Secretary of Labor to simultaneously review certain claims for which review by the Secretary of HEW has also been elected, particularly if special circumstances exist.

*Discussion and changes:* It is the view of the Department of Labor that the Act does not authorize the Social Security Administration and the Department of Labor to simultaneously review duplicate claims which were pending with or denied by both agencies as of March 1, 1978. The Conference Committee statement provides: The conferees also expect the Secretaries of HEW and Labor to establish a satisfactory mechanism to coordinate their responsibilities and to avoid both agencies simultaneously reviewing the claim of any claimant previously denied under part B and later denied, pending, or entitled under part C. (H. Rept. 95-864, 95th Cong., 2d sess., pp. 21-22 (1978).)

The procedures for the handling of duplicate claims set forth in this section of the



regulations are fully consistent with the intent of Congress.

Where, however, a part B claim is pending on appeal under the old law, and the claimant also elects to have the claim reviewed under section 435 of the Act, the statute does not prohibit the processing of the request for review. Nor does the statute prohibit the Department of Labor from reviewing a pending or denied part C claim at the same time the claimant is pursuing an appeal of a part B denial under the old law. A new paragraph (d) has been added to this section to reflect this view. If as a result of the review conducted pursuant to section 435 of the Act the claimant is found entitled to benefits, appropriate payments will be made either by the Black Lung Disability Trust Fund or the coal mine operator liable for the claim. The Act does not, however, permit a claimant to receive duplicate payments under both part B and part C. Therefore, if a part C beneficiary is ultimately successful in the appeal of the part B denial, the fund or the operator will cease making payments and will be entitled to reimbursement for payments made.

#### § 727.104 Review by the Social Security Administration.

(a) *Notification.* The Social Security Administration will notify each claimant who has filed a claim for benefits under part B of title IV of the Act, excluding miners who filed under section 415 of the Act, and whose claim was either pending or had been denied on or before March 1, 1978, that upon the request of the claimant such claim shall be either:

(1) Reviewed by the Social Security Administration on the basis of the evidence contained in the claimant's file, in accordance with the amendments made by the Black Lung Benefits Reform Act of 1977; or,

(2) Referred by the Social Security Administration to the Office of Workers' Compensation Programs in the Department of Labor for review based on the evidence contained in the claimant's file and any additional evidence the claimant seeks to submit, in accordance with the amendments made by the Black Lung Benefits Reform Act of 1977.

(b) *Response to notification.* Upon receipt of a claimant's response or a response on behalf of a claimant to the notice required by paragraph (a) of this section the Social Security Administration will undertake to review the claim or refer the claimant's file to the Office for processing under § 727.107. If there is no response to notification sent in accordance with paragraph (a) of this section within 6 months from the date on which notice is sent, unless the period is enlarged for good cause shown, the claimant shall be considered to have waived the right to review by the Social Security Administration. The date on which notice is sent and the date on which a claimant's response is received shall be

noted on an appropriate form by the Social Security Administration.

(c) *Change of election.* A part B claimant who has elected review by the Secretary of Labor may in writing revoke such election and elect review by the Social Security Administration at any time before being notified of the deputy commissioner's initial findings on the claim (§ 725.410 of this subchapter). If such a revocation is made, the deputy commissioner shall return the claimant's file to the Social Security Administration for appropriate processing. All documents received by the deputy commissioner, except the documents changing the claimant's election, shall be deleted from the claimant's file before it is returned to the Social Security Administration.

(d) *Social Security Administration review procedures.* Where the Social Security Administration determines that the claimant is eligible, the Administration will forward the claim file together with a copy of such determination to the Office for processing and payment in accordance with § 727.105 and shall so notify the claimant. Where it is determined that the claim cannot be approved, the Social Security Administration will transfer the claimant's file to the Office for further review in accordance with § 727.106, and shall so notify the claimant.

*Comments received:* (a) One comment recommends that the period allowed a claimant to elect HEW or Labor review should be enlarged to 1 year. (b) It has also been pointed out that there is no provision which allows or prohibits a change of that election.

*Discussion and changes:* (a) The existing provision, following the statutory language, permits a claimant 6 months to elect review of his or her claim, but also allows that period to be extended for an indefinite period for good cause shown. We think this is more favorable to the claimant than an inflexible 1 year period and accordingly, no change is necessary. (b) In view of the fact that a claimant for various reasons, including the possibility of recovering additional retroactive benefits, may upon being informed of his or her rights wish to change an earlier election to forego review of the claim by HEW, it has been determined to permit a change of election up until the time when the deputy commissioner makes initial findings with respect to the claim.

#### § 727.105 Action by the Office, Social Security approval.

(a)(1) Where the Social Security Administration determines that the claimant is eligible for benefits upon review under § 727.104(c), the claimant's file and certification of approval for payment of benefits will be forwarded to the Department of Labor. Upon receipt of the file and certification, the Office shall immediately authorize the payment of all benefits due to the claimant from the fund, in

accordance with § 725.522 of this subchapter. Such payments shall commence within not more than 30 days. Payments shall include all past due benefits, augmentation for dependents and medical expenses to the extent supported by information in the file.

(2) After authorizing payment, the deputy commissioner shall commence verification of the information in the file on which authorization of benefit payments was based. The deputy commissioner shall request current information from the claimant pertaining to any matter affecting the amount of benefits payable or any additional information which may be necessary to establish a more detailed and complete history of the miner's employment. After receipt of such information, the deputy commissioner shall determine the amount of benefits actually payable to the claimant and shall, if necessary, increase, decrease or terminate benefit payments as appropriate in accordance with subpart G of part 725 of this subchapter. The deputy commissioner shall then issue a proposed decision and order in accordance with the procedure set forth in §§ 725.418 and 725.419 of this subchapter, except as provided in paragraph (b)(1) of this section. If the information received establishes that there has been an underpayment or overpayment, benefit payments shall be corrected retroactive to January 1, 1974.

(3) If the information requested is not supplied to the deputy commissioner within 60 days following such request, unless the period is enlarged for good cause shown, the deputy commissioner shall issue an order to show cause why benefit payments should not be suspended and all benefits previously paid should not be declared an overpayment (see § 725.540 of this subchapter). If the claimant submits a satisfactory response to such order, and within a reasonable time submits sufficient evidence to allow the deputy commissioner to determine the actual amount of benefits payable, the deputy commissioner shall issue a proposed decision and order awarding benefits in accordance with §§ 725.418 and 725.419 of this subchapter except as provided in paragraph (b)(1) of this section. If there is no satisfactory response to the deputy commissioner's order to show cause in the time allotted, the deputy commissioner may issue a proposed decision and order in accordance with §§ 725.418 and 725.419 of this subchapter or proceed in accordance with § 725.409 of this subchapter. Benefit payments shall not be terminated and no overpayment shall be declared on account of an unrepresented claimant's failure to respond to a show cause order until the deputy commissioner has attempted to contact the claimant personally or by



telephone. In the case of an unrepresented claimant, a response to a show cause order may be given orally, in person or by telephone, except that such a response shall not excuse the claimant from submitting necessary information in writing.

(b)(1) If the deputy commissioner determines that there is a coal mine employer which may be liable for the payment of benefits to the claimant, the deputy commissioner shall identify and notify such operator of its possible liability as provided in § 725.412 of this subchapter, and shall proceed to adjudicate the claim in accordance with the appropriate provisions of subparts D and E of part 725 of this subchapter. The identification and notification of an operator shall be made as soon as possible after receipt of the claimant's file.

(2) An employer notified under this section shall have the right to have the claimant examined by a physician selected by such operator (see § 725.414 of this subchapter). If an employer contests the claim, the claimant may obtain and submit additional medical evidence to the deputy commissioner within the time permitted by § 725.414 of this subchapter for the submission of the employer's evidence. Evidence submitted by a claimant under this paragraph shall be paid for by the fund, if authorized by the deputy commissioner, and shall be reimbursable to the fund by the employer, if the employer is found liable for the claim (see § 725.407 of this subchapter).

(c) Except as is otherwise provided in this section, a determination of entitlement made by the Social Security Administration under this section is binding on the deputy commissioner.

(d) If it is determined by an administrative law judge, the Benefits Review Board, or a U.S. court that the determination of entitlement made by the Social Security Administration was incorrect, the payment of benefits shall terminate and any benefits paid shall be considered an overpayment subject to collection in accordance with § 725.540 of this subchapter.

*Comments received:* (a) Vigorous opposition was expressed to the Department's intention of notifying a potentially liable coal mine operator and obtaining additional payment information from claimants before beginning payments to a claimant whose claim is approved upon review by the Social Security Administration. Other comments urge quick identification of an operator. (b) Opposition was also expressed to the formality of the procedures for terminating payments to an unrepresented claimant who fails to supply requested information, and a telephone contact procedure was recommended. More specific time limits for a claimant's reply to show cause orders are also recommended.

*Discussion and changes:* (a) In developing the proposed rule, the Department was con-

cerned that because the files of claims approved by the Social Security Administration would contain only information dating prior to 1973 and would probably not contain current or adequate information on matters relating to dependency, survivorship and offsets, the actual amount of benefits payable to a claimant could not be determined without further inquiry. Moreover, the Department was concerned that the files would not contain sufficient information to permit the identification of a potentially liable coal operator. There was also reluctance to begin payment of benefits from the fund in claims where liability should properly belong to an operator, without at least notifying that operator of its potential liability for payment of benefits.

The comments received, however, persuasively argue that the law gives the Department no choice in this matter. The law mandates that benefit payments commence within 30 days of the date a claimant is found eligible for benefits by the Social Security Administration. The Department will authorize the payment of all benefits due the claimant immediately upon receipt of certification of approval from the Social Security Administration. After authorizing payment of benefits from the fund, the Department will commence verification of the information in a claimant's file upon which the amount of payments due was based. As soon as possible after receipt of a claimant's file, an attempt will be made to identify and notify a responsible operator, if any. Verification of the information upon which payment of benefits was based will be accomplished by requesting current information from the claimant, initially by telephone or personal contact where possible. In any event, written confirmation of information upon which the benefit payments amount is based will be required.

The operator is not prejudiced by this procedure since the deputy commissioner is bound by law to accept the determination of approval by the Social Security Administration (Act, section 435(a)(2)(A)), and the operator is entitled to a de novo hearing before an administrative law judge, who is not bound by that determination, and who may consider all evidence and objections. The operator will be required to reimburse the fund if found liable for the payment of benefits. Any overpayments made as a result of this procedure will be owed by the claimant to the fund. All necessary changes are reflected in the text.

(b) The Department recognizes the difficulties encountered by the unrepresented claimant and has made necessary changes to insure that personal contact will be attempted before a claimant's benefits are terminated as a result of the claimant's failure to supply requested information. The termination procedure and repayment requirements will remain in the rules to deal with the claimant who simply refuses to supply requested information. A time limit of 60 days, which may be extended for good cause, has been included with these changes.

#### § 727.106 Action by the Office, insufficient evidence for Social Security approval.

(a) In the case of a claim which has not been approved for benefits by the Social Security Administration under § 727.105, the claim shall be transferred by the Administration to the

Office and the Office shall follow the procedures set forth in this section. There shall be no further consideration of a claim described in this paragraph except as provided in this part.

(b) Upon receipt of the claimant's file from the Social Security Administration, the Office shall assign the claim to a deputy commissioner who may:

(1) Assist the claimant in obtaining additional medical evidence or request that such evidence be submitted (see §§ 725.405-725.408 of this subchapter); or

(2) Request such additional documents or information as may be necessary to establish the amount of benefits which may be payable, or to establish a more detailed and complete history of the nature and duration of the miner's employment.

(c) Based upon the evidence developed under this section, if any, and the information contained in the claimant's original file, the deputy commissioner may make an initial finding with respect to the eligibility of the claimant and shall proceed to adjudicate the claim under §§ 725.409-725.421 of this subchapter, which action may include the notification and participation of a coal mine employer and the submission of additional evidence as is appropriate.

*Comments received:* (a) One comment suggests deletion of the phrase "as appropriate" wherever it appears in this section and §§ 727.107 and 727.108. (b) One comment urges that immediate payment be made in cases for which an operator may be found liable, before the operator is allowed to participate in the determination of the claim in connection with this section and §§ 727.107 and 727.108.

*Discussion and changes:* (a) The Department disagrees. The deputy commissioners must have sufficient flexibility to take such action as is necessary to complete the adjudication of the claim. (b) The Department does not consider it proper to adjudicate a claim and award and pay benefits from the fund, absent statutory authority, such as exists in connection with a Social Security Administration approval, without permitting a coal operator, if any, to submit evidence and participate in the adjudication of the claim. In many instances the operator will be involved in the claim before sufficient evidence is present to establish a claimant's entitlement. Full and fair consideration of an operator's evidence and views is an essential element of claims proceedings, and the authorization of payments to a claimant from the fund without considering that evidence and those views would not be in keeping with the adjudicatory scheme established by Congress or the Secretary's fiduciary duties as a trustee of the fund.

#### § 725.107 Action by the Office, Social Security referral without prior review.

(a) In the case of a claim which is referred at the claimant's request by the Social Security Administration to the Office under § 727.104(a)(2) without



prior review by the Social Security Administration, the Office shall follow the procedures set forth in this section.

(b) Upon receipt of a claimant's file the claim shall be assigned to a deputy commissioner who shall examine the evidence contained in the file to determine whether the claim may be approved in light of the amendments made by the Black Lung Benefits Reform Act of 1977.

(c) If it is determined by the deputy commissioner that the evidence in the file supports a finding of entitlement to benefits the deputy commissioner may: (1) Request up-to-date information from the claimant pertaining to any matter affecting the amount of benefits payable (see subpart G of part 725 of this subchapter); and (2) request any additional information or verification which may be necessary to establish a more detailed and complete history of the miner's employment, for the purpose of determining the identity of any coal mine employer which may be liable for the payment of the claim, and for such other purposes as may be appropriate. Upon receipt of any additional information requested under this paragraph, or if the claimant fails to supply such information, the deputy commissioner may make an initial finding with respect to the eligibility of the claimant, notify a coal mine employer, if any, of its possible liability for the claim and proceed to adjudicate the claim under §§ 725.409-725.421 of this subchapter.

(d) If it is determined by the deputy commissioner that the evidence on file is insufficient to support a finding of entitlement with respect to a claim reviewed under this section, the deputy commissioner may: (1) Assist the claimant in obtaining additional medical evidence or request that such evidence be submitted (see §§ 725.405-725.408 of this subchapter); or (2) request such additional documents or information as may be necessary to establish the amount of benefits which may be payable, or to establish a more detailed and complete history of the nature and duration of the miner's employment. Based upon evidence developed under this paragraph, if any, and the information contained in the claimant's original file, the deputy commissioner may make an initial finding with respect to the eligibility of the claimant and shall proceed to adjudicate the claim under §§ 725.409-725.421 of this subchapter.

*Comments received:* See § 727.106.

**§ 727.108** Action by the Office, Department of Labor pending or denied claim.

(a) In the case of a claim filed with the Office under section 415 or Part C of Title IV of the act which is pending

or has been denied as of March 1, 1978, the Office shall follow the procedures set forth in this section.

(b) The deputy commissioner shall examine the evidence contained in the file to determine whether the claim may be approved in light of the amendments made by the Black Lung Benefits Reform Act of 1977.

(c) The deputy commissioner may: (1) request up-to-date information from the claimant pertaining to any matter affecting the amount of benefits payable (see subpart G of Part 725 of this subchapter); and (2) request any additional information or verification which may be necessary to establish a more detailed and complete history of the miner's employment, for the purpose of determining the identity of any coal mine employer which may be liable for the payment of the claim, and for such other purposes as may be appropriate. Upon receipt of any additional information requested under this paragraph, or if the claimant fails to supply such information, the deputy commissioner may notify a coal mine employer, if any, of its possible liability for the claim and proceed to adjudicate the claim under §§ 725.409-725.421 of this subchapter.

(d) If it is determined by the deputy commissioner that the evidence on file is insufficient to support a finding of entitlement with respect to a claim reviewed under this section, the deputy commissioner may: (1) assist the claimant in obtaining additional medical evidence or request that such evidence be submitted (see §§ 725.405-725.408 of this subchapter); or (2) request such additional documents or information as may be necessary to establish the amount of benefits which may be payable, or to establish a more detailed and complete history of the nature and duration of the miner's employment. Based upon the evidence developed under this paragraph, if any, and the information contained in the claimant's original file, the deputy commissioner may make an initial finding with respect to the eligibility of the claimant and shall proceed to adjudicate the claim under §§ 725.409-725.421 of this subchapter.

(e) Notwithstanding the provisions of paragraphs (a)-(d) of this section, in the case of a claim filed by a Part B beneficiary under Part C of the act prior to March 1, 1978, for such additional benefits as may be available, the Department shall accept the Social Security Administration's documented finding of entitlement as its initial determination of eligibility.

*Comments received:* See § 727.106.

**§ 727.109** Hearings and appeals, parties.

(a) If a hearing before an administrative law judge is necessary in connection with a claim reviewed under

this part, the hearing shall be conducted in accordance with the procedures set forth in subpart E of Part 725 of this subchapter. An appeal from a decision of an administrative law judge shall be considered by the Benefits Review Board in accordance with the procedures set forth in Parts 801 and 802 of this title.

(b) parties to proceedings conducted in connection with a claim reviewed under this section, matters relating to the representation of parties and the right of such representative to obtain a fee for services rendered, the powers of adjudication officers and the service of papers or documents shall be governed by the appropriate provisions contained in subparts C, D, and E of Part 725 of this subchapter.

*Comments received:* No comments for which a response is required.

### Subpart C—Criteria for Determining Eligibility for Benefits

**§ 727.200** Basis for criteria.

In enacting the Black Lung Benefits Reform Act of 1977, Congress provided that the criteria for determining whether a miner is or was totally disabled or died due to pneumoconiosis shall be no more restrictive than the criteria applicable to a claim filed with the Social Security Administration on or before June 30, 1973, under Part B of Title IV of the Act (the interim adjudicatory rules). These criteria are to be applied to claims reviewed under section 435 of the Act, to all filed reviewed under section 11 of the Black Lung Benefits Reform Act of 1977 and to new claims filed prior to the effective date of regulations to be promulgated in Part 718 of this subchapter which will establish permanent criteria, regardless of the date on which the claim is finally adjudicated. The rules promulgated in this section take into account the amendments made by the Black Lung Benefits Reform Act of 1977 and the expectations of the Congress. Accordingly, these rules provide additional standards, not available in the interim adjudicatory rules, by which a claimant can take advantage of a presumption of total disability or death due to pneumoconiosis arising out of coal mine employment.

*Comment received:* (a) Many comments were received in connection with the provisions of this subpart, especially with regard to the Department's formulation of the interim presumption contained in § 727.203. A few comments addressed to this section related to the specific provisions of § 727.203 and those will be considered in connection with that section. (b) A few comments directed specifically to this section approve the application of the interim presumption to claims for medical benefits filed under section 11 of the Reform Act and all claims filed between March 1, 1978, and the effec-



tive date of the Secretary of Labor's revised medical criteria.

**Discussion and changes:** In connection with section 11 claims and claims filed before the effective date of the Secretary's revised criteria, it should be noted that the procedures contained in Part 725 of this subchapter and not those contained in this part are applicable to the processing of such claims. Only the medical criteria for determining eligibility with respect to such claims are contained in this part.

**§ 727.201 Persons entitled to benefits, dependents.**

Benefits are provided under the Act to a miner who is totally disabled due to pneumoconiosis and to certain survivors of a miner who died due to or while totally (or in certain cases, partially) disabled by pneumoconiosis. The amount of benefits payable to a miner or survivor may be increased on account of certain dependents. For the purpose of determining whether a claimant is a miner or qualified survivor of a miner or a qualified dependent of a miner or survivor under this part, the provisions of Part 725 of this subchapter shall be applicable as appropriate.

*Comments received:* None.

**§ 727.202 Definition of pneumoconiosis.**

For the purposes of the act, "pneumoconiosis" means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosisanthro-silicosis, massive pulmonary fibrosis, progressive massive fibrosis silicosis, or silicotuberculosis arising out of coal mine employment. For purposes of this definition, a disease "arising out of coal mine employment" includes any chronic pulmonary disease resulting in respiratory or pulmonary impairment significantly related to, or aggravated by, dust exposure in coal mine employment.

*Comments received:* (a) A number of comments object to the exclusion of cancer and diseases of bacteriological or viral origin from being considered to have arisen out of dust exposure in coal mine employment. There is also some concern in this connection that benefits already awarded to persons suffering from cancer will now be terminated. Other comments approve this exclusion and argue that it should be expanded to include diseases of organic or congenital origin. (b) A few comments express the opinion that the law does not permit the payment of benefits to an individual who becomes totally disabled through aggravation of a preexisting condition as a result of exposure to coal dust. It is urged, therefore, that the term "aggravation" be removed from this section.

**Discussion and changes.** (a) The definition of pneumoconiosis is changed to delete the exclusion of cancer and diseases of bac-

teriological or viral origin. Since it is possible that a relationship between these diseases and exposure to coal mine dust may be established by medical evidence in a particular case, the Department has determined that the exclusion contained in the proposed rule is not appropriate. By deleting the exclusion, findings of a relationship between these diseases and dust exposure in coal mine employment are permitted if the medical evidence supports such findings.

The proposed rule's exclusion of cancer from the definition of pneumoconiosis was never intended to affect previously made determinations. In any event, deletion of the exclusion will relieve the concern expressed by some persons that benefits already awarded to persons suffering from cancer might be terminated.

The recommendation that the exclusion in this section be expanded to include diseases of organic or congenital origin is not accepted. Organic or congenital conditions which are themselves related to coal dust exposure may play an integral role in the development and progression of pneumoconiosis in an individual case. The presence of preexisting conditions should never be considered to prejudice the claim of a miner who suffers the consequences of pneumoconiosis at an earlier time, or more severely because of those very conditions. A contrary view would not be in keeping with the letter or spirit of the Act.

(b) The Department rejects the view that the significant aggravation of a preexisting condition by coal dust exposure should not be considered a basis for eligibility under the Act. It is a commonly agreed upon and salutary principle of workers' compensation law that an employer takes an employee with whatever underlying conditions the employee has. Accordingly, aggravation of a preexisting condition to the point of disability is considered a proper basis for awarding benefits under many compensation laws. Contrary to the commentator's argument, this is a well established principle under the Longshoremen's and Harbor Workers' Compensation Act, which Act sets the pattern for the consideration of claims under Part C of the Black Lung Benefits Act. The "aggravation" question has caused considerable confusion in the past and the Department hopes that the clarification in this section will put the matter to rest.

**§ 727.203 Interim presumption.**

(a) *Establishing interim presumption.* A miner who engaged in coal mine employment for at least 10 years will be presumed to be totally disabled due to pneumoconiosis, or to have been totally disabled due to pneumoconiosis at the time of death, or death will be presumed to be due to pneumoconiosis, arising out of that employment, if one of the following medical requirements is met:

(1) A chest roentgenogram (X-ray), biopsy, or autopsy establishes the existence of pneumoconiosis (see § 410.428 of this title);

(2) Ventilatory studies establish the presence of a chronic respiratory or pulmonary disease (which meets the requirements for duration in § 410.412(a)(2) of this title) as demonstrated by values which are equal to or

less than the values specified in the following table:

|                  | Equal to or less than— |     |
|------------------|------------------------|-----|
|                  | FEV <sub>1</sub>       | MVV |
| 67" or less..... | 2.3                    | 92  |
| 68".....         | 2.4                    | 96  |
| 69".....         | 2.4                    | 96  |
| 70".....         | 2.5                    | 100 |
| 71".....         | 2.6                    | 104 |
| 72".....         | 2.6                    | 104 |
| 73" or more..... | 2.7                    | 108 |

(3) Blood gas studies which demonstrate the presence of an impairment in the transfer of oxygen from the lung alveoli to the blood as indicated by values which are equal to or less than the values specified in the following table:

| Arterial pO <sub>2</sub><br>equal to or less than<br>(mm. Hg.) | Arterial pCO <sub>2</sub> |
|----------------------------------------------------------------|---------------------------|
| 30 or below .....                                              | 70                        |
| 31 .....                                                       | 69                        |
| 32 .....                                                       | 68                        |
| 33 .....                                                       | 67                        |
| 34 .....                                                       | 66                        |
| 35 .....                                                       | 65                        |
| 36 .....                                                       | 64                        |
| 37 .....                                                       | 63                        |
| 38 .....                                                       | 62                        |
| 39 .....                                                       | 61                        |
| 40-45 .....                                                    | 60                        |
| Above 45 .....                                                 | Any value.                |

(4) Other medical evidence, including the documented opinion of a physician exercising reasoned medical judgment, establishes the presence of a totally disabling respiratory or pulmonary impairment;

(5) In the case of a deceased miner where no medical evidence is available, the affidavit of the survivor of such miner or other persons with knowledge of the miner's physical condition, demonstrates the presence of a totally disabling respiratory or pulmonary impairment.

(b) *Rebuttal of interim presumption.* In adjudicating a claim under this subpart, all relevant medical evidence shall be considered. The presumption in paragraph (a) of this section shall be rebutted if:

(1) The evidence establishes that the individual is, in fact, doing his usual coal mine work or comparable and gainful work (see § 410.412(a)(1) of this title); or

(2) In light of all relevant evidence it is established that the individual is able to do his usual coal mine work or comparable and gainful work (see § 410.412(a)(1) of this title); or

(3) The evidence establishes that the total disability or death of the miner did not arise in whole or in part out of coal mine employment; or

(4) The evidence establishes that the miner does not, or did not, have pneumoconiosis.



(c) *Applicability of Part 718.* Except as is otherwise provided in this section, the provisions of Part 718 of this subchapter as amended from time to time, shall also be applicable to the adjudication of claims under this section.

(d) *Failure of miner to qualify under the presumption in paragraph (a) of this section.* Where eligibility is not established under this section, such eligibility may be established under part 718 of this subchapter as amended from time to time.

*Comments received:* The greatest amount of controversy in the comments received has been generated in connection with this section. (a) A number of comments argue that the section is far less restrictive than the standards applied by the Social Security Administration and that these standards are accordingly not authorized by the Act. Others argue that the requirement that all relevant evidence be considered is more restrictive than the Social Security standards and is contrary to law for that reason. A physician commented that the disability tables show no disability and should be eliminated. Some comments urge that the blood gas table should be raised by 5mm. Hg in the PO<sub>2</sub> column while others argued that it should be lowered by 5mm. Hg. There were suggestions that the interim presumption should be made available on the basis of A-aO<sub>2</sub> gradient standards. Other comments argue that blood gas test results are a poor measure of disability and should be eliminated. A few comments urge that the Social Security interim standards (20 CFR §410.490) be adopted verbatim. (b) A few comments urge the Department to delete the term "documented" from paragraph (a)(4), permit lay evidence to give rise to the presumption in the case of a living miner and require that a medical report which gives rise to the presumption should be filed by a pulmonary specialist.

*Discussion and changes:* The Department believes that the interim presumption format provided by this section is both practicable and fully in accordance with law.

More specific responses to the comments received are as follows:

1. The Department does not agree with the view that the interim standards cannot as a matter of law be more favorable to claimants than the Social Security Administration standards. The Act requires only that the Department's standards be no more restrictive than those applied by the Social Security Administration.

2. The many comments which urge that all relevant evidence should not be considered in rebutting the interim presumption must also be rejected. The Conference Report accompanying the 1977 Reform Act provides, in connection with the interim criteria, "except that in determining claims under such criteria all relevant medical evidence shall be considered in accordance with standards prescribed by the Secretary of Labor and published in the FEDERAL REGISTER." (See also Act, section 413(b).) Moreover, the Social Security regulations, while less explicit, similarly do not limit the evidence which can be considered in rebutting the interim presumption. For these reasons, the rule is not more restrictive than the criteria applicable to a claim filed on June 30,

1973, and is otherwise fully in accordance with law.

Some of the commentators felt that the "all relevant evidence" rule would cause claims adjudicators to ignore the presumption, and simply pick from all the evidence those items on which they wish to rely. This is certainly not authorized by the interim presumption. However, the Department believes that use of the presumption should be clarified.

The interim presumption is, by statute, rebuttable and the Department has no authority to make it irrebuttable. Nor does the Department have authority to exclude any relevant evidence from consideration in connection with any case, or mandate a result which is contrary to the evidence in a case. However, the Department cannot, as has been requested by some, look for the single item of evidence which would qualify a claimant on the basis of the interim presumption, and ignore other previously obtained evidence. This does not mean that the single item of evidence which establishes the presumption is overcome by a single item of evidence which rebuts the presumption. The Act embodies the principle that doubt is to be resolved in favor of the claimant, and that principle plays an important role in claims determinations both under the interim presumption and otherwise.

3. The comment that the pulmonary function tables show no disability and should be eliminated is rejected. The pulmonary function tables to be used in the application of the interim presumption were developed by the Social Security Administration. They have proved to be an effective measure of disability. These tables were the subject of Congressional inquiry, and in light of that inquiry have been mandated by the 1977 amendments.

4. The suggestions that the blood gas disability table be eliminated or raised or lowered by certain specified values are rejected. Building upon the Department's earlier experience with blood gas test results, and after consultation with knowledgeable medical authorities, it has been determined that the values embodied in the blood gas table are an accurate and useful measure of disability and are particularly useful in determining respiratory or pulmonary impairment in a person suffering from pneumoconiosis.

The Department will, however, in connection with the public hearings being held on the permanent medical criteria (20 CFR Part 718), which criteria contain an identical blood gas study table, consider comments and testimony relating to those criteria and make changes in this section if appropriate.

5. The Department cannot accept the suggestions that an A-aO<sub>2</sub> gradient standard be included within the interim presumption. In developing the standards contained in this section as well as the permanent criteria, the Department has inquired into the reliability of the A-aO<sub>2</sub> gradient as a measure of respiratory or pulmonary disability and impairment. The authorities contacted shared the view that the A-aO<sub>2</sub> gradient test is often not a reliable measure of disability or impairment because it is difficult to administer and reliable, uniform standards for administering the test have not been developed and could not readily be developed. While sufficient justification has not been provided to warrant building an A-aO<sub>2</sub> gradi-

ent test into the interim presumption, consideration of individual A-aO<sub>2</sub> gradient results accompanied by a reasoned medical report may, of course, be undertaken by a claims adjudicator, and weight may be accorded these results when appropriate.

The Department will reconsider its views on the A-aO<sub>2</sub> gradient if testimony or evidence presented at the hearing on the permanent standards (20 CFR Part 718) so warrants.

(b)(1) Some of those who commented expressed the opinion that the word "documented" in paragraph (a)(4) is unclear and should be deleted. This paragraph extends the application of the interim presumption on the basis of a medical report alone. This could not be done with respect to a claim filed on June 30, 1973. In order to justify this extension, the Department believes it is necessary to require both a documented and reasoned report. It is not, however, intended that documentation should consist exclusively of objective medical tests. It is intended that the physician's observation of the miner, personal knowledge of the miner's condition and work history, and other similar matters would constitute documentation.

(2) Additional commentators recommended that lay evidence should be sufficient to establish the interim presumption in the case of a living miner. Lay evidence may, of course, be considered in every claim. However, in the case of a living miner who can be examined by a physician at no cost to the miner, the Department is convinced that it would be improper to extend the applicability of the interim presumption on the basis of lay evidence alone, notwithstanding contrary medical evidence or the refusal of the miner to obtain medical evidence.

(3) Some commentators recommended that the Department require that paragraph (a)(4) reports be submitted by pulmonary specialists only. The physician who is most likely to have knowledge of the miner's work and health history necessary to prepare a paragraph (a)(4) report is the miner's family physician, who may or may not be a pulmonary specialist.

#### § 727.204 Presumption of entitlement applicable to certain death claims.

(a) In the case of a miner who died on or before March 1, 1978, who was employed for 25 or more years in one or more coal mines prior to June 30, 1971, the eligible survivors of such miner shall be entitled to the payment of benefits, unless it is established that at the time of death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Office, furnish such evidence as is available with respect to the health of the miner at the time of death, and the length of the miner's coal mine employment.

(b) For the purpose of this section a miner will be considered to have been "partially disabled" if he or she had reduced ability to engage in his or her usual coal mine work or "comparable and gainful work" (see part 718 of this subchapter as amended from time to time).

(c) In order to rebut this presumption the evidence must demonstrate



that the miner's ability to perform his or her usual and customary work or "comparable and gainful work" was not reduced at the time of his or her death or that the miner did not have pneumoconiosis.

(d) The following evidence alone shall not be sufficient to rebut the presumption:

(1) Evidence that a deceased miner was employed in a coal mine at the time of death;

(2) Evidence pertaining to a deceased miner's level of earnings prior to death;

(3) A chest X-ray interpreted as negative for the existence of pneumoconiosis;

(4) A death certificate which makes no mention of pneumoconiosis.

*Comments received:* The comments recommend that the definition of "partial disability" be revised either to include only reduced ability for coal mine work or reduced ability to engage in any work.

*Discussion and changes:* The act defines "total disability" to mean the inability to engage in the miner's regular coal mine work or comparable and gainful work. In this context, partial disability must mean something less than total disability for the same type of work. A change is included to more clearly reflect this result. However, for this same reason, the act provides no authority to limit the definition of partial disability to encompass only coal mine work or extend it to any work.

**§ 727.205 Effect of current coal mine employment or coal mine employment at the time of death.**

In the case of a miner who is working in coal mine employment or was employed in coal mine employment at the time of death, the following shall apply:

(a) A deceased miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled. In the case of a deceased miner who was employed in a coal mine at the time of death, all relevant evidence, including the circumstances of such employment and the statements of the miner's spouse, shall be considered in determining whether the miner was totally disabled due to pneumoconiosis at the time of death. In the case of a living miner, if there are changed circumstances of employment indicative of reduced ability to perform his or her coal mine work, the miner's employment in a mine shall not be used as conclusive evidence that the miner is not totally disabled.

(b) Notwithstanding any other provision of this section, and except as provided in section 411(c)(3) of the act, no miner shall be found to be totally disabled if the miner is found to be doing his or her customary coal mine work or "comparable and gainful work" (see § 410.412(a)(1) of this title) and there are no changed circumstances of em-

ployment indicative of reduced ability to perform coal mine work.

(c) No miner who is engaged in coal mine employment shall (except as provided in section 411(c)(3) of the act) be entitled to any benefits under this part while so employed. Any miner who has been determined to be eligible for benefits for any period during which such miner is engaged in coal mine employment shall be entitled to benefits if the miner's employment terminates within 1 year after the date such determination becomes final (see § 725.503A of this subchapter).

*Comments received:* Some comments express concern that a formal change of work circumstances will be required before a working miner may be informed of his or her possible eligibility for benefits. One comment suggests that medical evidence alone, regardless of circumstances of employment, should form a basis for informing a miner of his or her eligibility if work is terminated.

*Discussion and changes:* The Act provides that a miner's employment in a mine shall not be conclusive evidence that the miner is not totally disabled "if there are changed circumstances of employment indicative of a reduced ability to perform his or her usual coal mine work." In view of this provision it is clear that a change in circumstances is essential to a finding of total disability in the case of a working miner, unless the section 411(c)(3) presumption applies.

The concern that the change in circumstances must be a formal change is unwarranted. It is intended that any change in circumstances, including frequent absences from work because of respiratory illness, the inability to carry out regular duties without assistance, frequent unauthorized rest periods and the like, may be considered a change in circumstances. A formal reassignment or transfer is not required.

**§ 727.206 Quality standards applicable to evidence.**

(a) No chest X-ray or X-ray report, ventilatory study or blood gas study which does not or did not meet the quality standards applicable at the time the evidence was submitted shall be considered sufficient to invoke the interim presumption provided in § 727.203(a) of this part. With respect to evidence submitted prior to the effective date of Part 718 of this title, the standards to be applied in the evaluation of evidence are contained in subpart D of Part 410 of this title. Evidence submitted after the effective date of the revised Part 718 shall be evaluated as provided in that part.

(b)(1) In all claims where there is other evidence of a pulmonary or respiratory impairment, a board-certified or board-eligible radiologist's interpretation of a chest X-ray shall be accepted by the Office if the X-ray is in compliance with the requirements of § 410.428(b) of this title and if such X-ray has been taken by a radiologist or qualified radiologic technologist or technician and there is no evidence

that the claim has been fraudulently represented.

(2) The following definitions shall apply when making a finding in accordance with this paragraph:

(i) The term "other evidence" means medical tests such as blood-gas studies, pulmonary function studies or physical performance tests, physical examinations or medical histories which establish the presence of a chronic respiratory or cardio-pulmonary condition and the spouse's affidavit except that the spouse's affidavit alone shall not be sufficient in the case of a living miner to establish the existence of a respiratory or pulmonary impairment. In the case of a deceased miner, in the absence of medical evidence to the contrary, affidavits of persons with knowledge of the miner's physical condition may be sufficient to establish the presence of a respiratory or pulmonary impairment.

(ii) "Pulmonary or respiratory impairment" means an inability of the human respiratory apparatus to perform satisfactorily one or more of the three components of respiration, viz., ventilation, perfusion, and diffusion.

(iii) "Board-certified" means certification in radiology or diagnostic roentgenology by the American Board of Radiology, Inc. or the American Osteopathic Association.

(iv) "Board-eligible" means the successful completion of a formal accredited residency program in radiology or diagnostic roentgenology.

(v) "Qualified radiologic technologist or technician" means an individual who is either certified as a registered technologist by the American Registry of Radiologic Technologists or licensed as a radiologic technologist by a State licensing board.

*Comments received:* (a) Some comments urge that it be made clear that a qualifying X-ray is sufficient to satisfy the interim presumption. (b) Many comments take exception to proposed paragraph (b)(1) which provided that this section did not preclude the consideration of any relevant evidence including other X-rays and X-ray reports in determining the presence or absence of pneumoconiosis. One comment suggests that only a qualifying X-ray should be deemed admissible evidence. (c) A few comments suggest that evidence of a respiratory or pulmonary impairment should not be required to justify acceptance of an otherwise valid X-ray, or that the definition of "other evidence" should be clarified to indicate that evidence of total disability is not required. A few comments suggest that "other evidence" should include lay evidence in the case of a living miner. (d) Much concern was expressed over the requirement that X-rays and X-ray reports meet Department of Labor quality standards. It is suggested that the quality determination be made by the examining physician and not Department of Labor experts. A few comments insist that the qualifications of Department of Labor experts should be set forth in detail. There is some fear that by having Department of



Labor experts examine X-rays for quality, the Department will ignore the Congressional mandate to accept certain X-rays as valid, or will use quality review procedures to circumvent Congress' intent.

**Discussion and changes:** The purpose of § 727.206 is to properly implement the requirements of Sections 413(b) and 402(f)(1)(D) of the Act. Responses to specific comments are as follows:

(a) This section provides that the X-ray re-reading provision is applicable to reviewed claims. The section is not intended to suggest whether a particular X-ray is sufficient to satisfy the interim presumption and establish entitlement. It provides only that an X-ray which is not of sufficient quality for determining the presence or absence of pneumoconiosis shall not be considered relevant evidence for the purpose of a claim reviewed under this part.

(b) While the Act requires that all relevant evidence be considered in determining the validity of claims, proposed section (b)(1) has been eliminated because it had been incorrectly interpreted to mean that the Department would reinterpret X-rays and use such reinterpretation for the purpose of denying claims. The intention of the Department is to re-read X-rays to determine whether they are of sufficient quality to be considered relevant evidence.

(c) It is made clear in the Act and its legislative history that the Department of Labor must accept the X-ray interpretation submitted by, or on behalf of, the claimant only in those cases where there is "other evidence that a miner has a pulmonary or respiratory impairment \* \* \*." The statute does not require the Department to accept an X-ray interpretation in the absence of such evidence.

The view that lay evidence alone should be considered sufficient "other evidence of impairment" in this connection in the case of a living miner cannot be accepted. The law requires, in the case of a living miner, that the presence of a respiratory or pulmonary impairment be established by medical evidence. The miner is entitled to free medical examinations and tests, and these will be provided. The results of these examinations and tests are the best evidence of a respiratory or pulmonary impairment. Lay evidence may be used as appropriate in the case of a deceased miner.

Any significant and measurable level of respiratory or pulmonary impairment, which activates the X-ray re-reading prohibition, should be sufficient for purposes of this section.

(d) The Department is charged with the responsibility to insure that an X-ray which purports to demonstrate the existence of pneumoconiosis is of adequate quality and is, therefore, reliable evidence of the existence of the disease. The Department's review of X-rays is for the purpose of making an objective determination of quality.

Suggestions relating to the qualifications of the experts to be used for determining X-ray quality by the Department are outside the scope of this section.

### Subpart D—Payment of Benefits/ Liability

#### § 727.300 Conditions and duration of eligibility.

The provisions of subpart B of Part 725 of this subchapter shall be applicable in determining the conditions and duration of eligibility applicable with respect to a claim approved under this part.

**Comments received:** No comments for which a response is required.

#### § 727.301 Amounts payable, other payment provisions.

Except as is otherwise provided in this part (see § 727.302), provisions relating to the amount of benefits payable, the manner of payment and all other provisions contained in subpart G of Part 725 and § 725.309 of this subchapter, shall be applicable to a claim approved under this part. A miner whose claim is approved under this part shall be entitled to medical benefits to be determined and administered in accordance with the provisions of subpart I of Part 725 of this subchapter.

**Comments received:** None.

#### § 727.302 Date from which benefits are payable after review and approval.

(a) Section 435(c) of the act provides that any individual whose claim is approved after review shall be awarded benefits on a retroactive basis for a period which begins no earlier than January 1, 1974. This section implements section 435(c) of the act and sets forth provisions governing the date from which benefits shall be payable with respect to a claim reviewed under this part. (See also section 6(a) of the Longshoremen's Act as incorporated by section 422(a) of the act.)

(b) In the case of a claim reviewed and finally approved under § 727.105, benefits shall be payable for all periods of eligibility occurring on or after January 1, 1974.

(c)(1) In the case of a miner whose claim is reviewed and finally approved under § 727.106, benefits shall be payable for all periods of eligibility beginning with the month of onset of total disability due to pneumoconiosis or January 1, 1974, whichever is later. Where the evidence does not establish the month of onset, benefits shall be payable from the month during which the miner elected review under § 727.104.

(2) In the case of a survivor whose claim is reviewed and finally approved under § 727.106, benefits shall be payable for all periods of eligibility occurring on or after the month of the miner's death or January 1, 1974, whichever is later.

(d)(1) In the case of a miner's claim which is reviewed and finally approved under § 727.107, benefits shall be payable for all periods of eligibility beginning with the month of onset of total disability due to pneumoconiosis or January 1, 1974, whichever is later. Where the evidence does not establish the month of onset, benefits shall be payable from the month during which the miner elected review under § 727.104.

(2) In the case of a survivor whose claim is reviewed and finally approved under § 727.107, benefits shall be payable for all periods of eligibility occurring on or after the month of the miner's death or January 1, 1974, whichever is later.

(e) In the case of a claim reviewed and finally approved under § 727.108, benefits shall be payable as provided in § 725.503 of this subchapter.

(f) For the purposes of this section, the term "finally approved" means that an award of benefits has been made or affirmed by a deputy commissioner, administrative law judge, the Benefits Review Board, or a U.S. court of appeals, that no further hearing, appeal, or reconsideration is pending, and the time to request such hearing, appeal, or reconsideration has expired. (See part 725 of this subchapter generally.) Benefit payments shall be initiated prior to final approval in accordance with the provisions of § 725.522 of this subchapter.

**Comments received:** (a) A few comments indicated that the term "finally approved" as it appears in this section will require a claimant to wait until all proceedings with respect to the claim are completed before any payments will be made, or before full retroactive payments, if any, will be made. (b) Many commentators strongly object to the provisions which establish the first month of entitlement as the month of election in certain cases, if the actual month of onset cannot be established.

**Discussion and changes:** (a) The term "finally approved" is not intended to deprive a claimant of any payments, including full retroactive payments to which he or she is entitled, prior to the final adjudication of the claim. Those "interim payments" are guaranteed by the revised § 727.105 and § 725.522 of this subchapter which is cross cited in this section. However, the term "finally approved" makes clear that the claimant's right to benefits paid or payable is not fully established until the claim is finally adjudicated, and that any interim payments made are subject to recovery or offset if a determination by a deputy commissioner is not sustained by a higher level adjudicator.

(b) Many commentators expressed the view that by establishing the first month of entitlement as the date of election in the absence of evidence of the month of onset, certain claimants would be deprived of retroactive benefits back to January 1, 1974. The Department does not agree.

Section 435 of the act requires that each of these cases be treated as a part C claim. The date benefits begin under part C, which incorporates section 6(a) of the Longshore-



men's Act, is the date of onset of total disability due to pneumoconiosis. Under the Department's prior part C regulations (as well as the revised regulations), the date of onset must be established by evidence. If the evidence does not establish that date, the date of filing was and is considered to be the date of onset. This approach was adopted in view of the great difficulty encountered in establishing a date certain on which pneumoconiosis, often a latent, progressive, and insidious disease, progressed to total disability. The filing date was thought to be fair since proof of onset, which was usually obtained after filing, would likely fix the date of total disability at the time at which the medical tests were administered. The filing date, on the other hand, was likely to be a more accurate measure of onset since it would be the date, or close to the date, on which the claimant felt the need to file for benefits, presumably because disability had become total.

It is the Department's view that Congress recognized and adopted this approach in section 435(a)(4) of the act, which establishes the date of filing in the case of a social security election as the date of the election. There could be no other purpose for section 435(a)(4), since the date of filing of a prior part B denial is not relevant to anything but the date of payments under part C. There clearly is no statute of limitation applicable to such a claim.

In any event, the Department does not intend to use this provision to deny eligible part B claimants full retroactive benefits if an onset date is established at any time before the date of election. Every effort will be made to establish the onset date but experience dictates that in some cases it will not be determinable. This is particularly true in the case of claimants who must submit additional evidence after election in order to establish entitlement. This group should include most claimants affected by the filing date problem. In any case where earlier evidence of onset is in the file, an earlier date than the date of election will be selected.

It should be noted as well that all social security approvals will receive benefits retroactive to January 1, 1974, and all part C review claimants will also receive benefits on a retroactive basis if appropriate.

**§ 727.303 Claims filed under section 415 of the act.**

(a) A claim filed by a miner between July 1 and December 31, 1973, with the Secretary of Labor under section 415 of the act is subject to review under this section if it was pending or had been denied on or before March 1, 1978. Prior to the enactment of the Black Lung Benefits Reform Act of 1977, benefits with respect to a section 415 claim may have been payable by the Secretary of Labor from Federal funds for periods of eligibility between July 1 and December 31, 1973. However, under section 435 of the act, no benefits may be paid with respect to a claim reviewed under that section, including a section 415 claim, for any period of eligibility prior to January 1, 1974. Accordingly, in the case of any claim filed under section 415 of the act with respect to which no benefits have

been awarded prior to March 1, 1978, for any period of eligibility between July 1 and December 31, 1973, no benefits which might have been awarded for this period shall be awarded in any adjudication of the claim taking place after the effective date of this part.

(b) A claim filed under section 415 of the act which is reviewed under this part shall for all purposes be considered as if it was filed on January 1, 1974, under part C of title IV of the act.

*Comments received:* A few comments argue that it is wrong to preclude eligibility for section 415 benefits if any were obtainable before the enactment of the 1977 amendments but were not awarded.

*Discussion and changes:* While the Department recognizes that a few section 415 claimants might be denied benefits for the period from July 1 to December 31, 1973, if any were payable, the 1977 amendments clearly extinguish the right of section 415 claimants to obtain benefits for that period. Section 435(b) of the act provides that the review of all pending and denied section 415 and part C claims is automatic. Section 435(c) provides that a claim which is approved on review can be paid retroactive to January 1, 1974, and no earlier.

Moreover, the trust fund is prohibited from making payments for any period before January 1, 1974. There is no independent authority provided to the Secretary to spend money for benefits from any source other than the fund, and the Department cannot create such spending authority by regulation. Accordingly the comments must be rejected.

**§ 727.304 Liability for benefit payments.**

A claim approved under this part shall be payable either by a coal mine employer (see subpart F of Part 725 of this subchapter) or the black lung disability trust fund. Benefits shall be payable by a responsible coal mine employer if the miner's last date of coal mine employment occurred on or after January 1, 1970, and if the miner's last coal mine employer or a successor to such employer is found liable under the provisions of subpart F of Part 725 of this subchapter. Where it is determined that the employer liable for the payment of such benefits has not commenced payment of benefits within 30 days after the date the claimant is initially determined eligible or within 30 days after a payment is due, the fund will make the required payments. The employer is required by section 424 of the act to reimburse the fund where its liability is finally determined. For the purposes of determining the liability of a coal mine employer or the fund for the payment of an approved claim, the provisions of subparts F and H of Part 725 of this subchapter shall be applicable to a claim considered under this part, including any claim originally filed under part B of title IV of the act with the Social Security Administration. In all other cases, bene-

fits shall be payable by the fund. Nothing in this part shall be construed in derogation of the terms of Part 725 of this subchapter insofar as Part 725 affects the liability of a coal mine employer.

*Comments received:* A few comments express concern that this section does not specify that payment will be made from the fund if an operator refuses to pay a claim.

*Discussion and changes:* This section has been clarified to indicate that the fund will initiate benefit payments where the liable operator refuses to make such payments within the period specified by section 424(a)(1)(A) of the act.

**Subpart E—Special Review Provisions Relating to Claims Pending Before an Administrative Law Judge or the Benefits Review Board**

**§ 727.401 General.**

Section 435 of the act requires the Secretary of Labor to establish a consistent and effective procedure for the review of pending and denied claims in light of the amendments made by the Black Lung Benefits Reform Act of 1977. A number of the claims encompassed by section 435 are pending in the Office of Administrative Law Judges or before the Benefits Review Board. In order to insure a fair, orderly, and uniform disposition of claims pending before an administrative law judge or the Board which are subject to review under section 435 of the act, it has been determined that a return of many of these claims to the Office for expedited review is essential.

This subpart sets forth the procedures to be followed with respect to claims which are within the jurisdiction of the Office of Administrative Law Judges or the Benefits Review Board for which review under section 435 of the act is required. In order to carry out the purposes of section 435, certain of the procedures ordinarily applicable in the adjudication of a claim are changed in certain specified instances. These changes are intended exclusively to facilitate a uniform administrative review of all pending and denied claims where such review is appropriate. Once the administrative review of these claims has been completed, the hearing and appeal procedures set forth in subpart D of part 725 of this subchapter shall be available to all parties to a claim. Additional evidence may be submitted in connection with a reviewed claim by any party as is considered appropriate by the deputy commissioner or administrative law judge, and as is permitted by the act and this part.

*Comments received:* A few comments recommend that this section should clarify an operator's right to submit additional evidence in connection with a reviewed claim.



*Discussion and changes:* The Department agrees that in certain circumstances an operator may be allowed to submit additional evidence in connection with a reviewed claim and a correction has been made.

**§ 727.402 Claims pending in the Office of Administrative Law Judges.**

(a) A claim which is pending in the Office of Administrative Law Judges may be subject to review by a deputy commissioner under this part. This section sets forth criteria to be applied by the Chief Administrative Law Judge or an administrative law judge for determining whether a claim should be remanded to the deputy commissioner for review under § 727.108 or whether jurisdiction over the claim should be retained and sets forth a procedure to be followed if remand is required.

(b) A claim pending in the Office of Administrative Law Judges, which has been administratively denied by the deputy commissioner and with respect to which no decision has been issued, may be remanded to the deputy commissioner for consideration under § 727.108, upon the request of the Director or the claimant, or by the administrative law judge on his or her own motion.

(c) A claim pending in the Office of Administrative Law Judges, which has been administratively approved by the deputy commissioner and was forwarded for hearing at the request of a coal mine operator, shall be remanded to the deputy commissioner for payment if the miner on whose total disability or death the claim is predicated was last engaged in coal mine employment before January 1, 1970. If the miner's last coal mine employment occurred on or after January 1, 1970, the Office of Administrative Law Judges shall retain jurisdiction over the claim and proceed to adjudicate the claimant's eligibility and the liability of the named coal mine employer in accordance with the provisions of this part. If jurisdiction over a claim is retained under this paragraph, the administrative law judge may, on his or her own motion or at the request of the claimant, remand the claim to the deputy commissioner for consideration under § 727.108 if further evidentiary development of the claim is necessary. The right to review provided by § 727.108 is not available to a coal mine employer.

(d) A claim which has been denied by an administrative law judge and with respect to which no reconsideration or appeal is pending shall be automatically reviewed under § 727.108.

(e) In the case of a claim with respect to which a decision has been issued by an administrative law judge but not filed with the deputy commissioner, or if the decision has been filed and the time for appeal to the Bene-

fits Review Board has not expired, the provisions of this paragraph shall apply. If appropriate, such decision shall be immediately filed with the deputy commissioner. If the decision denied the claimant's entitlement to benefits, the claim shall be considered a pending claim subject to review by the deputy commissioner under § 727.108, or subject to an appeal to the Benefits Review Board. If the decision awards benefits to the claimant, the claim shall be paid as provided in part 725 of this subchapter and an appeal to the Benefits Review Board may be taken. If such an appeal is taken, the Board shall consider the appeal under the applicable provisions of this part, and may take such other action as is appropriate.

(f) Except as provided in paragraph (b) of this section, the remand of a claim authorized by this section shall be made by order of the Chief Administrative Law Judge or an administrative law judge on his or her own motion, or on the motion of any party to the claim as is appropriate.

*Comments received:* Many comments were received in support of this section. Some comments urge that the claimant alone should be allowed to decide whether to remain at the administrative law judge level or elect expedited review by the deputy commissioner.

*Discussion and changes:* Although a claimant has the right to elect whether to pursue the claim pending before an administrative law judge or to have the case remanded for review under section 435 of the act, the Director also has an interest in insuring that the claim has been fully developed before a formal hearing is conducted. The Director, both as a party to the proceedings and as administrator of the black lung program, must have the right to request remand, particularly where it is determined that further development of the evidence may result in a finding of entitlement without the necessity for formal hearing. In addition, the administrative law judge, as the fact finder in contested cases, has the authority to determine whether remand is appropriate, but is not in a position to gather evidence on behalf of the claimant or assist a claimant in obtaining new evidence. Accordingly, if new evidence is necessary, the claim may be remanded to the deputy commissioner who will help obtain this new evidence. These provisions are not designed to limit a claimant's right but rather are intended to insure compliance with the 1977 amendments and the proper utilization of available resources by avoiding, where possible, duplicative hearings.

**§ 727.403 Claims pending before the Benefits Review Board.**

(a) A claim pending before the Benefits Review Board which may be subject to review under this part shall be considered by the Board as the Board deems appropriate, in accordance with the authority given the Board by the act.

(b) If a claim subject to review under this part is pending before the Board,

the Board may, on its own motion or at the request of the Director, remand such case to the deputy commissioner for review under § 727.108. The consent of the parties shall not be a prerequisite to a remand by the Board under this paragraph.

(c) A claimant whose claim is pending before the Board may request that his or her claim be remanded to the deputy commissioner for consideration under § 727.108.

*Comments received:* A few comments recommend additional standards for consideration of cases by the Board.

*Discussion and changes:* The law establishing the Board establishes its scope of authority and it is not proper for the Department to further affect that authority in the context of these rules.

**§ 727.404 Claims pending in a U.S. Court of Appeals.**

A claim pending in a U.S. court of appeals which may be subject to review under this part shall be considered by the court as the court deems appropriate.

*Comments received:* None.

**§ 727.405 Expedited review of claims.**

(a) A claim which is remanded to the deputy commissioner by an administrative law judge, the Benefits Review Board, or a court, under this subpart shall be reviewed under § 727.108 and in accordance with the provisions of this part on a priority basis. Such claim shall be reviewed by the deputy commissioner before any other claim, except for a claim remanded at an earlier date under this subpart. If no additional evidence is submitted or required with respect to a claim remanded under this subpart, the deputy commissioner shall make initial findings (see § 725.410 of this subchapter) on the claim within no more than 60 days from the date on which the claim was remanded.

(b) If, after appropriate notice has been given to the claimant of his opportunity to elect review by the deputy commissioner in accordance with this subpart, or to proceed through the administrative appeals process, the claimant chooses not to elect review by the deputy commissioner, the claimant's right to review provided by this part shall be considered fully satisfied, and no further review of the claim beyond that afforded by the appeals process shall be required under section 435 of the act.

*Comments received:* Many comments support this provision. A few comments urge that a claimant should not forfeit review if his or her claim is not remanded to the deputy commissioner.

*Discussion and changes:* The purpose of paragraph (b) is to preclude a claimant from seeking review of his or her claim under the new law by an administrative law judge and the Benefits Review Board and then, if not



satisfied, seeking further review by the deputy commissioner. The claimant's absolute right to review under the new law may be exercised only once and that should be done in the first instance before the deputy commissioner, after which a hearing and an appeal will be available if necessary. The paragraph is however, revised to more clearly reflect this intent.

Signed this 11th day of August 1978  
at Washington, D.C.

RAY MARSHALL,  
*Secretary of Labor.*

[FR Doc. 78-22858 Filed 8-17-78; 8:45 am]



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FRIDAY, AUGUST 18, 1978  
PART III



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**DEPARTMENT OF  
LABOR**

**Employment Standards  
Administration**

**MINIMUM WAGES FOR  
FEDERAL AND  
FEDERALLY ASSISTED  
CONSTRUCTION**

**General Wage Determination  
Decisions**

Registered  
Federal



[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 requested by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

## MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rule-making procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

## MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

|                                                 |                |
|-------------------------------------------------|----------------|
| Alabama:                                        |                |
| AL78-1026.....                                  | Mar. 24, 1978. |
| Connecticut:                                    |                |
| CT78-3055.....                                  | July 28, 1978. |
| Florida:                                        |                |
| FL78-1062.....                                  | July 14, 1978. |
| Louisiana:                                      |                |
| LA78-4072.....                                  | Do.            |
| LA-4077.....                                    | Aug. 11, 1978. |
| Minnesota:                                      |                |
| MN77-2043; MN77-2044; MN77-2045; MN77-2046..... | May 6, 1977.   |
| MN78-2009.....                                  | Mar. 10, 1978. |
| MN78-2062.....                                  | July 14, 1978. |
| New Jersey:                                     |                |
| NJ78-3009.....                                  | Apr. 21, 1978. |
| Texas:                                          |                |
| TX78-4033; TX78-4037; TX78-4043.....            | Apr. 14, 1978. |

## SUPERSEDEAS DECISIONS 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. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

|                            |                |
|----------------------------|----------------|
| Alabama:                   |                |
| AL77-1083 (AL78-1067)..... | June 24, 1977. |
| California:                |                |
| CA78-5004 (CA78-5123)..... | Jan. 27, 1978. |
| Florida:                   |                |
| FL77-1049 (FL78-1068)..... | Apr. 29, 1977. |
| Pennsylvania:              |                |
| PA77-3058 (PA78-3048)..... | May 13, 1978.  |
| Texas:                     |                |
| TX78-4075 (TX78-4081)..... | Aug. 4, 1978.  |

## CANCELLATION OF GENERAL WAGE DETERMINATION DECISIONS

None.

Signed at Washington, D.C., this 11th day of August 1978.

XAVIER M. VELA,  
Administrator,  
Wage and Hour Division.



| DECISION #LA78-4072 - Mod. #3<br>(43 FR 30456 - July 14, 1978)<br>Bossier, Caddo & Calcasieu<br>Parishes, Louisiana                                                                                                                                                                       | Fringe Benefits Payments |                          |          |                                  | Basic<br>Hourly<br>Rates                       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|----------|----------------------------------|------------------------------------------------|
|                                                                                                                                                                                                                                                                                           | H & W                    | Pensions                 | Vocation | Education<br>and/or<br>Appr. Tr. |                                                |
| Change:<br>Bricklayers & stonemasons:<br>Calcasieu Parish<br>Marble setters - Calcasieu Par.<br>Terrazzo workers-Calcasieu Par.<br>Tile setters - Calcasieu Par.                                                                                                                          | .53<br>.53<br>.53<br>.48 | .30<br>.30<br>.30<br>.30 |          |                                  | \$11.25<br>11.25<br>11.25<br>8.30              |
| Omit:<br>Painters:<br>Calcasieu Parish - Group 1<br>Group 2<br>Group 3<br>Group 4<br>Group 5                                                                                                                                                                                              |                          |                          |          |                                  | 10.36<br>10.485<br>10.56<br>10.705<br>10.845   |
| Add:<br>Painters - Calcasieu Parish:<br>Group 1 - Painters, brush,<br>roller & buffer<br>Group 2 - Paperhanging, taping<br>& floating<br>Group 3 - Spray, sandblasting,<br>hydroblasting, spider op.,<br>rubberizing & pyroflexing,<br>steam jennies, taping &<br>floating machines, sign |                          | .10<br>.10               |          |                                  | 10.685<br>10.885<br>11.03                      |
| DECISION #LA78-4077 - Mod. #1<br>(43 FR 30456 - August 11, 1978)<br>Statewide Louisiana                                                                                                                                                                                                   |                          |                          |          |                                  |                                                |
| Change:<br>Bricklayers & stonemasons:<br>Zone 3<br>Marble, tile & terrazzo workers & finishers:<br>Zone 2 -<br>Marble & terrazzo workers<br>Tile setters                                                                                                                                  | .53<br>.53<br>.48        | .30<br>.30<br>.30        |          |                                  | 11.25<br>11.25<br>8.30                         |
| Omit:<br>Painters:<br>Zone 1 - Group 1<br>Group 2<br>Group 3<br>Group 4<br>Group 5                                                                                                                                                                                                        |                          |                          |          |                                  | \$10.36<br>10.485<br>10.56<br>10.705<br>10.845 |

| DECISION #AL78-1026 - MOD. #2<br>(43 FR 12532 - March 24, 1978)<br>Jefferson and Shelby Counties,<br>Alabama                                                                 | Fringe Benefits Payments         |                                                                                                                      |                                        |                                                                      | Basic<br>Hourly<br>Rates                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|----------------------------------------------------------------------------------------------------------------------|----------------------------------------|----------------------------------------------------------------------|-------------------------------------------------|
|                                                                                                                                                                              | H & W                            | Pensions                                                                                                             | Vocation                               | Education<br>and/or<br>Appr. Tr.                                     |                                                 |
| CHANGE:<br>Electricians:<br>Cable Splicers                                                                                                                                   | .55<br>.55                       | 3%+40<br>3%+40                                                                                                       |                                        | 1/2 of 1%<br>1/2 of 1%                                               | \$11.05<br>10.90                                |
| DECISION #CT78-3055 - MOD. #3<br>(43 FR 33023 - July 28, 1978)<br>Fairfield, Litchfield and<br>Windham Counties, Connecticut                                                 |                                  |                                                                                                                      |                                        |                                                                      |                                                 |
| CHANGE:<br>Line Construction:<br>Fairfield Co.: Darien, Green-<br>wich, New Canaan, Stamford &<br>that portion of Norwalk, W.<br>of Five Mile River<br>Railroad Construction | 6%<br>6%<br>6%<br>6%<br>6%<br>6% | 9% $\frac{1}{2}$<br>9% $\frac{1}{2}$<br>9% $\frac{1}{2}$<br>9% $\frac{1}{2}$<br>9% $\frac{1}{2}$<br>9% $\frac{1}{2}$ | 10%<br>10%<br>10%<br>10%<br>10%<br>10% | .02+1/2%<br>.02+1/2%<br>.02+1/2%<br>.02+1/2%<br>.02+1/2%<br>.02+1/2% | \$10.71<br>9.53<br>9.32<br>8.67<br>8.14<br>7.28 |
| Underground Railroad<br>Construction                                                                                                                                         | 6%                               | 9% $\frac{1}{2}$                                                                                                     | 10%                                    | .02+1/2%                                                             | 13.26                                           |
| Lineman                                                                                                                                                                      | 6%                               | 9% $\frac{1}{2}$                                                                                                     | 10%                                    | .02+1/2%                                                             | 12.20                                           |
| Equipment Operator                                                                                                                                                           | 6%                               | 9% $\frac{1}{2}$                                                                                                     | 10%                                    | .02+1/2%                                                             | 11.80                                           |
| Dynamite Man & Transitman                                                                                                                                                    | 6%                               | 9% $\frac{1}{2}$                                                                                                     | 10%                                    | .02+1/2%                                                             | 11.54                                           |
| Mechanic                                                                                                                                                                     | 6%                               | 9% $\frac{1}{2}$                                                                                                     | 10%                                    | .02+1/2%                                                             | 10.87                                           |
| Heavy Driver Groundman                                                                                                                                                       | 6%                               | 9% $\frac{1}{2}$                                                                                                     | 10%                                    | .02+1/2%                                                             | 10.21                                           |
| Driver Groundman                                                                                                                                                             | 6%                               | 9% $\frac{1}{2}$                                                                                                     | 10%                                    | .02+1/2%                                                             | 9.68                                            |
| Groundman                                                                                                                                                                    | 6%                               | 9% $\frac{1}{2}$                                                                                                     | 10%                                    | .02+1/2%                                                             |                                                 |
| DECISION #FL78-1062 - Mod. #4<br>(43 FR 30456 - July 14, 1978)<br>Pinellas County, Florida                                                                                   |                                  |                                                                                                                      |                                        |                                                                      |                                                 |
| Change:<br>Cement masons<br>Lathers<br>Plasterers                                                                                                                            |                                  |                                                                                                                      |                                        |                                                                      | \$6.50<br>7.36<br>7.39                          |



## MODIFICATIONS P. 4

| Basic Hourly Rates                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------|----------|--|----------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | H & W                    | Pensions | Vacation |  |                            |
| DECISION #MN78-2009 - Mod. #2<br>(43 FR 10221 - March 10, 1978)<br>Carlton, Cook, Itasca, Koochi-<br>ching, Lake & St. Louis Counties,<br>Minnesota                                                                                                                                                                                                                                                                                                                             |                          |          |          |  |                            |
| ADD:<br>Power Equipment Operators:<br>Add .05 Apprentice Training<br>to all classifications                                                                                                                                                                                                                                                                                                                                                                                     |                          |          |          |  | .05                        |
| DECISION #MN78-2062 - Mod. #1<br>(43 FR 30459-July 14, 1978)<br>Aitken, Anoka, Benton, Blue<br>Earth, Carlton, Carver, Chisago,<br>Cook, Dakota, Dodge, Fairbault,<br>Fillmore, Freeborn, Goodhue,<br>Hennepin, Houston, Itasca,<br>Kanabec, Koochi-ching, Lake,<br>LeSueur, Mille Lacs, Morrison,<br>Mower, Nicollet, Olmsted, Ramsey,<br>Rice, Scott, Sherburne, Sibley,<br>Stearns, Steel, St. Louis, Wabasha,<br>Waseca, Washington, Winona &<br>Wright Counties, Minnesota |                          |          |          |  |                            |
| ADD:<br>Power Equipment Operators:<br>Add .05 Apprentice Training<br>to all classifications                                                                                                                                                                                                                                                                                                                                                                                     |                          |          |          |  | .05                        |

## MODIFICATIONS P. 3

| Basic Hourly Rates                                                                                                                                                                                                                                                                                                                                                                  | Fringe Benefits Payments |                          |          |  | Education and/or Appr. Tr. |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|----------|--|----------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                     | H & W                    | Pensions                 | Vacation |  |                            |
| DECISION #1A78-4077 (CONT'D)<br><br>ADD:<br>Painters:<br>Zone 1:<br>Group 1 - Painters brush,<br>roller & buffer<br>Group 2 - Paperhanging, tap-<br>ing & floating<br>Group 3 - Spray, sandblasting,<br>hydroblasting, spider op.,<br>rubberizing & pyroflexing,<br>steam jennies, taping &<br>floating machines, sign<br>Group 4 - Bridge work, water<br>towers, radio & TV towers |                          | .10<br>.10<br>.10<br>.10 |          |  |                            |
| DECISION #MN77-2043 - Mod. #5<br>(42 FR 23390 - May 6, 1977)<br>Anoka, Carver, Hennepin, Scott,<br>Dakota, Ramsey & Washington<br>Counties, Minnesota                                                                                                                                                                                                                               |                          |                          |          |  |                            |
| ADD:<br>Power Equipment Operators:<br>Add .05 Apprentice Training<br>to all classifications                                                                                                                                                                                                                                                                                         |                          |                          |          |  | .05                        |
| DECISION #MN77-2044 - Mod. #5<br>(42 FR 23395 - May 6, 1977)<br>Blue Earth, Fairbault, Freeborn<br>& Mower Counties, Minnesota                                                                                                                                                                                                                                                      |                          |                          |          |  |                            |
| ADD:<br>Power Equipment Operators:<br>Add .05 Apprentice Training<br>to all classifications                                                                                                                                                                                                                                                                                         |                          |                          |          |  | .05                        |
| DECISION #MN77-2045 - Mod. #4<br>(42 FR 23400 - May 6, 1977)<br>Olmsted County, Minnesota                                                                                                                                                                                                                                                                                           |                          |                          |          |  |                            |
| ADD:<br>Power Equipment Operators:<br>Add .05 Apprentice Training<br>to all classifications                                                                                                                                                                                                                                                                                         |                          |                          |          |  | .05                        |
| DECISION #MN77-2046 - Mod. #3<br>(42 FR 23404 - May 6, 1977)<br>Benton, Sherburne & Stearns<br>Counties, Minnesota                                                                                                                                                                                                                                                                  |                          |                          |          |  |                            |
| ADD:<br>Power Equipment Operators:<br>Add .05 Apprentice Training<br>to all classifications                                                                                                                                                                                                                                                                                         |                          |                          |          |  | .05                        |



DECISION #NJ78-3009 - Mod. #2  
(42 FR - 17223 - April 21, 1978)  
Bergen, Essex, Hudson, Hunterdon, Middlesex,  
Morris, Passaic, Somerset, Sussex, Union,  
and Warren Counties, New Jersey

| Basic<br>Hourly<br>Rates                                                                                                                                                                                                                                                                                                                                                                                                                                   | Fringe Benefits Payments |          |          |  | Education<br>and/or<br>Appr. Tr. |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------|----------|--|----------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                            | H & W                    | Pensions | Vacation |  |                                  |
| Omit:<br>Roofers:<br>Zone 5                                                                                                                                                                                                                                                                                                                                                                                                                                |                          |          |          |  |                                  |
| Add:<br>Roofers:<br>Zone 3                                                                                                                                                                                                                                                                                                                                                                                                                                 | 1.00                     | 1.00     |          |  |                                  |
| Slate & Tile                                                                                                                                                                                                                                                                                                                                                                                                                                               |                          |          |          |  |                                  |
| Change:<br>Areas covered by Carpenters,<br>Insulators, and Millwrights:<br>Zone 1: Bergen County (east<br>of the Hackensack River, in-<br>cluding but not limited to<br>Cliffside, Fort Lee, Grant-<br>wood, Palisades Park, Ridge-<br>field, Edgewater, Fairview,<br>Leonia, and Cortesville) and<br>that part of Hudson County<br>east of the Hackensack River<br>Zone 4: Essex County and<br>that part of Hudson County<br>west of the Hackensack River |                          |          |          |  |                                  |
| Change:<br>Bricklayers, Stone Masons, Cement<br>Masons, & Plasterers<br>Zone 7                                                                                                                                                                                                                                                                                                                                                                             | 12.65                    | .50      | .70      |  | .02                              |
| Zone 8                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 11.54                    | .85      | .75      |  | .08                              |
| Carpenters, Insulators, & Mill-<br>wrights:<br>Zone 3                                                                                                                                                                                                                                                                                                                                                                                                      |                          |          |          |  |                                  |
| Carpenters & Insulators                                                                                                                                                                                                                                                                                                                                                                                                                                    | 11.70                    | 8%       | 7%       |  | 1/5%                             |
| Millwrights                                                                                                                                                                                                                                                                                                                                                                                                                                                | 11.95                    | 8%       | 7%       |  | 1/5%                             |
| Zone 4                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                          |          |          |  |                                  |
| Carpenters & Insulators                                                                                                                                                                                                                                                                                                                                                                                                                                    | 11.70                    | 8%       | 7%       |  | 1/5%                             |
| Millwrights                                                                                                                                                                                                                                                                                                                                                                                                                                                | 11.95                    | 8%       | 7%       |  | 1/5%                             |
| Laborers, Building Construction:<br>Zone 2                                                                                                                                                                                                                                                                                                                                                                                                                 | 8.00                     | 1.00     | .70      |  | .07                              |
| Zone 4                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 8.60                     | .70      | .40      |  | .07                              |

Laborers, Building Construction:  
(Cont'd)

| Basic<br>Hourly<br>Rates                                                                          | Fringe Benefits Payments |           |          |  | Education<br>and/or<br>Appr. Tr. |
|---------------------------------------------------------------------------------------------------|--------------------------|-----------|----------|--|----------------------------------|
|                                                                                                   | H & W                    | Pensions  | Vacation |  |                                  |
| Zone 5                                                                                            | .75                      | .85       |          |  | .07                              |
| Zone 6                                                                                            | .90                      | .80       |          |  | .07                              |
| Zone 7                                                                                            | .80                      | .80       | .90      |  | .07                              |
| Zone 8                                                                                            | .75                      | .50       |          |  | .07                              |
| Zone 9                                                                                            | .40                      | .50       |          |  | .07                              |
| Zone 10                                                                                           | .40                      | .45       |          |  | .07                              |
| Zone 12                                                                                           | .45                      | .45       |          |  | .07                              |
| Zone 13                                                                                           | .65                      | .50       |          |  | .07                              |
| Marble Setter, Terrazzo Workers<br>and Tile Setters:                                              | .75                      | .85       |          |  | .07                              |
| Zone 1                                                                                            | .85                      | .75       |          |  | .08                              |
| Plumbers:                                                                                         |                          |           |          |  |                                  |
| Zone 3                                                                                            | .75                      | 1.35      |          |  | .20                              |
| Plumbers & Steamfitters:                                                                          |                          |           |          |  |                                  |
| Zone 3                                                                                            | 1.04                     | .90       |          |  | .20                              |
| Zone 7                                                                                            | .84                      | 1.08      | 1.21     |  | .06                              |
| Steamfitters                                                                                      |                          |           |          |  |                                  |
| Roofers:                                                                                          |                          |           |          |  |                                  |
| Zone 3                                                                                            | 1.00                     | 1.00      |          |  | .07                              |
| Composition, Damp, & Water-<br>proofing                                                           |                          |           |          |  |                                  |
| Sprinkler Fitters:                                                                                |                          |           |          |  |                                  |
| Zone 1                                                                                            | .75                      | 1.05      |          |  | .07                              |
| DECISION #TX78-4033 - Mod. #5<br>(43 FR 16120 - April 14, 1978)<br>Brazos County, Texas           |                          |           |          |  |                                  |
| Change:<br>Cement masons                                                                          | \$10.60                  | .52       | .58      |  | .08                              |
| DECISION #TX78-4037 - Mod. #7<br>(43 FR 16127 - April 14, 1978)<br>Galveston & Harris Cos., Texas |                          |           |          |  |                                  |
| Change:<br>Cement masons - Harris Cos.                                                            | 10.60                    | .52       | .58      |  | .08                              |
| DECISION #TX78-4043 - Mod. #7<br>(48 FR 16134 - April 14, 1978)<br>Travis County, Texas           |                          |           |          |  |                                  |
| Change:<br>Lathers<br>Sheet metal workers                                                         | 10.925<br>10.89          | 3 3/4 .77 |          |  | .01<br>.07                       |



## SUPERSEDES DECISION

STATE: Alabama  
 DECISION NO.: AL78-1067  
 SUPERSEDES DECISION NO.: AL77-1063 dated June 24, 1977 in 42 FR 32458  
 DESCRIPTION OF WORK: Heavy Construction

COUNTIES: \*See below

DATE: Date of Publication

\*Counties: Calhoun Green Pickens Shelby Talladega and Walker

Etowah Jefferson St. Clair Sumter Tuscaloosa

AL78-1067 (Cont'd)

|                                                                                                                                                                                                                                                                                                                                                                                                                                      | Basic Hourly Rates | Fringe Benefits Payments |          |          |                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                      |                    | H & W                    | Pensions | Vacation | Education and/or Appr. Tr. |
| Bricklayers                                                                                                                                                                                                                                                                                                                                                                                                                          | 9.50               |                          |          |          |                            |
| Carpenters:                                                                                                                                                                                                                                                                                                                                                                                                                          |                    |                          |          |          |                            |
| Green, Pickens, Sumter and Tuscaloosa Counties                                                                                                                                                                                                                                                                                                                                                                                       | 8.30               |                          |          |          | .06                        |
| Jefferson, Shelby, Walker and that portion of St. Clair and Talladega County West of Highway 231 from the Blount County line South to Interstate 20. Also that portion of St. Clair and Talladega Counties South of Interstate 20 and West of U.S. Alternate 231 South, not including the City of Talladega and that portion of Talladega County South, of the City of Talladega and West and South of the Talladega National Forest | 8.65               | .50                      | .35      |          | .07                        |
| Calhoun, Etowah and Remainder of St. Clair and Talladega Counties                                                                                                                                                                                                                                                                                                                                                                    | 7.28               | .50                      | .35      |          | .06                        |
| Electricians                                                                                                                                                                                                                                                                                                                                                                                                                         | 11.05              | .55                      | 3%+.40   |          | 1/2 of 1%                  |
| Ironworkers                                                                                                                                                                                                                                                                                                                                                                                                                          | 8.50               | .60                      | .815     |          | .04                        |
| Laborers:                                                                                                                                                                                                                                                                                                                                                                                                                            |                    |                          |          |          |                            |
| Air tool operator                                                                                                                                                                                                                                                                                                                                                                                                                    | 6.20               | .30                      | .35      |          | .05                        |
| Asphalt lute man                                                                                                                                                                                                                                                                                                                                                                                                                     | 6.20               | .30                      | .35      |          | .05                        |
| Asphalt raker                                                                                                                                                                                                                                                                                                                                                                                                                        | 6.20               | .30                      | .35      |          | .05                        |
| Batch truck dumper                                                                                                                                                                                                                                                                                                                                                                                                                   | 6.05               | .30                      | .35      |          | .05                        |
| Caisson hole men (10" dia.)                                                                                                                                                                                                                                                                                                                                                                                                          | 6.80               | .30                      | .35      |          | .05                        |
| Chain saw operator                                                                                                                                                                                                                                                                                                                                                                                                                   | 6.20               | .30                      | .35      |          | .05                        |
| Concrete saw operator                                                                                                                                                                                                                                                                                                                                                                                                                | 6.20               | .30                      | .35      |          | .05                        |
| Dry cement handlers (bulk or bag)                                                                                                                                                                                                                                                                                                                                                                                                    | 6.20               | .30                      | .35      |          | .05                        |
| Hand blade operator                                                                                                                                                                                                                                                                                                                                                                                                                  | 6.05               | .30                      | .35      |          | .05                        |
| General laborer                                                                                                                                                                                                                                                                                                                                                                                                                      | 6.05               | .30                      | .35      |          | .05                        |
| Mortar mixers                                                                                                                                                                                                                                                                                                                                                                                                                        | 6.15               | .30                      | .35      |          | .05                        |
| Muckers                                                                                                                                                                                                                                                                                                                                                                                                                              | 6.15               | .30                      | .35      |          | .05                        |
| Pipelayers                                                                                                                                                                                                                                                                                                                                                                                                                           | 6.15               | .30                      | .35      |          | .05                        |
| Powdermen & blasters                                                                                                                                                                                                                                                                                                                                                                                                                 | 6.88               | .30                      | .35      |          | .05                        |

Laborers (Cont'd):  
 Side rail setters  
 Vibrator operator  
 Wagon drill operator  
 Wagon operator  
 Tunnel work (free air)  
 Chuck tender  
 Head miner  
 Pneumatic concrete gun operator & nozzle men  
 Tunnel laborer  
 Tunnel miner  
 Plumbers and Pipefitters  
 Truck drivers  
 Welders - Rate for craft.



AL78-1067 - (Cont'd)

## POWER EQUIPMENT OPERATORS:

|         | Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|---------|--------------------|--------------------------|----------|----------|--|----------------------------|
|         |                    | H & W                    | Pensions | Vacation |  |                            |
| CLASS A | 9.11               | .40                      | .30      |          |  | .10                        |
| CLASS B | 8.57               | .40                      | .30      |          |  | .10                        |
| CLASS C | 8.22               | .40                      | .30      |          |  | .10                        |
| CLASS D | 7.61               | .40                      | .30      |          |  | .10                        |

CLASS A: Asphalt plant, asphalt spreader, backhoe, boat operator, (inboard), boom tractor, bulldozer, cableways, cherry picker, compressors-2, or more within 200 ft. radius, concrete plants-stationary, mixer operator, concrete pump, conveyor-2 or more up to 4, core driller-crane-derrick-dragline-deck hoist on construction barges, crane-hydro, dinky locomotive, distributors-bituminous surface, dredge operator, farm tractor with attachments (30 HP or more-which are an integral part of tractor), fork lift, front end loader, gradall, headhouse operator, heavy duty, mechanic, hoist-2 drums or more, ice plant in connection with concrete, mixers-5 bags or over, motor graders, pile driver, push tractor, quarry master and rock crusher, rollers-asphalt, scraper, scrapers in tandem (operator to receive 25¢ per hour for each additional scraper), shovels, trenching machines and all similar equipment.

CLASS B: Crawler tractor, hoist-1 drum, pumps-2 or more 4 inch & over, under 5 within 200 ft. radius, rollers (other than asphalt), winch truck, well points and other equipment used for dewatering.

CLASS C: Air compressor, blade graders-pull type, farm tractor with attachments finishing machine-screed mounted self-propelled, mixers-under 5 bags.

CLASS D: Outboard boats, air compressor-125 and under, conveyer-one (1) tended by oiler, pumps-under 4 inch-3 or under, welding machines-3 or under, oiler in board boats, deck hand.

## SUPERSEDES DECISION

STATE: California

COUNTIES: Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura

DATE: Date of Publication

DECISION NUMBER: CA78-5123

Supersedes Decision No. CA78-5004 dated January 27, 1978, in 43 FR 3844

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 |          |          |  | Education and/or Appr. Tr. |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------------|----------|----------|--|----------------------------|
|                                                                                                                                                                            |                    | H & W                    | Pensions | Vacation |  |                            |
| ASBESTOS WORKERS                                                                                                                                                           | \$ 13.65           | \$1.05                   | \$ 1.27  |          |  | .06                        |
| BOILERMAKERS                                                                                                                                                               | 13.625             | 1.075                    | 1.00     | .75      |  | .02                        |
| BRICKLAYERS; Stonemasons:                                                                                                                                                  |                    |                          |          |          |  |                            |
| Imperial County                                                                                                                                                            | 12.09              | 1.13                     | 1.34     |          |  | .12                        |
| Inyo, Kern and Mono Counties                                                                                                                                               | 12.65              | 1.00                     | 1.45     |          |  | .07                        |
| Los Angeles County (Cities of Santa Monica, Malibu, Venice, Pasadena, South Pasadena, Arcadia, Monrovia and South of Rosecrans Blvd., including Long Beach), Orange County | 11.20              | 1.15                     | 1.45     |          |  | .30                        |
| Los Angeles County (except Cities of Santa Monica, Malibu, Venice, Pasadena, South Pasadena, Arcadia, Monrovia and South of Rosecrans Blvd., including Long Beach)         | 11.20              | 1.15                     | 1.45     |          |  | .30                        |
| Riverside and San Bernardino Counties                                                                                                                                      | 12.25              | 1.30                     | 1.65     |          |  | .05                        |
| Santa Barbara and San Luis Obispo Counties                                                                                                                                 | 10.50              | 1.20                     | 1.85     |          |  | .07                        |
| Ventura County                                                                                                                                                             | 12.78              | 1.10                     | 1.50     |          |  | .05                        |
| BRICK TENDERS                                                                                                                                                              | 8.85               | 1.15                     | 2.45     | .80      |  |                            |
| CARPENTERS:                                                                                                                                                                |                    |                          |          |          |  |                            |
| Carpenters                                                                                                                                                                 | 10.05              | 1.49                     | 1.95     | 1.00     |  | .06                        |
| Saw Filers                                                                                                                                                                 | 10.13              | 1.49                     | 1.95     | 1.00     |  | .06                        |
| Table Power Saw Operators                                                                                                                                                  | 10.15              | 1.49                     | 1.95     | 1.00     |  | .06                        |
| Shinglers; Piledrivers; Bridge or dock Carpenters;                                                                                                                         |                    |                          |          |          |  |                            |
| Derrick Barge-men; Hook Slinger                                                                                                                                            | 10.18              | 1.49                     | 1.95     | 1.00     |  | .06                        |
| Hardwood Floor Layers                                                                                                                                                      | 10.25              | 1.49                     | 1.95     | 1.00     |  | .06                        |
| Head Hook Slinger                                                                                                                                                          | 10.28              | 1.49                     | 1.95     | 1.00     |  | .06                        |
| Pneumatic Nailers                                                                                                                                                          | 10.30              | 1.49                     | 1.95     | 1.00     |  | .06                        |
| Millwrights                                                                                                                                                                | 10.55              | 1.49                     | 1.95     | 1.00     |  | .06                        |

## NOTICES

36839



36840

## NOTICES

|                                                            | Basic<br>Hourly<br>Rates | Fringe Benefits Payments |          |          |  | Education<br>and/or<br>Appr. Tr. |
|------------------------------------------------------------|--------------------------|--------------------------|----------|----------|--|----------------------------------|
|                                                            |                          | H & W                    | Pensions | Vacation |  |                                  |
| CEMENT MASONS:                                             |                          |                          |          |          |  |                                  |
| Cement Masons                                              | \$ 9.41                  | \$1.10                   | \$ 1.75  | \$ 1.00  |  | .08                              |
| Cement Floating and Troweling Machine                      | 9.66                     | 1.10                     | 1.75     | 1.00     |  | .08                              |
| DRYWALL INSTALLERS                                         | 11.40                    | 1.49                     | 1.95     | .90      |  | .07                              |
| ELECTRICIANS:                                              |                          |                          |          |          |  |                                  |
| Imperial County                                            | 14.30                    | .75                      | 38+1.45  |          |  |                                  |
| Electricians                                               | 14.58                    | .75                      | 38+1.45  |          |  |                                  |
| Cable Splicers                                             |                          |                          |          |          |  |                                  |
| Kern (China Lake Naval Ordnance Test Station, Edwards AFB) | 15.75                    | .90                      | 38+1.60  |          |  | .15                              |
| Electricians; Technicians                                  | 17.33                    | .90                      | 38+1.60  |          |  | .15                              |
| Cable Splicers                                             |                          |                          |          |          |  |                                  |
| Kern County (Remainder of Co.)                             | 13.25                    | .90                      | 38+1.60  |          |  | .15                              |
| Electricians; Technicians                                  | 14.58                    | .90                      | 38+1.60  |          |  | .15                              |
| Cable Splicers                                             |                          |                          |          |          |  |                                  |
| Los Angeles County                                         | 13.12                    | 1.15                     | 38+1.95  |          |  | .12                              |
| Electricians                                               | 13.42                    | 1.15                     | 38+1.95  |          |  | .12                              |
| Cable Splicers                                             |                          |                          |          |          |  |                                  |
| Traffic Signal and Street Lighting:                        |                          |                          |          |          |  |                                  |
| Electricians                                               | 13.12                    | 1.15                     | 38+1.95  |          |  | .12                              |
| Utility Technician No. 1                                   | 9.84                     | 1.15                     | 38+1.95  |          |  | .12                              |
| Utility Technician No. 2                                   | 9.18                     | 1.15                     | 38+1.95  |          |  | .12                              |
| Tunnel:                                                    |                          |                          |          |          |  |                                  |
| Electricians                                               | 13.52                    | 1.05                     | 18+1.70  |          |  | .02                              |
| Cable Splicers                                             | 13.82                    | 1.05                     | 18+1.70  |          |  | .02                              |
| Sound Technicians:                                         |                          |                          |          |          |  |                                  |
| Sound Technicians (on new building construction)           | 12.67                    | .75                      | 38       |          |  |                                  |
| Sound Technicians (on modification of existing buildings)  | 10.74                    | .75                      | 38       |          |  |                                  |
| Orange County                                              | 14.04                    | .81                      | 38+1.45  |          |  | .02                              |
| Electricians                                               | 14.69                    | .81                      | 38+1.45  |          |  | .02                              |
| Cable Splicers                                             |                          |                          |          |          |  |                                  |

|                                                                                                                                                            | Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                                                                                                                                                            |                    | H & W                    | Pensions | Vacation |                            |
| ELECTRICIANS: (Cont'd)                                                                                                                                     |                    |                          |          |          |                            |
| Riverside County                                                                                                                                           | \$ 13.06           | .85                      | 38+1.65  |          | .04                        |
| Electricians                                                                                                                                               | 13.36              | .85                      | 38+1.65  |          | .04                        |
| Cable Splicers                                                                                                                                             |                    |                          |          |          |                            |
| Inyo, Mono and San Bernardino Counties                                                                                                                     | 12.70              | 1.11                     | 38+2.00  |          | .04                        |
| Electricians                                                                                                                                               | 13.00              | 1.11                     | 38+2.00  |          | .04                        |
| Cable Splicers                                                                                                                                             |                    |                          |          |          |                            |
| Tunnel:                                                                                                                                                    |                    |                          |          |          |                            |
| Electricians                                                                                                                                               | 13.97              | 1.11                     | 38+2.00  |          | .04                        |
| Cable Splicers                                                                                                                                             | 14.27              | 1.11                     | 38+2.00  |          | .04                        |
| San Luis Obispo County                                                                                                                                     |                    |                          |          |          |                            |
| Electricians                                                                                                                                               | 13.41              | 1.20                     | 38+1.50  |          | .03                        |
| Cable Splicers                                                                                                                                             | 14.75              | 1.20                     | 38+1.50  |          | .03                        |
| Santa Barbara County (Vandenberg AFB)                                                                                                                      |                    |                          |          |          |                            |
| Electricians                                                                                                                                               | 15.00              | 1.10                     | 38+1.50  |          | .03                        |
| Cable Splicers                                                                                                                                             | 16.00              | 1.10                     | 38+1.50  |          | .03                        |
| Remainder of County                                                                                                                                        |                    |                          |          |          |                            |
| Electricians                                                                                                                                               | 13.25              | 1.10                     | 38+1.50  |          | .03                        |
| Cable Splicers                                                                                                                                             | 14.25              | 1.10                     | 38+1.50  |          | .03                        |
| Ventura County                                                                                                                                             |                    |                          |          |          |                            |
| Electricians                                                                                                                                               | 13.96              | 1.00                     | 38+1.30  |          | .02                        |
| Cable Splicers                                                                                                                                             | 15.36              | 1.00                     | 38+1.30  |          | .02                        |
| ELEVATOR CONSTRUCTORS:                                                                                                                                     |                    |                          |          |          |                            |
| Imperial, Inyo, Kern (South of Tehachapi Range), Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties | 13.41              | .745                     | .56      | a        | .025                       |
| Elevator Constructors                                                                                                                                      |                    |                          |          |          |                            |
| Elevator Constructors' Helpers                                                                                                                             | 704JR              | .745                     | .56      | a        | .025                       |
| Elevator Constructors' Helpers (Prob.)                                                                                                                     | 504JR              |                          |          |          |                            |
| Kern County (North of Tehachapi Range)                                                                                                                     |                    |                          |          |          |                            |
| Elevator Constructors                                                                                                                                      | 14.82              | .745                     | .56      | a        | .025                       |



| Basic Hourly Rates                | Fringe Benefits Payments |          |          |      | Education and/or Appr. Tr. |
|-----------------------------------|--------------------------|----------|----------|------|----------------------------|
|                                   | H & W                    | Pensions | Vacation |      |                            |
| ELEVATOR CONSTRUCTORS: (Cont'd)   |                          |          |          |      |                            |
| Helpers                           | .745                     | .56      | a        |      | .025                       |
| Elevator Constructors'            |                          |          |          |      |                            |
| Helpers (Prob.)                   | .67                      | .90      |          |      |                            |
| GLAZIERS:                         |                          |          |          |      |                            |
| Imperial County                   |                          |          |          |      |                            |
| Los Angeles, Orange,              |                          |          |          |      |                            |
| Riverside, San Bernardino,        |                          |          |          |      |                            |
| Santa Barbara, San Luis           |                          |          |          |      |                            |
| Obispo and Ventura                |                          |          |          |      |                            |
| Counties                          | .67                      | 1.45     |          |      | .04                        |
| IRONWORKERS:                      |                          |          |          |      |                            |
| Fence Erectors                    | 11.11                    | 2.47     | 1.65     |      | .07                        |
| Reinforcing                       | 12.00                    | 2.47     | 1.65     |      | .07                        |
| Ornamental; Structural            | 12.00                    | 2.47     | 1.65     |      | .07                        |
| IRRIGATION & LAWN SPRINKLERS:     |                          |          |          |      |                            |
| Imperial, Los Angeles, Orange,    |                          |          |          |      |                            |
| Riverside, San Bernardino, San    |                          |          |          |      |                            |
| Luis Obispo, Santa Barbara        |                          |          |          |      |                            |
| and Ventura Counties              | 10.45                    | 1.68     | 1.38     |      | .18                        |
| LATHERS:                          |                          |          |          |      |                            |
| Inyo, Kern and Mono Counties      | 9.13                     | .60      | 1.30     | .70  | .05                        |
| Los Angeles County (except City   |                          |          |          |      |                            |
| of Lancaster)                     | 12.50                    | .70      | .90      |      | .03                        |
| Ventura County                    | 11.98                    | 1.05     | 1.13     | 1.50 | .02                        |
| San Luis Obispo County            | 7.72                     | .87      | 3.20     |      |                            |
| Santa Barbara County              | 11.67                    | .82      | 1.25     | 1.50 |                            |
| Orange County                     | 12.50                    | .85      | 1.00     | .50  | .03                        |
| LINE CONSTRUCTION:                |                          |          |          |      |                            |
| Imperial County                   |                          |          |          |      |                            |
| Groundmen                         | 11.44                    | .75      | 38+1.45  |      |                            |
| Linemen                           | 14.30                    | .75      | 38+1.45  |      |                            |
| Cable Splicers                    | 14.58                    | .75      | 38+1.45  |      |                            |
| Kern (China Lake Naval Ordnance   |                          |          |          |      |                            |
| Test Station and Edwards AFB)     | 12.44                    | .90      | 38+1.60  |      | .15                        |
| Groundmen                         | 15.75                    | .90      | 38+1.60  |      | .15                        |
| Linemen                           | 17.33                    | .90      | 38+1.60  |      | .15                        |
| Cable Splicers                    |                          |          |          |      |                            |
| Kern County (Remainder of County) | 9.94                     | .90      | 38+1.60  |      | .15                        |
| Groundmen                         | 13.25                    | .90      | 38+1.60  |      | .15                        |
| Linemen                           | 14.58                    | .90      | 38+1.60  |      | .15                        |
| Cable Splicers                    |                          |          |          |      |                            |

| Basic Hourly Rates            | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|-------------------------------|--------------------------|----------|----------|--|----------------------------|
|                               | H & W                    | Pensions | Vacation |  |                            |
| LINE CONSTRUCTION: (Cont'd)   |                          |          |          |  |                            |
| Orange County                 |                          |          |          |  |                            |
| Groundman, 1st year           | \$ 11.43                 | .81      | 38+1.45  |  | .02                        |
| Groundman, after 1st year     | 12.12                    | .81      | 38+1.45  |  | .02                        |
| Lineman; Heavy Equipment      |                          |          |          |  |                            |
| Operators                     | 14.04                    | .81      | 38+1.45  |  | .02                        |
| Cable Splicers                | 14.69                    | .81      | 38+1.45  |  | .02                        |
| Los Angeles County            |                          |          |          |  |                            |
| Groundmen                     | 9.86                     | 1.25     | 38+1.95  |  |                            |
| Linemen                       | 13.14                    | 1.25     | 38+1.95  |  |                            |
| Cable Splicers                | 13.44                    | 1.25     | 38+1.95  |  |                            |
| Inyo, Mono and San Bernardino |                          |          |          |  |                            |
| Counties                      |                          |          |          |  |                            |
| Groundmen                     | 9.41                     | 1.11     | 38+2.00  |  | .04                        |
| Linemen                       | 12.72                    | 1.11     | 38+2.00  |  | .04                        |
| Cable Splicers                | 13.00                    | 1.11     | 38+2.00  |  | .04                        |
| Riverside County              |                          |          |          |  |                            |
| Groundmen                     | 9.65                     | .85      | 38+1.65  |  | .04                        |
| Linemen; Line Equipment       |                          |          |          |  |                            |
| Operators                     | 13.08                    | .85      | 38+1.65  |  | .04                        |
| Cable Splicers                | 13.38                    | .85      | 38+1.65  |  | .04                        |
| San Luis Obispo County        |                          |          |          |  |                            |
| Groundmen                     | 9.66                     | 1.00     | 18+1.35  |  | .03                        |
| Linemen; Line Equipment       |                          |          |          |  |                            |
| Operators                     | 12.26                    | 1.00     | 18+1.35  |  | .03                        |
| Cable Splicers                | 13.48                    | 1.00     | 18+1.35  |  | .03                        |
| Ventura County                |                          |          |          |  |                            |
| Groundmen                     | 12.93                    | 1.00     | 38+1.05  |  | .02                        |
| Linemen                       | 14.21                    | 1.00     | 38+1.05  |  | .02                        |
| Cable Splicers                | 15.63                    | 1.00     | 38+1.05  |  | .02                        |
| Santa Barbara County          |                          |          |          |  |                            |
| (Vandenberg AFB)              |                          |          |          |  |                            |
| Groundmen                     | 11.69                    | 1.10     | 38+1.50  |  | .03                        |
| Linemen                       | 15.00                    | 1.10     | 38+1.50  |  | .03                        |
| Cable Splicers                | 16.00                    | 1.10     | 38+1.50  |  | .03                        |
| Remainder of County           |                          |          |          |  |                            |
| Groundmen                     | 9.64                     | 1.10     | 38+1.50  |  | .03                        |
| Linemen                       | 13.25                    | 1.10     | 38+1.50  |  | .03                        |
| Cable Splicers                | 14.25                    | 1.10     | 38+1.50  |  | .03                        |

## NOTICES

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## NOTICES

| Basic Hourly Rates                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Fringe Benefits Payments                                                               |                                                                        |                                                                        |                                                                    | Education and/or Appr. Tr.                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------|--------------------------------------------------------------------|--------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | H & W                                                                                  | Pensions                                                               | Vacation                                                               |                                                                    |                                                                    |
| MARBLE SETTERS:<br>Inyo and Mono Counties<br>Imperial County<br>MARBLE, TERRAZZO & TILE<br>SETTERS' HELPERS:<br>Imperial County                                                                                                                                                                                                                                                                                                                                                                                                                                                       | \$11.64<br>12.34<br>9.44                                                               | \$1.50<br>.81<br>.81                                                   | \$1.03<br>1.17<br>1.17                                                 |                                                                    | .08<br>.08                                                         |
| PAINTERS:<br>Imperial, Orange, Riverside,<br>Los Angeles (Pomona Area),<br>San Bernardino (excluding<br>Western portion)<br>Brush; Paint Burners<br>Paperhangers; Iron, steel<br>and bridge (swing stage);<br>Sheet rock taper<br>Brush (swing stage); Spray<br>Steeplejack<br>Inyo, Kern (Lancaster, Mojave,<br>Palmdale, China Lake Naval<br>Ordnance Test Station and<br>Edwards AFB), Los Angeles<br>(except Pomona Area), Mono<br>San Bernardino (west of a<br>line north of Trono including<br>China Lake Area, Johannesburg,<br>Boron, South including the<br>Wrightwood Area) | 11.58<br>12.58<br>11.83<br>13.23<br>12.05<br>12.17<br>12.59<br>12.30<br>12.42<br>12.45 | 1.23<br>1.23<br>1.23<br>1.23<br>.66<br>.66<br>.66<br>.66<br>.66<br>.66 | 1.28<br>1.28<br>1.28<br>1.28<br>.80<br>.80<br>.80<br>.80<br>.80<br>.80 | .75<br>.75<br>.75<br>.75<br>.60<br>.60<br>.60<br>.60<br>.60<br>.60 | .07<br>.07<br>.07<br>.07<br>.02<br>.02<br>.01<br>.02<br>.02<br>.02 |

| Basic Hourly Rates                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Fringe Benefits Payments                                                                                                                                                  |                                                                                                                                               |                                                                                                                                               |                                                                                                                        | Education and/or Appr. Tr.                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | H & W                                                                                                                                                                     | Pensions                                                                                                                                      | Vacation                                                                                                                                      |                                                                                                                        |                                                                                                                                          |
| PAINTERS: (Cont'd)<br>Spray sandblaster swing stage<br>(13 stories or less); Paste<br>Machine; Special coating<br>Spray<br>Steeplejack<br>Kern County (Remainder of County)<br>Brush<br>Brush or Roller, swing stage;<br>Paperhangers; Taping joint<br>sheet rock<br>Spray; Sandblasters<br>Steeplejack<br>San Luis Obispo, Santa<br>Barbara, and Ventura Counties<br>Brush; Pot Tender<br>Paperhangers; Paste Machine<br>Operators; Iron and steel<br>Spray; Taper; Sandblasters<br>Sign Painter<br>Steeplejack<br>Parking Lot Striping Work and/or<br>Highway Markers;<br>Inyo and Mono Counties<br>Striper<br>Striper Helper<br>Traffic Delineating Device<br>Applicator; Wheel Stop<br>Installer; Traffic Sur-<br>face; Sandblaster<br>Helper (traffic delineating<br>device applicator, wheel<br>stop installer, traffic<br>surface sandblaster)<br>Slurry Seal Operation<br>Mixer Operator<br>Squeegee Man<br>Applicator Operator<br>Shuttleman<br>Top Man | \$12.55<br>13.30<br>9.87<br>10.12<br>10.37<br>11.37<br>11.99<br>12.12<br>12.37<br>11.52<br>12.87<br>10.47<br>8.47<br>9.37<br>7.97<br>9.37<br>8.87<br>7.97<br>6.90<br>6.47 | .66<br>.66<br>.45<br>.45<br>.45<br>.45<br>1.07<br>1.07<br>1.07<br>1.07<br>1.07<br>.55<br>.55<br>.55<br>.55<br>.55<br>.55<br>.55<br>.55<br>.55 | .80<br>.80<br>.61<br>.61<br>.61<br>.61<br>1.30<br>1.30<br>1.30<br>1.30<br>1.30<br>.40<br>.40<br>.40<br>.40<br>.40<br>.40<br>.40<br>.40<br>.40 | .60<br>.60<br>.03<br>.03<br>.03<br>.03<br>.03<br>.03<br>.03<br>.03<br>.03<br>b<br>b<br>b<br>b<br>b<br>b<br>b<br>b<br>b | .02<br>.02<br>.03<br>.03<br>.03<br>.03<br>.03<br>.03<br>.03<br>.03<br>.03<br>.03<br>.03<br>.03<br>.03<br>.03<br>.03<br>.03<br>.03<br>.03 |



| Basic Hourly Rates                                                  | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|---------------------------------------------------------------------|--------------------------|----------|----------|--|----------------------------|
|                                                                     | H & W                    | Pensions | Vacation |  |                            |
| PAINTERS: (Cont'd)                                                  |                          |          |          |  |                            |
| Remaining Counties:                                                 |                          |          |          |  |                            |
| Traffic Delineating Device Applicator                               | .55                      | .40      | b        |  |                            |
| Striper; Wheel Stop Installer; Surface Sandblaster                  | .55                      | .40      | b        |  |                            |
| Helper (striper, wheel stop installer, traffic surface sandblaster) | .55                      | .40      | b        |  |                            |
| Slurry Seal Operation:                                              |                          |          |          |  |                            |
| Mixer Operator                                                      | .55                      | .40      | b        |  |                            |
| Squegee Man                                                         | .55                      | .40      | b        |  |                            |
| Applicator Operator                                                 | .55                      | .40      | b        |  |                            |
| Shuttleman                                                          | .55                      | .40      | b        |  |                            |
| Top Man                                                             | .55                      | .40      | b        |  |                            |
| PLASTERERS:                                                         |                          |          |          |  |                            |
| Imperial County                                                     | 11.03                    |          |          |  |                            |
| Los Angeles and Orange Cos.                                         | 12.335                   | 1.85     |          |  | .12                        |
| Riverside and San Bernardino Counties                               | 15.95                    |          |          |  | .01                        |
| San Luis Obispo County                                              | 12.00                    |          |          |  |                            |
| Santa Barbara County                                                | 8.69                     | 1.05     |          |  | .01                        |
| Ventura County                                                      | 13.16                    | 2.15     |          |  | .02                        |
| PLASTERERS TENDERS:                                                 |                          |          |          |  |                            |
| Imperial, Inyo, Mono, Riverside and San Bernardino Counties         | 11.02                    | 2.45     |          |  |                            |
| Kern County (China Lake Naval Ordnance Test Station, Edwards AFB)   |                          |          | .60      |  |                            |
| Kern County (Remainder of Co.)                                      | 12.075                   | 2.45     |          |  |                            |
| Los Angeles and Orange Cos.                                         | 9.45                     | 2.45     | .60      |  |                            |
| San Luis Obispo County                                              | 10.975                   | 2.45     | 1.10     |  |                            |
| Santa Barbara County (except Santa Maria)                           | 9.43                     | 2.45     | 1.00     |  |                            |
| Santa Barbara Co. (Santa Maria)                                     | 10.78                    | 2.45     | .80      |  |                            |
| Ventura County                                                      | 11.23                    | 2.45     | 1.10     |  |                            |

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| Basic Hourly Rates                                                                                                                                                | Fringe Benefits Payments |          |          |      | Education and/or Appr. Tr. |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------|----------|------|----------------------------|
|                                                                                                                                                                   | H & W                    | Pensions | Vacation |      |                            |
| PLUMBERS; Steamfitters:                                                                                                                                           |                          |          |          |      |                            |
| Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties                                                     | \$ 13.12                 | 10%      | 16%      | 13%  | 3/4%                       |
| Inyo, Kern (except east of Los Angeles (Aqueduct) and Mono Counties                                                                                               | 10.88                    | .95      | 1.85     | 1.45 | .17                        |
| Kern County (East of Los Angeles Aqueduct)                                                                                                                        | 13.38                    | .95      | 1.85     | 1.45 | .17                        |
| REFRIGERATION & AIR CONDITIONING: Riverside and San Bernardino Counties                                                                                           | 10.70                    | .96      | .85      | 1.00 | .05                        |
| Los Angeles and Orange Counties                                                                                                                                   | 12.53                    | 1.85     | 1.80     | 1.52 | .20                        |
| ROOFERS:                                                                                                                                                          |                          |          |          |      |                            |
| Imperial County                                                                                                                                                   | 10.79                    | .80      | 1.05     | 1.00 |                            |
| Inyo, Kern and Mono Counties                                                                                                                                      | 10.70                    | .60      | .60      |      |                            |
| Riverside and San Bernardino Counties                                                                                                                             | 10.45                    | .80      | .75      | 1.00 |                            |
| Los Angeles, Orange and Ventura Counties                                                                                                                          | 12.32                    | .92      | 1.10     |      | .065                       |
| San Luis Obispo and Santa Barbara Counties                                                                                                                        | 10.43                    | .535     | .34      |      | .0025                      |
| SHEET METAL WORKERS:                                                                                                                                              |                          |          |          |      |                            |
| Imperial County                                                                                                                                                   | 13.96                    | 1.04     | 2.24     |      | .01                        |
| Kern County (China Lake Naval Ordnance Test Station and Edwards AFB)                                                                                              | 13.67                    | 1.04     | 1.80     |      | .02                        |
| Kern County (Remainder of County and all of Inyo and Mono Counties, Los Angeles County (That portion North of a straight line drawn between Gorman and Big Pines) | 11.17                    | 1.04     | 1.80     |      | .02                        |
| Los Angeles County (Remaining portion)                                                                                                                            | 13.65                    | 1.04     | 2.35     |      | .10                        |
| Orange County                                                                                                                                                     | 11.62                    | 1.04     | 2.13     |      | .09                        |
| Riverside and San Bernardino Counties                                                                                                                             | 10.10                    | 1.04     | 1.80     |      | .08                        |
| San Luis Obispo, Santa Barbara and Ventura Counties                                                                                                               | 12.73                    | 1.04     | 2.02     |      |                            |



## NOTICES

| Basic Hourly Rates | Fringe Benefits Payments |          |          |     | Education and/or Appr. Tr. |
|--------------------|--------------------------|----------|----------|-----|----------------------------|
|                    | H & W                    | Pensions | Vacation |     |                            |
| \$ 9.55            | .60                      | \$ 1.05  |          | .07 |                            |
| 11.72              | .70                      | .97      | .63      | .06 |                            |
| 10.42              | .75                      | .60      | 1.18     | .07 |                            |
| 15.52              | .75                      | 1.05     |          | .08 |                            |
| 14.66              | .66                      | .90      |          | .09 |                            |
| 12.34              | .81                      | 1.17     |          | .08 |                            |
| 12.34              | .81                      | 1.17     |          | .08 |                            |
| 12.62              | 1.00                     | 1.20     |          | .10 |                            |
| 10.50              | 1.20                     | 1.85     |          | .07 |                            |
| 12.57              | 1.03                     | 1.35     |          |     |                            |
| 11.20              | .65                      | .55      |          |     |                            |
| 9.96               | 1.39                     | 1.30     |          |     | .13                        |

|                                                                                                                                                                                                |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| SOFT FLOOR LAYERS:                                                                                                                                                                             |  |
| Imperial County                                                                                                                                                                                |  |
| Los Angeles, Orange, Riverside, Santa Barbara, San Luis Obispo, San Bernardino and Ventura Counties                                                                                            |  |
| Kern County, including that portion lying East of the Los Angeles Aqueduct and that portion of Inyo County included within the Inyo-Kern Naval Reservation                                     |  |
| SPRINKLER FITTERS:                                                                                                                                                                             |  |
| Imperial Inyo, Kern, Mono, Orange (except Santa Ana), Riverside, San Bernardino (except Ontario), San Luis Obispo, Santa Barbara and Ventura (except Santa Paula, Point Mugu and Port Huemene) |  |
| TERRAZZO WORKERS:                                                                                                                                                                              |  |
| Imperial County                                                                                                                                                                                |  |
| TILE SETTERS:                                                                                                                                                                                  |  |
| Imperial County                                                                                                                                                                                |  |
| Los Angeles, Orange and Ventura Counties                                                                                                                                                       |  |
| San Luis Obispo and Santa Barbara Counties                                                                                                                                                     |  |
| Riverside and San Bernardino Counties                                                                                                                                                          |  |
| Inyo, Kern and Mono Counties                                                                                                                                                                   |  |
| TILE SETTERS' HELPERS:                                                                                                                                                                         |  |
| Los Angeles, Orange and Ventura Counties                                                                                                                                                       |  |

## 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' service 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 but 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.

| LABORERS<br>(Tunnel)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Basic<br>Hourly<br>Rates | Fringe Benefits, Payments |          |          | Education<br>and/or<br>Appr. Tr. |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|---------------------------|----------|----------|----------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                          | H & W                     | Pensions | Vacation |                                  |
| BATCH PLANT LABORERS; Bull Gang<br>Mucker, Trackman; Concrete Crew,<br>including Rodders and Spreaders;<br>Changehouseman; Dumpman; Dumpman<br>(outside); Swamper (Brakeman<br>and Switchman on tunnel work);<br>Tunnel materials handling Man;<br>Tool Man                                                                                                                                                                                                                                              | \$ 10.14                 | \$1.15                    | \$ 2.45  | .60      |                                  |
| CABLE TENDER; Chuck Tender;<br>Nipper; Steel form raiser and<br>setter's helper; Vibratorman,<br>jackhammer, pneumatic tools<br>(except driller); Loading and<br>unloading agitator cars; Pot<br>tender using mastic or other<br>materials                                                                                                                                                                                                                                                               | 10.26                    | 1.15                      | 2.45     | .60      |                                  |
| BLASTER, Driller, Powderman;<br>Chemical grout jetman; Cherry<br>pickerman; Grout gunman; Grout<br>mixerman; Grout pumpman; Jack-<br>leg miner; Jumbo man; Kemper<br>and other pneumatic concrete<br>placer operator; Miner tunnel<br>(hand or machine); Powderman<br>(primer house); Primer Man;<br>Shotcrete Man; Steel Form<br>Raiser and setter; Timber-<br>man; Retimber (wood or<br>steel); Tunnel concrete<br>finisher; Nozzleman;<br>Operating troweling and/or<br>Grouting Machine; Sandblaster | 10.42                    | 1.15                      | 2.45     | .60      |                                  |
| SHAFT, Raise miner; Diamond<br>driller                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 10.70                    | 1.15                      | 2.45     | .60      |                                  |



## LABORERS (Cont'd)

|                           | Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|---------------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                           |                    | H & W                    | Pensions | Vacation |                            |
| <b>LABORERS</b>           |                    |                          |          |          |                            |
| Group 1                   | \$ 9.60            | \$1.15                   | \$ 2.45  | .80      | .12                        |
| Group 2                   | 9.75               | 1.15                     | 2.45     | .80      | .12                        |
| Group 3                   | 9.95               | 1.15                     | 2.45     | .80      | .12                        |
| Group 4                   | 10.10              | 1.15                     | 2.45     | .80      | .12                        |
| Group 5                   | 10.25              | 1.15                     | 2.45     | .80      | .12                        |
| <b>LABORERS (Gunnite)</b> |                    |                          |          |          |                            |
| Nozzlemen and Rodmen      | 10.07              | 1.15                     | 2.45     | .80      |                            |
| Gunmen                    | 9.57               | 1.15                     | 2.45     | .80      |                            |
| Reboundmen                | 8.61               | 1.15                     | 2.45     | .80      |                            |

## LABORERS

Group 1: Boring Machine Helper (outside); Cleaning and Handling of Panels Forms; Concrete Screeding for rough strike-off; Concrete, water curing; Demolition Laborer, the cleaning of brick and lumber; Dry packing of concrete, plugging, filling of Shee-Bolt Holes; Fire Watcher, Limbers, Brush Loaders, Pilers and Debris Handlers; Flag-man; Gas, oil and/or water pipeline laborer; Laborer, general or construction; Laborer; general cleanup; Laborer, landscaping; Laborer, jetting, temporary water and air lines; Material Hosenan (walls, slabs, floors and decks); Rigging and signaling; Scaler; Slip Form Raisers; Slurry Seal crews (mixer operator, applicator operator, squeegee man, shuttle man, top man); Stripper, asphalt, concrete or other paved surfaces; Tarman and mortar man; Tool crib or tool house laborer; Traffic delineating device applicator; Window cleaner; Wire mesh pulling--all concrete pouring operations

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Group 2: Asphalt Shoveler; Cement dumper (on 1 yard or larger mixer and handling bulk cement); Cesspool Digger and Installer; Chucktender; Chute Man, pouring concrete, the handling of the chute from ready-mix trucks, such as walls, slabs, decks, floors, foundations, footings, curbs, gutters and sidewalks; Concrete curer--impervious membrane and form oiler; Cutting torch operator (demolition); Fine grader, highways and street paving, airport, runways, and similar type heavy construction; Gas, oil and/or water pipeline wrapper--pot tender and form man; Guinea chaser; Headerboard Man--asphalt; Laborer, packing rod steel and pans; Power broom sweepers (small); Riprap stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Sandblaster (pot tender); Septic tank digger and installer (leadman); Tank scaler and cleaner; Tree climber, faller, chain saw operator, Pittsburgh chipper and similar type brush shredders; Underground laborer, including caisson bellow

Group 3: Asphalt raker, luteman, ironer and asphalt spreader boxes (all types); Buggymobile man; Concrete core cutter, grinder or sander; Concrete cutting torch; Concrete saw man, cutting, scoring old or new concrete; Driller, jackhammer, 2-1/2 ft. drill steel or longer; Dri Pak-it machine; Gas, oil and/or water pipeline wrapper--6" pipe and over by any method, inside and out; Hydro sealer and similar type; Impact wrench, multi-plate; Kettlemen, potmen and men applying asphalt, lay-fold, creosote, lime caustic and similar type materials ("applying" means applying dipping, brushing or handling of such materials for pipe wrapping and water-proofing); Operators of pneumatic, gas, electric tools, vibrating machines, pavement breakers, air blasting, come-alongs, and similar mechanical tools, not separately classified herein; Pipelayer's Backup man, coating, grouting, making of joints, sealing, caulking, discharging and including rubber gasket joints, pointing and any and all other services; Rock slinger; Rotary scarifier or multiple head concrete chipping scarifier; Steel headerboard man and guide-line setter; Tamperers, barko, wacker and similar type; Trenching machine, hand propelled

Group 4: Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Head rock slinger; Laser beam; Oversize concrete vibrator operator, 70 lbs. and over; Pipelayer, including water, sewage, solid, gas or air; Prefabricated manhole installer; Sandblaster (nozzleman), water blasting; Welding in connection with laborers' work

Group 5: Blasters powderman--all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller; All power drills, excluding jack-hammer, whether core, diamond, wagon, track, multiple unit, and any and all types of mechanical drills



## POWER EQUIPMENT OPERATORS

|                                                                      | Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|----------------------------------------------------------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                                                                      |                    | H & W                    | Pensions | Vacation |                            |
| POWER EQUIPMENT OPERATORS<br>DREDGING<br>(Hydraulic Suction Dredges) |                    |                          |          |          |                            |
| LEVERMAN                                                             | \$ 11.60           | .95                      | \$ 2.00  | .50      | .04                        |
| WATCH ENGINEER; Welder                                               | 11.02              | .95                      | 2.00     | .50      | .04                        |
| DECK MATE                                                            | 10.54              | .95                      | 2.00     | .50      | .04                        |
| WINCHMAN (Stern winch or dreged)                                     | 10.47              | .95                      | 2.00     | .50      | .04                        |
| BARGE MAN; Deckhand; Fireman;<br>Oiler; Leveehand                    | 9.93               | .95                      | 2.00     | .50      | .04                        |
| (Clamshell Dredges)                                                  |                    |                          |          |          |                            |
| LEVERMAN                                                             | 11.60              | .95                      | 2.00     | .50      | .04                        |
| WATCH ENGINEER                                                       | 11.02              | .95                      | 2.00     | .50      | .04                        |
| DECK MATE                                                            | 10.54              | .95                      | 2.00     | .50      | .04                        |
| BARGE MATE                                                           | 10.47              | .95                      | 2.00     | .50      | .04                        |
| BARGE MAN; Deckhand; Fireman;<br>Oiler                               | 9.93               | .95                      | 2.00     | .50      | .04                        |
| POWER EQUIPMENT OPERATORS                                            |                    |                          |          |          |                            |
| Group 1:                                                             | 10.70              | 1.00                     | 2.00     | .55      | .14                        |
| Group 2:                                                             | 10.98              | 1.00                     | 2.00     | .55      | .14                        |
| Group 3:                                                             | 11.27              | 1.00                     | 2.00     | .55      | .14                        |
| Group 4:                                                             | 11.41              | 1.00                     | 2.00     | .55      | .14                        |
| Group 5:                                                             | 11.63              | 1.00                     | 2.00     | .55      | .14                        |
| Group 6:                                                             | 11.74              | 1.00                     | 2.00     | .55      | .14                        |
| Group 7:                                                             | 11.86              | 1.00                     | 2.00     | .55      | .14                        |
| Group 8:                                                             | 12.03              | 1.00                     | 2.00     | .55      | .14                        |
| Group 9:                                                             | 12.16              | 1.00                     | 2.00     | .55      | .14                        |

Group 1: Brakeman; Compressor (less than 600 C.R.M.); Engineer Oiler; Generator; Heavy Duty Repairman; Helper; Pump; Signalman; Switchman

Group 2: Compressor (600 C.F.M. or larger); Concrete Mixer, skip type; Conveyor; Fireman; Hydrostatic Pump; Oiler Crusher (asphalt or concrete plant); Plant Operator; Generator; Pump or Compressor; Rotary Drill Helper (oilfield); Skiploader - wheel type up to 3/4 yd. w/o attachments; Soils Field Technician; Tar Pot Fireman; Temporary Heating Plant; Trenching Machine Oiler; Truck Crane Oiler

Group 3: A-Frame or Winch Truck; Elevator Operator (inside); Equipment Greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter Radioman (ground); Power Concrete Curing Machine; Power Concrete Saw; Power driver Jumbo Form Setter; Ross Carrier (job site); Stationary Pipe Wrapping and Cleaning Machine

Group 4: Asphalt Plant Fireman; Boring Machine; Boxman or Mixerman (asphalt or concrete); Chip Spreading Machine; Concrete Pump (small portable); Bridge type Unloader and Turntable; Dinkey Locomotive or Motorman (up to and including 10 tons); Equipment Greaser (greaser truck); Helicopter Hoist; Highline Cableway Signalman; Hydra-hammer-aero Stomper; Power Sweeper; Roller (compacting); Screed (asphalt or concrete); Trenching Machine (up to 6 ft.)

Group 5: Asphalt Plant Engineer; Backhoe (up to and including 3/4 yd.); Batch Plant; Bit Sharpeners; Concrete Joint Machine (canal and similar type); Concrete Planer; Deck Engine; Derrickman (oilfield type); Drilling Machine Operator (including water wells); Forklift (under 5-ton capacity); Hydrographic Seder Machine (straw, pulp or seed); Machine Tool Operator; Maginnis Internal Full Slab Vibrator; Mechanic Bern, Curb or Gutter (concrete or asphalt); Mechanical Finisher (concrete-Clary, Johnson, Bidwell or similar); Pavement Breaker (truck mounted); Road Oil Mixing Machine; Roller (asphalt or finish); Rubber-tired Earth Moving Equipment (single engine, up to and including 25 yds. struck); Self-propelled Tar Paving Machine; Slip Form Pump (power-driven hydraulic lifting device for concrete forms); Skiploader (Crawler and Wheel type over 3/4 yd. and up to and including 1 1/2 yds.); Stinger Crane (Austin-Western or similar type); Tractor-bulldozer, Tamper, Scraper (single engine, up to 100 h.p., flywheel and similar types, up to and including D-5 and similar types); Tugger Hoist 1 drum; Tunnel Locomotive (over 10 and up to and including 30 tons); Welder-General

Group 6: Asphalt or Concrete Spreading (tamping or finishing); Asphalt Paving Machine (Barber Greene or similar type); Bridge Crane Operator; Cast-in-place Pipe Laying Machine; Combination Mixer and Compressor (gunite work); Compactor, self-propelled; Concrete Mixer - paving; Concrete Pump (truck mounted); Crane Operator up to and including 25 ton capacity; Long-boom pay applicable); Crushing Plant; Drill Doctor; Elevating Grader; Forklift (over 5 tons); Grade Checker; Grade-all; Grouting Machine; Heading Shield; Heavy Duty Repairman; Hoist Operator (Chicago Boom and similar type); Kolman Belt Loader and similar type; LeTourneau Blob Compactor or similar type; Lift Mobile; Lift Slab Machine (Vagborg and similar types); Loader (Athey, Euclid, Sierra and similar type); Material Hoist; Mucking Machine (1/4 yd. rubber tired, rail or track type); Pneumatic Concrete



Placing Machine (Hackley-Presswell or similar type); Pneumatic Heading Shield (tunnel); Pumpcrete Gun; Rotary Drill (excluding caisson type); Rubber-tired Earth Moving Equipment (single engine-Caterpillar, Euclid, Athey Wagon, and similar types with any and all attachments over 25 yds. and up to and including 50 cu. yds. truck); Rubber-tired Earth Moving Equipment (multiple engine, up to and including 25 yds. truck); Rubber-tired Scraper (self-loading-paddle wheel type-John Deere, 1040 and similar single unit); Skiploader (crawler and wheel type-over 1½ yds., up to and including 6½ yds.); Surface Heaters and Planer; Trenching Machine (over 6 ft. depth capacity); Tower Crane; Tractor Compressor Drill Combination; Tractor (any type larger than D-5-100 flywheel h.p. and over, or similar) Bulldozer, Taper, Scraper and Push Tractor single engine; Tractor (boom attachments); Traveling Pipe Wrapping, Cleaning and Bending Machine; Tunnel Locomotive (over 30 tons); Shovel, Backhoe, Dragline, Clamshell (over 3/4 yd. and up to 5 cu. yds. m.r.c.) (Long Boom pay applicable); Self-propelled Curb and Gutter Machine

Group 7: Crane, over 25 ton up to and including 100 tons m.r.c. (long boom pay applicable); Derrick Barge (long boom pay applicable); Dual Drum Mixer; Heavy Duty Repairman-welder Combination; Hoist, Stiff-legs, Guy Derrick or similar type, up to and including 100 tons (long boom pay applicable); Monorail Locomotive (diesel, gas or electric); Motor Patrol-blade Operator (single engine); Multiple Engine Tractor (Euclid and similar type, except quad 9 Cat); Rubber-tired Earth Moving Equipment (single engine, over 50 yds. truck); Rubber-tired Earth Moving Equipment (multiple engine, Euclid, Caterpillar and similar) (over 25 yds. and up to 50 cu. yds. truck); Shovel, Backhoe, Dragline, Clamshell (over 5 cu. yds. m.r.c.) (long boom pay applicable); Tower Crane Repairman; Tractor Loader (crawler and wheel type over 6½ yds.); Welder-certified; Woods Mixer and similar Pugmill Equipment

Group 8: Auto Grader; Automatic Slip Form; Crane-over 100 tons (long boom pay applicable); Hoist-stiff Legs, Guy Derrick or similar types (capable of hoisting 100 tons or more) (long boom pay applicable); Mass Excavator - less than 750 cu. yds.; Mechanical Finishing Machine; Mobile Form Traveler; Motor Patrol, multi-engine; Pipe Mobile Machine; Rubber-tired earth moving equipment (multiple engine, Euclid, Caterpillar and similar type over 50 cu. yds. truck); Rubber tired self-loading Scraper (paddle wheel-auger type self-loading-2 or more units); Rubber-tired Scraper - pushing one another w/o Push Cat. Push-pull (50¢ per hour additional to base rate); Tandem Equipment (2 units only); Tandem Tractor (quad 9 or similar type); Tunnel Mole Boring Machine

Group 9: Canal Liner; Canal Trimmer; Helicopter Pilot; Highline Cableway; Remote Controlled Earth Moving Equipment (\$1.00 p/h additional to base rate); Wheel Excavator (over 750 cu. yd.)

| TRUCK DRIVERS | Basic Hourly Rates | Fringe Benefits Payments |          |          |                            |
|---------------|--------------------|--------------------------|----------|----------|----------------------------|
|               |                    | H & W                    | Pensions | Vacation | Education and/or Appr. Tr. |
| Group 1:      | \$ 9.52            | \$ 1.25                  | .75      | \$1.10   | .10                        |
| Group 2:      | 9.60               | 1.25                     | .75      | 1.10     | .10                        |
| Group 3:      | 9.66               | 1.25                     | .75      | 1.10     | .10                        |
| Group 4:      | 9.75               | 1.25                     | .75      | 1.10     | .10                        |
| Group 5:      | 9.78               | 1.25                     | .75      | 1.10     | .10                        |
| Group 6:      | 9.80               | 1.25                     | .75      | 1.10     | .10                        |
| Group 7:      | 9.84               | 1.25                     | .75      | 1.10     | .10                        |
| Group 8:      | 9.85               | 1.25                     | .75      | 1.10     | .10                        |
| Group 9:      | 9.90               | 1.25                     | .75      | 1.10     | .10                        |
| Group 10:     | 9.93*              | 1.25                     | .75      | 1.10     | .10                        |
| Group 11:     | 9.98               | 1.25                     | .75      | 1.10     | .10                        |
| Group 12:     | 10.00              | 1.25                     | .75      | 1.10     | .10                        |
| Group 13:     | 10.05              | 1.25                     | .75      | 1.10     | .10                        |
| Group 14:     | 10.30              | 1.25                     | .75      | 1.10     | .10                        |
| Group 15:     | 10.55              | 1.25                     | .75      | 1.10     | .10                        |
| Group 16:     | 10.65              | 1.25                     | .75      | 1.10     | .10                        |
| Group 17:     | 10.75              | 1.25                     | .75      | 1.10     | .10                        |
| Group 18:     | 11.05              | 1.25                     | .75      | 1.10     | .10                        |
| Group 19:     | 11.55              | 1.25                     | .75      | 1.10     | .10                        |

## TRUCK DRIVERS

Group 1: Warehouseman and Teamster

Group 2: Driver or vehicle or combinations of vehicles of 2 axes (including all vehicles less than six tons); Traffic Control Pilot Car, excluding moving heavy equipment permit load

Group 3: Truck mounted Power Broom

Group 4: Drivers of vehicles or combination of vehicles of 3 axes

Group 5: Bootman; Cement Distributor; Fuel Truck; Road Oil Spreader Truck; Water Truck, 2 axle

Group 6: Dump, of less than 16 yards

Group 7: Transit-mix, under 3 yards; Dumpcrete, less than 6½ yards

Group 8: Truck Repairman Helper

Group 9: Water Truck, 3 or more axes

Group 10: PB and similar type truck when performing within the Teamsters' jurisdiction; Pipeline and utility working truck including Winch, but limited to truck applicable to Pipeline and utility work, where a composite crew is used; Slurry Driver; Truck Greaser and Fireman (50¢ per hour additional for Fireman)

Group 11: Transit-mix, 3 yards or more; Dumpcrete, 6½ yards and over



Group 12: Driver of vehicle or combination of vehicles of 4 or more axles

Group 13: Dump, 16 yards but less than 25 yards

Group 14: A-Frame or Swedish Crane, or similar type of equipment driver; Fork Lift Driver; Ross Carrier, highway

Group 15: All-off-highway Equipment within Teamsters jurisdiction (off highway combination of vehicles or equipment with multiple power sources, \$1.00 per hour additional); Dump, 25 yards or more; Truck Repairman

Group 16: Truck Repairman Welder

Group 17: Low Bed driver, 9 axle or over

Group 18: Water Pull, single engine with attachments

Group 19: Water Pull, twin engine with attachments

SUPERSEDEAS DECISION

STATE: Florida  
 DECISION NUMBER: FL73-1063  
 Supersedeas Decision No.: FL77-1049 dated April 29, 1977 in 42 FR 22080  
 DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories).

COUNTY: Leon

DATE: Date of Publication

1977 in 42 FR 22080

DATE: Date of Publication

1977 in 42 FR 22080

DATE: Date of Publication

1977 in 42 FR 22080

|                               | Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|-------------------------------|--------------------|--------------------------|----------|----------|--|----------------------------|
|                               |                    | H & W                    | Pensions | Vacation |  |                            |
| Asbestos workers              | 11.27              | .45                      | .55      |          |  | .04                        |
| Bricklayers                   | 7.00               |                          |          |          |  |                            |
| Cement masons                 | 7.05               | .30                      | .30      |          |  | .08+.02                    |
| Carpenters                    | 6.54               |                          |          |          |  |                            |
| Drywall hangers               | 6.95               | .25                      |          |          |  | .03                        |
| Electricians                  | 8.75               | .50                      | .32      |          |  | 0.32                       |
| Glaziers                      | 6.43               |                          |          |          |  |                            |
| Laborers:                     |                    |                          |          |          |  |                            |
| Laborers                      | 4.25               | .20                      |          |          |  |                            |
| Concrete cutters, Grouters;   |                    |                          |          |          |  |                            |
| Guniters; Masons tenders      |                    |                          |          |          |  |                            |
| Mechanical tool operators;    |                    |                          |          |          |  |                            |
| Mortar mixers; Pipelayers;    |                    |                          |          |          |  |                            |
| Plasterer tender; Power buggy |                    |                          |          |          |  |                            |
| operators                     | 4.40               | .20                      |          |          |  |                            |
| Plumbers                      | 6.96               | 20%                      |          |          |  |                            |
| Roofers                       | 5.00               |                          |          |          |  |                            |
| Sheet metal workers           | 8.00               | .85                      | .55      |          |  | .07                        |
| Soft floor layers             | 7.10               | .25                      |          |          |  | .03                        |
| Truck drivers                 | 5.04               |                          |          |          |  |                            |
| Welders - rate for craft.     |                    |                          |          |          |  |                            |

|           | Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|-----------|--------------------|--------------------------|----------|----------|--|----------------------------|
|           |                    | H & W                    | Pensions | Vacation |  |                            |
| GROUP I   | 9.48               | .50                      | .35      |          |  | .05                        |
| GROUP II  | 8.30               | .50                      | .35      |          |  | .05                        |
| GROUP III | 7.32               | .50                      | .35      |          |  | .05                        |
| GROUP IV  | 6.21               | .50                      | .35      |          |  | .05                        |

GROUP I: Cranes, derricks, clam shells, draglines, piledriver (including auger & boring machine for drilling in piling), backhoes, hydra cranes, grade all, shovels, patrollers, cableways, tug boat captain (150 H.P. or more), multi-bowl operator (similar to R.G. LeTourneau Model L-60-2 or 3 twenty cu. yd. scraper front end loaders, (over 4 cy. cap.), side boom cats, multi-drum hoist (for rigging), mechanic (heavy equip), tower crane (stationary, climbing & traveling), gantry cranes, locomotive cranes, bridge cranes (over 20 ton cap.), concrete pump with boom (mobile), high lift or fork lift (second floor & higher), Locomotive engineer (jobs not covered by railroad unions)

GROUP II: Bulldozers, bridge cranes (20 tons & under), highlift or forklift (up to 2nd floor), straddle buggies, hoists (other than rigging) including winch truck not mobile & used aloft, front end loader (over 2 cy & up to & incl., 4 cy cap.), trenching machine (ladder & wheel type) over 6' cut & 24" width, concrete paver & scrapers

GROUP III: Concrete pumps, front end loader (2 cy or less not used as hoist) mobile winch trucks, self-propelled sub-grader, asphalt paving machine concrete mixer, tractors, air compressor plant (2 or more compressors on a common manifold) lubricating engineer (mobile plant), pavement breakers, street sweeping machines

GROUP IV: Tractor operated sweeper, trenching machine (ladder & wheel type maximum cut 6' & maximum width 24"), fireman, self-propelled rollers, wellpoint pump, asphalt distributor, water truck driver, motor boat operator, oiler, mechanics' helpers, pumpman (other than well point up to & incl., 5 pumps within 300 ft. radius), self-propelled sweepers, combination pump, compressor & combustion type welding machine



STATE: Pennsylvania  
 DECISION NO.: PA78-3048  
 Supersedeas Decision No. PA77-3058 dated May 13, 1977, in 42 FR 24702.  
 DESCRIPTION OF WORK: Building Erection and Foundation Excavation, (does not include single family homes and garden type apartments up to and including 4 stories).

COUNTY: Erie  
 DATE: Date of Publication  
 PA77-3058 dated May 13, 1977, in 42 FR 24702.

## LABORERS CONT'D

Group V - Mixing mortar for more than 3 masons by hand

Group VI - Blasters, drill operators, gunite nozzle man & machine man

Group VII - Plasterer mixing machine & pump

|                                        | Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|----------------------------------------|--------------------|--------------------------|----------|----------|--|----------------------------|
|                                        |                    | H & W                    | Pensions | Vacation |  |                            |
| ASBESTOS WORKERS                       | \$11.54            | .60                      | .60      |          |  | .02                        |
| BOILERMAKERS                           | 12.98              | .60                      | 1.20     |          |  | .03                        |
| BRICKLAYERS                            | 12.21              | .70                      | .40      |          |  |                            |
| CARPENTERS                             | 10.47              | .60                      | .30      |          |  | .02                        |
| CEMENT MASONS                          | 9.92               | .45                      | .75      |          |  | .015                       |
| ELECTRICIANS                           | 12.30              | 4½¢                      | 3½¢      | .75      |  | .065                       |
| ELEVATOR CONSTRUCTORS                  | 11.04              | .745                     | .56      | a+b      |  | .025                       |
| ELEVATOR CONSTRUCTORS' HELPERS         | 70¢JR              | .745                     | .56      | a+b      |  | .025                       |
| ELEVATOR CONSTRUCTORS' HELPERS (FRCB.) | 50¢JR              |                          |          |          |  |                            |
| GLAZIERS                               | 10.41              | .60                      | .80      |          |  |                            |
| IRONWORKERS:                           |                    |                          |          |          |  |                            |
| Structural                             | 11.08              | 1.86                     | 1.01     |          |  | .10                        |
| Ornamental                             | 11.08              | 1.86                     | 1.01     |          |  | .10                        |
| Reinforcing                            | 11.08              | 1.86                     | 1.01     |          |  | .10                        |
| LATHERS                                | 11.28              | .30                      | .10      |          |  | .02                        |
| LABORERS:                              |                    |                          |          |          |  |                            |
| Group I                                | 8.84               | .80                      | .60      |          |  | .01                        |
| Group II                               | 8.95               | .80                      | .60      |          |  | .01                        |
| Group III                              | 9.05               | .80                      | .60      |          |  | .01                        |
| Group IV                               | 9.11               | .80                      | .60      |          |  | .01                        |
| Group V                                | 9.16               | .80                      | .60      |          |  | .01                        |
| Group VI                               | 9.26               | .80                      | .60      |          |  | .01                        |
| Group VII                              | 9.32               | .80                      | .60      |          |  | .01                        |

## LABOR CLASSIFICATIONS

Group I - Building & common, carpenter tender, heaters & salamanders, power sweepers, power vacuum sweepers, pumps including 1-½" signal man concrete bucket, wrecking & demolition, window washing

Group II - Bricklayer & mason tenders, electric operated conveyor, electric operated hoist, fork lift up to 9 ft., plumber & sewer laborers, scaffold builders, float grinder & sander

Group III - Burners, concrete saw operator, hod carrier, mortar mixers, plasterer tankers, powered wheel-barrows & buggies

Group IV - Dual vibrator roller (walk behind type) Berfix cutting tool, blasters helpers, drill operator helper, jackhammer & air tool operators, mechanical tamers & air tamers, vibrator - air or otherwise

## NOTICES

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|                          | Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|--------------------------|--------------------|--------------------------|----------|----------|--|----------------------------|
|                          |                    | H & W                    | Pensions | Vacation |  |                            |
| LINE CONSTRUCTION:       |                    |                          |          |          |  |                            |
| Linemen, Heavy Equipment | \$10.80            | .50                      | 3%       |          |  | 3/8 of 1%                  |
| Operator                 | 7.59               | .50                      | 3%       |          |  | 3/8 of 1%                  |
| Winch - Truck Driver     | 7.26               | .50                      | 3%       |          |  | 3/8 of 1%                  |
| Groundmen                | 10.75              | .40                      | .70      |          |  |                            |
| MARBLE SETTERS           | 10.27              | 6%                       | 6%       |          |  | .02                        |
| MILLWRIGHTS              | 9.30               | .60                      | .50      |          |  | .02                        |
| PAINTERS:                |                    |                          |          |          |  |                            |
| Brush                    | 10.05              | .60                      | .50      |          |  | .02                        |
| Structural steel         | 9.80               | .60                      | .50      |          |  | .02                        |
| Spray                    | 11.14              | .60                      | .58      |          |  | .02                        |
| PILEDRIVERS              | 9.96               | .60                      | 1.00     |          |  | .015                       |
| PLASTERERS               | 11.17              | .55                      | .50      |          |  | .04                        |
| PLUMBERS                 |                    |                          |          |          |  |                            |
| ROOFERS:                 |                    |                          |          |          |  |                            |
| Composition              | 10.64              | .60                      | .30      |          |  | .05                        |
| SHEET METAL WORKERS      | 9.58               | .75                      | .90      |          |  | .075                       |
| SOFT FLOOR LAYERS        | 10.47              | .60                      | .30      |          |  | .02                        |
| SPRINKLER FITTERS        | 12.31              | .75                      | 1.05     |          |  | .08                        |
| STEAMFITTERS             | 11.17              | .55                      | .50      |          |  | .04                        |
| STONEMASONS              | 11.36              | .70                      | .40      |          |  |                            |
| TERRAZZO WORKERS         | 9.90               | .30                      | .40      |          |  |                            |
| TILE SETTERS             | 9.90               | .30                      | .40      |          |  |                            |
| TRUCK DRIVERS            | 7.12               | .30                      | .40      |          |  |                            |
|                          |                    | c                        | d        | e        |  |                            |

WELDER: Receive rate prescribed for craft performing operation to which welding is incidental



## POWER EQUIPMENT OPERATORS (CONT'D)

Class 1-A: Austin Western or similar type with jib + 25c, Austin Western or similar type 25 tons or over with jib + 25c, Cranes (excluding over head cranes), Crane - placed on building structure, Hoist single cage with Chicago Boom attached + 25c, Engineer - lead, Hoist hod (2 cages over 10 floors), Cranes - 100 feet to 150 feet

Class 1-B: Cranes - 150 feet to 200 feet

Class 1-C: Cranes - 200 feet and over

Class 2: Backfilling Machine, Boat - material or personnel, Compressor and air pump, Compressor and air tugger, Compressor and gunite machine (combination), Compressors and sandblasting unit (combination), Compressors (two), crane - overhead, Forklift - elevating - full or similar type generators - two Grade - sub, Jumbo - power, Layer - cable, Layer - pipe - no joint, Lift Slab Machine, Locomotive Machines - other minor, machines - small (two), Mucking Machines, Mobile Tower, Pipe - bending Machine (pipeline only), Pipe - cleaning machine, Pipe - wrapping machine, Plant - asphalt operator, Plant - portable crushing and screening, Plant - refrigeration pump - grout, Spreader - concrete, Asphalt and Stone, Well point systems (Section IC), Winch Truck (handling steel), Wire wrapping machine - pre-stress, Drill - Davey or similar, Drill - truck mounted and/or core drill for testing, Elevator (new buildings and major remodeling of old), Hoist one drum, Paver - asphalt, Post Driver - guard rail (other than truck mounted), Post Driver - guard rail (truck mounted), Pumpcrete or similar type (not self-propelled), Tire Repairman, Trencher Machine, Welder, Welding Machines (up to and including 4)

Class 3: Boiler, Breaker - pavement (self-propelled or ridden), Compactor (ridden or self-propelled), Crane - carry, Crusher - stone, Drill - well (horizontal), Drill (self-propelled and self contained), Elevator (alterations of old building), Finisher - broom (C.M.I. or similar type), Finishing Machines and Spreader (concrete), Forklifts (ridden or self-propelled), Form Line Machine, Minor equipment (all other), Motorman, Pipe Dream, Roller, Saw - concrete (ridden or self-propelled), Soil Stabilizer, Tractors (when used for snaking and hauling), Truck - winch, Tugger

Class 4: Compressor single over 65 cu. ft. regardless of power used, Hoist - monorail (regardless of power used), Pump (over 1 1/2 inch discharge regardless of power used), Oiler - truck crane (50 tons or over and Fireman)

Class 5: Blaster - water, Boring Machine, Broom - power, Compressor - 65 cu. ft. or under (regardless of power used) (2 gun painters), Conveyor - 1 story (regardless of power used), Conveyor (over 1 and up to 3 units regardless of power used), Generator (4 KW or over), Hauck Machine or similar type, Heaters - up to and including four), Jack and Pump - motor hydraulic, Jenny - steam (or similar type), Ladavator, Mixer - concrete (regardless of power used), Mixer - motor (over 10 cu. ft. regardless of power used), Mobile - track (or similar type), Mulching Machine, Pin Puller, Pulverizer, Pump - 1 1/2 inch discharge or less, Regulator - Ballast, Seeding Machine, Shoulder, Spray Cure Machine, Syphon - (steam or air), Tie Tamer (multiple heads), Tractor - farm (when used for landscaping), Welding machine - single (300 amp. or over), Oiler, Truck Crane.

## POWER EQUIPMENT OPERATORS:

|           | Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|-----------|--------------------|--------------------------|----------|----------|----------------------------|
|           |                    | H & W                    | Pensions | Vocation |                            |
| Class 1   | \$11.27            | .95                      | 1.00     |          | .10                        |
| Class 1-A | 11.56              | .95                      | 1.00     |          | .10                        |
| Class 1-B | 11.83              | .95                      | 1.00     |          | .10                        |
| Class 1-C | 12.11              | .95                      | 1.00     |          | .10                        |
| Class 2   | 10.77              | .95                      | 1.00     |          | .10                        |
| Class 3   | 10.60              | .95                      | 1.00     |          | .10                        |
| Class 4   | 9.72               | .95                      | 1.00     |          | .10                        |
| Class 5   | 9.11               | .95                      | 1.00     |          | .10                        |
| Class 6   | 9.82               | .95                      | 1.00     |          | .10                        |
| Class 6-A | 9.11               | .95                      | 1.00     |          | .10                        |
| Class 6-B | 9.59               | .95                      | 1.00     |          | .10                        |

## POWER EQUIPMENT OPERATORS

Class 1: Auger (truck or tractor mounted), Austin Western or similar type, Austin Western or similar type up to 25 tons (25 tons or over requires an oiler), Backhoe, Backhoe (under 5/8 yd.), Batch Plant - Automatic, Boom - side, Cableways, Conveyors Belts - up to 4 floors, Conveyor Belts - over 4 units, Crane - Tower (climbing type), Derrick (all types), Derrick - Traveler, Dragline, Drill - Caisson, Electro Matic or similar, Gradall (remote control or otherwise), Helicopter, Helicopter - hoisting operating Hi-lift (3 yards or over), Hoist - on 50 ft. stack or over, Hoist on slip form job, Hoist - hod (single cage), Hoist - hod (2 cages up to 10 floors), Hop-to or similar type with 360 degree swing, Hop-to or similar type with 360 degree swing under 5/8 yd., Hoisting Scooper, Xocal or similar type, Leverman, Mix Mobile, or similar type, Mixer - concrete paving, Mixer - Paving (self-propelled), Multiple Bowl Machines or Multi-engine, Pile Driver - Franki or similar type, Pile Driver, (when assistance is required it will be an operating engineer), Placer - belt (concrete), Plant - Central Mix (all types), Quad Nine, Shovels (all types), Shovels under 5/8 yd., Tractors - Boom mounted (all types), Tugboat, Whirlers, Boat - job work (inboard or outboard), Curb dozer, Carrier Ross or similar type, Compactor - (with blade attached), Curb Builder - self-propelled, Drill - Core, Drill - Well and Core (truck mounted), Engineer - maintenance (daily rated) Grader, Grader - Elevating, Greaser - equipment, Hi-lift (less than 3 yards), Hoist 2 drums in one unit, Hop-to or similar type with 100 degree swing, Tractors (all types with hydraulic backhoe attached), Cranes, Tower, Metro Chip Harvester (or similar type), Mixer - paving mixer - mortar - over 10 cu. ft., Plant - crushing and screening, Pumpcrete - mobile or similar type, Road Builder - Automatic, Scoop - self-powered and Tractor drawn (single bowl), Spray Cure Machine (power driven), Spreader, Steam Jenny (or similar type), Syphon (steam or air) Tractors (all types with hydraulic backhoe attached)



## POWER EQUIPMENT OPERATORS (CONT'D)

Class 6: Brake man, Deck hand, Helicopter, signalman, Oiler, Mechanic helper

Class 6-A: Oiler, Truck crane

Class 6-B: Oiler, Truck crean (50 tons or over)

## PAID HOLIDAYS: (Where Applicable)

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

## FOOTNOTES:

- Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as vacation pay credit.
- Paid Holidays: A through F, plus Friday after Thanksgiving Day.
- One week vacation after 1 years work; two weeks vacation after five years of service.
- Employee agree to contributed \$67.94 per month.
- Employer agree to contribute \$20.00 per week.

## SUPERSEDES DECISION

STATE: Texas

COUNTY: Bexar

DECISION NO.: TX78-4081

DATE: Date of Publication

Supersedes Decision No. TX78-4075, dated August 4, 1978, in 43 FR 34703  
DESCRIPTION OF WORK: Building Construction (does not include single family homes & garden type apartments up to & including 4 stories). (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

|                                                                                                                                                                                                                                                                                                                                        | Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------------|----------|----------|--|----------------------------|
|                                                                                                                                                                                                                                                                                                                                        |                    | H & W                    | Pensions | Vacation |  |                            |
| ASBESTOS WORKERS                                                                                                                                                                                                                                                                                                                       | \$ 11.05           | .60                      | .60      |          |  | .08                        |
| BOILERMAKERS                                                                                                                                                                                                                                                                                                                           | 10.55              | .80                      | 1.00     |          |  | .02                        |
| BRICKLAYERS-STONEMASONS                                                                                                                                                                                                                                                                                                                | 10.02              | .45                      | .30      | .25      |  | .05                        |
| CARPENTERS:                                                                                                                                                                                                                                                                                                                            |                    |                          |          |          |  |                            |
| Carpenters                                                                                                                                                                                                                                                                                                                             | 8.89               | .48                      | .40      | .40      |  | .05                        |
| Millwrights                                                                                                                                                                                                                                                                                                                            | 9.19               | .48                      | .40      | .40      |  | .05                        |
| CEMENT MASONS                                                                                                                                                                                                                                                                                                                          | 9.00               | .45                      |          | .65      |  | .02                        |
| ELECTRICIANS:                                                                                                                                                                                                                                                                                                                          |                    |                          |          |          |  |                            |
| Electricians                                                                                                                                                                                                                                                                                                                           | 11.10              | .44                      | 5%       |          |  | 1%                         |
| Cable splicers                                                                                                                                                                                                                                                                                                                         | 11.35              | .44                      | 5%       |          |  | 1%                         |
| ELEVATOR CONSTRUCTORS:                                                                                                                                                                                                                                                                                                                 |                    |                          |          |          |  |                            |
| Mechanics                                                                                                                                                                                                                                                                                                                              | 9.945              | .745                     | .56      | 4%+a+b   |  | .025                       |
| Helpers                                                                                                                                                                                                                                                                                                                                | 70%JR              | .745                     | .56      | 4%+a+b   |  | .025                       |
| Helpers (Probationary)                                                                                                                                                                                                                                                                                                                 | 50%JR              |                          |          |          |  |                            |
| GLAZIERS                                                                                                                                                                                                                                                                                                                               | 6.80               |                          |          |          |  |                            |
| IRONWORKERS                                                                                                                                                                                                                                                                                                                            | 8.45               | .55                      | 1.00     | .50      |  | .07                        |
| LABORERS:                                                                                                                                                                                                                                                                                                                              |                    |                          |          |          |  |                            |
| GROUP 1 - General laborers                                                                                                                                                                                                                                                                                                             | 5.66               | .38                      | .40      |          |  | .05                        |
| GROUP 2 - All power tools & equipment operators; cutting torch man; power buggy op.; wagon drill op.; well driller; drilling rig tender; cement finisher tender; handling creosoted materials; scale man on batch plants; asphalt raker; concrete & clay & all non-metallic pipe laying; plasterer tender; brick tender; lather tender |                    |                          |          |          |  |                            |
| GROUP 3 - Mortar mixer man; grout machines; pumpcrete machines; gunnite mixing machines; running sand dryer & loading; operating sand blaster; bell hole man; blaster powderman; gunnite nozzleman                                                                                                                                     | 5.91               | .38                      | .40      |          |  | .05                        |
| LINE CONSTRUCTION:                                                                                                                                                                                                                                                                                                                     |                    |                          |          |          |  |                            |
| Lineman                                                                                                                                                                                                                                                                                                                                | 6.01               | .38                      | .40      |          |  | .05                        |
| Cable splicer                                                                                                                                                                                                                                                                                                                          | 11.42              | .50                      | 3%       |          |  | 1/2%                       |
| Groundman (1st year)                                                                                                                                                                                                                                                                                                                   | 11.67              | .50                      | 3%       |          |  | 1/2%                       |
| Groundman                                                                                                                                                                                                                                                                                                                              | 5.71               | .50                      | 3%       |          |  | 1/2%                       |
|                                                                                                                                                                                                                                                                                                                                        | 6.28               | .50                      | 3%       |          |  | 1/2%                       |



DECISION NO. TX78-4081

DECISION NO. TX78-4081

|                                                                                                  | Basic Hourly Rates | Fringe Benefits Payments |          |          |                            |
|--------------------------------------------------------------------------------------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                                                                                                  |                    | H & W                    | Pensions | Vacation | Education and/or Appr. Tr. |
| MARBLE SETTERS                                                                                   | 9.14               | .45                      | .30      | .25      |                            |
| MARBLE SETTERS' FINISHERS                                                                        | 6.37               |                          |          |          |                            |
| PAINTERS:                                                                                        |                    |                          |          |          |                            |
| Brush; Paperhanger; Taper & floater                                                              | 8.85               |                          | .20      |          | .05                        |
| Spray; Structural steel                                                                          | 9.10               |                          | .20      |          | .05                        |
| Sandblasting                                                                                     |                    |                          |          |          |                            |
| PLUMBERS-PIPEFITTERS                                                                             | 9.35               |                          | .20      |          | .05                        |
|                                                                                                  | 11.48              | .55                      | .55      |          | .10                        |
| ROOFERS:                                                                                         |                    |                          |          |          |                            |
| Roofers; Deckman                                                                                 | 6.95               | .25                      |          |          |                            |
| Kettlemen                                                                                        | 6.18               | .25                      |          |          |                            |
| Waterproofers                                                                                    | 6.54               | .25                      |          |          |                            |
| SHEET METAL WORKERS                                                                              | 10.09              | 3*+.45                   | .77      |          | .07                        |
| SOFT FLOOR LAYERS                                                                                | 6.35               |                          |          |          |                            |
| SPRINKLER FITTERS                                                                                | 11.60              | .75                      | 1.05     |          | .08                        |
| TERRAZZO WORKERS                                                                                 | 9.14               | .45                      | .30      | .25      |                            |
| TERRAZZO WORKERS' FINISHERS                                                                      |                    |                          |          |          |                            |
| Terrazzo finishers                                                                               | 6.37               |                          |          |          |                            |
| Floor machine operators                                                                          | 6.57               |                          |          |          |                            |
| Base machine operators                                                                           | 6.77               |                          |          |          |                            |
| TILE SETTERS                                                                                     | 9.14               | .45                      | .30      | .25      |                            |
| TILE SETTERS' FINISHERS                                                                          |                    |                          |          |          |                            |
| TRUCK DRIVERS                                                                                    | 6.37               |                          |          |          |                            |
| WELDERS - receive rate prescribed for craft performing operation to which welding is incidental. | 3.64               |                          |          |          |                            |

FOOTNOTES:  
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 2% over 5 yrs. - 4% of basic hourly rate.  
b - Paid Holidays A thru G

PAID HOLIDAYS  
A-New Years' Day; B-Memorial Day;  
C-Independence Day; D-Labor Day;  
E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

| POWER EQUIPMENT OPERATORS | Basic Hourly Rates | Fringe Benefits Payments |          |          |                            |
|---------------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                           |                    | H & W                    | Pensions | Vacation | Education and/or Appr. Tr. |
| GROUP 1                   | 9.27               | .45                      | .75      |          |                            |
| GROUP 2                   | 8.28               | .45                      | .75      |          |                            |
| GROUP 3                   | 6.98               | .45                      | .75      |          |                            |
| GROUP 4                   | 6.71               | .45                      | .75      |          |                            |

## CLASSIFICATION DEFINITIONS

GROUP 1 - All foundation drilling rigs; All rollers (5 tons or over); Backfiller; Backhoe; Blade graders (self-propelled); Bull clam; Bulldozers; Cableway; Clamshell operator; Crane (power operated, all types); Derricks (power operated, all types); Draglines; DM-10 caterpillar and similar tractors; Elevating graders (self-propelled); Euclid; Fork lift used on construction; Gasoline or diesel-driven welding machines (7 to 12); Gradall; Heavy duty mechanic; High lifts; Hoist (two drums or more); Locomotives; Mixer (14 cu. ft. or over); Mixmobile; Paving mixers (all sizes); Piledrivers; Pumpcrete machine operator; Rock crusher operator on job; Scoopmobile; Scrapers; Shovel (power operated); Turnapulls; Trenching machines (all sizes); Winch truck; All other equipment of similar nature, coming within the heavy equipment class, when power operated

GROUP 2 - Air compressor (any time there are three or more attachments operating on a 125 cu. ft. air compressor or less, a light equipment operator shall be employed. Any compressor over 125 cu. ft. shall have a light equipment operator); Blade graders (towed); Building elevator used on construction; Flex planes; Form graders; Hoist (single drum); Mixer (less than 14 cu. ft.); Pneumatic roller; Pulsometers; Pump (2½ or larger shall require a light equipment operator); Three to six welding machines or any three pieces or equipment of equal or similar nature, coming within the light equipment class when power operated; Roller (under 5 tons); Truck crane drivers

GROUP 3 - Fireman  
GROUP 4 - Miller

[FR Doc. 78-22864 Filed 8-17-78; 8:45 am]



Registered  
Federal

FRIDAY, AUGUST 18, 1978  
PART IV



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OCCUPATIONAL  
SAFETY AND  
HEALTH REVIEW  
COMMISSION



RULES OF PROCEDURE

Proposed Rulemaking



[7600-01]

# **OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

[29 CFR Parts 2200 and 2201]

## **RULES OF PROCEDURE**

### **Proposed Rulemaking**

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Occupational Safety and Health Review Commission proposes the amendment of certain of its rules of procedure, the adoption of a new procedural rule governing briefs as well as a new subpart governing simplified proceedings. The amendments and the proposed rule on briefs are intended to clarify and expedite Commission proceedings. The new subpart consists of 10 procedural rules drafted to afford parties the opportunity to participate in a less costly and more expeditious type of adjudicative hearing.

**DATES:** Although notice and public procedure are not required under 5 U.S.C. 553 with respect to the adoption of rules of procedure, the Commission considers it in the public interest to obtain public comments on the proposal. Accordingly, interested persons may comment in writing on the proposal by submitting written data, views, and arguments not later than the close of Commission business on November 10, 1978.

**ADDRESS:** All communications should be addressed to: Robert C. Gombar, Counsel for Appellate and Administrative Legal Services, Occupational Safety and Health Review Commission, 1825 K Street NW., Washington, D.C. 20006.

### **FOR FURTHER INFORMATION CONTACT:**

Robert C. Gombar, Counsel for Appellate and Administrative Legal Services, 202-634-4015.

**SUPPLEMENTARY INFORMATION:** This notice effectively supersedes the notice of proposed rulemaking at 39 FR 4674(1974)<sup>1</sup> and the advanced notice of proposed rulemaking at 41 FR 26707(1976). All persons are notified that no further action shall be taken on those earlier proposals.

Each amendment, the new rule on briefs, and the new subpart were adopted as proposed rules by a majority vote of the Commission members at an open meeting of the Commission held on July 31, 1978.

The amendments and the new rules may be summarized as follows.

## **SECTION 2200.51 PREHEARING CONFERENCE**

A minor amendment inserts the word "settlement" into paragraph (a) of this rule. The insertion is made to apprise parties that settlement may be considered at a prehearing conference. The proposed amendment is wholly consistent with the general mandate of the Administrative Procedure Act that parties be afforded the opportunity to consider settlement. 5 U.S.C. 554(c) and 556(c)(6). The rule, as amended, however, in no way is intended to restrict the parties' settlement considerations to the prehearing conference. See § 2200.100 Settlement.

## **SECTION 2200.75 INTERLOCUTORY APPEALS**

The purpose of this rule is to establish a more structured system for dealing with interlocutory appeals. Under paragraph (b) of the proposed rule a party wishing to file an interlocutory appeal first must file a request for the judge to certify the appeal. The criteria for certifying an appeal are similar to those contained in the interlocutory appeal rule governing Federal district courts, 28 U.S.C. 1292(b). If an appeal is certified, the Commission may hear it or may elect to decline the certification under subparagraph (b)(2) of the proposed rule. If the judge denies the request to certify the appeal, the party may then petition the Commission to allow the appeal under subsection (c). The criteria for the Commission's granting of an appeal are set out in that subsection.

Paragraph (d) clearly indicates that the Commission's action in declining to hear an interlocutory appeal is without prejudice to the merits of the appeal. Thus, an objection that the party sought to raise in the interlocutory appeal still may be argued if the case later is reviewed by the Commission pursuant to § 2200.91a.

The proposed rule contemplates the revocation of § 2200.11(b), which permits interlocutory appeals as of right on ruling concerning trade secrets. In order to continue to afford protection to trade secrets, paragraph (e) provides that a request to a judge to certify an interlocutory appeal on a ruling concerning trade secrets automatically stays the effect of that ruling until the judge denies the request or the Commission rules on the appeal or declines to hear it. Additionally, if following the judge's denial of certification the Commission is petitioned to allow the appeal, the ruling also is automatically stayed. The stay remains in force until the Commission denies the petition or, if the petition is granted, rules on the appeal. Since a party whose appeal is denied certification may not necessarily petition the

commission to allow the appeal, there is no automatic stay during the period between the judge's denial of certification and the party's filing of a petition for interlocutory appeal with the Commission. It is expected, however, that if a petition is going to be filed, it would be filed expeditiously to minimize this gap. Also, the judge may extend the stay beyond the time certification is denied, although such an extension is not required. This paragraph does not limit the authority of judges or the Commission to grant stays beyond those provided automatically by the paragraph, including stays during appeals of rulings concerning issues other than trade secrets.

Paragraph (f) informs parties that briefs on interlocutory appeals are governed by rule 91b.

## **SECTION 2200.90 DECISION OF THE JUDGE**

The most important change proposed for this rule is the elimination of the 20-day reconsideration period between the mailing of the judge's initial decision to the parties and the filing of his report with the Commission. This period was provided when §§ 2200.90 and 2200.91 were amended on December 15, 1974. 39 FR 40249 (1974). The primary reason for the change proposed in the present rule is to shorten the time of processing Commission adjudications.

The proposed rule also more explicitly codifies the Commission's holding in *Gurney Industries*, 74 OSAHRC 8/A2, 1 BNA OSHC 1376, 1973-74 CCH OSHD para. 16,805 (No. 722, 1973) that a judge "makes" his report under section 12(j) of the Act (29 U.S.C. § 661(i)) when it is received by the Commission. It substitutes the date of receipt for the date of docketing provided by the current rule. The proposed rule would continue to provide definitions of the terms "report" and "decision" as they are used in the Act.

The proposed rule also reflects several style changes and the elimination of several redundant provisions in the present rule. Subparagraph (b)(2), for example, is redundant with § 2200.8(a), and subparagraph (b)(3) is redundant with section 12(j) of the Act.

It is expected that the Commission will, in order to expeditiously provide parties with copies of the judge's decision, require that the judge provide the Commission with at least as many copies of his decision as there are parties. The Office of the Executive Secretary will date the copies and mail them to the parties the same day they are received. This was the policy and practice of the Commission before the adoption of the present rule.

<sup>1</sup> 29 CFR part 2201.



**SECTION 2200.91 PETITIONS FOR DISCRETIONARY REVIEW**

Paragraph (b) of the proposed rule would, if adopted, mark a return to the original version of § 2200.91(b), 37 FR 20237 (1972). It requires that petitions for discretionary review be filed no later than the twenty-fifth day after the judge's report is received by the Commission. The original twenty-five-day rule was revoked in 1974 when a twenty-day reconsideration period was added to §§ 2200.90 and 2200.91. It is now proposed that these rules be amended to revoke the twenty-day reconsideration period and reinstitute the twenty-five-day period for the filing of petitions.

The Commission members have been troubled for some time by the fact that some parties file their petitions for discretionary review at or near the end of the thirty-day statutory review period. Not only do such filings make for hasty consideration of the petition at times, but they have obstructed the Commission's effective use of a procedure intended to eliminate duplicative consideration of petitions by Commission members. The Commission has instituted a procedure to review petitions in series. Review in series is not practical when petitions are received in the closing days of the statutory review period and such filings must be examined by each member simultaneously in a tripling effort.

A reinstitution of the twenty-five-day rule would not in any way limit the statutory right of each member to direct a judge's decision. The major effect of the proposed rule will be that a party's late filed petition will not be considered by the Commission members. A member may still upon his own motion direct review of the Judge's decision.

The proposed rule also permits parties to file short memorandums rather than briefs with their petitions. It has been found that some parties file extensive briefs which make expeditious consideration of the petition more difficult.

The rule on statements in opposition to petitions would be removed. It has been the Commission's experience that such statements are rarely filed. While the Commission's rules do not prohibit the filing of such statements, it was though unnecessary to make special provision for them.

**SECTION 2200.91b BRIEFS BEFORE THE COMMISSION**

The new rule on briefs, as proposed, establishes a responsive briefing schedule similar to that employed in the United States Courts of Appeals. Responsive briefing aids the review process by narrowing and clarifying the issues before the Commission. Moreover, responsive briefing allows a

non-aggrieved party to specifically address the contentions of the petitioning party rather than having to face the difficult task of anticipating an opponent's arguments. Under the proposal, responsive briefing does not apply where no petition for discretionary has been granted and a Commission members has directed review on his own motion. In all other review matters where briefs may be requested by the Commission, including interlocutory appeals, a briefing order consistent with this rule will be issued.

A second import feature of the rule, as proposed, is the briefing request. The issuance of a briefing request will be correlated with the disposition of a particular matter so that the parties may submit up-to-date briefs incorporating current commission case law.

Because briefs will normally be requested at a time close to disposition, the timely filing of a brief is essential. Thus, the rule details the requirements for and restrictions upon motions for extensions of time.

The rule, as proposed, requires a table of contents for all briefs in excess of 15 pages. A table of contents is an effective tool to aid a party in organizing its arguments. It also assists the Commission in its review of a brief. The rule places a limit of 35 pages on briefs unless the Commission permits otherwise. The limit is not intended to inhibit argument, but rather to foster the clear and concise presentation of a party's contentions. Whenever it is apparent that a longer brief is necessary to address the issues, the requisite permission will be granted.

**SECTION 2200.100 SETTLEMENT**

The rule, as proposed, extensively amends the current rule on settlement. The objective of these amendments is to fulfill the mandate that parties be afforded the opportunity to settle a dispute and to fully apprise the parties of the requirements for settlement.

The rule, as proposed, notifies all parties that settlement may be proposed whenever a case is pending within the jurisdiction of the Commission. The rule would codify the essential requirements for a settlement proposal as previously established by Commission case law. "See, e.g., Dawson Brothers—Mechanical Contractors," 75 OSAHRC 5/B8, 1 BNA OSHC 1024, 1971-73 CCH OSHD para. 15,039 (No. 12, 1972).

The proposed rule contains an important amendment regarding service of the settlement proposal upon and notice to affected employees. As proposed, the rule requires that each settlement proposal be served upon affected employees 10 days prior to the filing of the settlement proposal for approval. Thus, affected employees

will be afforded an opportunity to submit their views on the settlement.

The incorporation of specific requirements into the rule, as proposed, should in no way be construed to limit the Commission's authority to determine whether approval of the settlement proposal is consistent with the provisions and purposes of the Occupational Safety and Health Act.

**SECTION 2200.100 WITHDRAWAL OF NOTICE OF CONTEST**

The proposal moves the rule governing withdrawal out of subpart D governing prehearing procedures because a motion to withdraw a notice of contest may be filed at any stage of the proceedings.

A motion to withdraw a notice of contest should not be based upon the exchange of promises that may be unenforceable or may remain unknown to affected employees or other parties. Consequently, the rule, as proposed, contains two important amendments designed to preserve the important distinction between a motion to withdraw a notice of contest and a settlement. The rule requires that a motion to withdraw a notice of contest aver that it is made unilaterally; the motion must include a statement that no promise of another party has led to the motion. Furthermore, the rule clearly apprises parties that any exchange of promises intended to terminate litigation shall be treated as a settlement and must therefore be submitted in accordance with § 2200.100.

**SUBPART M—SIMPLIFIED PROCEEDINGS**

The purpose of these proposed simplified rules is to eliminate unnecessary paperwork, reduce expenses to the parties and the Agency, and make Commission adjudications less complex and time-consuming. It is hoped that the procedure is simple enough so that parties need not necessarily retain legal counsel to guide them through what might appear to be complex procedural rules. The Commission looks upon the rules in subpart M as experimental.

It is important to note that although the proposed simplified rules reflect the elimination of some procedural rights now granted by the Commission's rules, the proposed subpart M does not impinge upon the statutory rights of parties under the act or the Administrative Procedures Act. These statutory procedural rights are not affected by these proposed rules.

Sections 2200.201, 2200.202, and 2200.203(d) limit simplified proceedings to a class of cases arising under section 5(a)(2) of the act. Cases arising under section 5(a)(1), the "general duty" clause, are not subject to subpart M, nor are the cases arising under the standards listed in table A of



§ 2200.202. The standards in table A are all "health" standards. Most, if not all of them, require engineering controls as a primary method of abatement and require personal protective equipment as a secondary measure. Cases involving such standards are unusually complex and involve a certain amount of necessary discovery. Pamphlets or copies of the Commission's rules will be provided to contesting or petitioning parties early enough to enable them to decide whether the case is eligible and file a timely request for simplified proceedings.

Sections 2200.201 and 2200.203(a) permit only parties who have filed either a notice of contest (NOC) or a petition for modification of abatement (PMA) to choose simplified proceedings. Although all parties who have filed NOC's or PMA's in any one matter must agree to use simplified proceedings, the rules do not permit other parties to object once the choice has been made. The parties who initiate the proceedings should have the right to choose the rules for determining the matter, so long as the rules chosen are fair to all. Also, an objection procedure would unnecessarily complicate the matter.

Section 2200.204 eliminates most pleadings. In the complaint, the Secretary alleges little more than what is set forth in the citation. Answers usually deny the substantive portions of the complaint. The basic value of the Answer is to allege new matter, i.e., affirmative defenses. In this regard, the Commission is concerned that the Solicitor may find himself at a disadvantage when faced with a respondent represented by counsel who, for whatever reason, fails to disclose until the conference-hearing certain affirmative defenses. Thus, we have required parties represented by counsel to file a statement of affirmative defenses. It is expected that during the discussion among parties to be held pursuant to § 2200.205 the Solicitor will be able to determine the arguments to be made by a party appearing without counsel.

The conference-hearing provided by § 2200.206 is the heart of subpart M. This procedure is meant to be a flexible tool permitting the parties and the judge to make it as much of a "conference" or as much of a "hearing" as they deem necessary. In other words, within the framework of this subpart the parties have the right to make the procedure as informal or formal as they wish. Should the parties, or any single party, see the need for a hearing, as opposed to a proceeding more in the nature of a conference, a hearing shall be held and such a proceeding is intended to be an adjudicatory hearing consistent with section 10(c) of the Act (29 U.S.C. 659(c)) and the Administrative Procedure Act (5

U.S.C. 554 and 556). The rules of evidence, as indicated by § 2200.206(b), essentially are those that would prevail if the Commission relied completely upon the rule in 5 U.S.C. 556(d).

The purpose of the summary of oral proceedings provided by § 2200.208 is to obviate in many cases a full transcription of the oral record taken by the reporter under § 2200.207. The reporter's stenographic or magnetic tape would be transcribed only if a party or the judge requests a transcript. The judge's summary will be the record of the oral proceedings, however, unless it is objected to by a party. In that case, the record of the oral proceedings will be transcribed to the extent necessary and it will be the hearing record for the portions transcribed.

Section 2200.210 limits a party's right to discovery and eliminates interlocutory appeals. A party wishing to have discovery under this subpart must make a substantial showing that such discovery is necessary.

Under the authority of section 12(g) of the Occupational Safety and Health Act, Pub. L. 91-596 (29 U.S.C. 661(f)), the Commission proposes that 29 CFR part 2200 be amended in the manner set forth below.

#### § 2200.11 [Amended]

1. In § 2200.11, paragraph (b) would be revoked and the designation (a) in paragraph (a) would be deleted.

#### § 2200.50 [Redesignated as § 2200.100a and Revised]

2. Section 2200.50 would be redesignated as § 2200.100a and would be revised to read as follows:

#### § 2200.100a Withdrawal of notice of contest.

A party may move to withdraw its notice of contest at any stage of the proceedings. The motion shall include a statement that a promise of another party has not led to the motion to withdraw the notice of contest. The rule on settlements, § 2200.100, shall apply whenever a promise of another party has led to the party's motion to withdraw.

3. Section 2200.51(a) would be revised to read as follows:

#### § 2200.51 Prehearing conference.

(a) At any time before a hearing, the Commission or the judge, on their own motion or on the motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference to consider settlement or matters which will tend to simplify issues or expedite the hearing.

4. Section 2200.75 would be revised to read as follows:

#### § 2200.75 Interlocutory appeals.

(a) *Generally.* A judge's interlocutory ruling may be appealed to the Commission only in the manner prescribed by this rule.

(b) *Certification.* A party desiring to appeal from an interlocutory ruling shall file with the judge a written request for certification of the appeal. The request and supporting documents shall be filed within 5 days after receipt of the judge's ruling from which appeal is sought. Responses to the request, if any, shall be filed within 5 days after service of the request. The judge shall certify an interlocutory appeal when the ruling involves an important question of law or policy about which there is substantial ground for difference of opinion and an immediate appeal of the ruling may materially expedite the proceedings.

(1) *Procedure after certification.* Following certification, the judge shall forward to the Executive Secretary the request for certification and supporting documents, responses filed by the other parties, the ruling from which appeal is taken, a copy of relevant portions of the record, and the judge's order certifying the appeal.

(2) *Acceptance of certification—discretionary.* The Commission at any time may decline to accept a certification.

(c) *Petition for interlocutory appeal.* Within 5 days following the receipt of a judge's order denying certification, a party may file with the Commission a petition for interlocutory appeal. Responses to the petition, if any, shall be filed within 5 days following service of the petition. The Commission will grant a petition for interlocutory appeal only in exceptional circumstances where it finds (1) that the appeal satisfies the criteria for certification of an appeal set forth in paragraph (b) of this rule; (2) that there is a substantial probability of reversal; and (3) that there is a need for resolving the law regarding the issues raised on appeal.

(d) *Denial without prejudice.* The Commission's action in declining to accept a certification or denying a petition for interlocutory appeal shall not preclude a party from raising an objection to the judge's interlocutory ruling in a petition for discretionary review.

(e) *Stay.*—(1) *Trade secret matters.* The filing with a judge of a request to certify an interlocutory appeal of a ruling concerning an alleged trade secret shall stay the effect of the ruling: (i) Until the judge denies the request; or (ii) if the request is granted, until the Commission declines to accept the certification or rules on the



appeal. The filing with the Commission of a petition for interlocutory appeal of a ruling concerning an alleged trade secret shall stay the effect of the ruling until the Commission denies the petition or rules on the appeal.

(2) *Other cases.* In all other cases, the filing or granting of a request to certify an interlocutory appeal, or the filing or granting of a petition for interlocutory appeal shall not stay a proceeding or the effect of a ruling unless otherwise ordered.

(f) *Briefs.* Should the Commission desire briefs on the issues raised by an interlocutory appeal, it will give notice to the parties. See § 2200.91b.

5. Section 2200.90 would be revised to read as follows:

**§ 2200.90 Decision of the judge.**

(a) *Contents.* The decision of the judge shall include findings of fact, conclusions of law, and order.

(b) *Report; date of receipt.* The judge shall transmit to the Commission a report consisting of a decision and the record. The Commission shall mark on the decision the date of receipt of the report, and issue copies of the dated decision to the parties. The date of receipt of the report is the date that the report is made with the meaning of section 12(j) of the Act (29 U.S.C. 661(i)).

6. Section 2200.91 would be revised to read as follows:

**§ 2200.91 Petitions for discretionary review.**

(a) *Who may file; consequences of failure to file.* A party aggrieved by the decision of a judge may file a petition for discretionary review.

NOTE.—An aggrieved party who fails to file a petition in accordance with this rule may be foreclosed from judicial review of any objection to the judge's decision. *Key-stone Roofing Co. v. Dunlop*, 539 F. 2d 960 (3d Cir. 1976).

(b) *When to file.* The petition should be filed as early as possible to permit the fullest consideration. A petition filed later than the 25th day after the judge's report is received by the Commission shall not be accepted.

NOTE.—A Commission member may direct review of a judge's decision only within the 30-day period following the receipt of the judge's report.

(c) *Contents of the petition.* The petition should contain a concise statement of the parts of the decision and order objected to and may be accompanied by a short memorandum of points and authorities. Precise citations to the record or legal authorities will assist in the review of the petition.

(d) *Four copies.* Four copies of the petition shall be filed.

(e) *Denial of the petition.* Failure to grant the petition within the 30 days following the receipt of the judge's report shall be considered a denial of the petition.

7. Subpart F would be amended by adding a new § 2200.91b, which would read as follows:

**§ 2200.91b Briefs before the Commission.**

(a) *Request for briefs.* The Commission ordinarily will request the parties to file briefs on issues before the Commission.

(b) *Time for filing briefs.* Unless the briefing notice provides otherwise, a party whose petition for review or for interlocutory appeal has been granted or whose interlocutory appeal has been certified shall file a brief within 40 days after receipt of the briefing notice. All other parties shall file briefs within 30 days after the brief of the petitioning or appealing party has been served. If no petition for discretionary review has been granted and a member has directed review of a judge's decision upon his own motion, all briefs shall be filed within 40 days after receipt of the briefing notice. Additional briefs shall not be allowed except by leave of the Commission.

(c) *Motion for extension of time for filing brief.* An extension of time to file a brief shall not be granted except in extraordinary circumstances. A motion for extension of time to file a brief shall be filed within the time limit prescribed by paragraph (b) of this rule and shall include the following information: When the brief is due; the number and duration of extensions of time that have been granted to each party; the length of extension being requested; the specific reasons for the extension being requested; and what assurance there is that the brief will be filed within the time extension requested. A motion for extension of time to file a brief filed by an attorney shall be verified or supported by an affidavit.

(d) *Consequences of late filing of brief.* The Commission may decline to accept a brief that is not timely filed.

(e) *Length of brief.* Except by permission of the Commission, a brief shall contain no more than 35 pages of text.

(f) *Table of contents.* A brief in excess of 15 pages shall include a table of contents.

(g) *Four copies.* Four copies of a brief shall be filed. See § 2200.7(a).

8. Section 2200.100 would be revised to read as follows:

**§ 2200.100 Settlement.**

(a) *Policy.* Settlement is permitted at any stage of the proceedings. Settlements submitted for consideration after the judge's decision has been directed for review shall be filed with

the Executive Secretary. A settlement proposal shall be approved where it is consistent with the provisions and objectives of the Act.

(b) *Requirements.* Every settlement proposal shall include, where applicable, the following:

(1) A motion to amend or withdraw the citation, notification of proposed penalty, notice of contest, or petition for modification of abatement;

(2) A statement that payment of the penalty has been tendered or of a promise to pay; and

(3) A statement that the cited condition has been abated or of the date by which abatement will be accomplished.

(c) *Service and notice.* Settlement proposals shall be served upon represented and unrepresented affected employees in the manner prescribed for notices of contest in § 2200.7. This service shall be made at least ten days before filing the settlement proposal for approval. Proof of service shall accompany the settlement proposal.

9. A new subpart M would be added. Subparts H through L are reserved. The new subpart M should read as follows:

**Subpart M—Simplified Proceedings**

| Sec.     | Purpose.                                |
|----------|-----------------------------------------|
| 2200.200 | Application.                            |
| 2200.201 | Eligibility for simplified proceedings. |
| 2200.202 | Request for simplified proceedings.     |
| 2200.203 | Filing of pleadings.                    |
| 2200.204 | Discussion among parties.               |
| 2200.205 | Conference-hearing.                     |
| 2200.206 | Reporter present; transcripts.          |
| 2200.207 | Summary of oral proceedings.            |
| 2200.208 | Decisions of the judge.                 |
| 2200.209 | Miscellaneous.                          |

AUTHORITY: Sec. 12(g) of the Occupational Safety and Health Act, Pub. L. 91-596 (29 U.S.C. 661(f)).

**Subpart M—Simplified Proceedings**

**§ 2200.200 Purpose.**

(a) The purpose of this subpart is to provide simplified procedures for resolving contests under the Occupational Safety and Health Act of 1970, so that parties before the Commission may save time and expense while preserving fundamental procedural fairness. The rules shall be construed and applied to accomplish these ends.

(b) Procedures under this subpart are simplified in a number of ways. The major differences between these procedures and those provided in subparts A through G of the Commission's rules of procedure are the following: (1) Pleadings generally are not permitted or required. Early discussions among the parties will inform the parties of the legal and factual matters in dispute and narrow the



issues to the extent possible. See §§ 2200.204 and 2200.205. (2) The use of a transcript is optional. The Judge's summary will serve as the record of the oral proceedings unless a party disagrees with the summary. See § 2200.208. (3) The Federal Rules of Evidence do not apply.

#### § 2200.201 Application.

The rules in this subpart shall govern proceedings before an administrative law judge when (1) the case is eligible for simplified proceedings under § 2200.202, and (2) all parties who have filed a notice of contest or petition for modification of abatement period request simplified proceedings.

#### § 2200.202 Eligibility for simplified proceedings.

A case is eligible for simplified proceedings unless it concerns an alleged violation of section 5(a)(1) of the Act (29 U.S.C. 654(a)(1)) or an alleged failure to comply with a standard listed in table A.

TABLE A

All standards listed are found in title 29 of the Code of Federal Regulations.

|                                                                                                              |               |
|--------------------------------------------------------------------------------------------------------------|---------------|
| § 1910.94                                                                                                    | § 1910.96     |
| § 1910.95                                                                                                    | § 1910.97     |
| §§ 1910.1000 to 1910.1045, and any occupational health standard that may be added to subpart Z of part 1910. |               |
| § 1926.52                                                                                                    | § 1926.55     |
| § 1926.53                                                                                                    | § 1926.57     |
| § 1926.54                                                                                                    | § 1926.800(c) |

#### § 2200.203 Request for simplified proceedings.

(a) *Who may request simplified proceedings.* A party who files a notice of contest or a petition for modification of abatement period may request simplified proceedings.

(b) *When to request.* After the Commission receives a notice of contest or petition for modification of abatement, the Executive Secretary issues a notice indicating that the case has been docketed. A request for simplified proceedings, if any, shall be filed within 10 days after the notice of docketing is received, unless the notice of docketing states otherwise.

(c) *How to request.* A simple statement is all that is necessary. For example, "I request that the proceedings in this case be simplified" will suffice. The request must be filed with the Executive Secretary and served in the manner prescribed for notices of contest in § 2200.7.

(d) *Effect of the request.* For those cases eligible under § 2200.202, simplified proceedings are in effect when:

(1) A notice of contest is filed by only one party and that party requests simplified proceedings;

(2) Notices of contest are filed by two or more parties and all such parties request simplified proceedings; or

(3) A petition for modification of abatement is filed and the filing party requests simplified proceedings.

#### § 2200.204 Filing of pleadings.

(a) *Complaint and answer.* There shall be no complaint or answer in simplified proceedings. If the Secretary has filed a complaint under § 2200.33, a response to an employee contest under § 2200.35, or a response to a petition under § 2200.34, the complaint or response shall be disregarded.

(b) *Statement of affirmative defenses.* A party may raise affirmative defenses. If a party is represented by counsel and wishes to raise affirmative defenses, the party shall file a statement describing the defense within 15 days after the request for simplified proceedings is filed. The statement shall be filed and served in accordance with § 2200.7.

(c) *Motions.* A primary purpose of simplified proceedings is to eliminate, as much as possible, motions and similar documents. A motion will not be viewed favorably if the subject of the motion may be adequately discussed during the conference-hearing or has not been first discussed among the parties.

#### § 2200.205 Discussion among parties.

Within a reasonable time before the conference-hearing, the parties shall meet, in person or by telephone, and discuss the following: Settlement of the case; the narrowing of issues; an agreed statement of issues or facts; witnesses and exhibits; and any other pertinent matter.

#### § 2200.206 Conference-hearing.

(a) The judge shall schedule and preside over a conference-hearing. At the conference-hearing, the parties shall report to the judge the agreements they have reached and the status of their discussion. The judge may hear oral testimony and receive other evidence. Each party shall have a right to conduct cross-examination.

(b) *Evidence.* Oral or documentary evidence may be received, but the judge may exclude irrelevant or unduly repetitious evidence.

(c) *Oral and written argument.* Each party may present oral argument. Written argument may not be filed unless the judge is notified by a party at the conference-hearing that written argument will be filed. Upon notification,

the judge shall set a schedule for the prompt filing of written argument.

#### § 2200.207 Reporter present; transcripts.

A reporter shall be present at the conference-hearing to record the proceeding. An official transcript of the proceeding shall not be prepared unless it is requested by the judge, or unless a party orders the transcript from the reporter at the party's own expense.

#### § 2200.208 Summary of oral proceedings.

After the conference-hearing, the judge shall promptly prepare a summary of the oral proceedings. The summary shall be issued to the parties for their proposed corrections and additions. The summary shall be the record of the oral proceedings unless proposed corrections and additions are filed within 10 working days of the date of issuance or a period set by the judge. If the parties are unable to agree upon corrections and additions, the disputed portions of the conference-hearing shall be transcribed and filed as an appendix to the judge's decision. The summary and the parties' proposed corrections and additions shall be included in the official record.

#### § 2200.209 Decision of the judge.

At the conference-hearing the judge may announce a tentative decision. After the conference-hearing, the judge shall issue a written decision.

#### § 2200.210 Miscellaneous.

(a) *Discovery.* Discovery, including requests for admissions, shall not be allowed except by order of the judge as a result of a prehearing conference.

(b) *Interlocutory appeals not permitted.* Appeals to the Commission of a ruling made by a judge which is not the judge's final disposition of the case are not permitted.

(c) *Applicability of subparts A through G.* Sections 2200.6, 2200.33, 2200.34(d)(4), 2200.35, 2200.36, 2200.38, 2200.72, 2200.75, and 2200.76 shall not apply to simplified proceedings. All other rules contained in subparts A through G of the Commission's rules of procedure shall apply when consistent with the rules in this subpart governing simplified proceedings.

Signed this 14th day of August 1978.

TIMOTHY F. CLEARY,  
Chairman.

FRANK R. BARNAKO,  
Commissioner.

BERTRAM R. COTTINE,  
Commissioner.

[FR Doc. 78-23203 Filed 8-17-78; 8:45 am]



FRIDAY, AUGUST 18, 1978  
PART V



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**OFFICE OF  
MANAGEMENT  
AND BUDGET**

**IMPLEMENTATION OF  
FEDERAL GRANT AND  
COOPERATIVE  
AGREEMENT ACT OF  
1977 (PUB. L. 95-224)**

**Final OMB Guidance**

**Registered  
Product**



[3110-01]

# OFFICE OF MANAGEMENT AND BUDGET

## IMPLEMENTATION OF FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT OF 1977 (PUB. L. 95-224)

### Final OMB Guidance

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice of final OMB guidance for Federal agency use in implementing the Federal Grant and Cooperative Agreement Act of 1977.

**SUMMARY:** The Federal Grant and Cooperative Agreement Act distinguishes between procurement and assistance relationships and mandates that Federal agencies use contracts for procurement transactions:

Sec. 4. Each executive agency shall use a type of procurement contract as the legal instrument reflecting a relationship between the Federal Government and a State or local government or other recipient (1) whenever the principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; or (2) whenever an executive agency determines in a specific instance that the use of a type of procurement contract is appropriate.

and grants or cooperative agreements for assistance transactions:

Sec. 5. Each executive agency shall use a type of grant agreement as the legal instrument reflecting a relationship between the Federal Government and a State or local government or other recipient whenever (1) the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and (2) no substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the State or local government or other recipient during the performance of the contemplated activity.

Sec. 6. Each executive agency shall use a type of cooperative agreement as the legal instrument reflecting a relationship between the Federal Government and a State or local government or other recipient whenever (1) the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State and local government or other recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and (2) substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the State or local government or other recipient during performance of the contemplated activity.

Federal agencies must implement sections 4, 5, and 6 by February 3, 1979. OMB's intent in issuing guidance is to promote consistent implementation of the Act.

Section 8 of the Act requires OMB to conduct a study of Federal assistance relationships and provide a report to Congress no later than February 1980. This will focus on developing a better understanding or alternative means for implementing Federal assistance programs and on determining the feasibility of developing a comprehensive system of guidance for Federal assistance programs. In undertaking the study, OMB is required by the act to consult and, to the extent practicable, involve representatives of the executive agencies, Congress, General Accounting Office, State and local governments, other recipients, and interested members of the public. A draft plan outlining the proposed scope of the study was published in the *FEDERAL REGISTER* on June 23, 1978, for comment. Comments on the draft plan are due to OMB by August 23, 1978.

### FOR FURTHER INFORMATION CONTACT:

Thomas L. Hadd, Intergovernmental Affairs Division, Office of Management and Budget, Room 9026, NEOB, Washington, D.C. 20503, telephone 202-395-5156.

DAVID R. LEUTHOLD,  
Budget and Management  
Officer.

### SUMMARY OF MAJOR COMMENTS ON THE DRAFT GUIDANCE AND THE OMB RESPONSE

The Act authorizes the Director of OMB to issue supplementary interpretative guidelines to promote consistent and efficient use of contracts, grants, and cooperative agreements. On May 19, 1978, OMB published a proposed draft of the guidance in the *FEDERAL REGISTER* for comment.

Numerous comments were received from Federal agencies and others. The majority of the comments suggested ways for improving the clarity of the draft and many of these improvements are reflected in the final guidance. Some comments dealt with aspects or potential effects of the Act itself that are beyond the scope of this guidance. There were also comments or suggestions that could not be used in revising the guidance, but which will be considered during the study.

A summary of the more important substantive comments about specific parts of the draft proposal along with the OMB response to them follow:

#### A. OMB interpretation of the Act.

##### 1. General purposes of the Act.

*Comment.* One agency pointed out that there are a number of types of

transactions that are not covered by the Act, such as the sale, lease, license, and other authorizations to use Federal property, when not for the purpose of support or stimulation.

*Response.* The guidance was amended to reflect this fact.

#### A. 3. Interpretation of specific provisions of the Act.

*Comment.* There were several comments about the clarity of the guidance in interpreting subsection 4(2) of the Act, which allows the use of contracts "whenever an executive agency determines in a specific instance that the use of a type of procurement contract is appropriate." Most of the comments related to the possible use of "assistance contracts."

*Response.* The guidance was revised by including a direct quote from the legislative history, and by stating that in all transactions based on this subsection of the Act, procurement contracts must be used.

*Comment.* One comment was received expressing the opinion that subsection 7(a) of the Act, which authorizes agencies to use procurement contracts, grants, and cooperative agreements as provided for in the Act unless otherwise prohibited, should be interpreted as replacing the Grants Act. The Grants Act provided general authority to use grants for funding research.

*Response.* OMB cannot agree with this interpretation, since Pub. L. 95-224 specifically repeals the Grants Act and requires that the selection of the appropriate legal instrument be based on the character of the specific transaction (i.e., procurement or assistance) rather than on a functional activity or class of recipient.

#### B. Distinguishing between procurement and assistance.

##### 1. Basic determinations.

*Comment.* Although a major purpose of the Act is to distinguish between procurement and assistance, several observers indicated they did not feel the OMB draft guidance was in sufficient detail. One comment was made that the guidance should stress the principal purpose of a transaction as being the most important determinant. Two comments requested that agencies be guided to use grants for research funding.

*Response.* In most cases, agencies will have no trouble distinguishing between procurement and assistance. Where the distinction is hard to make, OMB believes that the agency mission and intent must be the guide, and that more detailed criteria would not be useful. The suggestion that emphasis be placed on the principal purpose was followed. The request to guide the agencies to use grants to fund research is not consistent with the Act. OMB will continue to work with the agen-



cies to promote consistency in agency determinations on procurement and assistance distinctions.

**B. 2. Assistance awards to for-profit organizations.**

*Comment.* Some of the comments indicated confusion over whether the Act authorizes assistance awards to for-profit organizations.

*Response.* A subsection was added that indicates assistance awards may be made to for-profit organizations if the awards are consistent with sections 4, 5, and 6 of the Act.

**C. Characterization of grants and cooperative agreements.**

*Comment.* Many comments were received on this section. Most of them indicated a need for clarifying the guidance or suggested ways of doing it.

*Response.* The entire section has been rewritten for clarification. One additional provision was added to indicate that transactions that include very precise Federal requirements and provisions for intense monitoring of these requirements may properly be classified as cooperative agreements.

**C. 2. OMB policy on substantial involvement.**

*Comment.* There were several expressions of concern that cooperative agreements, as a new class of assistance instruments, might lead to greater Federal involvement, particularly in research projects.

*Response.* The guidance has been revised to state that nothing in this Act can be interpreted as a basis for increasing Federal involvement beyond that authorized by program statutes.

**D. Agency decision structure for selection of instruments.**

*Comments.* It was pointed out that the guidance, as drafted, would not apply to the organization and processes of some agencies.

*Responses.* The guidance was rewritten to convey the original intent but to be less restrictive on how agencies should follow it.

**E. Administrative requirements for grants and cooperative agreements.**

*Comment.* There were a number of comments about whether or not these requirements should apply to cooperative agreements. It was also pointed out that some of these requirements do not now apply to some classes of recipients, such as for-profit organizations.

*Response.* The legislative history specifically indicates that OMB Circular A-102 is part of the existing system of guidance, and the creation of the cooperative agreement instrument should not lead to a bypass of this initial step. The point about the limited applicability of some of the administrative requirements has been included in the final guidance. OMB will consider the question of administrative requirements as they relate to

grants and cooperative agreements during the study required by section 8 of the Act.

**F. Specific guidelines for grants.**

**1. Distinction between grants and subsidies.**

*Comments.* Several comments were received that the draft guidance on this point was inadequate.

*Response.* The distinction between grants, which are covered under section 5 of the Act, and subsidies, which are not, will have to be included in the section 8 study. Accurate coverage is not possible at this time, so this paragraph has been removed from the guidance.

**L. Agency records and M. OMB reporting requirements.**

*Comment.* There were numerous comments that both of these sections impose a considerable burden on the agencies.

*Response.* One purpose of the Act is to provide Congress with more information on the operations of Federal assistance programs. OMB is trying to keep the burden to a minimum, consistent with this purpose. These sections are to give the agencies an early indication of the type of information that will be needed.

**GUIDANCE TO THE FEDERAL AGENCIES**

The transmittal memorandum from the Director of OMB to the heads of Federal agencies and the attached guidance follow.

EXECUTIVE OFFICE OF THE PRESIDENT,  
OFFICE OF MANAGEMENT AND BUDGET,  
Washington D.C. August 15, 1978.

**MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES**

From: James T. McIntyre, Jr.  
Subject: OMB Guidance for Implementing the Federal Grant and Cooperative Agreement Act.

The Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95-224) requires that by February 3, 1979, Federal agencies use procurement contracts to acquire property or services for the direct benefit or use of the Federal Government and grants or cooperative agreements to transfer money, property, services, or anything of value to recipients to accomplish a Federal purpose of stimulation or support authorized by statute.

The act authorizes the Office of Management and Budget to issue supplementary interpretative guidelines to promote consistent and efficient use of contracts, grants, and cooperative agreements as defined in the act. It is hoped that the attached OMB guidance will not only promote consistent and orderly implementation of the act, but also aid in minimizing potential disruptions resulting from possible revisions to procedures and application materials.

A draft of this guidance was published in the May 19, 1978, FEDERAL REGISTER for agency and public comment. While we received a number of suggestions for improving and clarifying specific sections, relatively few basic policy issues that could be treated in the guidance were brought to our at-

tention. The attached guidance reflects, to the extent practicable, comments provided in response to the public notice. Agency representatives assisted in revising the draft and bringing it to its final form. This guidance will appear as a Notice in the FEDERAL REGISTER in the near future.

OMB is authorized to except individual transactions or programs from provisions of the act until February 3, 1981. Exception policy and procedures are included in the guidance. In the meantime, OMB is required to conduct a study to develop a better understanding of alternative means for implementing Federal assistance programs and to determine the feasibility of developing a comprehensive system of guidance for Federal Assistance programs. Many of the issues addressed in the OMB guidance will also be the subject of further review in the study. A draft plan for the study was published in the June 23, 1978, FEDERAL REGISTER for a 60-day public comment period. A report on the study is to be submitted to Congress no later than February 1980.

**OMB GUIDANCE TO AGENCIES FOR IMPLEMENTING THE FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT**

(Pub. L. 95-224)

*Introduction.* The Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95-224), signed February 3, 1978, requires executive agencies to distinguish procurement relationships from assistance relationships. A major objective of the act is to achieve consistency in the use of legal instruments by agencies for procurement and assistance transactions. This is a preliminary step toward a broad review of the administration of Federal assistance programs and the relationships created by the terms and conditions of legal assistance instruments. Section 4 of the act requires the use of procurement contracts for all agency acquisition activity. Sections 5 and 6 require the use of grants or cooperative agreements for specified types of assistance relationships. Section 9 authorizes the Director of the Office of Management and Budget to issue supplementary interpretative guidelines to promote consistent and efficient implementation of sections 4, 5, and 6. Subsection 10(d) authorizes the Director to except individual transactions or programs from the act's provisions.

In addition, section 8 of the act requires OMB to conduct a study of Federal assistance relationships and submit a report to Congress in 2 years. The guidelines that follow are based on OMB authorizations under sections 8, 9, and 10(d).

**CONTENTS**

- A. OMB interpretation of the Act.
- B. Distinguishing between procurement and assistance.
- C. Characterization of grants and cooperative agreements.



- D. Agency decision structure for selection of instruments.
- E. Administrative requirements for grants and cooperative agreements.
- F. Specific guidelines for grants.
- G. Specific guidelines for cooperative agreements.
- H. Assistance transactions involving only non-monetary transfers.
- I. OMB exception policy.
- J. OMB exception procedures.
- K. Joint funding under grants and cooperative agreements.
- L. Agency records.
- M. OMB reporting requirements.

#### GUIDANCE

##### A. OMB INTERPRETATION OF THE ACT

1. *General purposes of the Act.* OMB views the Federal Grant and Cooperative Agreement Act as an important opportunity to review, improve, and simplify the broad array of Federal assistance relationships. It sees the Act's objective of Federal consistency for various types of relationships coinciding with the President's goal of making Federal program actions more understandable and predictable. Agencies should give serious consideration to the policy implications of the Act's provisions, particularly Sections 4, 5, and 6, pertaining to the use of contracts, grants, and cooperative agreements as these involve the essence of the way agencies perform fundamental functions.

This Act does not cover all possible relationships that may exist between Federal agencies and others. For example, the sale, lease, license, and other authorizations to use Federal property, when not for the purpose of support or stimulation, are not within the scope and intent of Pub. L. 95-224 or this guidance.

2. *Orderly implementation of sections 4, 5, and 6.* These sections of the Act require agencies to use contracts for all procurement actions, and grants or cooperative agreements to transfer money, property, services, or anything of value to recipients to accomplish a Federal purpose of stimulation or support authorized by statute. Subsection 10(b) says:

Nothing in this Act shall be construed to render void or voidable any existing contract, grant, cooperative agreement, or other contract, grant, or cooperative agreement entered into up to one year after the date of enactment of this Act.

The legislative historic clearly indicates that Congress intended this provision to provide one year for orderly implementation of sections 4, 5, and 6. The Act was signed February 3, 1978. Agencies have until February 3, 1979, to implement these sections in accordance with the OMB guidelines.

3. *Interpretation of specific provisions of the Act.* To promote consistency, agencies should interpret subsections

4(2), 7(a), and 7(b) of the Act as follows:

a. Subsection 4(2) allows the use of contracts "whenever an executive agency determines in a specific instance that the use of a type of procurement contract is appropriate." The Senate Report on the Act says:

"This subsection accommodates situations in which an agency determines the specific public needs can be satisfied best by using the *procurement process*. For example, subsection 4(2) would cover the two-step situation in which a Federal agency may procure medicines which it then "grants" to non-Federal hospitals. This subsection does not allow agencies to ignore sections 5 and 6. Compliance with the requirements of sections 4, 5, and 6 will necessitate deliberate and conscious agency determinations of the choice of instruments to be employed. (Italics added.)

Until the Federal Acquisition Regulation is published, the Federal Procurement Regulation, the Armed Services Procurement Regulation, and other procurement regulations authorized by law govern policy and procedures regarding procurement contracts awarded under the authority of this subsection. Section M of this guidance includes a reporting requirement for procurement transactions based on subsection 4(2).

b. Subsection 7(a) says:

Notwithstanding any other provision of the law, each executive agency authorized by law to enter into contracts, grant or cooperative agreements, or similar arrangements is authorized and directed to enter into and use types of contracts, grant agreements, or cooperative agreements as required by this Act.

If, prior to the passage of the Act, an agency was authorized to use one or more of the three instruments—procurement contracts, grants, or cooperative agreements—and is not prohibited from using any of them, this provision enables it to enter into any of the three types of arrangements, subject to the criteria set forth in sections 4, 5, and 6.

c. Subsection 7(b) says:

The authority to make contracts, grants, and cooperative agreements for the conduct of basic or applied research at nonprofit institutions of higher education, or at nonprofit organizations whose primary purpose is the conduct of scientific research shall include discretionary authority, when it is deemed by the head of the executive agency to be in furtherance of the objectives of the agency, to vest in such institutions or organizations, without further obligation to the government, or on such other terms and conditions as deemed appropriate, title to equipment or other tangible personal property purchased with such funds.

The Act repeals the Grants Act, Pub. L. 85-934, which authorized the use of grants for scientific research. This provision continues the authority of the Grants Act to vest title to

equipment purchased with Federal funds in a nonprofit organization. It expands this authority to other classes of property and applies to procurement contracts and cooperative agreements as well as grants.

##### B. DISTINGUISHING BETWEEN PROCUREMENT AND ASSISTANCE

1. *Basic determinations.* While one of the major objectives of the Act is to distinguish between procurement and assistance relationships, neither term is specifically defined. Section 4 requires use of a procurement contract when the principal purpose is acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government. Sections 5 and 6 require the use of grants or cooperative agreements when the principal purpose is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use by the Federal Government.

Agencies should interpret the language of sections 5 and 6 which call for the use of grants or cooperative agreements to "accomplish a public purpose of support or stimulation authorized by Federal statute" as including but not restricted to traditional assistance transactions. Thus, for example, where an agency authorized to support or stimulate research decides to enter into a transaction where the *principal purpose* of the transaction is to stimulate or support research, it is authorized to use either a grant or a cooperative agreement. Conversely, if an agency is not authorized to stimulate or support research, or the *principal purpose* of a transaction funding research is to produce something for the government's own use, a procurement transaction must be used. Until the Federal Acquisition Regulation is published, the Federal Procurement Regulation, the Armed Services Procurement Regulation, and other procurement regulations authorized by law govern policy and procedures regarding procurement contracts.

2. *Assistance awards to for-profit organizations.* Subject to the requirements of sections 4, 5, and 6 of the Act, assistance awards may be made to for-profit organizations when deemed by the agency to be consistent with legislative intent and program purposes.

3. *When to decide on the use of procurement or assistance instruments.* Any public notice, solicitation, or request for applications or proposals should indicate whether the intended relationship will be one of procurement or assistance.



4. *What to do if the distinctions between procurement and assistance do not apply to a specific class of transactions.* Agencies should make every effort to ensure their relationships conform with those specified in the Act. If, however, there are major individual transactions or programs which contain elements of both procurement and assistance, but which cannot be characterized as having a *principal purpose* of one or the other, an OMB exception should be requested. Sections I and J deal with OMB exceptions.

#### C. CHARACTERIZATION OF GRANTS AND COOPERATIVE AGREEMENTS

1. *Anticipated substantial involvement during performance.* The basic statutory criterion for distinguishing between grants and cooperative agreements is that for the latter, "*substantial involvement is anticipated between the executive agency and the recipient during performance of the contemplated activity*" (emphasis added). To insure consistent determinations, all agencies should use only this criterion when deciding to use either a grant or a cooperative agreement.

a. Anticipated substantial Federal involvement is a relative rather than an absolute concept. The examples that follow in "b" and "c" are not meant to be a checklist or to be considered as individual determinants. Rather, they are to illustrate the general policy that:

(1) When the terms of an assistance instrument indicate the recipient can expect to run the project without agency collaboration, participation, or intervention as long as it is run in accordance with the terms of the assistance instrument, substantial involvement is not anticipated.

(2) When the instrument indicates the recipient can expect agency collaboration or participation in the management of the project, substantial Federal involvement is anticipated.

b. As a guide to making these determinations, anticipated substantial involvement during performance does not include:

(1) Agency approval of recipient plans prior to award.

(2) Normal exercise of Federal stewardship responsibilities during the project period such as site visits, performance reporting, financial reporting, and audit to insure that the objectives, terms, and conditions of the award are accomplished.

(3) Unanticipated agency involvement to correct deficiencies in project or financial performance from the terms of the assistance instrument.

(4) General statutory requirements understood in advance of the award such as civil rights, environmental protection, and provision for the handicapped.

(5) Agency review of performance after completion.

(6) General administrative requirements, such as those included in OMB Circulars A-21, A-95, A-102, A-110, and FMC 74-4.

c. Conversely, anticipated involvement during performance would exist and, depending on the circumstances, could be substantial, where the relationship includes, for example:

(1) Agency power to immediately halt an activity if detailed performance specifications (e.g., construction specifications) are not met. These would be provisions that go beyond the suspension remedies of the Federal Government for nonperformance as in OMB Circulars A-102 and A-110.

(2) Agency review and approval of one stage before work can begin on a subsequent stage during the period covered by the assistance instrument.

(3) Agency review and approval of substantive provisions of proposed subgrants or contracts. These would be provisions that go beyond existing policies on Federal review of grantee procurement standards and sole source procurement.

(4) Agency involvement in the selection of key recipient personnel. (This does not include assistance instrument provisions for the participation of a named principal investigator for research projects.)

(5) Agency and recipient collaboration or joint participation.

(6) Agency monitoring to permit specified kinds of direction or redirection of the work because of interrelationships with other projects.

(7) Substantial, direct agency *operational involvement* or *participation* during the assisted activity is anticipated prior to award to insure compliance with such statutory requirements as civil rights, environmental protection, and provision for the handicapped. Such participation would exceed that normally anticipated under (b)(4), above.

(8) Highly prescriptive agency requirements prior to award limiting recipient discretion with respect to scope of services offered, organizational structure, staffing, mode of operation, and other management processes, coupled with close agency monitoring or operational involvement during performance over and above the normal exercise of Federal stewardship responsibilities to ensure compliance with these requirements.

2. *OMB policy on substantial involvement.* Agencies should limit Federal involvement in assisted activities to the minimum consistent with program requirements. Nothing in this Act should be construed as authorizing agencies to increase their involvement beyond that authorized by other statutes.

3. *How technical assistance and guidance relate to substantial involvement.* The practice of some agencies of providing technical assistance, advice, or guidance to recipients of financial assistance does not constitute substantial involvement if:

a. It is provided at the request of the recipient, or;

b. The recipient is not required to follow it, or;

c. The recipient is required to follow it, but it is provided prior to the start of the assisted activity and the recipient understood this prior to the financial assistance award.

4. *What to do if grants or cooperative agreements do not fit program requirements.* There may be a few cases of assistance programs covered by section 5 or 6 of the Act where neither a grant nor a cooperative agreement is suitable. In such cases, an OMB exception should be requested in accordance with sections I and J below.

5. *Competition for assistance awards.* Consistent with the purposes of Pub. L. 95-224, agencies are encouraged to maximize competition among all types of recipients in the award of grants or cooperative agreements, in consonance with program purposes.

#### D. AGENCY DECISION STRUCTURE FOR SELECTION OF INSTRUMENTS

The determinations of whether a program is principally one of procurement or assistance, and whether substantial Federal involvement in performance will normally occur are basic agency policy decisions. Agency heads should insure that these general decisions for each program are either made or reviewed at a policy level. A determination that a program is principally one of procurement or assistance does not preclude the use of any of the types of instruments when appropriate for a particular transaction. Congress intended the Act to allow agencies flexibility to select the instrument that best suits each transaction. Agencies should insure that all transactions covered by the Act are consistent with their basic policy decisions for each program.

#### E. ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS.

Present administrative requirements such as OMB Circulars A-95, A-102, and A-110 apply to both grants and cooperative agreements involving the transfer of Federal funds. Some of these administrative requirements apply to specific classes of recipients such as State and local governments. This guidance does not extend the coverage of these requirements to instruments with other recipient classes such as for-profit organizations. These



administrative requirements will not apply to General Revenue Sharing or Anti-Recession Fiscal Assistance Grants administered by the Treasury Department.

Each assistance instrument must provide that the head of the assisting agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the recipient and their subgrantees which are pertinent to the transaction for the purpose of making audits, examination, excerpts, and transcripts.

#### F. SPECIFIC GUIDELINES FOR GRANTS

1. *Increasing Federal involvement during a grant period.* At times an agency may find it necessary to increase the involvement in a grant-funded project during the period of time covered by the grant. This could happen, for example, when standard grant reports or monitoring indicates some sort of problem. If this occurs, agencies should not view the Act as restricting their authority to intervene as necessary to bring the project into conformance with original intentions. Agencies should not, however, seek to become substantially involved in a long term or ongoing grant-funded activity without converting the grant instrument to a cooperative agreement following negotiation with the recipient.

#### G. SPECIFIC GUIDELINES FOR COOPERATIVE AGREEMENTS

1. *Alternative uses of cooperative agreements.* In all cases, the determination of when to use cooperative agreements will be based on the need for substantial Federal involvement in the assisted activity.

a. Some programs now using grants will require the use of cooperative agreements exclusively. This determination should be based on statutory requirements or policy level determinations of substantial Federal involvement in the performance of the assisted project.

b. Other programs may use grants or cooperative agreements, depending on the nature of the project or the abilities of the recipients. For example:

(1) Some projects may start out as cooperative agreements in the first year and be converted to grants after recipient capacity has been established.

(2) Other projects, initially funded as grants, may have to be renewed or continued for subsequent budget periods as cooperative agreements if there is a need to revise the project, upgrade recipient capacity, or protect the Federal interest.

2. *Statement of Federal involvement.* Each cooperative agreement should in-

clude an explicit statement of the nature, character, and extent of anticipated Federal involvement. These statements must be developed with care to avoid unnecessarily increasing Federal liability under the assistance instrument.

#### H. ASSISTANCE TRANSACTIONS INVOLVING ONLY NONMONETARY TRANSFERS

1. *Types of assistance included.* Sections 5 and 6 apply to transactions that transfer "property, services, or anything of value," which could include consultation, technical services, information, and data. This section of the guidance applies to agencies and programs that provide such types of nonmonetary assistance apart from fund transfers.

2. *Applicability of administrative standards.* Section E above stated that existing administrative standards (e.g., OMB Circulars A-95, A-102, A-110) apply to grants and cooperative agreements involving the transfer of funds.

Agencies are encouraged, however, to use these standards where appropriate, and in some cases, their use is required for nonmonetary transfers. For example, a donation of a substantial parcel of land to a local government is the type of Federal action covered by Part II of A-95, but other administrative standards may not apply.

3. *OMB exception for nonmonetary assistance.* OMB exempts programs and transactions providing nonmonetary assistance from the provisions of section 5 of the Act. Existing agency practices for providing nonmonetary assistance where no Federal involvement in the assisted activity is anticipated should continue. Thus a formal grant instrument is not required to provide surplus property, consultation, or data. Where substantial Federal involvement in the assisted activity is anticipated, however, a cooperative agreement is required as indicated in section 6 of the Act. Agencies engaged in the provision of nonmonetary assistance will be asked to report on these activities under section M below.

#### I. OMB EXCEPTION POLICY

1. *General.* Section 10(d) authorizes the Director of OMB to:

Except individual transactions or programs of any executive agency from the application of the provisions of this Act. This authority shall expire one year after receipt by the Congress of the study provided for in section 8 of this Act.

Agencies are advised that, unless otherwise indicated, OMB exceptions will run through January 1981.

2. *Exceptions provided in this guidance.* Section H 3 of this guidance accepts nonmonetary grants.

3. *Other exceptions under the Act.* Agencies are required to conform with sections 4, 5, and 6 of the Act. Where

severe disruption to a program or serious consequences to recipients would result, a request for exceptions should be made to OMB. OMB intends to grant additional exceptions only on the basis of agency requests that include strong justifications and an indication of the harm that will result if an exception is not granted. Section J below indicates the procedures agencies should follow in requesting exceptions.

4. *Waiver of administrative standards.* OMB is responsible for most of the administrative standards that apply to assistance programs. Agencies should follow these standards. The circulars that establish these standards presently provide procedures for granting of waivers. If the standards appear unsuitable to a particular situation, requests for waivers should be sent to the OMB office responsible for the circular or the responsible agency if not OMB (e.g., for GSA uniform relocation provisions). Requests for waivers to financial management circulars administered by OMB should be addressed to John Lordan, Chief, Financial Management Branch, OMB, Room 6002, NEOB, Washington, D.C. 20503.

#### J. OMB EXCEPTION PROCEDURES

A request for an OMB exception under this Act should be addressed to Deputy Associate Director for Intergovernmental Affairs, Room 9025, NEOB, Washington, D.C. 20503. It should include:

1. A statement on whether the exception is requested for a complete program or an individual transaction.

2. An explanation of why an exception is requested, including statutory, agency policy, or other reasons.

3. A statement of what the agency will do if an exception is not granted and what the implications would be if this action were taken.

4. An indication of how the agency will handle the situation if the OMB exception expires before there are any changes to either this Act or agency statutes.

#### K. JOINT FUNDING UNDER GRANTS AND COOPERATIVE AGREEMENTS

Subsection 10(c) of the Act specifically provides for projects funded under the Joint Funding Simplification Act that include more than one type of assistance relationship. Thus a project with some components funded by grants and others by cooperative agreements is entirely permissible. Agencies should view this Act as providing the opportunity and authority to participate in joint funded projects in any number of funding relationships to serve the best interests of the participating agencies programs.



## L. AGENCY RECORDS

Both Congress and OMB view this Act as a preliminary step toward long-range overhaul of Federal assistance activities. The requirement for agencies to implement sections 4, 5, and 6 in one year is, in large part, to begin the systematic gathering of data about Federal assistance relationships. Agencies should anticipate that congressional committees, the General Accounting Office, and OMB will be asking extensive questions about the effects of implementing these sections. While the questions may vary from agency to agency, they can reasonably be expected to deal with operating experience for a year or more after full implementation. Agencies should develop systems of records that would allow them to answer questions such as:

1. How many financial grants have been awarded in accordance with section 5 of the Act? What was the dollar volume and what classes of recipients were involved (e.g., State governments, universities, hospitals, individuals)?

2. For which programs did the agency decide to use grants exclusively? Why?

3. How many financial assistance cooperative agreements have been awarded in accordance with section 6 of the Act? What was the dollar volume and what classes of recipients were involved?

4. For which programs did the agency decide to use cooperative agreements exclusively? What are the nature and reason for the agency involvement?

5. For which programs were both grants and cooperative agreements used? What were the criteria for determining the instrument used?

6. What types of nonmonetary assistance transfers were made as grants? What types as cooperative agreements?

7. What was the agency's experience in implementing sections 4, 5, and 6? How did it contribute to improved projects, management, or intergovernmental relations? What problems has the Act presented that can be expected to continue?

## M. OMB REPORTING REQUIREMENTS

The experience of the agencies in making decisions necessary to imple-

ment sections 4, 5, and 6 of the Act will be important to the study required by section 8. In addition, to the more general questions about the feasibility of a comprehensive system of guidance for assistance activities, the report to Congress must include a summary of the effects of sections 4, 5, and 6. For these reasons, agencies are to provide by March 1, 1979, a report to OMB that includes the following:

1. Distinguishing between procurement and assistance:

a. For what types of activities did the agency have trouble making the distinction between procurement and assistance? Why?

b. On what basis were the issues resolved?

2. Use of procurement contracts:

a. What activities formerly funded through grants or other assistance instruments will now be handled with procurement contracts?

b. What is the anticipated dollar volume of these procurement contracts?

c. What is expected to be the impact of this shift on the agency?

d. Who will be the principal recipients of these contracts?

e. What is expected to be the impact on the recipients?

f. What use was made of the subsection 4(2) procurement provisions? Explain any uses other than those following the two-step example in the legislative history.

3. Agency decisions on when to use grants or cooperative agreements:

a. Describe the process by which the agency decided which programs would use:

(1) Only grants.

(2) Only cooperative agreements.

(3) Both grants and cooperative agreements.

b. Which programs, as listed in the Catalog of Federal Domestic Assistance, will fall into each of the above three categories? For those in category 3 what is the expected mix in terms of total dollars and numbers of transactions?

c. What programs not listed in the Catalog of Federal Domestic Assistance will fall into each of the three categories? For those in category 3 what is the expected mix in terms of total dollars and numbers of transactions?

d. What is the anticipated first-year

dollar volume of the programs in each of the three categories?

e. What types of Federal involvement in the assisted activity led to the identification of programs that would use only cooperative agreements?

f. What are the anticipated reactions of the recipients of programs using only cooperative agreements?

g. What are the anticipated liability, accountability, and other implications for the programs using only cooperative agreements?

h. What are the agency guidelines on the selection of instruments for programs that may use either grants or cooperative agreements.

i. What is the anticipated dollar volume of grants and cooperative agreements to be awarded under these programs?

j. How will the opportunity to use either grants or cooperative agreements improve administration of these programs?

k. What negative effects are anticipated from the requirement to make a choice of instruments?

1. What programs will use assistance instruments that formerly used contracts and what is the dollar volume of these new uses of assistance instruments?

4. Nonmonetary assistance transfers:

a. What were the types and dollar value of nonmonetary transfers made by the agency using grant instruments?

b. How do these grant instruments compare with monetary grant instruments?

c. What were the types and dollar value of nonmonetary transfer made under the OMB exception that did not use grant instruments?

d. How would the agency have treated these transfers had not OMB granted the exception?

e. What were the types and dollar value of nonmonetary transfers made through cooperative agreements?

f. What was the agency's experience with this use of cooperative agreements?

5. Overall evaluation of the Act:

a. What elements of the Act are contributing to improved program performance and administration?

b. What elements of the Act are particularly troublesome? Why?

c. What proposals would the agency make for revising the Act?

[FR Doc. 78-23260 Filed 8-17-78; 8:45 am]







Registered  
Federal  
Property

FRIDAY, AUGUST 18, 1978

PART VI



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## THE PRESIDENT

■

EXECUTIVE ORDERS

12072-12075

AND

PROCLAMATIONS

4585 AND 4586



FRIDAY, AUGUST 15, 1975  
PART VI



THE PRESIDENT

EXECUTIVE ORDERS  
12072-12075  
AND  
PROCLAMATIONS  
4583 AND 4584



[3195-01]

# Title 3—The President

Executive Order 12072

August 16, 1978

## Federal Space Management

By the authority vested in me as President of the United States of America by Section 205(a) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(a)), and in order to prescribe appropriate policies and directives, not inconsistent with that Act and other applicable provisions of law, for the planning, acquisition, utilization, and management of Federal space facilities, it is hereby ordered as follows:

### 1-1 *Space Acquisition.*

1-101. Federal facilities and Federal use of space in urban areas shall serve to strengthen the Nation's cities and to make them attractive places to live and work. Such Federal space shall conserve existing urban resources and encourage the development and redevelopment of cities.

1-102. Procedures for meeting space needs in urban areas shall give serious consideration to the impact a site selection will have on improving the social, economic, environmental, and cultural conditions of the communities in the urban area.

1-103. Except where such selection is otherwise prohibited, the process for meeting Federal space needs in urban areas shall give first consideration to a centralized community business area and adjacent areas of similar character, including other specific areas which may be recommended by local officials.

1-104. The process of meeting Federal space needs in urban areas shall be consistent with the policies of this Order and shall include consideration of the following criteria:

- (a) Compatibility of the site with State, regional, or local development, redevelopment, or conservation objectives.
- (b) Conformity with the activities and programs of other Federal agencies.
- (c) Impact on economic development and employment opportunities in the urban area, including the utilization of human, natural, cultural, and community resources.
- (d) Availability of adequate low and moderate income housing for Federal employees and their families on a nondiscriminatory basis.
- (e) Availability of adequate public transportation and parking and accessibility to the public.

1-105. Procedures for meeting space needs in urban areas shall be consistent with the policies of this Order and shall include consideration of the following alternatives:

- (a) Availability of existing Federally controlled facilities.
- (b) Utilization of buildings of historic, architectural, or cultural significance within the meaning of section 105 of the Public Buildings Cooperative Use Act of 1976 (90 Stat. 2507, 40 U.S.C. 612a).
- (c) Acquisition or utilization of existing privately owned facilities.
- (d) Construction of new facilities.



(e) Opportunities for locating cultural, educational, recreational, or commercial activities within the proposed facility.

1-106. Site selection and space assignments shall take into account the management needs for consolidation of agencies or activities in common or adjacent space in order to improve administration and management and effect economies.

1-2. *Administrator of General Services.*

1-201. The Administrator of General Services shall develop programs to implement the policies of this Order through the efficient acquisition and utilization of Federally owned and leased space. In particular, the Administrator shall:

(a) Select, acquire, and manage Federal space in a manner which will foster the policies and programs of the Federal government and improve the management and administration of government activities.

(b) Issue regulations, standards, and criteria for the selection, acquisition, and management of Federally owned and leased space.

(c) Periodically undertake surveys of space requirements and space utilization in the executive agencies.

(d) Ensure, in cooperation with the heads of Executive agencies, that their essential space requirements are met in a manner that is economically feasible and prudent.

(e) Make maximum use of existing Federally controlled facilities which, in his judgment, are adequate or economically adaptable to meeting the space needs of executive agencies.

(f) Annually submit long-range plans and programs for the acquisition, modernization, and use of space for approval by the President.

1-202. The Administrator is authorized to request from any Executive agency such information and assistance deemed necessary to carry out his functions under this Order. Each agency shall, to the extent not prohibited by law, furnish such information and assistance to the Administrator.

1-203. In the process of meeting Federal space needs in urban areas and implementing the policies of this Order, the Administrator shall:

(a) Consider the efficient performance of the missions and programs of the agencies, the nature and function of the facilities involved, the convenience of the public served, and the maintenance and improvement of safe and healthful working conditions for employees.

(b) Coordinate proposed programs and plans for facilities and space with the Director of the Office of Management and Budget.

(c) Consult with appropriate Federal, State, regional, and local government officials and consider their recommendations for and objections to a proposed selection site or space acquisition.

(d) Coordinate proposed programs and plans for facilities and space in a manner designed to implement the purposes of this Order.

(e) Prior to making a final determination concerning the location of Federal facilities, notify the concerned Executive agency of an intended course of action and take into account any additional information provided.

1-204. In ascertaining the social, economic, environmental and other impacts which site selection would have on a community, the Administrator shall, when appropriate, obtain the advice of interested agencies.

1-3. *General Provisions.*

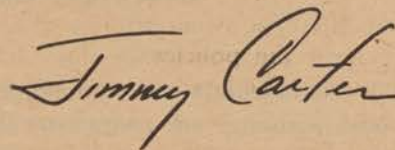
1-301. The heads of Executive agencies shall cooperate with the Administrator in implementing the policies of this Order and shall economize on their use of space. They shall ensure that the Administrator is given early notice of



new or changing missions or organizational realignments which affect space requirements.

1-302. Executive agencies which acquire or utilize Federally owned or leased space under authority other than the Federal Property and Administrative Services Act of 1949, as amended, shall conform to the provisions of this Order to the extent they have the authority to do so.

1-303. Executive Order No. 11512 of February 27, 1970, is revoked.



THE WHITE HOUSE,  
August 16, 1978.

[FR Doc. 78-23438 Filed 8-17-78; 11:38 am]

EDITORIAL NOTE: The President's remarks of Aug. 16, 1978, on signing Executive Order 12072, are printed in the Weekly Compilation of Presidential Documents (vol. 14, no. 33).







[3195-01]

Executive Order 12073

August 16, 1978

## Federal Procurement in Labor Surplus Areas

By the authority vested in me as President by the Constitution of the United States of America, and in order to strengthen the economic base of our Nation, it is hereby ordered as follows:

*1-1. Procurements in Labor Surplus Areas.*

1-101. Executive agencies shall emphasize procurement set-asides in labor surplus areas in order to strengthen our Nation's economy.

1-102. Labor surplus area procurements shall be consistent with this Order and, to the extent funds are available, the priorities of Section 15 of the Small Business Act, as amended by Public Law 95-89 (15 U.S.C. 644).

*1-2. Administrator of General Services.*

1-201. The Administrator shall coordinate with and advise State and local officials with regard to Federal efforts to encourage procurements in labor surplus areas with the aim of fostering economic development in labor surplus areas.

1-202. The Administrator shall establish specific labor surplus area procurement targets for Executive agencies in consultation with the heads of those agencies.

1-203. In cooperation with the heads of Executive agencies, the Administrator shall encourage the use of set-asides or other appropriate methods for meeting procurement targets in labor surplus areas.

1-204. The Administrator shall report every six months to the President on the progress of the agencies in achieving the procurement targets.

*1-3. Agency Responsibilities.*

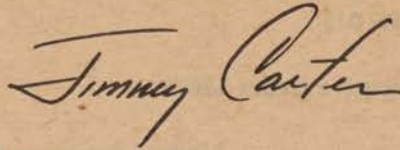
1-301. The Secretary of Labor shall classify and designate labor markets which are labor surplus areas. The Secretary shall provide labor market data to the heads of agencies and State and local officials in order to promote the development of business opportunities in labor surplus areas.

1-302. The heads of Executive agencies shall cooperate with the Administrator in carrying out his responsibilities for labor surplus area programs and shall provide the information necessary for setting procurement targets and recording achievement. They shall keep the Administrator informed of plans and programs which affect labor surplus procurements, with particular attention to opportunities for minority firms.

1-303. In accord with Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405), the Administrator for Federal Procurement Policy



shall be responsible for the overall direction and oversight of the policies affecting procurement programs for labor surplus areas.



THE WHITE HOUSE,  
August 16, 1978.

[FR Doc. 78-23439 Filed 8-17-78; 11:39 am]

EDITORIAL NOTE: The President's remarks of Aug. 16, 1978, on signing Executive Order 12073, are printed in the Weekly Compilation of Presidential Documents (vol. 14, no. 33).



[3195-01]

Executive Order 12074

August 16, 1978

## Urban and Community Impact Analyses

By the authority vested in me as President by the Constitution of the United States of America, and in order to establish an internal management procedure for identifying aspects of proposed Federal policies that may adversely impact cities, counties, and other communities, it is hereby ordered as follows:

1-1. *Urban and Community Impact Analyses.*

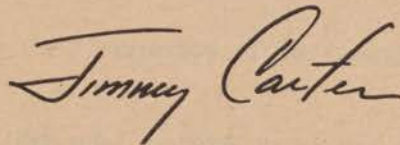
1-101. The Director of the Office of Management and Budget shall: (a) develop criteria for identifying major policy proposals to be analyzed; (b) formulate standards regarding the content and format of impact analyses; and (c) establish procedures for the submission and review of such analyses.

1-102. The Director of the Office of Management and Budget and the Assistant to the President for Domestic Affairs and Policy shall review the analyses.

1-2. *Agency Responsibilities.*

1-201. Executive agencies shall prepare urban and community impact analyses for major policy initiatives identified by the Office of Management and Budget, the Assistant to the President for Domestic Affairs and Policy, or the agencies themselves.

1-202. Each Executive agency shall, to the extent permitted by law, cooperate with the Director of the Office of Management and Budget and the Assistant to the President for Domestic Affairs and Policy in the performance of their functions under this Order, furnish them with the information they request, and comply with the procedures prescribed pursuant to this Order.



THE WHITE HOUSE,  
August 16, 1978.

[FR Doc. 78-23441 Filed 8-17-78; 11:51 am]

EDITORIAL NOTE: The President's remarks of Aug. 16, 1978, on signing Executive Order 12074, are printed in the Weekly Compilation of Presidential Documents (vol. 14, no. 33).



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[3195-01]

Executive Order 12075

August 16, 1978

## Interagency Coordinating Council

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for interagency coordination of the implementation of Federal urban and regional policy, it is hereby ordered as follows:

1.1. *Establishment of the Council.*

1-101. There is established the Interagency Coordinating Council.

1-102. The Council shall be composed of the heads of the following agencies, or a designated representative, and such others as the President may designate:

- (a) Department of the Treasury
- (b) Department of Justice
- (c) Department of the Interior
- (d) Department of Agriculture
- (e) Department of Commerce
- (f) Department of Labor
- (g) Department of Health, Education, and Welfare
- (h) Department of Housing and Urban Development
- (i) Department of Transportation
- (j) Department of Energy
- (k) Environmental Protection Agency
- (l) Community Services Administration
- (m) General Services Administration
- (n) Small Business Administration
- (o) ACTION

1-103. The President shall designate the Chairperson of the Council.

1-2. *Functions of the Council.*

1-201. The Council shall work with Executive agencies to involve all sectors of the Nation, including State, county and local governments, regional bodies, the private sector, neighborhood groups, and volunteer and civic associations, in a partnership to conserve and strengthen America's communities.

1-202. The Council shall facilitate cooperation and coordination of urban and regional policy implementation among and between Executive agencies.

1-203. The Council shall assist Executive agencies in coordinating timely responses to State, county and local government and community development strategies.

1-204. The Council shall identify and seek to solve interagency and intergovernmental problems which impede the effective functioning of the Federal system.

1-205. The functions of the Council shall neither substitute for nor replace Executive Office of the President clearance, review and decisionmaking procedures.



## THE PRESIDENT

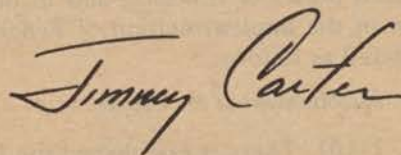
1-3. *Administrative Provisions.*

1-301. Executive agencies shall cooperate with and assist the Council in performing its functions.

1-302. The Chairperson shall be responsible for providing the Council with such administrative services or support as may be necessary or appropriate.

1-303. The Chairperson may establish working groups or subcommittees of the Council. The Chairman may invite representatives of nonmember agencies to participate from time to time in the functions of the Council.

1-304. The Chairperson shall report to the President on the performance of the Council's functions.



THE WHITE HOUSE,  
August 16, 1978.

[FR Doc. 78-23442 Filed 8-17-78; 11:52 am]

EDITORIAL NOTE: The President's remarks of Aug. 16, 1978, on signing Executive Order 12075, are printed in the Weekly Compilation of Presidential Documents (vol. 14, no. 33).



[3195-01]

PROCLAMATION 4585

# National Hispanic Heritage Week, 1978

*By the President of the United States of America*

## A Proclamation

The Hispanic heritage of 16 million Americans is an essential part of our identity as a nation, and of our role as a leader among nations. As we reflect upon the countless historical, cultural, and scientific contributions that Hispanics have made to the development of our country, I want to reaffirm my commitment to ensuring the full participation of our Hispanic citizens in all levels of our society and government.

Americans have had a unique opportunity to appreciate the values of a broad diversity of cultures and the contribution each makes to our democratic and pluralistic society.

As we reach beyond our national borders to advocate the cause of human rights, we must increasingly look to our own Hispanic community as one of our primary sources of advice and counsel, particularly in the development of our relations with other nations of the western hemisphere.

Our Hispanic community is an integral element in the domestic life of our own nation, as well as in our continuing international effort to build understanding, mutual respect, and common purpose with all Hispanic nations.

In recognition of our Hispanic heritage, the Congress, by joint resolution approved September 17, 1968 (36 U.S.C. 169f), has requested the President to issue annually a proclamation designating the week including September 15 and 16 as National Hispanic Heritage Week.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim the week beginning September 10, 1978, as National Hispanic Heritage Week. I call upon all Americans to take this occasion to reflect on the influence of Hispanic culture in our land, and to consider how each of us can be more responsive to the concerns of Hispanics.

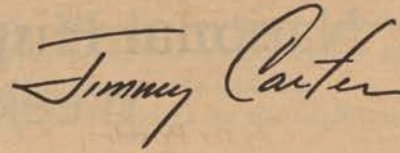
As we observe National Hispanic Heritage Week with appropriate ceremonies and activities, I call upon all Federal, State and community agencies, all business and professional leaders, educators, the clergy, and the communications media to join with me in launching new Hispanic initiatives that will assure the full participation of Hispanic Americans in every sector of American life, at every level of leadership, and guarantee that the human and civil rights of Hispanics, other minorities and, indeed, all citizens of our country are fully protected under the law.

As part of this week's activities I have asked many of my Hispanic appointees to hold town meetings in areas of concentrated Hispanic population. These meetings will help define the problems and concerns shared by Hispanics across our nation.



The role of Hispanics is ever increasing and offers our Hispanic citizens—the fourth largest Spanish-speaking population in the world—an increasingly active and visible leadership.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of August, 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.



[FR Doc. 78-23443 Filed 8-17-78; 11:53 am]



[3195-01]

PROCLAMATION 4586

# Columbus Day, 1978

*By the President of the United States of America*

## A Proclamation

Nearly five centuries ago an Italian navigator in the service of Spain gazed beyond the wisdom of his time and sailed west to rap at the portals of the New World. Yearly, in gratitude, we celebrate this incomparable achievement of Christopher Columbus. We honor too the courage, self-sacrifice, and perseverance that propelled him on that voyage.

These qualities can fairly be held as a standard for the people of the United States of America. When they have been foremost in our spirit, they have produced the finest moments in the history of our Republic. Let us continue to hold them fast so that we may always be open to new wisdom, but courageous and persevering in defense of the ideas we hold dear.

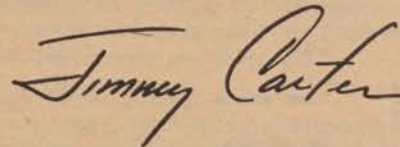
On October 9 we again honor the memory of Christopher Columbus and the ever-young promise of the New World.

In tribute to his achievement, the Congress of the United States, by joint resolution approved April 30, 1934 (48 Stat. 657), as modified by the Act of June 28, 1968 (82 Stat. 250), asked the President to proclaim the second Monday in October of each year as Columbus Day.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby designate Monday, October 9, 1978, as Columbus Day. I invite the people of this Nation to observe that day in their schools, churches, and other suitable places with appropriate ceremonies to commemorate his great adventure.

I also direct that the flag of the United States be displayed on all public buildings on the appointed day in memory of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of August, 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.



[FR Doc. 78-23444 Filed 8-17-78; 11:54 am]



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