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federal register

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Monday	Tuesday	Wednesday	Thursday	Friday
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CSA	CSC		CSA	CSC
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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

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

NOTE: As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

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In computing dates certain, the day after publication counts as one. All succeeding days are counted except that when a date certain falls on a weekend or holiday, it is moved forward to the next Federal business day. (See 1 CFR 18.17)

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USDA—AGRICULTURE DEPARTMENT

AMS—Agricultural Marketing Service
ARS—Agricultural Research Service
ASCS—Agricultural Stabilization and Conservation Service
APHIS—Animal and Plant Health Inspection Service
CCC—Commodity Credit Corporation
CEA—Commodity Exchange Authority
CSRS—Cooperative State Research Service
EMS—Export Marketing Service
ERS—Economic Research Service
FmHA—Farmers Home Administration
FCIC—Federal Crop Insurance Corporation
FAS—Foreign Agricultural Service
FNS—Food and Nutrition Service
FSQS—Food Safety and Quality Service
FS—Forest Service
RDS—Rural Development Service
REA—Rural Electrification Administration
RTB—Rural Telephone Bank
SEA—Science and Education Administration
SCS—Soil Conservation Service

COMMERCE—COMMERCE DEPARTMENT

Census—Census Bureau
EAB—Bureau of Economic Analysis
EDA—Economic Development Administration
FTZB—Foreign-Trade Zones Board
ITA—Industry and Trade Administration
MA—Maritime Administration
MBEO—Minority Business Enterprise Office
NBS—National Bureau of Standards
NFPCA—National Fire Prevention and Control Administration
NOAA—National Oceanic and Atmospheric Administration
NSA—National Shipping Authority
NTIA—National Telecommunications and Information Administration
NTIS—National Technical Information Service
PTO—Patent and Trademark Office
USTS—United States Travel Service

DOD—DEFENSE DEPARTMENT

AF—Air Force Department
Army—Army Department
DCPA—Defense Civil Preparedness Agency
DCAA—Defense Contract Audit Agency
DIA—Defense Intelligence Agency
DIS—Defense Investigative Service
DLA—Defense Logistics Agency
EC—Engineers Corps
Navy—Navy Department

DOE—ENERGY DEPARTMENT

BPA—Bonneville Power Administration
ERA—Economic Regulatory Administration
EIA—Energy Information Administration
ERO—Energy Research Office
ETO—Energy Technology Office
FERC—Federal Energy Regulatory Commission
OHADOE—Hearings and Appeals Office, Energy Department

SEPA—Southeastern Power Administration
SWPA—Southwestern Power Administration
WAPA—Western Area Power Administration

HEW—HEALTH, EDUCATION, AND WELFARE DEPARTMENT

AC—Aging Federal Council
ADAMHA—Alcohol, Drug Abuse, and Mental Health Administration
CDC—Center for Disease Control
ESNC—Educational Statistics National Center
FDA—Food and Drug Administration
HCFA—Health Care Financing Administration
HDSO—Human Development Services Office
HRA—Health Resources Administration
HSA—Health Services Administration
MSI—Museum Services Institute
NIH—National Institutes of Health
OE—Office of Education
PHS—Public Health Service
RSA—Rehabilitation Services Administration
SSA—Social Security Administration

HUD—HOUSING AND URBAN DEVELOPMENT DEPARTMENT

CARF—Consumer Affairs and Regulatory Functions, Office of Assistant Secretary
CPD—Community Planning and Development, Office of Assistant Secretary
FDAA—Federal Disaster Assistance Administration
FHEO—Fair Housing and Equal Opportunity, Office of Assistant Secretary
FHC—Federal Housing Commissioner, Office of Assistant Secretary for Housing
FIA—Federal Insurance Administration
GNMA—Government National Mortgage Association
ILSRO—Interstate Land Sales Registration Office
NCA—New Communities Administration
NCDC—New Community Development Corporation
NVACP—Neighborhoods Voluntary Associations and Consumer Protection, Office of Assistant Secretary

INTERIOR—INTERIOR DEPARTMENT

BIA—Bureau of Indian Affairs
BLM—Bureau of Land Management
FWS—Fish and Wildlife Service
GS—Geological Survey
HCRS—Heritage Conservation and Recreation Service
Mines—Mines Bureau
NPS—National Park Service
OHA—Office of Hearings and Appeals, Interior Department
RB—Reclamation Bureau
SMRE—Surface Mining Reclamation and Enforcement Office

JUSTICE—JUSTICE DEPARTMENT

DEA—Drug Enforcement Administration
INS—Immigration and Naturalization Service
LEAA—Law Enforcement Assistance Administration
NIC—National Institute of Corrections

LABOR—LABOR DEPARTMENT

BLS—Bureau of Labor Statistics
BRB—Benefits Review Board
ESA—Employment Standards Administration
ETA—Employment and Training Administration
FCCPO—Federal Contract Compliance Programs Office
LMSEO—Labor Management Standards Enforcement Office
MSHA—Mine Safety and Health Administration
OSHA—Occupational Safety and Health Administration
P&WBP—Pension and Welfare Benefit Programs
W&H—Wage and Hour Division

STATE—STATE DEPARTMENT

AID—Agency for International Development
FSGB—Foreign Service Grievance Board

DOT—TRANSPORTATION DEPARTMENT

CG—Coast Guard
FAA—Federal Aviation Administration
FHWA—Federal Highway Administration
FRA—Federal Railroad Administration
MTB—Materials Transportation Bureau
NHTSA—National Highway Traffic Safety Administration
OHMR—Office of Hazardous Materials Regulations
OPSR—Office of Pipeline Safety Regulations
SLS—Saint Lawrence Seaway Development Corporation
UMTA—Urban Mass Transportation Administration

TREASURY—TREASURY DEPARTMENT

ATF—Alcohol, Tobacco and Firearms Bureau
Customs—Customs Service
Comptroller—Comptroller of the Currency
ESO—Economic Stabilization Office (temporary)
FS—Fiscal Service
IRS—Internal Revenue Service
Mint—Mint Bureau
PDB—Public Debt Bureau
RSO—Revenue Sharing Office
SS—Secret Service

INDEPENDENT AGENCIES

ATBCB—Architectural and Transportation Barriers Compliance Board
CAB—Civil Aeronautics Board
CASB—Cost Accounting Standards Board
CEQ—Council on Environmental Quality
CFTC—Commodity Futures Trading Commission
CITA—Textile Agreements Implementation Committee
CPSC—Consumer Product Safety Commission
CRC—Civil Rights Commission
CSA—Community Services Administration
CSC—Civil Service Commission
CSC/FPRAC—Federal Prevailing Rate Advisory Committee
EEOC—Equal Employment Opportunity Commission
EXIMBANK—Export-Import Bank of the U.S.
EPA—Environmental Protection Agency
ESSA—Endangered Species Scientific Authority
FCA—Farm Credit Administration
FCC—Federal Communications Commission
FCSC—Foreign Claims Settlement Commission
FDIC—Federal Deposit Insurance Corporation
FEA—Federal Energy Administration
FEC—Federal Election Commission
FHLBB—Federal Home Loan Bank Board
FMC—Federal Maritime Commission
FPC—Federal Power Commission
FRS—Federal Reserve System
FTC—Federal Trade Commission
GSA—General Services Administration
GSA/ADTS—Automated Data and Telecommunications Service
GSA/FPA—Federal Preparedness Agency
GSA/OFR—Office of the Federal Register
GSA/FSS—Federal Supply Service
GSA/NARS—National Archives and Records Service
GSA/OFR—Office of the Federal Register
GSA/PBS—Public Buildings Service
ICA—International Communications Agency
ICC—Interstate Commerce Commission
ICP—Interim Compliance Panel (Coal Mine Health and Safety)
ITC—International Trade Commission
LSC—Legal Services Corporation
MB—Metric Board
MWSC—Minimum Wage Study Commission
MWSC—Minimum Wage Study Commission
NACEO—National Advisory Council on Economic Opportunity
NASA—National Aeronautics and Space Administration
NCUA—National Credit Union Administration
NFAH—National Foundation for the Arts and the Humanities
NLRB—National Labor Relations Board

NRC—Nuclear Regulatory Commission
NSF—National Science Foundation
NTSB—National Transportation Safety Board
OMB—Office of Management and Budget
OMB/FPPO—Federal Procurement Policy Office
OMB/FPRS—Federal Property Resources Service
OMB/FPPO—Federal Procurement Policy Office
OPIC—Overseas Private Investment Corporation
OSTP—Office of Science and Technology Policy
PADC—Pennsylvania Avenue Development Corporation
PRC—Postal Rate Commission
PS—Postal Service
RB—Renegotiation Board
RRB—Railroad Retirement Board
ROAP—Reorganization, Office of Assistant to President
SBA—Small Business Administration
SEC—Securities and Exchange Commission
TVA—Tennessee Valley Authority
USIA—United States Information Agency
VA—Veterans Administration
WRC—Water Resources Council

rules and regulations

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

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

[1505-01-M]

Title 1—General Provisions

CHAPTER I—ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

CFR CHECKLIST

1977/1978 Issuances

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal Regulations issued to date for 1977 and 1978. New units issued during the month are announced on the back cover of the daily FEDERAL REGISTER as they become available.

For a checklist of current CFR volumes comprising a complete CFR set, see the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription service to all revised volumes is $400 domestic, $100 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

CFR Unit (Rev. as of Jan. 1, 1978):

Title	Price
1	$2.75
2 [Reserved]	
3	4.25
4	4.75
5	5.00
7 Parts:	
0-52	6.00
53-209	4.50
210-699	6.75
700-749	4.25
750-899	2.40
900-944	4.75
945-980	3.50
981-999	3.50
1000-1059	4.75
1060-1119	4.75
1120-1199	4.00
1200-1499	4.75
1500-2799	6.50
2800-2851	5.50
2852	6.00
2853-end	4.00
8	3.50
9	6.00
10 Parts:	
0-199	5.00
200-end	6.25
12 Parts:	
1-299	8.25
300-end	6.75
13	4.75
14 Parts:	
1-59	5.75
60-199	6.75
200-1199	5.75
1200-end	3.75
15	5.75
16 Parts:	
0-149	5.00
150-999	4.75
1000-end	5.25

CFR Unit (Rev. as of Apr. 1, 1978):

17	$8.25
18 Parts:	
150-end	5.00
20 Parts:	
1-399	3.50
400-499	5.00
500-end	4.50
21 Parts:	
1-99	4.00
100-199	6.00
200-299	2.75
300-499	5.75
500-599	5.00
600-1299	4.25
1300-end	4.50
22	5.50
23	5.00
24 Parts:	
0-499	8.25
25	5.50
26 Parts:	
1 (§§ 1.0-1.169)	5.75
1 (§§ 1.301-1.400)	4.00
1 (§§ 1.401-1.500)	4.75
1 (§§ 1.501-1.640)	4.75
1 (§§ 1.641-1.850)	4.75
1 (§§ 1.1201-end)	6.50
2-29	4.75
40-299	5.50
300-499	4.75
600-end	3.00

CFR Unit (Rev. as of July 1, 1977):

28	$4.25
29 Parts:	
0-499	5.75
500-1899	6.00
1900-1919	6.00
1920-end	4.50
30	6.00
31	5.75
32 Parts:	
1-39 (V. I) (Rev. 7/1/76)	4.75
(V. II) (Rev. 7/1/76)	7.50
(V. III) (Rev. 7/1/76)	5.25
40-399	6.25
400-589	5.00
590-699	4.00
700-799	8.25
800-999	5.75
1000-1399	2.75
1400-1599	4.25
1600-end	2.75
32A	3.75
33 Parts:	
1-199	7.00
200-end	5.30
34	1.70
35	4.00
36	4.50
37	3.00
38	6.00
39	3.50
40 Parts:	
0-49	4.25
50-59	5.75
60-99	5.00
100-399	4.75
400-end	5.75
41 Chapters:	
1-2	5.25
3-6	5.50
7	2.75
8	2.30
9 (Rev. 9/26/77)	5.00
10-17	4.25
19-100	4.50
101-end	5.75
CFR INDEX & finding aids	4.75

CFR Unit (Rev. as of Oct. 1, 1977):

42 Parts:	
1-399	$5.50
400-end	4.75
43 Parts:	
1-999	4.00
1000-end	6.00
44 [Reserved]	
45 Parts:	
1-99	4.25
100-149	5.50
150-199	4.75
200-499	3.50
500-end	6.00
46 Parts:	
1-29	3.00
30-40	3.25
41-69	4.50
70-89	3.25
90-109	3.00
110-139	3.00
140-165	4.75
166-199	3.75
200-end	6.00
47 Parts:	
0-19	5.75
20-69	5.25
70-79	5.00
80-end	6.00
48 [Reserved]	
49 Parts:	
1-99	3.00
100-199	8.25
200-999	8.75
1000-1199	4.50
1200-1299	8.00
1300-end	4.25
50	5.50

[6325-01-M]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Entire Executive Civil Service

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: Positions on the staff of the Council on Wage and Price Stability and positions in member agencies of the Council which are needed to carry out those agencies' anti-inflation

program responsibilities are excepted under Schedule A because it is impracticable to examine for them. With establishment of this more general authority, Schedule A authority under § 213.3199(r)(1), which covered only positions on the staff of the Council, is simultaneously revoked.

EFFECTIVE DATE: November 21, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3102(kk) is added and § 213.3199(r) is revoked as set out below:

§ 213.3102 Entire Executive Civil Service.

* * * * *

(kk) Until September 30, 1979, positions at grades GS-15 and below on the staff of the Council on Wage and Price Stability, and positions in agencies which are members of the Council, when such positions are needed to carry out the agencies' responsibilities under the anti-inflation program.

* * * * *

§ 213.3199 Temporary Boards and Commissions.

* * * * *

(r) [Revoked]

(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. 78-33365 Filed 11-30-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

National Foundation on the Arts and the Humanities

AGENCY: Civil Service Commission.

ACTION: Final Rule.

SUMMARY: The positions of Deputy Director, Division of Research Grants and Humanist Administrator, Summer Seminars/Summer Stipends Program, Division of Fellowships are no longer excepted under Schedule A because it is practicable to examine for them; however, the positions are excepted under Schedule B because it is not practicable to hold a competitive examination for them.

EFFECTIVE DATE: August 14, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3182(b)(8) is amended and (b)(24) is revoked and 213.3282(b) (24) and (25) are added as set out below:

§ 213.3182 National Foundation on the Arts and the Humanities.

* * * * *

(b) *National Endowment for the Humanities.* * * *

(8) Until September 30, 1980, two Program Officers, Division of Research and Stipends.

* * * * *

(24) (Revoked)

* * * * *

§ 213.3282 National Foundation on the Arts and the Humanities.

* * * * *

(b) *National Endowment for the Humanties* * * *

(24) Until September 30, 1980, one Deputy Director, Division of Research Grants.

(25) Until September 30, 1980, one Humanist Administrator, Summer Seminars/Summer Stipends Program, Division of Fellowships.

(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. 78-33364 Filed 11-30-78; 8:45 am]

[3410-01-M]

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Delegation of Authority for Remote Sensing Activities

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: Authority is delegated to the Director of Economics, Policy Analysis and Budget and to the Chairman, World Food and Agricultural Outlook and Situation Board to provide technical assistance, coordination, and guidance in matters relating to satellite remote sensing activities. This action will result in centralized coordination of remote sensing activities in USDA. The Chairman will also serve as or designate someone to serve as Executive Secretary of the USDA Remote Sensing Coordinating Committee.

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

James L. Fulton, Office of the Deputy Administrator for Management, Economics, Statistics, and Cooperatives Service, U.S. Department of Agriculture, Washington, D.C. 20250,Telephone: 447-7392.

Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

Subpart C—Delegations of Authority to the Deputy Secretary, Assistant Secretaries, the Director of Economics, Policy Analysis and Budget, and the Director, Office of Governmental and Public Affairs

1. Section 2.27 is amended by revising paragraph (e) to read as follows:

§ 2.27 Delegations of Authority to the Director of Economics, Policy Analysis and Budget.

* * * * *

(e) *Related to remote sensing.* (1) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to assure full consideration and evaluation of advanced technology.

(2) Coordinate administrative, management, and budget information relating to the Department's remote sensing activities including:

(i) Inter- and Intra-agency meetings, correspondence, and records;

(ii) Budget and management tracking systems; and

(iii) Inter-agency contacts and technology transfer.

(3) Designate the Executive Secretary for the Remote Sensing Coordinating Committee.

* * * * *

Subpart K—Delegations of Authority by the Director of Economics, Policy Analysis and Budget

2. Section 2.86 is amended by adding a new paragraph (a)(4) to read as follows:

§ 2.86 Chairman, World Food and Agricultural Outlook and Situation Board.

(a) * * *

(4) *Related to remote sensing.* (i) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to assure full consideration and evaluation of advanced technology.

(ii) Coordinate administrative, management, and budget information relating to the Department's remote sensing activities including:

(*a*) Inter- and intra-agency meetings, correspondence, and records;

(*b*) Budget and management tracking systems; and

(*c*) Inter-agency contacts and technology transfer.

(iii) Serve as or designate the Executive Secretary for the Remote Sensing Coordinating Committee.

* * * * *

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953)

For Subpart C:

Dated: November 18, 1978.

BOB BERGLAND,
Secretary of Agriculture.

For Subpart K:

Dated: November 18, 1978.

HOWARD W. HJORT,
Director of Economics, Policy Analysis and Budget.

[FR Doc. 78-33684 Filed 11-30-78; 8:45 am]

[3410-10-M]

[Amdt. 4]

PART 16—LIMITATION ON IMPORTS OF MEAT

Section 204 Import Regulations; Restrictions on the Importation of Meat From New Zealand

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule.

SUMMARY: The regulations set forth in this Subpart are amended to limit imports of certain meats from New Zealand to no more than 314.8 million pounds, during calendar year 1978. Such action is necessary to carry out the 1978 restraint program including the agreement entered into by the United States with New Zealand pursuant to section 204 of the Agricultural Act of 1956 limiting the export from New Zealand and the importation into the United States of certain meats.

EFFECTIVE DATE: December 1, 1978. See supplementary information.

FOR FURTHER INFORMATION CONTACT:

John E. Riesz (FAS), 202-447-7217, Dairy, Livestock and Poultry Division, CP, FAS, USDA, Room 6621 South Building, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: The Secretary of State and the Special Representative for Trade Negotiations concur in the issuance of this regulation.

This regulation establishes quantitative restrictions applicable to meat imported from New Zealand which may be entered or withdrawn from warehouse for consumption in the United States, whether shipped directly or indirectly, at the level of 314.8 million pounds during calendar year 1978.

The action taken herewith has been determined to involve foreign affairs functions of the United States. Therefore, these regulations fall within the foreign affairs exception to the notice and effective date provisions of 5 U.S.C. 553 and E.O. 12044.

EFFECTIVE DATE

Meat released under the provisions of Section 448(b) of the Tariff Act of 1930 (19 U.S.C. 1448(b) (immediate delivery)) prior to December 1, 1978, shall not be denied entry.

Subpart A, Section 204 Import Regulations, of Part 16, Limitation on Imports of Meat, of Title 7 of the Code of Federal Regulations is amended to add paragraph (c) to § 16.5, "Quantitative Restrictions" which reads as follows:

§ 16.5 Quantitative restrictions.

* * * * *

(c) Imports from New Zealand. During calendar year 1978, no more than 314.8 million pounds of meat, exported from New Zealand in the form in which it would fall within the definition of meat in TSUS 106.10 or 106.20, may be entered or withdrawn from warehouse for consumption in the United States, whether such meat was shipped directly or indirectly, from New Zealand to the United States.

(Sec. 204, Pub. L. 540, 84th Cong., 70 Stat. 200, as amended (7 U.S.C. 1854) and Executive Order 11539 (35 FR 10733).)

Issued at Washington, D.C., this 28th day November 1978.

BOB BERGLAND,
Secretary.

[FR Doc. 78-33741 Filed 11-30-78; 8:45 am]

[3410-08-M]

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

PART 403—PEACH CROP INSURANCE

Subpart—Regulations for the 1979 and Succeeding Crop Years

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: This rule prescribes the procedure for insuring peaches under revised regulations, effective with the 1979 and succeeding crop years, which are designed to more nearly reflect the intent of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), as it relates to the cost of production protection provided by the insurance. Under the revised regulations, the production costs are reflected in the dollar amount of insurance based on both the expected production and the actual amount of fruit at harvest time. The fruit is valued based upon market price and the intent of these revised regulations is to relate the amount of insurance directly to the cost or production, and to relate the value of production directly to the dollar amount of insurance. These revised regulations are designed to more adequately cover the costs of production and reflect the true value of the production.

DATES: Effective December 1, 1978. Comments will be accepted until January 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3325.

SUPPLEMENTARY INFORMATION: The current peach crop insurance program, now offered by the Federal Crop Insurance Corporation in certain counties in Alabama, Arkansas, Georgia, and South Carolina is operating unsatisfactorily from the standpoint of grower participation and insuring experience. In 1971, there were 304 peach crop insurance contracts. In 1978, there are 161 such contracts. In the 8 years from 1971 through 1978, loss ratios on peach crop losses exceeded 1.00 in 6 of the 8 years, indicating a need for review and possible changes in order to assure a continuation of the peach crop insurance program. There are currently 17 contracts in Arkansas, 14 in Georgia, and 130 in South Carolina, with 111 of this number located in Spartanburg County. Due to the relatively small

number of peach crop insureds, it was possible for the Corporation to review the necessary changes in the regulations, appearing below, with a large number of growers in these States. Considerable time was spent with producers researching the revised peach crop insurance policy and evaluating the previous insuring experience under the old regulations. In the discussions, two proposed policies were reviewed. Selection was based on the policy which most adequately serves the needs of producers. Such policy is contained in the peach crop insurance regulations outlined below. The current peach crop insurance regulations were printed in the FEDERAL REGISTER on September 30, 1975 (40 FR 44823), and became effective for the 1976 crop year. These current regulations do not consider the value of the remaining production, dealing only with a percent of loss basis for adjustment purposes. It is possible for a crop with a high percentage of loss to still return to the grower substantial returns if the value of the fruit is high.

The value of the remaining production is taken into consideration under the revised regulations which more nearly reflect the intent of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.). Under the revised regulations, production costs are reflected in the dollar amount of insurance based on both the expected production and the actual amount of fruit at the time of harvest. The fruit is valued based upon the market price and the intent is that the amount of insurance relates directly to the cost of production and the value of production is related directly to the dollar amount of insurance. It is felt that the revised regulations more adequately cover the production costs and reflect the true value of production.

Under the provisions of the peach crop insurance policy, the cancellation date, that date by which a policyholder must notify the Corporation of his desire to cancel his crop insurance coverage for a particular crop year, has been established as November 30. Any regulations that are promulgated herein, or any amendments thereto, must be placed on file in the Corporation's office for the county 15 days prior to such cancellation date, or November 15, in order to be effective for that crop year.

The Board of Directors of the Federal Crop Insurance Corporation has found and determined that there would not be enough time to follow the procedure for notice and public participation and still have the regulations on file in sufficient time to be effective for the coming 1979 crop year. In addition, the Board is mindful of the considerable time and research involved in discussions with peach producers of the affected States prior to the decision to revise the peach crop insurance regulations. The Corporation will provide all current peach insureds a copy of the revised peach policy along with the rates and levels of coverage and a complete written explanation of the changes.

Because of the November 15 deadline, it is hereby found and determined that compliance with the notice and public participation procedure, provisions of 5 U.S.C. 553 is impractical, unnecessary, and contrary to the public interest.

Similarly, it is hereby found in accordance with the provisions of Executive Order 12044 (43 FR 12661, March 24, 1978), that it is not possible to publish these regulations in proposed form and allow 60 days for public comments. However, in an effort to assure an opportunity for public comment in the rule making process as it relates to the insuring of peaches, the Corporation will accept written comments, views, and data on the revised Peach Crop Insurance regulations for a period of 60 days. Such comments, views, and data will be given serious consideration for use in future amendments to such regulations. The public is requested to forward any written comments, views, or data to James D. Deal, Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, by not later than January 30, 1979, in order to be sure of consideration.

Such comments, views, and data that are received in response to this invitation will be available for public inspection in the Office of the Manager during regular business hours, 8:15 a.m. to 4:45 p.m., Monday through Friday (7 CFR 1.27(b)).

Adopted by the Board of Directors on October 20, 1978.

FINAL RULE

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), 7 CFR Part 403, the Peach Crop Insurance Regulations for the 1976 and Succeeding Crop Years, as amended, which shall remain in full force and effect for the 1978 crop year, are hereby amended effective for the 1979 and succeeding crop years to read as set forth below.

The provisions of this subpart shall apply, until amended or superseded to all continuous peach crop insurance contracts as they relate to the 1979 and succeeding crop years.

Subpart—Regulations for the 1979 and Succeeding Crop Years

Sec.

403.40 Availability of peach crop insurance.
403.41 Premium rates and amounts of insurance.
403.42 Application for insurance.
403.43 Public notice of indemnities paid.
403.44 Creditors.
403.45 Good faith reliance on misrepresentation.
403.46 The contract.
403.47 The policy.

AUTHORITY: Secs. 506, 516, 52 Stat, 73, as amended, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1979 and Succeeding Crop Years

§ 403.40 Availability of peach crop insurance.

Peach crop insurance shall be offered for the 1979 and succeeding crop years under the provisions of § 403.40 through § 403.47 in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from a list of counties approved by the Board of Directors of the Corporation for peach crop insurance. The counties designated by the Manager shall be published by appendix to this section.

Counties designated by the Manager for Peach Crop Insurance effective for the 1979 crop year are:

ALABAMA

Chilton

ARKANSAS

Cross
Johnson
Lee
St. Francis

SOUTH CAROLINA

Aiken
Allendale
Barnwell
Chesterfield
Edgefield
Greenville
Lexington
Spartanburg
York

§ 403.41 Premimum rates and amounts of insurance.

The Manager shall establish premium rates and the amounts of insurance per acre which shall be shown on the county actuarial table on file in the office for the county. Such premium rates and amounts of insurance may be changed from year to year.

§ 403.42 Application for insurance.

(a) Application for insurance may be submitted by any person to cover such person's insurable share in peaches as landlord, owner-operator, tenant, or sharecropper, at the office for the county on or before the closing date which shall be the January 10 of the year for which application for insurance is made of the Corporation.

(b) The Corporation reserves the right to discontinue the taking of applications in any county upon its determination that the insurance risk involved is excessive prior to the closing

date for the filing of applications. To extend the closing date for acceptance of applications in any county, by publishing a notice in the FEDERAL REGISTER, upon his determination that no adverse selectivity will result during the period of such extension: *Provided, however,* That if adverse conditions should develop during such period the Corporation will immediately discontinue the acceptance of applications.

(c) Application for initial insurance shall be made on the following form:

U.S. DEPARTMENT OF AGRICULTURE, FEDERAL CROP INSURANCE CORPORATION

APPLICATION FOR FEDERAL CROP INSURANCE FOR 19—— AND SUCCEEDING CROP YEARS

Name and address: ————————

ZIP code: ————.
Contract No.: ————————
County: ————————
State: ————————
Identification No.: ————————

A. The undersigned applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called the "Corporation"), hereby applies to the Corporation for insurance on his share (for cotton, peanut and tobacco insurance, on his share-cropper or share tenant shares as specified in paragraph B below) in the crops stated below that are insurable crops planted on insurable acreage as shown on the applicable county actuarial table of the Corporation for the above-stated county. The applicant elects each plan of insurance, amount of insurance, or price at which indemnities shall be computed, shown below which in each case shall be an electable plan, amount, or price, as provided on the applicable county actuarial table on file in the Corporation's office for the above county. The premium rates and production guarantees shall be those shown on the applicable county actuarial table for each crop year.

Crops: ————————
Elections
(A): ————————
(P): ————————

B. Applicable only to cotton, peanut and tobacco: If the applicant intends too insure only the shares of his share-croppers or share tenants who have no insurance on the crop with the Corporation "(SC-Int.)" shall be entered following the name of the crop. If the applicant intends to insure both his individual share and the shares of his share-croppers or share tenants "(Comb. Int.)" shall be entered following the name of the crop. Insurance for sharecroppers and share tenants shall be provided in accordance with the regulations of the Corporation (7 CFR 401, 103(b)).

C. Upon acceptance of this application by the Corporation, the contract shall be in effect for the first crop year specified above, except on any crop on which the time for the filing of applications has passed at the time this application is filed, and shall continue for each succeeding crop year until cancelled or terminated as provided in the contract. This application, the insurance policy, endorsements, and the county actuarial tables shall constitute the contract. Any changes in the contract shall be on file in the Corporation's office for the county at least 15 days prior to the applicable cancellation date.

D. This application, when executed by a person as an individual, shall not cover his share in a crop produced by a partnership or other legal entity.

The applicant is a ———— (type of entity).

All natural persons in whose behalf this application is made are over 18 years of age —— (yes or no).

E. Premium Note: In consideration hereof, the insured promises to pay to the order of the Corporation each crop year of the contract the annual premiums. It is agreed that any amount due the Corporation by the insured may be deducted from any indemnity payable to the insured and when not prohibited by law, from any loan or payment otherwise due the insured under any program administered by the United States Department of Agriculture.

Witness to signature: ————————
Signature of applicant: ————————
Date: ————, 19——.
Code: ————.
Address of office for county: ————————

Phone: ————.
Location of farm(s) or headquarters: ————

Phone: ————.

§ 403.43 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at the county courthouse a listing of the indemnities paid in the county.

§ 403.44 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or any involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in sections 12 and 13 of the policy set forth in § 403.47.

§ 403.45 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the insurance contract whenever an insured person under any contract of crop insurance entered into under these regulations has suffered a loss to a crop which is not insured, or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, because of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation and the Board of Directors of the Corporation or the Manager in cases involving not more that $5,000 finds (a) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (b) that said insured person relied thereon in good faith, and (c) that to deny said insured's claim for indemnity would not be fair and equitable, such insured person shall be entitled to such indemnity the same as if otherwise entitled thereto.

§ 403.46 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the peach crop which is provided in and covered by the policy when insurance is accepted on the peach crop by the Corporation pursuant to a duly submitted application. Any changes made in the contract shall not affect the continuity from year to year.

§ 403.47 The policy.

The provisions of the Peach Insurance Policy for the 1979 and succeeding crop years are as follows:

U.S. DEPARTMENT OF AGRICULTURE

PEACH INSURANCE POLICY

(This is a continuous contract. Refer to Section 18.)

FEDERAL CROP INSURANCE CORPORATION

Subject to the regulations of the Federal Crop Insurance Corporation (herein called "Corporation") and in accordance with the terms and conditions set forth in this policy, the Corporation upon acceptance of a person's application does insure such person's peach crop against unavoidable loss of production due to causes of loss insured against that are specified in this policy. No term or condition of the contract shall be waived or changed on behalf of the Corporation except in writing by a duly authorized representative of the Corporation.

TERMS AND CONDITIONS

1. *Meaning of terms.* For the purposes of insurance on peaches the terms:

(a) "Actuarial table" means the forms and related material approved by the Corporation which are on file for public inspection in the office for the county, and which show the applicable amounts of insurance, premium rates, insurable acreage, and related information regarding peach crop insurance in the county.

(b) "Contract" means the accepted application, this policy, and the actuarial table.

(c) "County" means the county shown on the application and any additional insurable land located in a local producing area bordering on the county, as shown on the actuarial table.

(d) "Crop year" means the period within which the peach crop is normally grown and

shall be designated by the calendar year in which the peach crop is normally harvested.

(e) "Harvest" means picking of peaches from the tree or from the ground either by hand or machine for the purpose of marketing.

(f) "Loss ratio" means the ratio of indemnity(ies) paid to premium(s) earned.

(g) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(h) "Person" or "Insured" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(i) "Share" means the share of the insured as landlord, owner-operator, or tenant in the insured peach crop at the time insurance attaches as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured: *Provided,* That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share on the earliest of (1) the date of beginning of harvest on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(j) "Tenant" means a person who rents land from another person for a share of the peach crop or proceeds therefrom.

(k) "Unit" means all insurable acreage of peaches in the county on the date insurance attaches for the crop year (1) in which the insured has a 100 percent share, (2) which is owned by one person and operated by the insured as a tenant, or (3) which is owned by the insured and rented to one tenant. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the peach crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in the office for the county, or by written agreement between the Corporation and the insured. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. *Causes of loss.* (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from drought, earthquake, flood, freeze, frost, hail, hurricane, lightning, tornado, wind, and an insufficient number of hours of chilling temperature to effectively break the dormant period occurring within the insurance period, subject, however, to any exception, exclusions, or limitations with respect to such causes of loss that are set forth on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production due to (1) disease or insect infestation, (2) the neglect or malfeasance of the insured, any member of his household, his tenants or employees, (3) failure to follow recognized good farming practices, (4) the backing up of water by any governmental or public utilities dam or reservoir project, (5) spilt pits and misshapen fruit regardless of the cause, or (6) any cause not specified as an insured cause in this policy as limited by the actuarial table.

3. *Crop and acreage insured.* (a) The peaches insured shall be of a variety established as adapted to the area and not shown as non-insurable on the actuarial table.

(b) The acreage insured for each crop year shall be that acreage of peaches in the county (1) in which the insured has a share at the time insurance attaches, (2) shown as insurable on the actuarial table, and (3) reported by the insured or as determined by the Corporation, whichever the Corporation shall elect:

Provided, That insurance shall not attach or be considered to have attached as determined by the Corporation to any acreage (1) on which the trees have not reached the 4th growing season after being set out or (2) having a minimum expected production of less than 100 bushels per acre on the date insurance attaches.

4. *Responsibility of insured to report acreage, share, and expected production.* (a) Not later than January 10 each year, the insured shall submit to the Corporation at the office for the county on a form prescribed by the Corporation a report showing the following:

(1) All acreage of peaches (including a designation of any acreage to which insurance does not attach) in which the insured has a share, (2) the insured's share therein, and (3) the expected production per acre from such acreage. If the insured does not have a share in any acreage of peaches for any year, he shall submit a report so indicating. Any acreage report submitted by the insured shall be binding upon the insured and shall not be subject to change by the insured.

(b) If the insured does not submit an acreage report on or before January 10, the Corporation may elect to determine by units the insured acreage, share, expected production per acre or declare the insured acreage on any unit(s) to be "zero."

5. *Amount of insurance per acre and prices for computing indemnities.* (a) At the time application for insurance is made, the applicant shall elect either a High, Medium, or Low dollar level of insurance from those shown on the actuarial table. If the insured has not elected a level or the level elected is not shown on the actuarial table for the crop year, the applicable level under the contract, and which the insured shall be deemed to have elected, shall be the level provided on the actuarial table for such purpose: *Provided,* That the level of insurance for peaches intended for processing as determined by the Corporation shall not exceed the Medium level. The insured may, with the consent of the Corporation, change the level elected for any crop year on or before the closing date for submitting applications for that crop year.

(b) The dollar amount of insurance per acre for each crop year shall be determined as shown in the following Amount of Insurance Table. (1) For the purpose of computing premium, the dollar amount of insurance per acre shall be the amount corresponding with the expected production (as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect), and the applicable level of insurance as shown in Columns A and B. (2) For the purpose of determining any indemnity, where the amount of fruit remaining on the trees at the time of harvest is less than the expected production, the dollar amount of insurance shall be the amount shown in Columns C through H opposite the applicable level of insurance shown in Column B.

Amount of Insurance Table

Dollar Amount of Insurance Per Acre Based Upon Expected Production and Dollar Level of Insurance Per Acre at the Time Insurance Attaches		Dollar Amount of Insurance Per Acre Based Upon Bushels of Fruit Remaining on the Trees At the Time of Harvest					
Col. A	Col. B.	Col. C	Col. D	Col. E	Col. F	Col. G	Col. H
Expected Production (Bus.)	Levels of Insurance	200 or More Bu.	150 to 199 Bu.	100 to 149 Bu.	50 to 99 Bu.	10 to 49 Bu.	0 to 9 Bu.
300 or More	High $800	$800	$720	$640	$560	$480	$400
	Med. 600	600	540	480	420	360	300
	Low 400	400	360	320	280	240	200
250 - 299	High $700	$700	$630	$560	$490	$420	$350
	Med. 525	525	475	420	370	315	265
	Low 350	350	315	280	245	210	175
200 - 249	High $600	$600	$540	$480	$420	$360	$300
	Med. 450	450	405	360	315	270	225
	Low 300	300	270	240	210	180	150
150 - 199	High $500	$500	$500	$440	$375	$315	$250
	Med. 375	375	375	330	280	235	190
	Low 250	250	250	220	190	155	125
100 - 149	High $400	$400	$400	$400	$335	$265	$200
	Med. 300	300	300	300	250	200	150
	Low 200	200	200	200	165	135	100

(c) The price per bushel for computing indemnities shall be determined by the Corporation as follows: (1) The price for fresh fruit shall be based upon the applicable average FOB shipping point price per ¾ bushel carton of U.S. Extra #1 two-inch peaches (if not available, the next larger size for which a price is available) as reported by the Market News Service of the Department of Agriculture for the seven consecutive market days commencing with the day harvest starts for the variety as determined by the Corporation: *Provided,* That such price shall never be less than $4.00 per ¾ bushel carton. (2) The price for peaches which are intended for processing as determined by the Corporation, shall be the price per bushel received by the insured: *Provided,* That such price shall never be less than $2.00 per bushel.

6. *Annual premium.* (a) The annual premium is earned and payable at the time insurance attaches and shall be determined by multiplying the insured acreage times the amount of insurance per acre (based on the expected production when the insurance attaches) times the applicable premium rate, times the insured's share at the time insurance attaches, and applying the premium adjustment herein provided.

(b) For premium adjustment purposes, only the years during which premiums were earned subsequent to the 1978 crop year shall be considered.

(c) The premium shall be adjusted as shown in the following table:

[3410-08-C]

ADJUSTMENTS FOR FAVORABLE CONTINUOUS INSURANCE EXPERIENCE

Loss Ratio Through Previous Crop Year	Number of Years Continuous Experience Through Previous Year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
.00 - .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 - .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 - .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 - .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 - 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

ADJUSTMENTS FOR UNFAVORABLE INSURANCE EXPERIENCE:

Loss Ratio Through Previous Crop Year	Number of Loss Years Through Previous Year														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1.10 - 1.19	100	102	104	106	108	110	112	114	116	118	120	122	124	126	128
1.20 - 1.39	100	104	108	112	116	120	124	128	132	136	140	144	148	152	160
1.40 - 1.69	100	108	116	124	132	140	148	156	164	172	180	188	196	204	212
1.70 - 1.99	100	112	122	132	142	152	162	172	182	192	202	212	222	232	242
2.00 - 2.49	100	116	128	140	152	164	176	188	200	212	224	236	248	260	272
2.50 - 3.24	100	120	134	148	162	176	190	204	218	232	246	260	274	288	300
3.25 - 3.99	105	124	140	156	172	188	204	220	236	252	268	284	300	300	300
4.00 - 4.99	110	128	146	164	182	200	218	236	254	272	290	300	300	300	300
5.00 - 5.99	115	132	152	172	192	212	232	252	272	292	300	300	300	300	300
6.00 - Up	120	136	158	180	202	224	246	268	290	300	300	300	300	300	300

(d) If there is no break in the continuity of participation, any premium adjustment applicable under subsection (c) of this section shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured in operating only the same farm or farms, if such person had previously actively participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(e) If there is a break in the continuity of participation, any reduction in premium earned under subsection (c) of this section shall not thereafter apply; however, any increase in premium shall apply following a break in continuity.

(f) Any unpaid amount due the Corporation may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any act of Congress or program administered by the U.S. Department of Agriculture, when not prohibited by law.

7. *Insurance period.* Insurance on insured acreage shall attach on January 10 and shall cease in the same calendar year upon the earlier of (1) harvest or (2) September 15.

8. *Notice of damage or loss.* Any notice of damage or loss shall be given in writing by the insured to the Corporation at the office for the county. The Corporation shall reject any claim for indemnity if any of the requirements of this section are not met.

(a) Notice shall be given for each damage to the peaches from an insured cause of loss within seven days after such damage becomes apparent, giving the date, cause, and estimated extent of such damage: *Provided,* That if an indemnity is to be claimed, the insured shall notify the office for the county immediately if the damage occurs within the seven-day period before harvest commences or during harvest. The Corporation reserves the right to provide additional time if it determines that circumstances beyond the control of the insured prevent compliance with the provisions of this subsection.

(b) Any insured acreage which is not to be harvested shall be left intact until the Corporation makes an inspection.

(c) There shall be no abandonment to the Corporation of any insured peach crop.

9. *Claim for indemnity.* (a) Any claim for indemnity on any unit shall be submitted to the Corporation on a form prescribed by the Corporation. It shall be a condition precedent to the payment of any indemnity that the insured (1) establish that any loss has been directly caused by one or more of the causes insured against during the insurance period for which the indemnity is claimed and (2) furnish any other information regarding the loss as may be required by the Corporation.

(b) The amount of indemnity for any unit shall be determined by subtracting the dollar value of production from the dollar amount of insurance and multiplying the remainder by the insured share. The dollar value of production is obtained by multiplying the total production to be counted by the applicable price for computing indemnities provided in subsection 5(c). The dollar amount of insurance is obtained by multiplying the applicable dollar amount per acre determined in accordance with the provisions of subsections 5 (a) and (b) times the insured acres: *Provided,* That if the premium computed on the acreage as determined by the Corporation and share, is more than the premium computed on the acreage and share, the amount of indemnity shall be computed on the determined acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation and subject to adjustment for wind and hail damage to fruit, shall include all harvested production and any appraisals made by the Corporation for unharvested production, poor farming practices, uninsured causes of loss, or for acreage abandoned or put to another use without prior written consent of the Corporation. The production to be counted shall not be less than the expected production per acre at the time insurance attached for any acreage of peaches which is abandoned, put to another use without prior written consent of the Corporation, not inspected by the Corporation prior to the completion of harvest or damaged solely by an uninsured cause.

(d) The Corporation reserves the right to delay final appraisal of any damage until the extent of damage can be determined.

(e) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c): *Provided,* That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

10. *Payment of indemnity.* (a) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. However, in no event shall the Corporation be liable for interest or damage in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(b) If the insured is an individual who dies, disappears, or is judicially declared incompetent, or the insured is other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

11. *Misrepresentation and fraud.* The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right, including the right to collect any unpaid premiums if, at any time, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

12. *Collateral assignment.* Upon approval of a form prescribed by the Corporation, the insured may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

13. *Transfer of insured share.* If the insured transfers all or any part of the insured share during the crop year, upon approval by the Corporation, protection will continue to be provided according to the provisions of the contract to the transferee for such crop year on the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the transferor for the current crop year. Any transfer shall be made on a form prescribed by the Corporation.

14. *Subrogation.* The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made and shall execute all papers required and take appropriate action to secure such rights.

15. *Records and access to farm.* The insured shall keep or cause to be kept for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all peaches produced on each unit in which the insured has a share, including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

16. *Forms.* Copies of forms referred to in the contract are available at the office for the county.

17. *Contract changes.* The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the cancellation date, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 18.

18. *Life of contract: Cancellation and termination.* (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel insurance for any crop year by giving a signed notice to the other on or before the cancellation date preceding the crop year for which the cancellation is to become effective.

(b) The contract will terminate if (1) any amount due the Corporation is not paid on or before the termination date for of the calendar year immediately following the crop year of the indebtedness: *Provided,* That the date of payment for premium deducted from any indemnity claim shall be the date the insured signs such claim, or when deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved or (2) the insured has not complied with a request by the Corporation for satisfactory arrangements for payment of the premium for the following crop year.

(c) Following are the cancellation and termination dates:

State	Cancellation date	Termination date for indebtedness
All States.....	Nov. 30	Jan. 10

(d) The contract will terminate if no premium is earned for three consecutive years.

(e) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; however, if such event occurs after insurance attaches

for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership, unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

(f) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (b), (c), (d), and (e) of this section, the contract shall continue in force for each succeeding crop year.

NOTE.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942, and OMB Circular No. 840.

Dated: November 9, 1978.

PETER F. COLE,
Secretary, Federal Crop Insurance Corporation.

Dated: November 28, 1978.

Approved by:

BOB BERGLAND,
Secretary.

[FR Doc. 78-33683 Filed 11-30-78; 8:45 am]

[3410-05-M]

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 722—COTTON

Subpart—1979 Crop Extra Long Staple Cotton; Acreage Allotments and Marketing Quotas

FINAL RULE; CORRECTION

AGENCY: Agricultural Stabilization and Conservation Service, Department of Agriculture.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule relating to extra-long staple cotton and the apportionment of national acreage allotments to the States appearing in the FEDERAL REGISTER of October 20, 1978 at 43 FR 48990.

FOR FURTHER INFORMATION CONTACT:

Charles V. Cunningham (ASCS) 202-447-7873.

In FR Doc. 78-29546 appearing at page 48990 of October 20, 1978, the second line of § 722.560 is corrected by deleting 000,000 and substituting 114,965 therefor.

Signed at Washington, D.C., on November 22, 1978.

RAY FITZGERALD,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 78-33678 Filed 11-30-78; 8:45 am]

[3410-02-M]

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

[Lemon Regulation 175; Lemon Regulation 174, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

SUMMARY: Final rule.

ACTION: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period December 3-9, 1978, and increases the quantity of such lemons that may be so shipped during the period November 26-December 2. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective December 3, 1978, and the amendment is effective for the period November 26-December 2, 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, established under this marketing order, 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 November 28, 1978, to consider supply and market conditions and other factors affecting the need for regulation, and recommended quantities of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons continues good on all sizes but slightly easier on 200's.

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 and amendment are 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, and the amendment relieves restrictions on the handling of lemons. 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.

§ 910.475 Lemon Regulation 175.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period December 3, 1978, through December 9, 1978, is established at 240,000 cartons.

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

§ 910.474 [Amended]

Paragraph (a) of § 910.474 Lemon Regulation 174 (43 FR 54934) is amended to read as follows: "The quantity of lemons grown in California and Arizona which may be handled during the period November 26, 1978, through December 2, 1978, is established at 240,000 cartons."

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

Dated:

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

[FR Doc. 78-33851 Filed 11-30-78; 11:22 am]

[3410-37-M]

CHAPTER XXVIII—FOOD SAFETY AND QUALITY SERVICE, DEPARTMENT OF AGRICULTURE

PART 2859—INSPECTION OF EGGS AND EGG PRODUCTS

Fees and Charges

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: The hourly rates for overtime or holiday work incurred under the mandatory egg products inspection service are changed to reflect salary increases for inspectors.

EFFECTIVE DATE: December 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Ashley R. Gulich, Food Safety and Quality Service, United States Department of Agriculture, Room 3944 South Building, Washington, D.C. 20250, Phone: (202) 447-3506.

SUPPLEMENTARY INFORMATION: Under the mandatory egg products inspection program the first 40 hours of an inspector's charges are paid by the Federal Government. Users of the Service are charged only for work performed in overtime, on holidays, or on certain appeal inspections. The Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*) requires that the costs of inspection for such services as overtime and holiday work be recovered from the users. Fees for these services have not been adjusted since November 1976. Since that time, there have been two general salary increases for Federal employees and some State employees, as well as increases in other costs to provide services. To recover costs for service, the hourly rates for overtime and holiday inspection work are increased from $10.60 to $12.00 per hour.

Therefore, pursuant to the authority of the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*) § 2859.126 and § 2859.128(a), (7 CFR Part 2859) are amended to read as follows:

§ 2859.126 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day, or on a day outside the established schedule, such services are considered as overtime work. The official plant shall give reasonable advance notice to the inspector of any overtime service necessary and shall pay the Service for such overtime at an hourly rate of $12.00 to cover the cost thereof.

§ 2859.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant shall, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and shall pay the Service therefor at an hourly rate of $12.00 to cover the cost thereof.

* * * * *

(84 Stat. 1633, 21 U.S.C. 1053)

It has been determined that in order to cover these increased costs of the services, the hourly fees charged in connection with the performance of the services must be increased as soon as practicable as provided herein. The need for the increase and the amount thereof are dependent upon facts within the knowledge of the Food Safety and Quality Service.

The Egg Products Inspection Act requires that fees recovered from users of the mandatory egg products inspection program for overtime and holiday work cover the costs for such services. Increased revenues are urgently needed to meet the costs of these services as presently being performed. Therefore, Sydney J. Butler has determined that this document represents an emergency situation requiring immediate program action without a notice and comment period. Further, these amendments have not been classified "significant" and an impact analysis is not required since the amendments are mandated by statute.

Accordingly, pursuant to the authority in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to these amendments are impracticable and contrary to the public interest and good cause is found for making these amendments effective before January 2, 1979.

Done at Washington, D.C. on: November 27, 1978.

SYDNEY J. BUTLER,
Acting Administrator,
Food Safety and Quality Service.

[FR Doc. 78-33680 Filed 11-30-78; 8:45 am]

[3410-34-M]

Title 9—Animal and Animal Products

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

SUBCHAPTER A—ANIMAL WELFARE

PART 3—STANDARDS

Revision of Standards for the Transportation and the Handling, Care, and Treatment in Connection Therewith of Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, Nonhuman Primates, and Certain Other Warmblooded Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the transportation standards governing certain live warmblooded animals under the Animal Welfare Act published in the FEDERAL REGISTER on June 21, 1977 (42 FR 31556-31571) and on May 16, 1978 (43 FR 21160-21167). The amendments contained herein concern changes in the allowable minimum and maximum air temperatures surrounding dogs, cats, guinea pigs, hamsters, rabbits, nonhuman primates and certain other warmblooded animals when transported in commerce. They also contain a new procedure for measuring the air temperature surrounding live animals being transported in commerce which replaces the "ambient temperature" provisions of the present transportation standards. In connection with such new procedure, the range of allowable air temperatures for animals being transported in commerce takes into consideration the differences between the air temperature occurring inside the animal shipping container and the air temperature surrounding such container. The revisions contains herein are the result of petition for reconsideration which were received by the Department and which made new facts and evidence available that appeared to warrant such action.

DATE: Effective date January 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Dr. Dale F. Schwindaman, Senior Staff Veterinarian, Animal Care Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436-8271.

SUPPLEMENTARY INFORMATION: On October 17, 1978, the Department published a notice of proposed rulemaking containing changes and additions to Part 3 of Subchapter A, Chapter 1, Title 9 of the Code of Federal Regulations (42 F.R. 47964-47968) which provided for (1) a change in the minimum allowable air temperature from 7.2°C. (45°F.) to 1.7°C. (35°F.) for dogs, cats, hamsters, rabbits, and certain other warmblooded animals when transported in commerce, (2) a change in the maximum allowable air temperature from 35°C. (95°F.) to 29.5°C. (85°F.) for all warmblooded animals under the Animal Welfare Act when transported in commerce, and (3) a new procedure for measuring the air temperature surrounding live animals transported in commerce wherein the air temperature is measured and read outside the animal shipping container at a distance not to exceed .91 meters (3 feet) from the external walls of such container.

A total of 839 comments were received representing many interest groups, i.e., air carriers, pet shop

owners and operators, humane groups, pet animal dealers, veterinarians, hobby breeders, individual pet owners and concerned citizens. Many of the comments raised questions or provided information which warranted some changes in the proposed amendments to the standards. Certain editorial changes were also made for clarification.

Discussion of Major Proposed Items and Comments

Method for measuring the air temperature surrounding live animals transported in commerce

The present transportation standards (9 CFR 3.18, 3.42, 3.67, 3.92, and 3.118) cite a minimum and maximum ambient temperature within primary enclosures used to transport certain warmblooded animals. Criticism of these standards, because they require the insertion of a thermometer into the shipping container to measure the ambient temperature and may result in possible injury to contained animals, prompted the Department to propose a safer and more practical procedure for measuring the air temperature surrounding animals during transportation. Consequently, the Department proposed that the air temperature be measured and read outside the primary enclosure (shipping container) which contains the live animal at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level paralleled to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such enclosure.

Carriers and several other persons commenting on the proposed method for measuring air temperature indicated their agreement with the proposal as being practical and easy for carrier personnel to accomplish, as well as being safe for the contained animals. On the other hand, two comments criticized the proposed method as far too subjective and less accurate in reflecting the actual temperature impacting the contained animals. It was indicated that the proposed method did not take into consideration factors such as direct sunlight, construction of the shipping container, etc., which could affect the temperature within a shipping container. However, the effect of all these interrelated factors has yet to be sufficiently evaluated relative to a warmblooded animal's physiological response to temperature extremes. In addition, inexpensive temperature measuring devices which would not require thrusting some part of such devices into the animal's shipping container are not readily available and there is a reluctance on the part of carrier or intermediate handler employees to get too near an animal whose disposition toward strangers is unknown. The Department is therefore amending §§ 3.16, 3.40, 3.65, 3.90, and 3.116 to reflect the new method of measuring and reading the air temperature outside primary enclosures (shipping containers) containing live animals.

Allowable maximum air temperature

In proposing to change the method of measuring the air temperature around warmblooded animals confined in shipping containers, the Department recognized that there is a difference between the air temperature which immediately surrounds an animal within a shipping container and the temperature of the air surrounding the outside of such container. Physiological data indicates that warmblooded animals adjust to their environment through an elaborately developed heat-regulating system to maintain a relatively constant body temperature. However, as the temperature of the surrounding air approaches the level of the animal's body temperature, the animal will experience discomfort and, after a period of time, death. Scientific data also indicates that as the temperature outside an animal shipping container rises, the differential between the temperature inside the shipping container and the temperature of the outside environment increases. Information also available to the Department indicates that when the air temperature which surrounds the animal shipping container within 3 feet of such container, reaches 29.5°C. (85°F.) the air temperature surrounding the animal inside the shipping container will reach approximately 35°C. (95°F.). Based on this information, the Department proposed that carriers and intermediate handlers not allow the air temperatures which surround the animal shipping container in animal holding areas of terminal facilities to exceed 20.5°C. (85°F.). Further, the Department proposed to require that auxiliary ventilation be used when the temperature reaches 23.9°C. (75°F.).

Comments from air carriers indicated that the existing allowable maximum air temperature standards, i.e., air temperature shall not exceed 29.5°C. (85°F.) for more than 4 hours and never exceed a maximum of 35°C. (95°F.), have not resulted in a hazardous or detrimental environment for animals maintained in carriers' animal holding areas. Furthermore, comments indicated that air carriers have not been advised by either shippers or the public of instances where the temperatures in carriers' facilities which contained live warmblooded animals have exceeded the present standards for allowable maximum air temperatures. Several shippers of animals expressed the fear of air carriers refusing to accept animal shipments when the outside atmospheric temperature reaches 75°F. because the carriers would not have temperature controlled areas in their terminal facilities. The Department received no comments or information which refuted the basic available data indicating that subjection of warmblooded animals to temperatures higher than 95°F. is inhumane. It believes that the proposed standard for the allowable maximum temperature (29.5°C. or 85°F.) outside the shipping container is necessary considering the temperature which immediately surrounds the confined animal inside a shipping container. Therefore, it is provided herein that carriers and intermediate handlers shall not allow the air temperature which is measured and read outside the animal container or primary enclosure (within 0.91 meters (3 feet) of the external walls of such enclosure) to exceed 29.5°C. (85°F.) for all warmblooded animals covered by the Act. Further, it is also provided that auxiliary ventilation must be used when the temperature reaches 23.9°C. (75°F.).

Allowable minimum air temperature

The present transportation standards provide that the ambient air temperature and the temperature surrounding live warmblooded animals transported in commerce shall not be allowed to fall below 7.2°C. (45°F.). An exception is provided for USDA licensees or registrants and U.S. Government Departments, agencies, or instrumentalities wherein a certificate executed by a licensed veterinarian may be furnished to carriers or intermediate handlers indicating that an animal presented for transportation (with the exception of guinea pigs) is acclimated to air temperatures lower than 7.2°C. (45°F.). Many individuals, other than USDA licensees or registrants and representatives of the U.S. Government agencies, felt that their dogs and cats and certain other warmblooded animals were not adversely affected by air temperatures down to 35°F. Based on empirical information, as well as on a certain amount of scientific data, the Department proposed to provide for a minimum allowable air temperature of 1.7°C. (35°F.) surrounding dogs, cats, hamsters, rabbits, and certain other warmblooded animals, with the exception of guinea pigs and nonhuman primates, when transported in commerce.

A majority of individuals who submitted comments, many of whom are pet owners, vehemently objected to the lowering of the allowable minimum air temperature surrounding warmblooded animals, mostly basing

their objections on an anthropomorphic response, i.e., a human would be uncomfortable and eventually freeze in a 35°F. environment; therefore, animals will also be uncomfortable and eventually freeze under the same conditions. Other comments disagreed with the proposal because it lacked certain qualifying criteria, such as (1) restriction on the time an animal could be subjected to temperatures as low as 35°F., (2) consideration for the physical differences between animal breeds, e.g., long-haired animals versus short-haired animals, relative to their ability to adjust to colder environments, and (3) allowances for differences between the less developed thermoregulatory mechanisms of young animals and the well developed mechanisms of adult animals. Hobby breeders decried the discrimination of not being allowed to present a certificate of acclimation to lower temperatures to carriers when shipping long-haired, adult dogs or cats which are acclimated to colder temperatures.

The Department's proposed amendments to the standards for allowable minimum air temperatures apply to all dogs (*Canis familiaris*), all cats (*Felis catus*), and other warmblooded animals affected by the Act and do not give consideration to breed differences or age differences. There is no available scientific data which evaluates the individual ability of the many various breeds of dogs, cats, and other animals to tolerate various temperatures lower than 45°F. or which indicates the pathological effect of such low temperatures on the animals. In addition, those scientific experiments which have involved certain breeds of animals and the effect of temperature extremes utilized adult animals rather than young or immature ones. Consideration for these animal breed and age differences would create complicated requirements wherein carriers and intermediate handlers would have to recognize breeds of animals and differentiate animals by age. Such requirements would be impractical, if not impossible.

The Department feels that additional scientific evaluation of the effects of cold temperatures on those warmblooded animals covered by the Animal Welfare Act must be made and has already initiated action to derive this needed information. In the meantime, the proposed change of the allowable minimum air temperature from 7.2°C. (45°F.) to 1.7°C. (35°F.) shall not be implemented in this rulemaking.

The Department acknowledges the validity of the complaints from hobby breeders and individual pet owners who are presently not afforded the opportunity to present to carriers a certificate of acclimation to lower temperatures when shipping an animal which is known to be so acclimated. The Department will therefore consider providing such an option to all pet owners through a certificate of acclimation to lower temperatures executed by an "accredited" veterinarian in future rulemaking. An "accredited" veterinarian is a licensed veterinarian who has been officially authorized by the Deputy administrator of the Department's Veterinary Services to perform certain functions in connection with programs and laws which the Department administers.

Accordingly, the standards (9 CFR 3.1 *et seq.*) are amended in the following respects:

1. The Table of Contents cited in Part 3—STANDARDS is amended by deleting §§ 3.18, 3.42, 3.67, 3.92, and 3.118.

§ 3.11 [Amended]

2. Section 3.11(c) of the standards (9 CFR 3.11(c)) is amended by deleting the section number 3.18 in the phrase, "* * * prescribed in §§ 3.16 and 3.18." and inserting the section number "3.17" in its place.

3. Section 3.16 of the standards (9 CFR 3.16) is revised to read as follows:

§ 3.16 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.7 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live dogs or cats shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live dogs and cats when the air temperature within such animal holding area is 23.9°C. (75.°F.) or higher. The air temperature around any live dog or cat in any animal holding area shall not be allowed to fall below 7.2°C. (45°F.) nor be allowed to exceed 29.5°C. (85°F.) at any time: *Provided, however,* That no live dog or cat shall be subjected to air temperatures around any such dog or cat in excess of 23.9°C. (75°F.) for more than 4 hours at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live dog or cat shall be measured and read outside the primary enclosure which contains such dog or cat at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

§ 3.17 [Amended]

4. Section 3.17(a)(1) of the standards (9 CFR 3.17(a)(1)) is amended to read as follows:

(a) * * * (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live dogs and cats from the direct rays of the sun and such live dogs or cats shall not be subjected to surrounding air temperatures which exceed 29.5°C. (85°F.), and which shall be measured and read in the manner prescribed in § 3.16 of this Part, for a period of more than 45 minutes.* * *

5. Section 3.17(a)(3) of the standards (9 CFR 3.17(a)(3)) is amended to read as follows:

(a) * * * (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live dogs and cats when the outdoor air temperature falls below 10°C. (50°F.), and such live dogs or cats shall not be subjected to surrounding air temperatures which fall below 7.2°C. (45°F.), and which shall be measured and read in the manner prescribed in § 3.16 of this Part, for a period of more than 45 minutes unless such dogs or cats are accompanied by a certificate of acclimation to lower temperatures as prescribed in § 3.11(c).

* * * * *

§ 3.18 [Deleted]

6. Section 3.18 of the standards (9 CFR 3.18) is deleted.

§ 3.35 [Amended]

7. Section 3.35(c) of the standards (9 CFR 3.35(c)) is amended by deleting the section number "3.42" in the phrase, "* * * prescribed in §§ 3.40 and 3.42." and inserting the section number "3.41." in its place.

8. Section 3.40 of the standards (9 CFR 3.40) is revised to read as follows:

§ 3.40 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate

handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.31 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live guinea pigs or hamsters shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live guinea pigs and hamsters when the air temperature within such animal holding area is 23.9°C. (75.°F.) or higher. The air temperature around any live guinea pig or hamster in any animal holding area shall not be allowed to fall below 7.2°C. (45°F.) nor be allowed to exceed 29.5°C. (85°F.) at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live guinea pig or hamster shall be measured and read outside the primary enclosure which contains such guinea pig or hamster at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and measured on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

§ 3.41 [Amended]

9. Section 3.41(a)(1) of the standards (9 CFR 3.41(a)(1)) is amended to read as follows:

(a) * * * (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live guinea pigs and hamsters from the direct rays of the sun and such live guinea pigs or hamsters shall not be subjected to surrounding air temperatures which exceed 29.5°C. (85°F.), and which shall be measured and read in the manner prescribed in § 3.40 of this Part, for a period of more than 45 minutes. * * *

10. Section 3.41(a)(3) of the standards (9 CFR 3.41(a)(3)) is amended to read as follows:

(a) * * * (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live guinea pigs and hamsters when the outdoor air temperature falls below 10°C. (50°F.), and such live guinea pigs or hamsters shall not be subjected to surrounding air temperatures which fall below 7.2°C. (45°F.), and which shall be measured and read in the manner prescribed in § 3.40 of this Part, for a period of more than 45 minutes.

* * * * *

§ 3.42 [Deleted]

11. Section 3.42 of the standards (9 CFR 3.42) is deleted.

§ 3.60 [Amended]

12. Section 3.60(c) of the standards (9 CFR 3.60(c)) is amended by deleting the section number "3.67" in the phrase, "* * * prescribed in §§ 3.65 and 3.67" and inserting the section number "3.66." in its place.

13. Section 3.65 of the standards (9 CFR 3.65) is revised to read as follows:

§ 3.65 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.56 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live rabbits shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live rabbits when the air temperature within such animal holding area is 23.9°C. (75°F.) or higher. The air temperature around any live rabbit in any animal holding area shall not be allowed to fall below 7.2°C. (45°F.) nor be allowed to exceed 29.5°C. (85°F.) at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live rabbit shall be measured and read outside the primary enclosure which contains such rabbit at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

§ 3.66 [Amended]

14. Section 3.66(a)(1) of the standards (9 CFR 3.66(a)(1)) is amended to read as follows:

(a) * * * (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live rabbits from the direct rays of the sun and such live rabbits shall not be subjected to surrounding air temperatures which exceed 29.5°C. (85°F.), and which shall be measured and read in the manner prescribed in § 3.65 of this Part, for a period of more than 45 minutes. * * *

15. Section 3.66(a)(3) of the standards (9 CFR 3.66(a)(3)) is amended to read as follows:

(a) * * * (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live rabbits when the outdoor air temperature falls below 10°C. (50°F.), and such live rabbits shall not be subjected to surrounding air temperatures which fall below 7.2°C. (45°F.), and which shall be measured and read in the manner prescribed in § 3.65 of this Part, for a period of more than 45 minutes unless such rabbits are accompanied by a certificate of acclimation to lower temperatures as prescribed in § 3.60(c).

* * * * *

§ 3.67 [Deleted]

16. Section 3.67 of the standards (9 CFR 3.67) is deleted.

§ 3.85 [Amended]

17. Section 3.85(c) of the standards (9 CFR 3.85(c)) is amended by deleting the section number "3.92" in the phrase, "* * * prescribed in §§ 3.90 and 3.92." and inserting the section number "3.91." in its place.

18. Section 3.90 of the standards (9 CFR 3.90) is revised to read as follows:

§ 3.90 Terminal facilities

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.81 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live nonhuman primates shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circu-

lated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live nonhuman primates when the air temperature within such animal holding area is 23.9°C. (75.°F.) or higher. The air temperature around any live nonhuman primate in any animal holding area shall not be allowed to fall below 7.2°C. (45°F.) nor be allowed to exceed 29.5°C. (85°F.) at any time: *Provided, however,* that no live nonhuman primate shall be subjected to surrounding air temperatures which exceed 23.9°C. (75°F.) for more than 4 hours at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live nonhuman primate shall be measured and read outside the primary enclosure which contains such nonhuman primate at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

§ 3.91 [Amended]

19. Section 3.91(a)(1) of the standards (9 CFR 3.91(a)(1)) is amended to read as follows:

(a) * * * (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live nonhuman primates from the direct rays of the sun and such live nonhuman primates shall not be subjected to surrounding air temperatures which exceed 29.5°C. (85°F.), and which shall be measured and read in the manner prescribed in § 3.90 of this Part, for a period of more than 45 minutes. * * *

20. Section 3.91(a)(3) of the standards (9 CFR 3.91(a)(3)) is amended to read as follows:

(a) * * * (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live nonhuman primates when the outdoor air temperature falls below 10°C. (50°F.) and such live nonhuman primates shall not be subjected to surrounding air temperatures which fall below 7.2°C. (45°F.), and which shall be measured and read in the manner prescribed in § 3.90 of this Part, for a period of more than 45 minutes unless such nonhuman primates are accompanied by a certificate of acclimation to lower temperatures as prescribed in § 3.85(c).

* * * * *

§ 3.92 [Deleted]

21. Section 3.92 of the standards (9 CFR 3.92) is deleted.

§ 3.111 [Amended]

22. Section 3.111(c) of the standards (9 CFR 3.111(c)) is amended by deleting the section number "3.118" in the phrase, "* * * prescribed in §§ 3.116 and 3.118." and inserting the section number "3.117." in its place.

23. Section 3.116 of the standards (9 CFR 3.116) is revised to read as follows:

§ 3.116 Terminal facilities.

Carries and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.116 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live animals shall be provided with fresh air by means of windows, doors vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live animals when the air temperature within such animal holding area is 23.9°C. (75.°F.) or higher. The air temperature around any live animal in any animal holding area shall not be allowed to fall below 7.2°C. (45°F.) nor be allowed to exceed 29.5°C. (85°F.) at any time: *Provided, however,* That no live animal shall be subjected to surrounding air temperatures which exceed 23.9°C. (75°F.) for more than 4 hours at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live animal shall be measured and read outside the primary enclosure which contains such animal at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

§ 3.117 [Amended]

24. Section 3.117(a)(1) of the standards (9 CFR 3.117(a)(1)) is amended to read as follows:

(a) * * * (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live animals from the direct rays of the sun and such live animals shall not be subjected to surrounding air temperatures which exceed 29.5°C. (85°F.), and which shall be measured and read in the manner prescribed in § 3.116 of this Part, for a period of more than 45 minutes. * * *

25. Section 3.117(a)(3) of the standards (9 CFR 3.117(a)(3)) is amended to read as follows:

(a) * * * (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live animals when the outdoor air temperature falls below 10°C. (50°F.) and such live animals shall not be subjected to surrounding air temperatures which fall below 7.2°C. (45°F.), and which shall be measured and read in the manner prescribed in § 3.116 of this Part, for a period of more than 45 minutes unless such animals are accompanied by a certificate of acclimation to lower temperatures as prescribed in § 3.111(c).

* * * * *

(Secs. 12 and 13, 90 Stat. 418 and 419, 7 U.S.C. 2142 and 2143; 37 FR 28477, 28646; 38 FR 19141.)

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon such good cause that further notice and other public participation with respect to the revision are impracticable and unnecessary.

Done at Washington, D.C., this 29th day of November, 1978.

NOTE.—This rule has been reviewed under the USDA criteria established to implement E. O. 12044, "Improving Government Regulations", and has been designated "significant". An approved Final Impact Analysis Statement has been prepared and is available from the Animal Care Staff, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, telephone Area Code (301) 436-8271.

E. A. SCHILF,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc. 78-33789 Filed 11-30-78; 8:45 am]

[3410-34-M]

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

PART 78—BRUCELLOSIS

Subpart D—Designation of Brucellosis Areas, Specifically Approved Stockyards, and Slaughtering Establishments

BRUCELLOSIS AREAS

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final Rule.

SUMMARY: The Animal and Plant Health Inspection Service is amending its Brucellosis Regulations. These amendments update the Brucellosis regulations by providing the current status of various counties and States which have been designated Certified Brucellosis-Free Areas, Modified Certified Brucellosis Areas, or Noncertified Areas for purposes of interstate movement of cattle and bison from such areas. This action is required because of the change in the Brucellosis status of the areas affected.

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. A. D. Robb, U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Hyattsville, Maryland, Room 805, (301) 436-8713.

SUPPLEMENTARY INFORMATION: The amendments delete the following areas from the list of Modified Certified Brucellosis Areas in § 78.21 and add such areas to the list designated as Noncertified Areas in § 78.22 because it has been determined that they no longer come within the definition of a Modified Certified Brucellosis Area in § 78.1(m): Highlands County in Florida.

The amendments delete the following areas from the list of Certified Brucellosis-Free Areas in § 78.20 and add such areas to the list designated as Modified Certified Brucellosis Areas in § 78.21 because it has been determined that they now come within the definition of a Modified Certified Brucellosis Area in § 78.1(m): Jefferson County in Tennessee.

The amendments delete the following areas from the list of Modified Certified Brucellosis Areas in § 78.21 and add such areas to the list designated as Certified Brucellosis-Free Areas in § 78.20 because it has been determined that they now come within the definition of a Certified Brucellosis-Free Area in § 78.1(l): Mesa County in Colorado; Calhoun County in Florida; Miami County in Kansas; and Quay County in New Mexico.

Accordingly, §§ 78.20, 78.21, and 78.22 of Part 78, Title 9, Code of Federal Regulations, designating Certified Brucellosis-Free Areas, Modified Certified Brucellosis Areas, and Noncertified Areas, respectively, are amended to read as follows:

§ 78.20 Certified Brucellosis-Free Areas.

The following States, or specified portions thereof, are hereby designated as Certified Brucellosis-Free Areas:

(a) *Entire States.*

Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevade, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Virginia, Washington, West Virginia, Wisconsin, Virgin Islands.

(b) *Specific Counties Within States.*

Alabama. Dale, Geneva.

Arkansas. Baxter, Bradley, Carroll, Cleveland, Columbia, Dallas, Drew, Fulton, Garland, Jefferson, Marion, Monroe, Montgomery, Newton, Ouachita, Searcy, Sharp, Stone, Union.

Florida. Baker, Bay, Calhoun, Citrus, Dixie, Franklin, Holmes, Leon, Liberty, Monroe, Okaloosa, Orange, Santa Rosa, Seminole, St. Johns, Taylor, Wakulla, Walton.

Georgia. Appling, Atkinson, Bacon, Banks, Brantley, Bryan, Bulloch, Burke, Butts, Camden, Candler, Charlton, Chatham, Chattahoochee, Clarke, Clayton, Cook, Crawford, De Kalb, Echols, Effingham, Evans, Fannin, Franklin, Glascock, Glynn, Greene, Habersham, Jeff Davis, Johnson, Lanier, Laurens, Liberty, Long, McIntosh, Monroe, Peach, Rabun, Richmond, Screven, Stephens, Taylor, Toombs, Treutlen, Twiggs, Upson, Ware, Wayne, Wheeler, White, Wilkinson.

Idaho. Ada, Adams, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Boundary, Butte, Camas, Canyon, Caribou, Clark, Clearwater, Custer, Gem, Idaho, Kootenai, Latah, Lemhi, Lewis, Minidoka, Nez Perce, Owyhee, Payette, Power, Shoshone, Valley, Washington.

Illinois. Adams, Alexander, Bond, Boone, Brown, Bureau, Calhoun, Carroll, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Cook, Crawford, Cumberland, De Kalb, De Witt, Douglas, Du Page, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Grundy, Hamilton, Hancock, Hardin, Henderson, Henry, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Kane, Kankakee, Kendall, Lake, La Salle, Lawrence, Lee, Livingston, Logan, Macon, Macoupin, Madison, Marion, Marshall, Mason, McDonough, McHenry, McLean, Menard, Mercer, Monroe, Montgomery, Morgan, Moultrie, Ogle, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Rock Island, St. Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Stark, Stephenson, Tazewell, Union, Vermilion, Wasbash, Warren, Washington, Wayne, White, Whiteside, Will, Williamson, Winnebago, Woodford.

Iowa. Adair, Allamakee, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Kossuth, Lee, Linn, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Palo Alto, Pocahontas, Polk, Pottawattamie, Poweshiek, Plymouth, Sac, Scott, Shelby, Sioux, Story, Tama, Union, Van Buren, Wapello, Warren, Washington, Webster, Winnebago, Winneshiek, Woodbury, Worth, Wright.

Kansas. Anderson, Barber, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Coffey, Comanche, Decatur, Doniphan, Douglas, Edwards, Ellsworth, Finney, Ford, Gove, Graham, Grant, Gray, Greeley, Hamilton, Haskell, Hodgeman, Jewell, Johnson, Kearny, Kingman, Kiowa, Labette, Lane, Logan, Marion, Marshall, Meade, Miami, Mitchell, Ness, Norton, Osborne, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Republic, Riley, Rooks, Rush, Saline, Scott, Seward, Shawnee, Sheridan, Sherman, Smith, Stanton, Stevens, Thomas, Trego, Wallace, Washington, Wichita, Woodson, Wyandotte.

Kentucky. Bell, Breathitt, Campbell, Clay, Floyd, Harlan, Johnson, Kenton, Knott, Knox, Lawrence, Lee, Leslie, Letcher, Lewis, Magoffin, Martin, McCreary, Menifee, Morgan, Owsley, Pendleton, Perry, Pike, Robertson, Trimble, Whitley, Wolfe.

Mississippi. Alcorn, Hancock, Harrison, Jackson, Stone, Tishomingo.

Misssouri. Audrain, Dunklin, Gasconade, Hickory, Lewis, Moniteau, Montgomery, Perry, Platte, Pulaski, St. Louis, Schuyler, Shelby.

Nebraska. Banner, Box Butte, Cheyenne, Dakota, Deuel, Dodge, Douglas, Perkins, Thurston.

New Mexico. Catron, Colfax, De Baca, Dona Ana, Grant, Guadalupe, Harding, Hidalgo, Lincoln, Los Alamos, Luna, McKinley, Otero, Quay, Rio Arriba, Sandoval, San Juan, Santa Fe, Sierra, Socorro, Taos, Torrance, Union.

South Dakota. Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Kingsbury, Lake, Lawrence, Lincoln, Lyman, Marshall, McCook, McPherson, Meade, Mellette, Miner, Minnehaha, Moody, Pennington, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Sully, Todd, Tripp, Turner, Union, Walworth, Washabaugh, Yankton, Ziebach.

Tennessee. Anderson, Blount, Campbell, Carter, Claiborne, Davidson, Fentress, Grainger, Greene, Hamblen, Hancock, Johnson, Knox, Lake, Lewis, Meigs, Morgan, Perry, Polk, Roane, Robertson, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren.

Texas. Armstrong, Bandera, Borden, Brewster, Childress, Comal, Crane, Culberson, Ector, Gillespie, Glasscock, Gray, Hansford, Hartley, Hemphill, Hudspeth, Hutch-

inson, Irion, Jeff Davis, Kendall, Kerr, Kimble, Lipscomb, Llano, Loving, Martin, Mason, Menard, Midland, Moore, Newton, Ochiltree, Pecos, Presidio, Reagan, Real, Roberts, Schleicher, Sherman, Sterling, Sutton, Terrell, Val Verde, Ward, Winkler, Yoakum.

Utah. Beaver, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, Salt Lake, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, Wayne, Weber.

Vermont. Bennington, Caledonia, Essex, Grand Isle, Lamoille, Orange, Rutland, Washington, Windham, Windsor.

Wyoming. Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Laramie, Natrona, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston.

Puerto Rico. Adjuntas, Aguada, Aguadilla, Aguas Buenas, Aibonito, Anasco, Arroyo, Barceloneta, Barranquitas, Bayamon, Cabo Rojo, Caguas, Canovanas (Loiza), Catano, Cayey, Ceiba, Ciales, Cidra, Coamo, Comerio, Corozal, Culebra, Dorado, Fajardo, Guanica, Guayama, Guaynabo, Guayanilla, Hormigueros, Humacao, Jayuya, Juana Diaz, Juncos, Lajas, Lares, Las Marias, Luquillo, Manati, Maricao, Maunabo, Mayaguez, Moca, Morovis, Naranjito, Orocovis, Patillas, Penuelas, Ponce, Rincon, Rio Grande, Rio Piedras, Sabana Grande, Salinas, San German, San Juan, San Lorenzo, Santa Isabel, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, Vieques, Villalba, Yabucoa, Yauco.

§ 78.21 Modified Certified Brucellosis Areas.

The following States, or specified portions thereof, are hereby designated as Modified Certified Brucellosis Areas:

(a) *Entire States.*

Alaska, Louisiana, Oklahoma.

(b) *Specified Counties Within States.*

Alabama. Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Calhoun, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, De Kalb, Elmore, Etowah, Escambia, Fayette, Franklin, Greene, Hale, Henry, Houston, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Mobile, Monroe, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Russell, St. Clair, Shelby, Sumter, Talladege, Tallapoosa, Tuscaloosa, Walker, Washington, Wilcox, Winston.

Arkansas. Arkansas, Ashley, Benton, Boone, Calhoun, Chicot, Clark, Clay, Cleburne, Conway, Craighead, Crawford, Crittenden, Cross, Desha, Faulkner, Franklin, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Lonoke, Madison, Miller, Mississippi, Nevada, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Pulaski, Randolph, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, Washington, White, Woodruff, Yell.

Florida. Alachua, Bradford, Brevard, Broward, Charlotte, Clay, Collier, Columbia, Dade, De Soto, Duval, Escambia, Flagler, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Hillsborough, Indian River, Jackson, Jefferson, Lafayette, Lake, Lee, Levy, Madison, Manatee, Marion, Martin, Nassau, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Lucie, Sarasota, Sumter, Suwanee, Union, Volusia, Washington.

Georgia. Baker, Baldwin, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun, Carroll, Catoosa, Chattooga, Cherokee, Clay, Clinch, Cobb, Coffee, Colquitt, Columbia, Coweta, Crisp, Dade, Dawson, Decatur, Dodge, Dooly, Dougherty, Douglas, Early, Elbert, Emanuel, Fayette, Floyd, Forsyth, Fulton, Gilmer, Gordon, Grady, Gwinnett, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jefferson, Jenkins, Jones, Lamar, Lee, Lincoln, Lowndes, Lumpkin, Macon, Madison, Marion, McDuffie, Meriwether, Miller, Mitchell, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Pickens, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Randolph, Rockdale, Schley, Seminole, Spalding, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Telfair, Terrell, Thomas, Tift, Towns, Troup, Turner, Union, Walker, Walton, Warren. Washington, Webster, Whitfield, Wilcox, Wilkes, Worth.

Idaho. Bannock, Bonneville, Cassia, Elmore, Franklin, Fremont, Gooding, Jefferson, Jerome, Lincoln, Madison, Oneida, Teton, Twin Falls.

Illinois. Jo Daviess, Knox, Massac.

Iowa. Adams, Appanoose, Guthrie, Page, Ringgold, Taylor, Wayne.

Kansas. Allen, Atchison, Barton, Butler, Cloud, Cowley, Crawford, Dickinson, Elk, Ellis, Franklin, Geary, Greenwood, Harper, Harvey, Jackson, Jefferson, Leavenworth, Lincoln, Linn, Lyon, McPherson, Montgomery, Morris, Morton, Nemaha, Neosho, Osage, Ottawa, Reno, Rice, Russell, Sedgwick, Stafford, Sumner, Wabaunsee, Wilson.

Kentucky. Adair, Allen, Anderson, Ballard, Barren, Bath, Boone, Bourbon, Boyd, Boyle, Bracken, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Carroll, Carter, Casey, Christian, Clark, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Franklin, Fulton, Gallatin, Garrard, Grant, Graves, Grayson, Green, Greenup, Hancock, Hardin, Harrison, Hart, Henderson, Henry, Hickman, Hopkins, Jackson, Jefferson, Jessamine, Larue, Laurel, Lincoln, Livingston, Logan, Lyon, Madison, Marion, Marshall, Mason, McCracken, McLean, Meade, Mercer, Metcalfe, Monroe, Montgomery, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Powell, Pulaski, Rockcastle, Rowan, Russell, Scott, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Union, Warren, Washington, Wayne, Webster, Woodford.

Mississippi. Adams, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, De Soto, Forrest, Franklin, George, Greene, Grenada, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, LeFlore, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Sunflower, Tallahatchie, Tate, Tippah, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo.

Missouri. Adair, Andrew, Atchison, Barry, Barton, Bates, Benton, Bollinger, Boone, Buchanan, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cass, Cedar, Chariton, Christian, Clark, Clay, Clinton, Cole, Cooper, Crawford, Dade, Dallas, Daviess, De Kalb, Dent, Douglas, Franklin, Gentry, Greene, Grundy, Harrison, Henry, Holt, Howard, Howell, Iron, Jackson, Jasper, Jefferson, Johnson, Knox, Laclede, Lafayette, Lawrence, Lincoln, Linn, Livingston, Macon, Madison, Maries, Marion, McDonald, Mercer, Miller, Mississippi, Monroe, Morgan, New Madrid, Newton,Nodaway, Oregon, Osage, Ozark, Pemiscot, Pettis, Phelps, Pike, Polk, Putnam, Ralls, Randolph, Ray, Reynolds, Ripley, St. Charles, St. Clair, St. Francois, St. Genevieve, Saline, Scotland, Scott, Shannon, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Warren, Washington, Wayne, Webster, Worth, Wright.

Nebraska. Adams, Antelope, Arthur, Blaine, Boone, Boyd, Brown, Buffalo, Burt, Butler, Cass, Cedar, Chase, Cherry, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Dixon, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lancaster, Lincoln, Logan, Loup, Madison, McPherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Phelps, Pierce, Platte, Polk, Redwillow, Richardson, Rock, Saline, Sarpy, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Valley, Washington, Wayne, Webster, Wheeler, York.

New Mexico. Bernalillo, Chaves, Curry, Eddy, Lea, Mora, Roosevelt, San Miguel, Valencia.

South Dakota. Jones, Stanley.

Tennessee. Bedford, Benton, Bledsoe, Bradley, Cannon, Carroll, Cheatham, Chester, Clay, Cocke, Coffee, Crockett, Cumberland, Decatur, DeKalb, Dickson, Dyer, Fayette, Franklin, Gibson, Giles, Grundy, Hamilton, Hardeman, Hardin, Hawkins, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Lauderdale, Lawrence, Lincoln, Loudon, Macon, Madison, Marion, Marshall, Maury, McMinn, McNairy, Monroe, Montgomery, Moore, Obion, Overton, Pickett, Putnam, Rhea, Rutherford, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Warren, Washington, Wayne, Weakley, White, Williamson, Wilson.

Texas. Anderson, Andrews, Angelina, Aransas, Archer, Atascosa, Austin, Bailey, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Bosque, Bowie, Brazoria, Brazos, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comanche, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, De Witt, Dickens, Dimmitt, Donley, Duval, Eastland, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hardeman, Hardin, Harris,

Harrison, Haskell, Hays, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Jack, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kenedy, Kent, King, Kinney, Kleberg, Knox, Lamar, Lamb, Lampasas, La Salle, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, Lubbock, Lynn, McCulloch, McLennan, McMullen, Madison, Marion, Matagorda, Maverick, Medina, Milam, Mills, Mitchell, Montague, Montgomery, Morris, Motley, Nacogdoches, Navarro, Nolan, Nueces, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Polk, Potter, Rains, Randall, Red River, Reeves, Refugio, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Scurry, Shackelford, Shelby, Smith, Somervell, Starr, Stephens, Stonewall, Swisher, Tarrant, Taylor, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Wise, Wood, Young, Zapata, Zavala.

Utah. Box Elder, Garfield.

Vermont. Addison, Chittenden, Franklin, Orleans.

Wyoming. Lincoln.

Puerto Rico. Arecibo, Camuy, Carolina, Gurabo, Hatillo, Isabela, Las Piedras, Naguabo, Quebradillas, San Sebastian.

§ 78.22 Noncertified areas.

The following States, or specified portions thereof, are hereby designated as Noncertified Brucellosis Areas:

(a) *Entire States.*

Yellowstone National Park.

(b) *Specific Counties Within States.*

Florida. Highlands, Okeechobee.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132, (21 U.S.C. 111-113, 114a-1, 115, 117, 120, 121, 125, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141, 9 CFR 78.25.)

The amendments impose certain restrictions necessary to prevent the spread of brucellosis in cattle and relieve certain restrictions presently imposed. They should be made effective promptly in order to accomplish their purpose in the public interest and to be of maximum benefit to persons subject to the restrictions which are relieved. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 22nd day of November 1978.

This regulation has not been designated "significant" under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations."

G. V. PEACOCK,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 78-33685 Filed 11-30-78; 8:45 am]

[1505-01-M]

Title 13—Business Credit and Assistance

CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 309—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

Amendment of Labor Standards for Construction Projects

Correction

In FR Doc. 78-33046 appearing at page 54924 in the issue of Friday, November 24, 1978, on page 54925, in the first column, preceding the date line, the following amendment was inadvertently deleted and should be inserted to read as follows: "Accordingly, EDA amends 13 CFR Part 309 by deleting subsections (d) and (e) from § 309.6."

[6740-02-M]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY

PART 154—RATE SCHEDULES AND TARIFFS

Modification of Purchased Gas Cost Adjustment Clause Regulations

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order No. 13-A issued in Docket No. R-406.

SUMMARY: Order amending Order No. 13 which amended the Federal Energy Regulatory Commission's purchased gas cost adjustment clause regulations to limit to two a year the number of purchased gas cost adjustment rate filings an interstate pipeline may make and to allow these pipelines to accrue and collect carrying charges on amounts carried in their deferred purchased gas costs accounts. Order No. 13-A denies rehearing of Order No. 13 and makes some clarifying modifications to that order.

EFFECTIVE DATE: Effective on January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles E. Bullock, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (202)—275-4232.

On October 18, 1978, as amended by Errata Notice issued October 20, 1978, the Commission issued Order No. 13 which amended the purchased gas adjustment (PGA) clause regulations contained in § 154.38(d)(4) of the regulations to limit the number of PGA filings made by natural gas pipeline companies and to permit the collection of carrying charges accrued on balances carried in Account 191, Unrecovered Purchased Gas Costs. On November 3, 1978, the Public Service Commission of the State of New York (New York) filed an application for rehearing and clarification of Order No. 13. On November 17, 1978, Midwestern Gas Transmission Company (Midwestern) and Western Gas Interstate Company (Western) each filed an application for rehearing of Order No. 13. For the reasons stated below, the Commission shall grant in part and deny in part the applications for rehearing of Order No. 13. In addition, the Commission shall make some clarifying modifications to Order No. 13.

New York argues that Order No. 13 continues to treat the flow-through of pipeline supplier rate increases on a discriminatory basis from the flow-through of pipeline supplier refunds. Specifically, New York alleges that while carrying charges are permitted on positive balances in the deferred account, which result when the pipeline has undercollected its purchased gas costs, there are no similar interest provisions should negative balances occur, which result when the pipeline has overcollected its purchased gas costs. New York is particularly concerned about the alleged lack of interest provisions when negative balances result when a pipeline receives a lump sum refund from one of its pipeline suppliers resulting from the resolution of that pipeline supplier's general section 4 rate case.

New York's concerns are unfounded. Section 154.38(d)(4)(iv)(*b*) of the Regulations [1] provides for carrying charges on positive balances as well as interest amounts on negative balances at the

[1] New York correctly points out that the entire clause (iv) was erroneously referred to in Order No. 13 (mimeo p. 18, line 10) and in the Errata Notice (mimeo, p. 1, lines 2 and 5) as § 154.38(d)(4)(vi) rather than § 154.38(d)(4)(iv). That error will be corrected in this order.

current rate of interest on pipeline refunds prescribed by the Commission. Thus no discrimination will result between the treatment of positive and negative balances accrued in the deferred account.[2]

Finally, New York urges that the Commission substantially modify Order No. 13 to provide that pipeline supplier refunds received by a pipeline be flowed through within 30 days of the date they are received if they exceed $10,000,000 or 1% of the purchasing pipeline's jurisdictional revenues for the last calendar year, whichever is lower, in a manner consistent with the pattern of payment of the excess charges. New York argues that the distributor and direct industrial customers of a pipeline supplier making refunds from its general section 4 rate increase filing receive refunds sooner than the customers of that pipeline supplier's pipeline purchasers because the refunds are credited to the pipeline purchasers' Accounts 191. In addition, New York is concerned that the customers of the pipeline purchasers who receive the effect of these refunds may not receive them in proportion to the amount of excess charges they actually paid, subject to refund.

The Commission shall not adopt New York's suggested modification to Order No. 13. The alleged discrimination between the direct industrial and distributor customers versus the pipeline purchaser customers of a pipeline supplier is taken into account by the carrying charge and interest provisions governing balances in the pipeline purchaser's Account 191. Thus, the customers of the pipeline supplier will be adequately compensated for the time value of the refunds received by the pipeline purchaser from the pipeline supplier and placed in the pipeline purchaser's Account 191. In any event, New York's proposal to require all pipeline supplier refunds above a certain level to be flowed through on a lump sum, as-billed basis is beyond the scope of the Notice of Rulemaking in this docket. However, the Commission shall continue to monitor this issue and to determine whether future amendments to the PGA clause regulations are necessary.

Midwestern argues for a special exemption for its Northern Division to permit the simultaneous flow-through of major increases in its Canadian supplier rates. Midwestern indicates that it is willing to agree to a once a year PGA rate adjustment date (January 1) for Canadian supplier increases accrued in its Account 191 resulting from the fact that monthly payments are made to its Canadian supplier in Canadian, rather than U.S. dollars and the fact that volumes are purchased on a Btu, rather than an Mcf basis.[3] However, it alleges that it is concerned about the financial impact which may result from its having to carry a large increase in purchased gas costs in its Account 191 for any length of time.

Midwestern's request shall not be granted. Midwestern, like other pipelines, will be permitted to accrue and collect carrying charges on amounts carried in its Account 191. To the extent carrying charges do not adequately protect Midwestern, it may file a general section 4 rate increase case to reflect, among other things, changes in purchased gas costs if it can demonstrate the need for waiver, as described in more detail in Order No. *16* issued this day in Docket No. RM79-1.

Western requests that its adjustment dates be changed from February 1 and August 1 *to* May 1 and November 1 so that it may better track changes in purchased gas costs flowed through by its major suppliers, El Paso Natural Gas Company (El Paso) and Colorado Interstate Gas Company (CIG) which have adjustment dates of April 1 and October 1; and October 1, respectively. For good cause shown, Western's request shall be granted.

For purposes of clarification, the Commission notes that filings made during the effectiveness of a pipeline's old PGA clause shall be governed by the *filing* dates in their old PGA clause even if the proposed effective date occurs after the pipeline's old PGA clause has expired. Similarly, filings made on or after the date the new PGA clause becomes effective shall be made in accordance with the procedures (including adjustment dates) prescribed by the new PGA clause.

Section 154.38(d)(4)(iv)(*b*) erroneously required that *all* pipelines must utilize Account 731.1 in conjunction with Account 191. The Uniform System of Accounts provides that only Class C and D pipelines use Account 731.1 and that Class A and B pipelines should use Account 805.1 in conjunction with Account 191. Section 154.38(d)(4)(iv)(*b*) will be amended to correct this error.

Order No. 13 also erroneously eliminated the requirement contained in the old § 154.38(d)(4)(iv)(*b*) of the PGA regulations which prescribed instructions for calculation of the surcharge to recover amounts accumulated in the pipeline company's Account 191. Accordingly, the revised § 154.38(d)(4)(iv) promulgated in Order No. 13 shall be amended in this order to reinstate those instructions.

For purposes of clarification, we shall republish the amendments to § 154.38(d)(4) as promulgated in Order No. 13 and the Errata Notice, as amended in the instant order.

(Natural Gas Act (15 U.S.C. 717c, g, i and o), Administrative Procedure Act (5 U.S.C. 553), Department of Energy Organization Act, (42 U.S.C. 7101, *et seq.*), and E.O. 12009, 42 F.R. 46267.

In consideration of the foregoing, Part 154, Chapter I of Title 18, The Code of Federal Regulations is amended as set forth below, to become effective January 1, 1979.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

1. Section 154 is amended in subparagraph (4) paragraph (d) by revising subdivision (iv) and by adding a new subdivision (viii) to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(d) *Statement of rate.* * * *

(4) * * *

(iv)(*a*) Rate changes which reflect both the current cost of purchased gas and a revised surcharge to clear the amounts accrued in the deferred account for both producer and pipeline suppliers shall be computed and filed not more frequently than semi-annually. The PGA clause shall specify dates of adjustment as follows:

*

JANUARY 1, AND JULY 1

Alabama-Tennessee Natural Gas Company
East Tennessee Natural Gas Company
Chattanooga Gas Company, a Division of Jupiter Industries, Inc.
Granite State Gas Transmission, Inc.
Midwestern Gas Transmission Company
Sea Robin Pipeline Company
Southern Natural Gas Company
South Georgia Natural Gas Company
Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.
Tennessee Natural Gas Lines, Inc.
United Gas Pipe Line Company
Distrigas of Massachusetts Corporation
Gas Gathering Corporation

FEBRUARY 1, AND AUGUST 1

Lawrenceburg Gas Transmission Corporation
Mid Louisiana Gas Company
National Fuel Gas Supply Corporation
Texas Eastern Transmission Corporation
Texas Gas Transmission Corporation
Utah Gas Service Company

MARCH 1, AND SEPTEMBER 1

Algonquin Gas Transmission Company
Columbia Gas Transmission Corporation
Consolidated Gas Supply Corporation
Eastern Shore Natural Gas Company

[2] New York also alleges that in promulgating the new § 154.38(d)(4)(iv), the Commission erroneously did not delete the first paragraph of the old clause (iv). New York is correct and this error shall be corrected. The new clause (iv) was intended as a replacement for *all* of the language in the old clause (iv).

[3] Midwestern states that it has no objection to the January 1 and July 1 adjustment dates prescribed for it insofar as they affect flow-through of purchased gas costs by its Southern Division.

Mississippi River Transmission Corporation
Natural Gas Pipeline Company of America
North Penn Gas Company
Panhandle Eastern Pipe Line Company
Transcontinental Gas Pipe Line Corporation
Trunkline Gas Company

APRIL 1, AND OCTOBER 1

Arkansas Louisiana Gas Company
El Paso Natural Gas Company
Florida Gas Transmission Company
Mountain Fuel Supply Company
Northwest Pipeline Corporation
Oklahoma Natural Gas Gathering Corporation
Pacific Interstate Transmission Company
Raton Natural Gas Company
Southwest Gas Corporation
Transwestern Pipeline Company

APRIL 23, AND OCTOBER 23

Cities Service Gas Company
Commercial Pipeline Company, Inc.

MAY 1, AND NOVEMBER 1

Kentucky-West Virginia Gas Company
McCulloch Interstate Gas Company
Western Gas Interstate Company
Michigan Wisconsin Pipe Line Company
Montana-Dakota Utilities Company
Valley Gas Transmission, Inc.
Great Lakes Gas Transmission Company

OCTOBER 1

Colorado Interstate Gas company
Northern Natural Gas Company (Peoples Division)

NOVEMBER 1

Inter-City Minnesota Pipelines Ltd., Inc.

JUNE 1, AND DECEMBER 1

Louisiana-Nevada Transit Company
Mountain Fuel Resources, Inc.
South Texas Natural Gas Gathering Company
Western Transmission Corporation
Texas Gas Pipe Line Corporation

DECEMBER 1

Kansas-Nebraska Natural Gas Company

DECEMBER 27

Northern Natural Gas Company

(*b*) To assure recovery of all purchased gas costs, the Commission has prescribed deferred purchased gas cost accounts. For Class A and B natural gas companies, the deferred account is "Account 191, Unrecovered purchased gas costs," 18 CFR Part 201, Balance Sheet Accounts, 191 and is used in conjunction with "Account 805.1, Purchased gas cost adjustments," 18 CFR Part 201, Balance Sheet Accounts, 805.1. For Class C and D natural gas companies, the deferred account is "Account 191, Unrecovered purchased gas costs," 18 CFR Part 204, Balance Sheet Accounts, 191 and is used in conjunction with "Account 731.1, purchased gas cost Adjustments," 18 CFR Part 201, Balance Sheet Accounts, 731.1. Pipelines using deferred accounting procedures shall be subject to the provisions of these accounts. In order to qualify for carrying charges, the company is required to adopt the principles of interperiod income tax allocation in connection with the balances recorded in the unrecovered purchased gas cost account.

(*c*) Carrying charges shall be computed based on the ending balances in Account 191, exclusive of accumulated interest each month. Interest will not be compounded. The rate for computation of carrying charges shall be the current rate of interest on pipeline refunds established by the Commission. Carrying charges shall be debited to Account 191 if the ending balance in Account 191 for the month is positive and shall be credited to Account 191 if the ending balance is negative. The carrying charges shall be computed monthly on the net balances in Account No. 191 and the related amounts in Account Nos. 283 or 190, as appropriate, as of the end of the immediately preceding month.

(*d*) After the initial 6-month period following the effectiveness of the PGA clause and after the company has chosen to maintain an unrecovered purchase gas cost account (Account No. 191) the company shall adjust its rate(s), either positively or negatively, to include a surcharge to recover or return the balance which has accumulated in the unrecovered purchase gas cost account (Account No. 191) in the preceding 6-month period. This procedure will be followed in each succeeding 6-month period.

* * * * *

(viii) Pipelines must file tariff sheets pursuant to this part to conform their existing PGA clauses on or before December 1, 1978, which shall become effective as of January 1, 1979. After January 1, 1979, a pipeline shall not be permitted to track changes in purchased gas costs under a PGA clause unless the PGA clause in effect at that time conforms to the rule promulgated in Order No. 13, as modified by Order No. 13-A.I40[FR Doc. 78-33675 Filed 11-30-78; 8:45 am]

[4110-03-M]

Title 21—Food and Drugs

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

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Monensin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Products Co., providing for the use of monensin in a liquid feed supplement.

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

William D. Price, Bureau of Veterinary Medicine (HFV-123), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: Elanco Products Co., a Division of Eli Lilly and Co., P.O. Box 1750, Indianapolis, IN 46206, filed a supplemental NADA (95-735V) providing for the use of monensin in a liquid feed supplement. The liquid supplement must be thoroughly mixed with grain and/or roughage before feeding to cattle being fed in confinement for slaughter.

Complete feeds containing 5 to 30 grams (g) of monensin per ton, when manufactured from dry supplements containing not more that 1,200 g of monensin per ton are not required to comply with the ministerial requirements of section 512(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(m)). Because the drug level in the liquid supplement is the same as in the dry supplement, and the drug is used for manufacturing and identical complete feed, the waiver of the requirements of section 512(m) of the act applies to liquid as well as dry feed supplements. The basis of the waiver of the requirements of section 512(m) of the act for dry supplements was published in the FEDERAL REGISTER of December 16, 1975 (40 FR 58289).

Approval of this supplement does not consititute reaffirmation of the safety of residues resulting from use of this drug.

In accordance with the freedom of information regulations and § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness

data and information submitted to support this approval is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA-305), Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b (i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.355 is amended by adding paragraph (c)(3), revising paragraph (d)(3), adding paragraph (d)(5), and revising paragraph (f)(3)(i)(*b*) to read as follows:

§ 558.355 Monensin

* * * * *

(c) * * *

(3) Liquid feed supplements contain 80 to 120 percent of the labeled amount of monensin activity.

(d) * * *

(3) Complete cattle feeds manufactured from dry or liquid feed supplements that contain not more than 1,200 grams of monensin per ton and that comply with the provisions of paragraph (f)(3) of this section are not required to comply with the requirements of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

* * * * *

(5) Liquid feed supplements shall bear an expiration date of 8 weeks after its date of manufacture.

* * * * *

(f) * * *

(3) * * *

(i) * * *

(*b*) *Limitations.* Feed only to cattle being fed in confinement for slaughter. Feed continuously in complete feed at a rate of 50 to 360 milligrams of monensin per head per day; as monensin sodium. Complete feeds may be manufactured from monensin liquid feed supplements. The liquid supplements contain a minimum of 20 percent molasses in combination with any of the following feed ingredients or their equivalents: condensed fermentation solubles, whey, ammonium polyphosphate, sodium hydroxide, phosphoric acid, fat, sulfuric acid, attapulgite clay, water, urea, vitamins, and/or minerals; a pH of 4.3 to 6; agitate the supplement until homogenous prior to use; mix thoroughly with grain and/or roughage prior to feeding. Do not allow horses or other equines access to feed containing monensin. Ingestion of monensin by horses has been fatal.

* * * * *

Effective date. This regulation shall be effective December 1, 1978.

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

Dated: November 21, 1978.

TERENCE HARVEY,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 78-33404 Filed 11-30-78; 8:45 am]

[4830-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER C—EMPLOYMENT TAXES

[T.D. 7574; final draft of 4-20-78]

PART 31—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

Modification of requirements for depositing certain employment taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the requirements for the deposit of certain employment taxes. These regulations affect certain employers who, because of noncompliance with employment tax procedures, are required to file employment tax returns monthly.

EFFECTIVE DATE: The regulations are effective with respect to aggregate amounts of taxes (as defined in paragraph (a)(1)(iii) of § 31.6302(c)-1) that are undeposited on or after January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

John M. Coulter, Jr., of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3346).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 27, 1975, the FEDERAL REGISTER published proposed amendments to the Employment Tax Regulations (26 CFR Part 31) under section 6302 of the Internal Revenue Code of 1954 (40 FR 27240). A public hearing was held on October 22, 1975. After consideration of all comments regarding the proposed amendments, a portion of those amendments is adopted by this Treasury decision.

EXPLANATION OF PROVISION ADOPTED

Under previous regulations, an employer who, because of noncompliance with employment tax procedures, was required to file monthly rather than quarterly employment tax returns was excepted from the general deposit requirement. Unless notified by the district director to make deposits pursuant to a special two-banking-day rule, such an employer needed only to pay the tax by the date on which the monthly return was due—a distinct advantage for a taxpayer who would otherwise fall within the quarter-monthly deposit rules. This Treasury decision corrects this by restricting this exception to the general deposit requirement to cases in which the employer falls within the more stringent two-banking-day requirements.

EXPLANATION OF PROVISIONS NOT ADOPTED

The notice of proposed rulemaking contained an amendment to the employment tax deposit requirements which was designed to ease the administrative burden on small businessmen resulting from the existing requirements relating to depositing those taxes. A substantial number of comments were received in response to those proposed new rules, and a public hearing was held at which a number of issues were raised. For example, an organization of accountants opposed the proposed elimination of the requirement that employers having undeposited taxes of $200 or more at the end of a month deposit those taxes during the following month. The accountants felt that many small businessmen would use these funds for other business purposes and be unable to pay them over when due. Others suggested that the change from the present system of monthly deposits for small businesses to a system where less frequent deposits are required, with the deposit requirement determined by reference to the dollar liability that accumulates and not by reference to a fixed calendar date, would actually make compliance more difficult for these small businesses. Accordingly, it has been concluded that the existing regulations should be retained. it should be noted, however, that alternative solutions to the problem are currently under active consideration.

Under the amendment as proposed, the quarter-monthly employment tax deposit requirements to which larger

employers are subject were revised to eliminate the 90-percent exception. In view of the fact that many larger employers do not have the data to make timely quarter-monthly deposits with 100-percent accuracy, this Treasury decision does not remove the 90-percent "safe-haven" provision.

DRAFTING INFORMATION

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

ADOPTION OF AMENDMENT TO THE REGULATIONS

Accordingly, the amendments proposed to paragraph (a)(1)(i) and (ii) of § 31.6302 (c)-1 of the Employment Tax Regulations (26 CFR Part 31) are withdrawn. Paragraph (b)(1) of such section is amended to read as follows:

§ 31.6302 (c)-1 Use of Government depositories in connection with taxes under Federal Insurance Contributions Act and income tax withheld.

* * * * *

(b) *Exceptions*—(1) *Monthly returns.* The provisions of this section are not applicable with respect to taxes for the month in which the employer receives notice from the district director that returns are required under § 31.6011 (a)-5 (or for any subsequent month for which such a return is required), if those taxes are also required to be deposited under the separate accounting procedures provided in § 301.7512-1 of this chapter (Regulations on Procedure and Administration) (which procedures are applicable if notification is given by the district director of failure to comply with certain employment tax requirements). In cases in which a monthly return is required under § 31.6011 (a)-5 but the taxes are not required to be deposited under the separate accounting procedures provided in § 301.7512-1, the provisions of this section shall apply except that paragraph (a)(1)(iv) shall not authorize the deferral of any deposit to a date after the date on which the return is required to be filed.

* * * * *

This Treasury decision is issued under the authority contained in sections 6302 and 7805 of the Internal Revenue Code of 1954 (68A Stat. 775, 917; 26 U.S.C. §§ 6302, 7805).

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: November 15, 1978.

DONALD C. LUBICK,
Assistant Secretary of the Treasury.

[FR Doc. 78-33430 Filed 11-30-78; 8:45 am]

[7710-12-M]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

Mailing of Books by Publishers and Distributors at the Library Rate

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule clarifies and adds certain definitions and conditions to section 135.26(c) of the Postal Service Manual concerning the mailing of books by publishers and distributors to schools, colleges, universities and libraries at the fourth-class library rate of postage. The rule clarifies that books may not be returned to publishers and distributors at the library rate and that the mailing of books to libraries under the rule is limited to books sent to public libraries. The rule also defines the term distributor, specifies that books mailed pursuant to the rule must be addressed to the qualifying institution, and sets forth the circumstances in which books sent to certain bookstores are considered to be sent to schools, colleges, or universities within the meaning of the rule.

EFFECTIVE DATE: December 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Grayson M. Poats, 202-245-4602.

SUPPLEMENTARY INFORMATION: On February 17, 1978, the Postal Service published for comment in the FEDERAL REGISTER proposed amendments to § 135.26(c) of the Postal Service Manual as described above (43 FR 6972). Interested persons were invited to submit written comments concerning the proposed amendments by March 20, 1978.

The Postal Service received 8 written and 2 telephonic comments in response to its February 17 notice. Seven commenters objected to 135.26(c)(4), which would not permit the return of books to publishers or distributors at the library rate. However, we find no intent on the part of Congress to extend the fourth-class library rate to include books returned to publishers or distributors by schools, colleges, universities or libraries. The clear language of Pub. L. 94-421 provides the library rate only for books mailed *from* a publisher or distributor *to* a school, college, university, or library. Several commenters expressed the opinion that books were presently being returned to publishers at the library rate and that adoption of § 135.26(c)(4) would result in an unwarranted rate increase for those materials. Books have never been mailable to publishers or distributors at the library rate. Persons who have made such mailings have done so improperly. The rule we are adopting does not affect the level of postage rates in any way; it only clarifies and defines the scope of materials eligible to be mailed at the library rate.

Three commenters objected to the limitation of the mailing of books by publishers and distributors to public libraries. They favored the inclusion of business, commercial, industrial and private libraries as eligible recipients of books mailed at the library rate. There is no evidence, however, to indicate that Congress intended by the enactment of Pub. L. 94-421 to expand eligibility for the library rate to libraries other than public libraries. Accordingly, we have retained the limitation on eligible mailings to those sent to public libraries. One commenter requested that the Postal Service define the term "public library" as it is used in the library rate regulations. We believe that this proposal has merit and are considering the publication in the near future of a proposed definition of "public library."

In view of the considerations discussed above, the Postal Service hereby adopts the proposed amendments of 135.26c of the Postal Service Manual without change.

PART 135—FOURTH CLASS

In 135.2 revise .26c to read as follows:

135.2 Classification

* * * * *

.26 Fourth-Class Library Rate.

* * * * *

c. Books, including books to supplement other books, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing no advertising matter other than incidental announcements of books, when mailed from a publisher or distributor to a school, college, university, or public library, may be mailed at the library rate. For purposes of this subsection—

(1) A distributor is an agent, business firm or similar organization whose business is the

sale, resale, shipment, or reshipment of books.

(2) Books must be addressed to the qualifying institution. An individual recipient may only be noted with an attention line.

(3) Books may be mailed to bookstores which are owned, operated and controlled by schools, colleges, or universities, including separately incorporated, nonprofit bookstores owned by those institutions.

(4) Books may not be returned to a publisher or distributor by a school, college, university or public library.

A Post Office Services (Domestic) transmittal letter making these changes in the pages of the Postal Service Manual will be published and will be transmitted to subscribers automatically. These changes will be published in the FEDERAL REGISTER as provided in 39 CFR 111.3.

(39 U.S.C. 401(2))

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc. 78-33600 Filed 11-30-78; 8:45 am]

[6560-01-M]

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 997-4]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for Empire District Electric Co., Riverton, Kans.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby issues a Delayed Compliance Order to the Empire District Electric Company, Riverton, Kansas. The Order requires the company to bring air emissions from its electric power generating plant at Riverton, Kansas into compliance with certain regulations contained in the federally-approved Kansas State Implementation Plan (SIP). Empire District Electric Company's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Henry F. Rompage, Environmental Protection Agency, Region VII, 1735 Baltimore, Kansas City, Missouri 64108, 816/374-2576.

ADDRESSEES: The Delayed Compliance Order, supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing issuance of the Order are available for public inspection and copying during normal business hours at: Environmental Protection Agency (EPA) Region VII, Enforcement Division, 1735 Baltimore, Kansas City, Missouri 64108.

SUPPLEMENTARY INFORMATION: On August 14, 1978, the Regional Administrator of EPA's Region VII Office published in the FEDERAL REGISTER, 43FR35958, a notice setting out the provisions of a proposed delayed compliance order for Empire District Electric Company, Riverton, Kansas. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. One comment and request for a public hearing was received in the Regional Office in response to the proposal notice. The commentors are presently involved in litigation with Empire.

The commentors wished to bring to the attention of Environmental Protection Agency (EPA) that ambient monitor recordings in the area of Empire's Riverton plant showed five twenty-four hour periods during which the national primary standard of 365 micrograms per cubic meter of air for sulfur dioxide (SO_2) was exceeded. Under the Kansas State Implementation Plan (SIP) the twenty-four hour concentration for (SO_2) must exceed 2100 micrograms per cubic meter of air to constitute an air pollution emergency and 1600 micrograms per cubic meter of air to constitute an air pollution warning. The highest concentration recorded was 881 micrograms per cubic meter of air. Therefore, these five recorded excursions above the standard were not of a magnitude and duration to be considered an imminent and substantial endangerment to health or welfare. The information concerning the five excursions above the standard were previously known to EPA and were considered in making the decision to initiate an enforcement action against Empire.

The commentors also submitted nine statements from individual members of families residing in near proximity to the Empire Riverton plant. These statements expressed a personal belief that they and members of their families were suffering eye irritation and respiratory distress and paint damage to houses and automobiles attributable to emissions from Empire Riverton. These statements were dated June 6, 1977, and were presented previously at public hearings held by the Kansas Department of Health and Environment (KDHE) prior to the Department taking state action. EPA employees were present at these hearings. Also included was a June 1978 statement from a doctor who examined a nine year old area resident. He stated he could not conclude that the child's eye irritation and respiratory distress and allergies were attributable to Empire's Riverton emissions.

Because all this information was available to EPA prior to making its decision to propose issuance of a Delayed Compliance Order (DCO) to Empire, and because the commentors did not present any new evidence or information to be raised at a public hearing, it has been determined that the holding of a public hearing is not justified. None of the comments indicated that the source could achieve compliance more expeditiously than the date for compliance set in the proposed DCO. There was no evidence presented of an imminent and substantial endangerment to health or welfare that would justify an enforcement action under the Section 303 emergency provisions of the Clean Air Act. Therefore, after a review of the comments submitted, it has been determined the comments do not establish significant public interest to justify the holding of a public hearing. Further, it has been determined that the holding of a public hearing would only serve to delay the taking of effective enforcement action.

It is the mandate and intent of the EPA to bring sources into compliance in the most expeditious manner for the protection of the public health and welfare. After considering all the enforcement options available to him, the Administrator has determined that Empire qualifies for a DCO, that it is in the public interest to take the most expeditious means to ensure that Empire achieves compliance with the SIP at Riverton, that the most expeditious means is through the issuance of a DCO pursuant to Section 113(d) of the Clean Air Act, that other enforcement options available such as a civil action under Section 113(b) would possibly result in compliance at a date later than that proposed for final compliance in the DCO, and that it is not in the public interest to delay by taking a less expeditious enforcement action.

Therefore, and in consideration of the comments received on the proposed Order, a delayed compliance order effective this date is issued to Empire District Electric Company by the Administrator of EPA pursuant to the authority of Section 113(d)(1) of the Clean Air Act, 42 U.S.C. 7413(d)(1). The Order places Empire District Electric Company on a schedule to bring its Units Nos. 7 and 8 at

Riverton into compliance as expeditiously as practicable with Kansas Air Pollution Emission Control Regulation 28-19-31C, a part of the federally-approved Kansas State Implementation Plan. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Empire District Electric Company to delay compliance with the SIP regulations covered by the Order until June 30, 1979. The company is unable to immediately comply with these regulations.

EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place Empire District Electric Company on a schedule for compliance with the applicable requirement(s) of the Kansas State Implementation Plan.

(42 U.S.C. 7413(d), 7601)

Dated: November 16, 1978.

DOUGLAS M. COSTLE,
Administrator.

1. In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

By adding the following entry to the table in § 65.210:

§ 65.210 Federal delayed compliance orders issued under Section 113(d)(1), (3), and (4) of the Act.

* * * * *

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
*	*	*	*	*	*
Empire District Electric Co.	Riverton, Kans.	Docket No. VII-78-DCO-6.	Aug. 14, 1978.	KS Regulation 28-19-31C.	June 30, 1979.

2. The text of the order is as follows:

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION VII

1735 Baltimore

Kansas City, Missouri 64108

[Docket No. VII-78-DCO-6]

In the matter of The Empire District Electric Company, Riverton, Kansas.

Proceeding under section 113(d)(1) 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. 7401 *et seq.* (hereinafter the Act). This ORDER contains a schedule of compliance, interim requirements, and monitoring and reporting requirements. Public notice, opportunity for a public hearing and thirty (30) days' notice to the State of Kansas has been provided pursuant to section 113(d)(1) of the Act.

FINDINGS

On December 16, 1975, The Empire District Electric Company (prior to the issuance by the Environmental Protection Agency of the hereinafter mentioned section 113 Order of December 23, 1975) acknowledged its Units Nos. 7 and 8 were exceeding the levels specified in Kansas Air Pollution Control Regulations 28-19-31A (Particulates) and 28-19-31C (Sulfur), Indirect Heating Equipment Emissions—Emission Limitations, a part of the applicable Kansas Implementation Plan. The company also then waived the opportunity to confer under 42 U.S.C. 1857c-8(a)(4) (now 42 U.S.C. 7413(a)(4)) and the Environmental Protection Agency duly issued its Order on December 23, 1975, under section 113(a)(1), then 42 U.S.C. section 1857c-8(a)(1), specifying compliance schedules as to sulfur and as to particulates.

Pursuant to such 1975 section 113 Order, the company's particulate emissions were reduced below the level specified in Regulation 28-19-31A for Units Nos. 7 and 8 in July, 1977, and the company is not in violation of the schedule of such 113 Order as to sulfur. Units Nos. 7 and 8 continue to emit sulfur in excess of the level specified in Regulation 28-19-31C when burning coal. This determination is based on calculations using fuel data submitted by the company on April 26, 1978.

ORDER

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule set forth in this ORDER is expeditious as practicable, and that the terms of this ORDER comply with section 113(d) of the Act. *Therefore, it is ordered:*

I. That The Empire District Electric Company shall comply with the Kansas Implementation Plan Regulation 28-19-31C in accordance with the following schedule on or before the dates specified therein.

A. Units Nos. 7 and 8.

1. December 31, 1978—Completion of coal availability and supply study.

2. January 31, 1979—Acquisition of tentatively selected coal for test burns.

3. April 30, 1979—Completion of test burns and evaluations.

4. May 15, 1979—Enter contract for low sulfur coal.

5. June 30, 1979—Achieve final compliance with Kansas Regulation 28-19-31C.

II. That The Empire District Electric Company shall comply with the following interim requirements which are determined to be a reasonable and practicable interim system of emission reduction (taking into account the requirement for which compliance is ordered in section I, above), and will avoid any imminent and substantial endangerment to the health of persons and is required to comply with Regulation 28-19-31C insofar as Empire District is able to so comply during the period the ORDER is in effect:

A. Average monthly sulfur emissions shall not exceed 3.05 pounds per million BTU.

B. Sulfur emissions shall not exceed 3.15 pounds per million BTU at any time.

III. That The Empire District Electric Company shall comply with the following emission monitoring and reporting requirements on or before the dates specified below:

A. Emission monitoring

1. A proximate analysis must be conducted on a composite sample collected from the coal fired in Units 7 and 8 each week.

2. The results of each weekly proximate analysis shall be submitted to Environmental Protection Agency, Region VII (EPA), Director of Enforcement, no later than fifteen (15) days after the end of each month.

3. The Company shall within ninety (90) days after the effective date of this Order, operate at least two continuous ambient sulfur dioxide monitors according to methods and locations to be approved by EPA.

B. Reporting requirements

1. No later than ten (10) days after any date for achievement of an incremental step or final compliance, specified in this ORDER, Empire District Electric Company shall notify EPA in writing of its compliance, or noncompliance and reasons therefor, with the requirement. If delay is anticipated in meeting any requirement of this ORDER, Empire District shall immediately notify EPA in writing of the anticipated delay and reasons therefor. Notification to EPA of any anticipated delay does not excuse the delay.

2. All submittals and notifications to EPA pursuant to this ORDER shall be made to the Director, Enforcement Division, EPA Region VII, 1735 Baltimore, Kansas City, Missouri 64108, 816-374-2576.

IV. Nothing herein shall affect any responsibility of Empire District Electric Company to comply with State or local regulations as modified by any applicable State variance.

V. Empire District Electric is hereby notified that your failure to achieve final compliance by July 1, 1979, will result in a requirement to pay a noncompliance penalty under section 120. In the event of such failure Empire District will be formally notified, pursuant to section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

VI. This ORDER shall be terminated in accordance with section 113(d)(8) of the Act if the Administrator (or his delegatee, as appropriate) determines on the record, after notice and hearing, that an inability to

reduce the sulfur emissions to or below the level specified in Kansas Regulation 28-19-31C no longer exists.

VII. 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 Kansas Regulation 28-19-31C 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.

VIII. This ORDER is effective immediately.

Dated: November 16, 1978.

DOUGLAS M. COSTLE,
Administrator, U.S. Environmental Protection Agency.

CONSENT

The Empire District Electric Company agrees that the foregoing is a reasonable means by which to attain the sulfur emission level of Kansas Regulation 28-19-31C, and consents to and agrees to abide by all the terms of the Order (paragraphs I thru VIII, both inclusive) when issued, but the Company does not in any way hereby admit to any legal violation of such Regulation (or any other Regulation or statute, State or Federal).

Dated: November 18, 1978.

The Empire District Electric Company:

A. R. PUFFINBARGER,
Senior Vice President, Promotion.

[FR Doc. 78-33466 Filed 11-30-78; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 78-218; FCC 78-714]

PART 63—EXTENSION OF LINES AND DISCONTINUANCE OF SERVICE BY CARRIERS

Spanish International Network; Request for Authorized User Status Under the Communications Satellite Act of 1962

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: This action requires the international common carriers to end the rotational arrangements under which international television transmission service is currently provided. It also changes Commission policy to permit the Communications Satellite Corporation to provide television transmission service to the public directly. These actions are designed to permit more flexibility and customer choice in obtaining international television transmission service.

DATES: Communications Satellite Corporation shall file an application under Section 214 of the Communications Act of 1934 (47 U.S.C. 214) for authority to provide direct television service on or before March 16, 1979. American Telephone and Telegraph Co., Western Union International, Inc., ITT World Communications, Inc., and RCA Global Communications, Inc. shall file applications under Section 214 for authority to remove conditions on their certificates authorizing and requiring rotational arrangements for television service.

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

FOR FURTHER INFORMATION CONTACT:

Joel S. Winnik, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554 (202-632-7265).

REPORT AND ORDER

Adopted: October 5, 1978.

Released: November 16, 1978.

In the matter of Spanish International Network, request for authorized user status under the Communications Satellite Act of 1962, CC Docket No. 78-218.

1. In this *Report and Order* we consider changes in our policy and changes in the certificates of various carriers in order to permit more efficient international television program transmission services. This rulemaking grew out of a petition filed by Spanish International Network [1] which questioned whether the current arrangement for providing television service meet public needs. Spanish International sought status as an authorized user under the Communications Satellite Act of 1962 so that it could obtain satellite transmission services directly from Communications Satellite Corporation (Comsat).[2] Interested parties were given an opportunity to file comments and reply comments on this petition. Based on these comments, the Commission adopted *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, FCC 78-515, released July 31, 1978 which reviewed the current arrangements for international television program transmission and proposed changes in our policy to permit Comsat to serve television transmission customers directly.

2. Public Notice of this proceeding was given in the FEDERAL REGISTER on August 2, 1978. Interested parties were given until September 1, 1978 to file comments and until September 11, 1978 to file reply comments.[3] The pleadings filed with respect to the Spanish International petition were to be incorporated into this proceeding.

3. Comments were filed in support of the proposed policy change by Public Broadcasting Service; National Public Radio; the Department of Justice; the Department of Defense; the National Telecommunications and Information Administration; Comsat; the three major television networks—American Broadcasting Companies, Inc., CBS, Inc. and National Broadcasting Company, Inc.—filing jointly; the European Broadcasting Union (which purchases telecommunications services for its members including European broadcasting organizations); the Hughes Television Network; Home Box Office, Inc. (a supplier of pay television programming); Robert Wold Inc. (a supplier and distributor of television programming); Telemundo, Inc. (licensee of WKAQ-TV, San Juan, P.R.); Visions, Ltd. (a television program distributor in Anchorage, Alaska); the Air Transport Association of America and Aeronautical Radio, Inc. (which supplies world-wide telecommunications services to the nation's airlines) filing jointly; and Spanish International. Most of these entities are existing or prospective users of international television program transmission services.

4. Comments in opposition to our proposals were filed by Western Union International, Inc. (WUI), RCA, Global Communications, Inc. (RCA Globcom) ITT World Communications

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[1] Spanish International is a domestic corporation involved primarily in the distribution of Spanish language programming to affiliated U.S. broadcasters. Its Magna Verda division is engaged in closed-circuit and other broadcast related telecasts of important special events on a hemisphere-wide basis such as this years World Cup Soccer matches.

[2] Although Spanish International originally sought declaratory ruling that it was an authorized user, we stated the following: The Commission cannot find that television comes within the "unique or exceptional" standard as it was intended to be applied in the Authorized User Decision * * * (However,) its petition is broad enough to be considered as a request for waiver for the policy for itself, and a petition to change the policy as it applies to other similarly situated television customers * * * Therefore, we will consider Spanish International's petition as a request for waiver and a petition for rulemaking. (43 FR at 33943.)

The *Authorized User Decision*, 4 F.C.C. 2d 421 (1966) recon. 6 F.C.C. 2d 593 (1967), referred to is discussed more fully in the following paragraphs of this *Report and Order*.

[3] See 43 FR 40541, September 12, 1978.

Inc. (ITT Worldcom); and American Telephone and Telegraph Company (AT&T). These are the entities which currently provide international television transmission service and which would compete with Comsat if direct service were permitted.[3]

5. Due to the technical characteristics of the television signal, international television transmission may be provided only through satellites. These satellites, which also carry a substantial portion of the world's telephone, telex and private line traffic, are owned by the International Telecommunications Satellite Consortium (INTELSAT). Pursuant to the Communications Satellite Act of 1962, (47 U.S.C. § 701 *et* seq.), Comsat is established as the U.S. signatory to the INTELSAT agreements and is designated as the U.S. operating entity to participate in INTELSAT satellite operations. The general public, however, does not purchase television service from Comsat directly. Instead, under policies established in the Commission's *Authorized User Decision*, 4 FCC 2d at 435–436, service is provided by the international carriers. These carriers do not compete in the provision of international television services. Instead, they take turns providing the service, alternating weekly. *STA For TV Service Via Satellite* 1 FCC 2d 82, 89–90 (1965).

6. International television program transmission service consists of two segments, (1) the satellite channel, and (2) the facilities which bring the signal to the customer's location. The satellite channel and all of the required earth station facilities are provided by Comsat. The international carriers purchase Comsat's service and resell it to the public, together with entrance channel facilities located between the earth station and AT&T's operating center in New York. In addition to providing facilities, the international carriers also monitor signal quality and arrange the foreign end of the service. The domestic entrance channel facilities are owned by AT&T but they are shared by the joined television carriers. If AT&T is the carrier-of-the-week, the signal is connected at AT&T's operating center to facilities separately obtained by the customer which reach the customer's network pick-up point. If one of the other carriers is the carrier-of-the-week, the signal is switched from AT&T's operating center over local loops to the other carrier's operating center and then over other local loops back to the AT&T operating center. At this point, it is interconnected to facilities obtained by the customer which reach the customer's network pick-up point. Comsat charges $1,500 per hour for the satellite circuit. The carriers charge the customer $2,340 per hour for their service.

7. The parties filing in support of our proposed change in policy believe that giving users the option to purchase service directly from Comsat will permit higher quality service, more suitable to their needs, at a potentially lower cost. The international carriers argue that the proposed direct service is impermissible as a matter of law. Moreover, they argue it has not been shown that the public will benefit from direct service, even if legal. They also propose that as an alternative to direct service, the Commission should consider ending the carrier-of-the-week arrangements.

TENTATIVE CONCLUSIONS IN THE NOTICE

8. In our *Memorandum Opinion and Order and Notice of Proposed Rulemaking* we tentatively concluded that direct television service would serve the public interest and would promote the purposes and policies of the Satellite Act. We believed that the public might benefit because of the added flexibility and lower costs that television users would obtain. We further felt that competition in the provision of this service would lead to improved service and would serve as a regulatory tool to encourage cost-based pricing.

9. The evidence before us indicated that the purchase of satellite channels directly from Comsat would provide television service users with complete flexibility in arranging the domestic portion of the service. Some television users stated that they would establish domestic satellite earth stations near the Comsat international earth station so that the signal could be transmitted via the domestic satellite system directly to customer locations. Television service users could also construct private terrestrial facilities on a single or shared use basis, or lease common carrier terrestrial facilities on a single or shared use basis to and from the Comsat earth station. The example of the Public Broadcasting System cited in the *Notice* demonstrated the flexibility which direct service would provide. The Public Broadcasting Service's network control center is located in Washington, D.C. Under the current arrangements, international television programming received at Comsat's earth station at Etam, West Virginia is switched through New York City and then back to Washington for distribution over the Public Broadcast Service's domestic satellite network. If direct service were permitted, the Public Broadcasting Service could transmit the signal directly from a domestic terminal located at Etam to its affiliates or it could obtain terrestrial facilities to carry the signal to its Washington network control center.

10. In addition to the flexibility that would be afforded users by Comsat's entry we also postulated in the *Notice* that additional competition could encourage carriers to provide service more efficiently and economically, and could serve as a regulatory tool to ensure that the international carriers provide satellite channels at or near their cost.

CARRIER-OF-THE-WEEK ARRANGEMENTS

11. After release of the proposed rule changes, the international carriers each proposed or requested that the Commission consider ending the carrier-of-the-week arrangements so that international television transmission could be provided among themselves on a competitive basis. They suggested the possibility that the provision of television transmission service by the international carriers on a competitive basis will meet the same public interest objectives as would the direct provision of service by Comsat. WUI states that "competition among the existing, but eligible, providers of overseas television service will inevitably lead to dramatic service improvements and cost reductions. This being the end which the Commission has apparently sought in this proceeding, WUI feels there is no longer any need to 'tinker' with the *Authorized User* policy." WUI Comments, September 1, 1978, page 20.

12. We agree that elimination of the carrier-of-the-week arrangement would create competition among the international carriers and that this competition would likely provide many of the same public benefits as permitting Comsat to service television users directly.[4] Competition between the international carriers is likely to encourage the carriers to provide more efficient service and to pass on any effi-

[3] On September 27, 1978, ITT Worldcom requested that the Commission accept an unauthorized pleading alleging that Comsat's provision of television service directly to users would violate the anti-trust laws. ITT Worldcom alleged that the additional pleading was required because it did not have time to adequately brief the issues raised in this proceeding. ITT Worldcom has had four opportunities to address the issues in this proceeding and it had more than four weeks to develop its initial comments on the Commission's proposals. Therefore ITT Worldcom is denied permission to file the unauthorized pleading. We believe, however, that this order does address the concerns the pleading would raise.

[4] AT&T and ITT Worldcom suggest that the Commission should require another series of pleadings on the question of whether the carrier-of-the-week arrangements should be eliminated. However, the carrier-of-the-week arrangements were brought into question in Spanish International's original petition and all parties have addressed the matter. We believe that any additional pleadings would be repetitive and cause unnecessary delay. We, therefore, decline to accept the suggestion that additional pleadings are required.

cieny savings in terms of lower rates. The competitive environment should stimulate the carriers to make available service options attractive to the television users. It is likely to create flexibility in the availability of entrance channels or in the choice of ancillary features such as quality control functions and the arrangements of the foreign end of the service. More flexibility in service arrangements or the benefits of lower rates resulting from competition between the carriers can inure to the public in the form of increased international television programming.

13. The circumstances which justified our original authorization of the carrier-of-the-week arrangements no longer apply. These arrangements were instituted when the Commission first considered applications from the carriers to utilize the communications satellite system in the Atlantic basin. *AT&T et al.* 38 F.C.C. 1315 (1965). Each of the international carriers sought authority to provide television program transmission service individually. However, ITT Worldcom challenged the application of AT&T, claiming that television should be considered a record service and that television would replace in substantial degree other forms of record services provided by the international carriers. *Id.* at 1319. ITT Worldcom's assertion was considered significant because under the *TAT-4 Decision*, 37 FCC 1151, 1159-61 (1964), AT&T was generally prohibited from providing record services to overseas points. The Commission stated that it wanted to subject these issues to further study, and, therefore, withheld action on these applications. *AT&T et al.*, 38 FCC at 1319-1320. Instead, the Commission authorized Comsat to provide service to the major television networks directly. *Order and Authorization*, 38 FCC 1314 (1965). In deferring action on the applications the Commission stated that it would seek comment from the carriers upon a plan submitted by WUI proposing a joint service offering. After the international carriers sought reconsideration of the order authorizing Comsat's direct service, the Commission adopted, on a temporary basis the joint-service plan which authorized the carrier-of-the-week arrangements. *STA For TV Service Via Satellite*, supra, 1 FCC 2d at 89-90. This arrangement permitted the Commission to study further the concerns raised by ITT Worldcom and television service. Furthermore, it alleviated a concern expressed by RCA Globcom that AT&T would obtain a competitive advantage because of its virtual monopoly of domestic television transmission facilities. Four years later the Commission formally authorized the carrier-of-the-week authorizations. *AT&T et al.*, 18 FCC 2d 402 (1969).[5]

14. Later, in *Public Broadcasting Service et al.*, 63 FCC 2d 707, 721 (1977), the Commission held that "the provision of television service has never been considered to be, nor treated as, a record communications service." ITT Worldcom's prediction that television service would replace existing record services never materialized. Circumstances have also changed with regard to AT&T's status as a domestic television carrier. Carriers other than just AT&T now provide television service pursuant to competitive policies established in *Specialized Common Carrier Decision*, 29 FCC 2d 870 (1971), *aff'd Sub. nom. Washington Utilities and Transportation Commission* v. *FCC*, 513 F2d 1142 (9th Cir. 1975), *cert. denied* 423 U.S. 836 (1975); *Domestic Satellite Proceeding*, 22 FCC 2d 86 (1970), *aff'd sub. nom. Network Project* v. *FCC*, 511 F2d 786 (DC Cir. 1975); and *Resale and Shared Use*, 60 FCC 2d 21 (1976), *recon. granted in part* 62 FCC 2d 588 (1977), *aff'd American Telephone and Telegraph Co.* v. *FCC*, 572 F.2d 17 (2nd Cir. 1978).[6]

[5] The certificates authorizing the carriers to provide service in accordance with these arrangements are limited in term and can be terminated after notification by the Commission. *AT&T, et al, supra*, 18 FCC 2d at 404, 406-407.

[6] ITT Worldcom has protested the proposed new rule arguing that television transmission service should be considered a record service and subject to the gateway provisions of Section 222 of the Communications Act of 1934. 47 U.S.C. 222. These provisions restrict the domestic record services of carriers defined as international telegraph carriers to a limited number of gateway cities. 47 U.S.C. 222(a)(5). This provision means that an international telegraph carrier such as ITT Worldcom cannot provide an international telegraph operation, such as telex, beyond its authorized gateway city. If the message is destined for the hinterland, ITT Worldcom must interconnect with a domestic carrier authorized to serve that point. *See e.g. International Record Carriers Scope of Operation*, 58 F.C.C. 2d 250 (1976). ITT Worldcom argues that Comsat should be defined as an international telegraph carrier for the purpose of offering a retail television service. Even if Comsat cannot be so defined, ITT Worldcom believes that fairness and evenhandedness of regulation requires that Comsat be subject to the same gateway limitations as international telegraph carriers. However, section 222 only applies to record services, and it is clear that television service is not a record service. See *Public Broadcasting System, supra*. We do not have cause to reconsider the *Public Broadcasting System* holding. Therefore, neither ITT Worldcom nor Comsat are restricted by section 222 in the provision of television service. Consequently, no carrier suffers a competitive disadvantage in the provision of television transmission service by virtue of gateway limitations.

Direct Provision of Service by Comsat

A. Legal Authority

15. While eliminating the rotational arrangements will encourage competition between the carriers and this is likely to result in some flexibility for television service users, we must still consider whether permitting television users to purchase the satellite circuit directly from Comsat provides additional public interest benefits to television users. First, however, we consider the international carriers' contentions that the provision of direct television service by Comsat is not permitted by the Communications Act of 1962.

16. The question as to whether the Commission has the statutory authority to authorize direct service was considered and settled in the *Authorized User Decision*. In that proceeding the Commission considered what it specifically recognized to be two separate questions: (1) "The extent to which, as a matter of law, entities in the United States other than communications common carriers can be authorized under the Communications Satellite Act of 1962 to obtain telecommunications services directly from Comsat" and (2) "the extent to which, as a matter of policy, such entities should be authorized to obtain services" 4 FCC 2d at 421. The Commission concluded that, as a matter of law, the Satellite Act empowers the Commission to authorize Comsat to provide service to entities other than common carriers. 4 FCC 2d at 427. This finding, based on the comprehensive and detailed legal briefs and comments submitted in the *Authorized User* proceeding and the Commission's own investigation into all relevant sections of the Act, including consideration of the legislative history of these sections, has been the foundation of Commission decision-making for over twelve years. Now, when the Commission proposes to change its policy as to when direct service *should* be permitted, these carriers seek to relitigate the issue of the Commission's statutory authority to authorize Comsat to provide the direct service.

17. The plain language of the Satellite Act, 47 U.S.C. 735 (a) and (b),[7]

[7] (a) In order to achieve the objectives and to carry out the purposes of this Act, the corporation is authorized to—

* * * * *

(2) Furnish, for hire, channels of communication to United States communications common carriers and to other authorized entities, foreign and domestic, . . .

(b) Included in the activities authorized to the corporation for accomplishment of the purposes indicated in subsection (a) of this section, are, among others not specifically named—

* * * * *

(4) To contract with authorized users, including the United States Government, for the services of the communications satellite system; . . .

clearly authorizes Comsat to furnish channels to "authorized entities" other than common carriers and to contract with authorized users for satellite services. The Act itself does not explicitly define "authorized user" nor does it in any other way limit the Commission's discretion in deciding who may be an authorized user. Basic rules of statutory construction require that full effect is to be given every clause and word of a statute so that no clause, sentence, or word will be rendered superfluous, void or of no significance. *United States* v. *Menasche* 348 U.S. 528, 538-39 (1955); *Perko* v. *United States* 204 F. 2d 446, 449 (8th Cir. 1953), *cert. denied*, 346 U.S. 832. It is clear from the language of the Act and the application of these principles of statutory construction that direct access to Comsat's service is not limited to common carriers. Moreover, as the *Authorized User Decision* makes clear, the legislative history of the Act fully supports the legal authority of the Commission to authorize Comsat to provide direct service to noncarrier entities. On February 7, 1962 President Kennedy submitted a proposal to Congress, calling for the establishment of a privately-owned communications satellite corporation. The President's letter of transmittal accompanying this proposal states that the bill sets forth "purposes and powers of the new corporation (which) would include furnishing for hire, channels of communications to authorized users, including the U.S. Government." S. Rep. No. 1584 87th Cong. 2nd Sess. 28 (1962). After hearings on the bill, Senator Pastore, from the Senate Committee on Commerce, delivered the Committee report on the bill:

> It will be the purpose of the corporation to plan, initiate, construct, own, manage, and operate, in conjunction with foreign governments and business entities, a commercial communications satellite system, including satellite terminal stations when licensed therefore by the Federal Communications Commission. It will also be its purpose to furnish for hire channels of communication to United States communications common carriers who, in turn, will use such channels in furnishing their common carrier communications services to the public. *Provision is also made whereby the corporation may furnish such channels for hire to other authorized entities, foreign and domestic.* S. Rep. No. 1584, 87th Cong. 2nd Sess. 10-11, (1962)[8] [Emphasis added]

18. Mr. Newton M. Minow, then Chairman of the Federal Communications Commission, had specifically pointed out to both Senate and House committees that the authorized user provisions in the President's bill—in precisely the same language as in the version that was ultimately enacted would permit Comsat to provide direct service to private users in addition to common carriers. Chairman Minow even submitted corrective language which would have permitted direct service only to authorized United States communications common carriers and foreign entities, removing entirely any eligibility for other "authorized users" as now appears in Section 305(b)(4) of the Satellite Act. The Committees each focused on the situation described by Chairman Minow. However, the Committees chose to make no changes in the legislation's authorized user language.[9] Mr. Minow also stated that since, in his view, the proposed legislation did not contemplate a satellite corporation which would be a common carrier serving the public directly, it should not be subject to the requirements of the Communications Act of 1934 applicable to common carriers generally:

> Since the Corporation will not function as a conventional common carrier, we believe that it would be impractical to place it under a regulatory scheme devised for such carriers. Unlike those carriers, the Corporation will not furnish service to the general public. Its undertaking rather, will be to furnish channels of communications to relatively few users; namely, common carriers and their foreign counterparts, who do serve the general public. For these and other reasons, certain sections of the Communications Act relating to common carriers may not be germane to the Corporation, while at the same time the unique status of the Corporation requires singular measures not now present in the act. (Hearings on H.R. 10115 before the House Committee on Interstate and Foreign Commerce, 87th Cong., 2nd Sess. at 407 (1962).)[10]

However, Congress could not have agreed with Mr. Minow's view of Comsat as exclusively a carrier's carrier because it later adopted a provision which subjected Comsat to all of the common carrier provisions of the Communications Act of 1934, except where those provisions were inconsistent with the Satellite Act.

19. In the *Authorized User* proceeding the international carriers contended that the Satellite Act contains no standards pursuant to which the Commission might authorize access by a non-carrier entity. The Commission disagreed, finding that the Satellite Act and the Communications Act of 1934, 47 U.S.C. 151, *et seq.* which is expressly incorporated into the Satellite Act, does provide guidelines for making determinations of this kind. 47 U.S.C. 741, 4 FCC 2d at 426. The provisions require that the Commission act in accordance with the standard of public convenience, interest, or necessity in granting radio licenses (47 U.S.C. 307(a)); "prescribe the nature of the service to be rendered by each class of licensed stations and each sta-

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[8] Notwithstanding the language in the statute and the committee report, there is evidence in the legislative history which may suggest that Comsat was not intended to provide service directly to the public. In his closing statement, just prior to passage of the bill, Senator Pastore stated:

> The satellite corporation and the carriers will not be competing in the same market. No one, either the proponents of H.R. 11040 or the advocates of Government ownership has proposed that the satellite entity should go into competition with the existing carriers in serving the general public directly. To the contrary the satellite corporation under H.R. 11040 will serve mainly the carriers.

(108 *Cong.* Rec. 16920) On the other hand, the Commission read Senator Pastore's statement and on the language in S. Rept. No. 1584, to mean only that "Comsat was and is intended to serve primarily as a common carrier's common carrier". 4 FCC 2d at 428. As we have indicated this interpretation did not mean that Comsat must serve common carriers exclusively. On the contrary, the Commission stated:

> Comsat can thus be authorized to serve noncarriers directly. But it does not follow, as some of the noncarriers appear to contend, that such authorization is to be left unregulated—that Comsat and the noncarriers are free to contract as they wish. Were that the case, Comsat could readily become, to a very substantial extent, a common carrier dealing directly with the public. (4 FCC 2d at 4238)

Under the Commissions 1966 interpretation it could authorize direct service in its discretion so long as the authorization did not nullify Comsat's role as primarily a carrier's carrier:

> In the process of issuing authorizations to Comsat as a common carrier and reviewing its tariffs, the Commission is required, under the public interest standard, to take into account and specify the conditions under which Comsat can depart from its primary role as a common carrier's carrier and provide service directly to the public. Further, it is the Commission's responsibility to issue regulations or policy statements to insure that authorized users have nondiscriminatory access to the system. (4 FCC 2d at 429) (Footnote omitted)

We have reviewed the legislative history again and we have doubts that Congress intended to restrict Comsat's role to being primarily a carrier's carrier. Nevertheless, we need not disavow the Commission's earlier conclusion in *Authorized User* about Comsat's status as primarily a carrier's carrier. Even assuming *arguendo* that Congress intended Comsat to be primarily a carrier's carrier, an authorization enabling Comsat to provide television transmission service directly would be fully consistent with that intent. Comsat's television revenues account for less than 2% of its overall operating revenues. (1977 TV revenues: $2,525,535, 1977; overall revenues: $168,187,373, *Statistics of Common Carriers*, to be published January, 1979).

[9] Hearings on S. 2814 before the Senate Committee on Commerce, 87th Cong., 2nd Sess. at page 116 (1962). See also, Hearings on H.R. 10115 before the House Committee on Interstate and Foreign Commerce, 87th Cong. 2nd Sess. at page 408 (1962). (Although Congress rejected Minow's amendment to limit the definition of authorized user, it did adopt his amendment granting the Commission broad authority to develop rules and regulations to address changing circumstances. 47 U.S.C. 721(c)(11).)

[10] Mr. Minow reiterated his restrictive view of the proposed legislation throughout the course of the hearings. See e.g., Hearings on S. 2814 before the Senate Commerce Committee, 87th Cong., 2nd Sess. at pages 65, 71 and 115. (1962); Hearings on H.R. 11040 before Senate Committee on Foreign Relations, 87th Cong. 2nd Sess., at page 20. (1962); Letter, dated July 26, 1962 from Mr. Minow to the Honorable Mike Mansfield, printed at 108 Cong. Rec. 14900 (1962).

tion within any class" (47 U.S.C. 303(b)); study new uses for radio and generally encourage the larger and more effective use of radio in the public interest (47 U.S.C. 303(g)); and make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with laws, as may be necessary to carry out the provisions of the act (47 U.S.C. 303(r)). The Satellite Act itself requires that "it is the intent of Congress that all authorized users shall have nondiscriminatory access to the system" and "that the corporation created under this act be so organized and operated as to maintain and strengthen competition in the provision of communications services to the public" 47 U.S.C. 701(c). The Commission is directed to "make rules and regulations to carry out the provisions of this act" (47 U.S.C. 721 (c)(11)).

20. Congress was well aware that satellite telecommunications was in its infancy, and it provided broad standards to be followed by the Commission in guiding its growth, rather than rigid or detailed criteria for regulation. Therefore, we have determined that our judgment in this area must be based upon an evaluation of the often changing situation and the Congressional concern with the public interest in: (1) Encouraging wider and more effective use of radio techniques; (2) assuring that competition is maintained and strengthened in the provision of communication services to the public; (3) assuring that access to the satellite system shall be available to all authorized users on a nondiscriminatory and equitable basis; and (4) assuring that the benefits of new technology shall be reflected in service made available to the public through both improvements in the quality of service and the realization of all possible economies. The standards established by the Communications Act for authorizing carriers to provide service to the public are applicable to satellite services as well as other telecommunication services. 4 FCC 2d at 426-427. Under these guidelines it is clear that the Commission can "authorize Comsat to afford access to the satellite system by non-carrier entities upon a proper finding that such access would serve the public interest and comport with the purposes and policies of the Satellite Act." 4 FCC 2d at 428.

21. Having concluded that, as a matter of law, the Commission has the authority and obligation to exercise its discretion to determine whether to permit direct service, the Commission then considered, applying the facts before it, what policy it should develop in determining whether direct service proposals are in the public interest. We concluded that, as a matter of policy, Comsat would be authorized to deal directly with users "in only those instances where the requirement for satellite service is of such an exceptional or unique nature that the service must be tailored to the peculiar needs of the customer and, therefore, cannot be provided within the terms and conditions of a general public tariff offering." 4 FCC 2d at 431. The rationale for this policy was grounded in the Commission's concern that if Comsat provided the leased channel services which were sought by a number of the petitioners in the *Authorized User* proceeding, there was the potential that it would siphon off this business from the carriers. The Commission was concerned that this would force rate increases by the carriers for basic telephone and telex services in order to meet their revenue requirements. Since the direct service would benefit only a few large users to the potential detriment of the vast majority of users, it was believed that, under the circumstances, allowing competition for leased channel service between Comsat and the international carriers would be in derogation of the Satellite Act's objective to make the benefits of lower satellite communications rates available to all users. 4 FCC 2d at 433. Thus the Commission decided to limit Comsat's direct service to exceptional or unique circumstances.

22. The international carriers now claim that the Commission can never change this policy or waive its requirements. It is, however, proper for the Commission to modify or even reverse a prior decision. *See e.g. FCC* v. *WOKO*, 329 U.S. 223, 227-28 (1946); *Aspen Institute* 55 F.C.C. 2d 697 (1975) *aff'd sub nom. Chisholm* v. *FCC*, 538 F. 2d 349 (D.C. Cir. 1976) *cert. denied* 429 U.S. 890 (1976).[11] The international carriers further argue that the Satellite Act itself requires this policy. However, the "exceptional or unique" standard is not found within the terms of the Satellite Act. On the contrary, it is clear that Congress intended the Commission to be guided by the broad standards contained in the Act's regulatory scheme, rather than rigid and detailed criteria. The application of these broad standards and the conclusion that the Commission must use its informed discretion in applying them is fully supported by the legislative history of the Act. This is made clear by the following colloquy between Deputy Attorney General Katzenbach, who was principally responsible for drafting the legislation and steering it through Congress, and Senator Kefauver before the Senate Committee on Anti-trust and Monopoly:

> Senator KEFAUVER. While we are off on another subject I have been alarmed about the idea that we are talking only about voice communication. That is what A.T.&T. is engaged in largely.
>
> Suppose we want to use this system for direct television, navigation, weather, meteorology, or if they wanted to send IBM data, or somebody else wants to send data over this system, or to use it from plane to plane. What right is the Government going to have to dictate that it has to be used on some reasonable terms for these other purposes?
>
> Mr. KATZENBACH. Well, sir, there are provisions in the bill, in the administration proposal, which guarantee—the provisions themselves don't guarantee, but which tell the Federal Communications Commission to guarantee equitable access to all authorized users. Now as Dr. Welsh said——
>
> Senator KEFAUVER. Who are the authorized users?
>
> Mr. KATZENBACH. People licensed by the FCC.
>
> * * * * *
>
> Mr. KATZENBACH. They would all come under FCC jurisdiction, sir, because as soon as you are using these facilities, as soon as you are using the radio spectrum, you are under FCC jurisdiction.
>
> Senator KEFAUVER. But you are forcing them to make a deal with one of the communications carriers, and what if they don't want to make a deal with a communications carrier?
>
> Mr. KATZENBACH. Then they have to get into the business themselves, sir. And I suppose if that is a practicable way of doing it, then that is what should be done. But these are responsibilities as to who is to be licensed for what purposes, which are given to the Federal Communications Commission." (*Hearings on S. Res. 258 Before the Subcommittee on Antitrust and Monopoly of*

[11] In the *Aspen Institute* case, the Commission reversed a statutory interpretation that had existed for more than ten years, and exempted from the equal time requirements of the Communications of 1934 (47 U.S.C. 315) candidates' press conferences and debates between political candidates. The Court of Appeals in *Chisholm* affirmed the Commission's reversal of its policy. In *Chisholm* the court stated that when an agency changed an established policy it should indicate that a policy is being changed and it should follow "the rule of law." (538 F. 2d 364). In a related case where the Court of Appeals also confirmed that the FCC acted properly in reversing its equal time policy, the court stated that to change policy the Commission must "provide a reasoned basis for its action, fully explaining the course it has taken in light of relevant legal and policy issues." (*United Church of Christ* v. *FCC*. No. 76-1878 (Slipsheet p. 13) (D.C. Cir., decided Sept. 11, 1978).) The Court further stated that the Commission must meet the requirements of "a reasoned opinion explaining its action, and [allow] * * * interested groups who were not parties to the proceeding * * * an opportunity to comment on the matter before the agency." (*Id.* at 15.) (See also, e.g., *Greater Boston Television Corporation* v. *FCC*, 444 F. 2d 841, 851-52 (D.C. Cir., 1970), *cert. denied*, 403 U.S. 923 (1971); *Pinellas Broadcasting Co.* v. *FCC*. 230 F. 2d 204, 206, 234 (D.C. Cir.), *cert. denied*, 350 U.S. 1007 (1956).) The Commission in this rulemaking involving Spanish International's petition has carefully followed these directions of the courts.

the Senate Committee on the Judiciary, 87th Cong., 2d sess., pt. 1, at 55-56 (1962).) [12]

23. Moreover, the legislative history supports the conclusion that the Commission's discretion to permit direct service is not limited to situations where Comsat would not compete with the carriers.[13] When Congress was considering the various proposals for privately-owned satellite systems, there was considerable discussion as to whether the earth stations should be owned by the common carriers or by Comsat. *See e.g.* S. Rep. No. 1584, 87th Cong., 2nd Sess. 12 (1962). The issues of earth station ownership and direct service are inextricably related because if Comsat did not obtain an ownership interest, direct service to non-carrier entities would be effectively prohibited since users would still have to obtain access to the satellite system through the international carriers. H.R. 11040, when reported out of the House Committee on Interstate and Foreign Commerce, left the question of who should own the earth stations to the Commission's discretion. However, the bill also contained language expressing a preference for common carrier ownership of the stations. H.R. 11040, section 201(c)(7), 87th Cong., 2nd Sess. (1962). The Committee report explained these provisions as follows:

> It is not the intent of the committee that these provisions limit in any way the Commission in determining what meets the public interest, convenience, and necessity. It is, however, the intent of the committee that in exercising its licensing functions in this respect and in determining who is to be licensed, the Commission shall give consideration to all relevant factors, including such things as the amount and nature of the communications services which are being rendered and which are to be rendered by individual communications common carriers, * * * *the need for effective competition among the corporation and carriers* in rendering such services, and any other factors which * * * might bear upon the public interest, convenience, and necessity. (H.R. Rep. No. 1636, 87th Cong., 2d Sess. 12 (1962) (Emphasis added.))

As adopted, the preference for common carrier ownership was removed and the Commission was given complete discretion in developing earth station ownership policies to consider such factors as the need for effective competition among the corporation and the carriers in providing telecommunications services. 47 U.S.C. 721 (c)(7).

B. PUBLIC INTEREST ANALYSIS

24. Given this descretion, we shall now determine whether provision of direct television service by Comsat would serve the public interest. In the provision of the satellite channel the international carriers provide nothing more than the transparent channel supplied by Comsat. While many users may require the end-to-end service provided by the international carriers, there is no operational reason why a user should have to go through an international carrier to obtain only the satellite channel. In fact, requiring the user to go through this extra layer only creates a greater potential for service mix-ups than if the service was ordered directly from the entity which actually provides it. This is a particular concern in international television transmission where news and special events programming requires immediate availability and quick and efficient processing of service orders and changes. The television users allege that in the past there have been service mix-ups and delays. While the international carriers dispute the facts of the particular instances described, the extra service layer clearly creates the potential for service errors. Given the fact that the international carriers do not provide any satellite service in addition to the service provided by Comsat, there is no operational necessity for the user to be required to be subjected to this potential. Therefore, if the user does not desire end-to-end service or desires to be served directly through a special purpose earth station, it makes operational sense to give him the option to purchase the satellite service directly from Comsat.

25. Comsat's entry would have additional benefits in the sense that it would provide a useful regulatory benchmark. Comsat would provide to direct users only the transparent satellite channel terminating at the U.S. earth station rather than end-to-end service. To the extent that Comsat's costs of providing service to the carriers is the same as the service it provides to television users directly, it will have to charge similar rates to the carriers and direct users. If the international carriers are to remain competitive with Comsat in providing this channel, their charges will have to reflect its true cost. If, on the other hand, Comsat's costs for providing direct service are higher than its costs of providing this channel to the carrier, the direct users rates will at least serve as an upper limit for the prices charged by the carriers.[14]

26. We believe that authorizing Comsat to provide direct service to television users is consistent with the rationale of the *Authorized User Decision*. Since we originally expressed this belief in the *Notice*, The carriers have not provided any evidence which would lead us to change our tentative conclusion. As indicated in paragraph 21, *supra*, in the *Authorized User Decision* the Commission found that permitting Comsat to provide direct service could divert leased channel revenues from the international carriers to Comsat, necessitating rate increases for the other public services of the carriers such as message telephone service or telex. This was determined to be a "detriment to the vast majority of users for the apparent benefit of a few large users" 4 F.C.C. 2d at 433, in derogation of the policy of the Satellite Act because the Act requires that the benefits of lower satellite rates be made available to all users. On its face, this rationale would be also applicable to television transmission service. However closer analysis reveals that permitting direct service to television users has little possibility of creating such public detriments. This service accounts for less than one percent of the international carriers' revenues. As stated in the *Notice*, the international carriers report only marginal profits or losses in providing the service. Consequently, there is no basis for concluding that there would be any adverse effect on the other services provided by the international carriers even if all television revenues were diverted to Comsat. On the contrary, the fact that some carriers have experienced losses in providing the service suggests that the current arrangements burden public services rather than prevent a burden on those services as the *Authorized User Decision* intended.

27. Therefore, we find that the public interest will be served by permitting television program transmission users to obtain satellite service directly from Comsat. Such a policy is consistent with the Satellite Act's mandate that "care and attention * * * be directed toward * * * the reflection of the benefits of this new technology in both quality of services and charges for such services." 47 U.S.C. 701(b).

Feasibility of Competition

28. As set forth by the U.S. Supreme Court in *F.C.C.* v. *RCA Communications, Inc.* 346 U.S. 86, 96-97 (1953), the criteria for authorizing additional competition are two-fold: (a) There must be grounds for reasonable expectation that competition may have some beneficial effect; and (b) competition must be reasonably feasible. The earlier sections of this order demonstrate that there are reasonable grounds to conclude that the additional competition provided by eliminating the rotational arrangements and the

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[12] *See also*, colloquy between Sen. Wiley and Mr. Minow (Hearings on H.R. 11040 before Senate Committee on Foreign Relations, 87th Cong., 2nd Sess. at p. 50 (1962); footnote 9, *supra*.)

[13] But see footnote 8, *supra*.

[14] As discussed in the section of this decision on cross-subsidization, *infra*, the carriers assert that Comsat's costs in serving users directly should be higher than its costs of serving carriers.

provision of direct service by Comsat may be reasonably expected to have some beneficial effect. We shall now consider whether competition is reasonably feasible.

29. There is a range of opinion among the carriers pleading in this proceeding as to the degree of competition which is reasonably feasible in the provision of international television transmission service. WUI assumes that competition among the four international carriers is reasonably feasible and has requested authority to withdraw from the rotational arrangement. AT&T, ITT Worldcom and RCA Globcom, to varying degrees, suggest that the Commission may wish to explore this possibility. Thus, none of these four carriers assert affirmatively that competition among themselves is not feasible,[15] but all question the feasibility of the added competition which would be provided by Comsat.

30. As pointed out by ITT Worldcom in its comments, the Commission established its basic formula for determining the feasibility of additional competition in *Mackay Radio Telegraph Co., Inc.*,28 FCC 231 (1960). The Commission there stated:

> It appears to us that feasibility of competition depends on whether there is sufficient traffic to support the addition of another competing direct circuit and upon the effect of the opening of such circuit upon the applicant as well as all other carriers providing service to the public. (28 FCC at 239)

We would note at the outset that there is a significant difference between the factual situations present in both the *Mackay* and *RCA* cases and the instant situation. In both of the former cases, the Commission was being asked to approve the establishment of entirely new direct high frequency radio circuits to points where other carriers already had established such circuits. The applicant carrier was proposing to incur the capital costs of the transmitting and receiving equipment necessary to establish the duplicating high frequency radio circuit with which it proposed to compete. Authorization of the new circuit had the potential to decrease the revenue generated by the capital investment that the existing carrier or carriers had made in like facilities in order to provide the existing circuits. This was particularly true if the new entrant diverted significant amounts of existing traffic from the present carrier and no new traffic was generated. Finally, there was a significant question of whether authorization of a duplicating direct circuit which may not be fully utilized was an efficient allocation of the scarce high frequency radio spectrum. (*See e.g. Mackay*, 28 FCC at 233-35, 243-44)

31. Neither the abolition of the rotational arrangement nor Comsat's direct provision of television service from the existing earth stations involves the construction of duplicate satellites or satellite earth stations or the use of additional frequencies or capacity in the existing satellites. This will not require substantial new capital investments or put substantial existing capital investment at risk. The basic difference will be in which carrier will make use of largely commonly-used existing facilities and how that carrier is selected. This difference can best be demonstrated by a comparison of facilities use under the present rotational plan and that which will occur if the rotational plan is abolished and Comsat is permitted to provide direct service from the existing earth stations.

32. As indicated in paragraph 6, *supra*, all of the carriers lease the satellite and terrestrial facilities for the period the customer desires service. These facilities can be leased for periods as small as ten minutes. In the case of AT&T, it owns the terrestrial circuits it leases to the customer. If the rotational arrangement is obolished, exactly the same facilities will be used in the same manner. The sole difference will be that the carrier providing the service will be determined by the customer rather than the calendar. Comsat, will still lease the same satellite capacity from INTELSAT and, in turn, lease it and the same earth station capacity to the customer-chosen carrier. The same terrestrial circuits and operating office equipment will be used in the same manner. Since competition will determine which carrier is selected, the amount of time that the terrestrial circuits are leased by AT&T to an IRC rather than to the ultimate customer will change. Likewise, the use made of, and the revenue generated by, each carrier's investment in equipment associated with television service at its operating office could shift among the carriers.

33. If Comsat is permitted to provide direct service from the existing earth stations, the same earth station and satellite facilities will be used. Comsat would either lease this capacity to one of the international carriers or directly to the customer. The impact of Comsat's provision of television service on the international carriers would be the same as if AT&T were to obtain the customer; they would not derive revenues on their investment in the equipment in their operating offices used for the provisions of television service from the customer. The effect on AT&T could be to further alter the amount of time it leases the terrestrial circuitry to another carrier rather than the ultimate customer.

34. Another potential effect that would occur on AT&T if a customer or a carrier should seek to establish additional transmission facilities to the earth stations is that AT&T's terrestrial facilities between the earth station and a carrier's operating office will not be utilized. However, construction of any such facilities would require Commission authorization and would not be certified if found to be detrimental to the public interest.

35. It is clear from the foregoing that elimination of the rotational arrangement and permission for Comsat to provide television transmission and reception service directly to customers from the existing earth stations will not require duplication of facilities or substantial additional capital investment, or put substantial existing capital investments at risk. The only facilities put at the risk of reduced use is the equipment at the operating offices of WUI, ITT Worldcom and RCA Globcom dedicated to television service. While none of these carriers nor provided us with the dollar amount invested in such equipment, we would expect that the amount is comparatively small, namely, an investment in signal quality control equipment and a limited switching ability. AT&T may also run this risk. However, since it will still provide most of the terrestrial television circuitry, AT&T should still be able to utilize most of this equipment, even if Comsat provides the satellite link to the customer. Likewise we would expect any additional investment by Comsat to be small. Indeed, since Comsat already provides the satellite portion of television service to the carriers, it may well already have all of the required equipment.

36. RCA asserts that the carriers will not be able to effectively compete with Comsat because Comsat would be supplier of satellite circuits both to the carriers and to direct users. It asserts that it could not cover its own costs of overhead and still meet the Comsat rate. This conclusion is apparently based on the Commission's statement in the *Notice* that, "presumably, Comsat would charge its customers—whether television users or international carriers—the same rate for satellite service." (*Notice*, p. 7) This statement assumed that Comsat's costs of serving the carriers are the same as its costs of serving television users directly. However, as discussed in the next section, the carriers allege that Comsat's costs in serving users directly should exceed its costs of serving carriers. On further consideration of our original presumption, we find it questionable whether Comsat could, in

[15] Presumably those carriers urging further proceedings to determine whether the rotational arrangement should be abolished would not rule out such a finding, however.

a tariff proceeding, cost-justify serving both types of customers at the same rate.

37. Even if the carriers obtain the satellite circuit at the same rate as direct users and must include their overhead costs of obtaining that circuit in the rate at which they resell it, they would have counterveiling competitive advantages over Comsat which are likely to mitigate the effect of this price differential. Most importantly, Comsat would be authorized to provide only the transparent channel rather than end-to-end service. The international carriers, on the other hand, can provide end-to-end service. For users desiring the option of contracting with only one carrier to fully arrange all aspects of the service, this complete service is likely to prove quite attractive.

38. The international carriers have further advantages over Comsat. The carriers have been in the international television service market for years. Presumably they have developed working relationships with their customers which may be sustained despite Comsat's entry.

39. In the event that Comsat can justify the same rate for both carriers and television users and the carriers have to include the overhead costs in the resale price, we believe that the customer should be able to decide for itself whether any premium paid to obtain service from the international carriers is worth the price. As we have stated, the overhead costs are extra costs associated only with the reselling of Comsat's satellite circuit and are not necessary to the provision of service. It is not in the public interest to burden users with these costs if the user does not believe that the costs are balanced by the countervailing benefits. We believe that compelling the customers to deal with the carriers rather than providing them with the options of obtaining service in the way that best meets their needs would not be protecting competition but, rather, would be protecting competitors.

Price Discrimination and Cross-Subsidization

40. Several of the international carriers assert that the Commission needs more information to make a well-reasoned evaluation of whether Comsat should be permitted to offer international television service directly to users. Specifically, these carriers argue that Comsat should file with the Commission its proposed rules and regulations for television services as well as its costs of providing service and resultant proposed charges to users. The carriers' claim that the Commission needs this information for several reasons. First, it is asserted by ITT that if Comsat serves users as well as carriers, it will have an incentive to predatorily and unfairly charge high rates to the latter and lower rates to the former. Furthermore, both ITT and WUI assert that if Comsat were to provide service directly to the user, it would be an entirely different service than Comsat provides to the carriers, thus mandating a different rate. WUI claims that while Comsat only provides the carriers with a basic satellite channel, direct service to users would force Comsat to also provide coordination of the alignment of foreign and domestic facilities, scheduling of programs, quality control and conditioning of the television signal, maintenance and testing of all circuits, technical coordination of all segments of the transmission path, and billing, accounting and customer relations. ITT adds that extra costs to be borne by Comsat would include the cost of marketing to direct users and the cost of uncollectables. ITT further states that if Comsat were to provide service to users at the same rate it charges the carriers, it would have to cover its costs for these other functions by illegal subsidization from other services. ITT believes that this concern increases the need for Comsat to file an informal tariff.

41. While the carriers argue extensively about possible predatory pricing by Comsat, their arguments are simply speculative. The concerns of the carriers should more appropriately be raised after Comsat has filed its tariff for direct use. It is then that any attempts at predatory or unfair pricing will surface and be disposed of. Furthermore, at this juncture, we are only considering Comsat's provision of satellite service. In light of this, we believe that it would be very difficult for Comsat to engage in predatory pricing without detection by the Commission.

42. Other than the need to prevent illegal pricing, which will be handled within the context of specific authorizations, the carriers have not raised, and we do not see any other reasons, to require Comsat to file an informational tariff. Comsat's costs to provide service and the resulting prices it charges have little or no relationship to whether Comsat should be permitted to enter the market. If, as ITT and WUI assert, Comsat's costs and charges are higher to users than to carriers, the carriers should be able to offer a cheaper rate to users than Comsat itself can. If this is the case, the user will have to decide whether obtaining service directly from Comsat is worth the premium it must pay to do so. We emphasize, however, that this is precisely why we belive it is in the public interest to permit Comsat's entry into the market; the customer will be afforded more flexibility of choice.[16]

[16] In addition to requesting that Comsat submit this tariff information WUI requests that the Commission hold an evidentiary hearing and oral argument to consider the issues raised. However, as we have stated, the question as to whether Comsat's rates involve predatory pricing is more appropriately addressed in an evidentiary proceeding after the tariff actually is filed. An investigation into whether Comsat would engage in predatory pricing and the effect of such pricing would involve speculation. The other issues in this proceeding involve policy considerations, the determination of which would not be furthered by cross-examination in an evidentiary hearing. The two sets of both comments and replies in this proceeding have provided adequate opportunity to define and address all the issues raised. We, therefore, see no need either for an evidentiary hearing or oral argument and WUI's request is denied.

Carrier Capital Investment in Space Segment

43. The international carrier pleadings in this proceeding contain a variety of assertions that if Comsat is permitted to provide television service directly to the public, the carriers should be permitted to deal directly with INTELSAT, lease television capacity in the satellite and earth stations on a cost basis, or acquire a capital investment in the space segment. We believe that carrier ownership of INTELSAT space segment and direct carrier-INTELSAT arrangements are prohibited by the Communications Act Satellite Act of 1962. However, we do not believe that capital investment, other than ownership, in the nature of indefeasible right of user is prohibited by law.[17] Further, there may be public benefits which flow from permitting carrier capital acquisition of satellite circuits. One potential benefit could be increased price competition in the provision of the basic satellite channel.

44. We emphasize, however, that even without the right of capital acquisition, the carriers are not placed at any competitive disadvantage vis-a-vis Comsat. They will be able to purchase the satellite channel at or below the rate Comsat charges to direct users. While the carriers may not then be able to incorporate a profit into their price to the users of the satellite channel, under the Commission's rate base regulation carriers are not entitled to earn a profit on leased facilities. *Communications Satellite Corporation*, 56 FCC 2d 1101, 1119 (1975). *See also Earth Station Ownership* 5 FCC 2d 812 (1966). Thus, the situation would not change.

45. Given the complexity of determining available capacity in a satellite system which varies with the manner in which the satellite is configured, the concomitant complexity of making that determination in earth stations

[17] See Sections 102(c) and 305(a)(1) of the Satellite Act. Indefeasible right of user is a capital investment interest in which the owner does not obtain rights in management or control of the facility.

and the fact that the carriers already have an ownership interest in the earth stations, consideration of such a capital investment policy will inherently reflect that complexity. This is particularly true in the case of the television transmission capacity which is shared on a varying time basis. Given the fact that the carriers have provided no detailed proposals on how such capital acquisition might be effectuated and the extreme complexity of such a consideration, we believe that this matter is better addressed in a more comprehensive proceeding. As indicated in the *Notice*, the Commission will soon issue a *Notice of Inquiry* which will re-evaluate the entire *Authorized User Decision* in terms of actual operating experience since the decision's adoption. In this inquiry the Commission will also examine the carrier's capital investment proposals in addition to earth station ownership policies and policies concerning special purpose earth stations.

ASSURANCE OF EQUITABLE ACCESS

46. As is alluded to in the carrier pleadings in this proceeding, there is a potential that Comsat, as both the operator of the satellite television transmission facilities and a competitor for the provision of those facilities to the public, could place itself in a favored position. The Satellite Act requires that the Commission shall:

> insure that all present and future authorized carriers shall have non-discriminatory use of, and equitable access to, the communications satellite system and satellite terminal stations under just and reasonable charges, classifications, practices, regulations, and other terms and conditions and regulate the manner in which available facilities of the system and stations are allocated among such users thereof; (47 U.S.C. 721(c)(2)).

The Commission has taken particular care in past decisions to assure that this responsibility has been carried out. For example, we note that the first authorization granted to AT&T to lease satellite circuits was conditioned on the premise that AT&T make its facilities between New York and the then sole earth station at Andover, Maine "* * * available to all international carriers and other authorized users of the satellite system on fair and nondiscriminatory terms and assure equitble access thereto." *AT&T et. al.* 38 FCC at 1318. We shall condition the authorization granted to Comsat to provide direct television service on its provision of fair and nondiscriminatory terms and equitable access to the satellite system television capacity for all authorized carriers and users. Because of the fact that television service is, and will continue to be, provided on commonly used, time-shared, satellite facilities and the fact that the demand for international television is often created by fast breaking newsworthy events of international importance, we shall further require that Comsat describe fully in its application for authority to provide direct television service, the procedures by which it will effectuate this condition. Such procedures, at a minimum, must assure that all requests for television service whether by carriers or customers be handled on a chronological basis. Carriers and customers alike must have equal access to contact Comsat to place orders. Comsat must maintain an up-to-date log of all requests for television service showing the carriers or customer, name of the person making the request, the time and date the request was made, the time during which service was requested and, the specific service requested. Finally, Comsat must retain such logs for one year in order to allow Commission inspection should a controversy arise.

47. In view of the above, we find the public interest will be served by permitting competition among the carriers and Comsat in the provisions of international television program transmission service. We therefore grant Spanish International's request for a waiver of our "unique and exceptional" policy in the *Authorized User* decision (4 FCC 2d at 431, 435-36) as it applies to its reception of international television programming from Comsat, and we grant Spanish International's petition to change this policy as it applies to other similarly situated television customers. Thus, the "unique and exceptional" policy is not applicable to television customers, and they are authorized users under our *Authorized User* decision and may receive direct service from Comsat. In other respects, the *Authorized User* decision and our "unique and exceptional" policy are not modified by this decision.

48. *Accordingly, it is hereby ordered,* That the Communications Satellite Corporation shall within 120 days of the release of this order make application under Sections 214 and 309 of the Communications Act to provide satellite television services directly to user at U.S. earth stations.

49. *It is further ordered,* That the American Telephone and Telegraph Company, Western Union Internation, Inc., ITT World Communications, Inc., and RCA Global Communications, Inc. shall 60 days thereafter make application under Section 214 of the Communications Act to remove conditions authorizing and requiring rotational arrangements for television service.

50. Authority for this action is contained in Section 4(i), 4(j), 201(b), 303, 307 and 403 of the Communications Act of 1934, as amended, and Sections 102(c), 201(c)(2), 305(a), 305(b) and 401 of the Communications Satellite Act of 1962.

51. *It is further ordered,* That this proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM TRICARICO,
Secretary.

[FR Doc. 78-33677 Filed 11-30-78; 8:45 am]

[6712-01-M]

[BC Docket No. 78-73; RM-2949]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Station in Prescott, Ariz.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: Action taken herein assigns a second Class A FM channel to Prescott, Arizona in response to a petition filed by Southwest Broadcasting Company. The channel provides an opportunity to bring a needed additional aural broadcast service to the community.

EFFECTIVE DATE: January 4, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

REPORT AND ORDER—(PROCEEDING TERMINATED)

Adopted: November 21, 1978.

Released: November 22, 1978.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Prescott, Arizona), BC Docket No. 78-73, RM-2949.

1. The Commission has before it the *Notice of Proposed Rule Making*, 43 FR 8815, proposing the assignment of Channel 280A to Prescott, Arizona, as its second FM assignment. Petitioner, Southwest Broadcasting Company, has filed supporting comments reaffirming its intention to file for the channel, if assigned.

2. Prescott (pop. 13,039), [1] seat of Yavapai County (pop. 36,733) is located

[1] Population figures are taken from the 1970 U.S. Census unless otherwise indicated.

in west central Arizona, approximately 113 kilometers (70 miles) northwest of Phoenix. It presently receives service from full-time AM Station KYCA, licensed to petitioner, AM Station KNOT (full-time) and Station KNOT-FM (Channel 252A).

3. Petitioner states that, according to the 1976 Arizona Statistical Review, Prescott's population is currently estimated at 17,000, which represents an increase of almost 25% over the 1970 U.S. Census data. We are told that tourism, manufacturing, ranching and mining comprise the major industries. Petitioner asserts that the population and economic trends for Prescott and Yavapai County indicate a rapid and continuing expansion of both population and economy.

4. Preclusion would occur affecting four Arizona communities [2] with populations greater than 1,000. Of the four communities, Kingman has an AM and FM station and Wickenburg has an AM station and an FM assignment. Williams and Bagdad have no FM assignments, but petitioner states that alternate FM channels are available for assignment to these communities, if the need should arise. Since other channels are available, the preclusion is not an impediment to the proposed assignment.

5. In a *Roanoke Rapids/Anamosa* study, petitioner shows that 3,998 persons in a 1,303 square kilometer (503 square miles) area would receive a second FM service and a second nighttime aural service from a station operating on the requested channel.

6. Upon careful consideration of the proposal, we believe that Channel 280A should be assigned to Prescott, Arizona. The channel would provide for an FM station which could render a second service as well as second nighttime service to a significant area. It would also provide the community with an opportunity to develop a needed second local FM broadcast service.

7. Mexican concurrence in this assignment has been obtained.

8. Accordingly, pursuant to authority contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules; *it is ordered*, That effective January 4, 1979, the FM Table of Assignments (§ 73.202(b) of the rules) is amended with respect to the community listed below:

City: Prescott, Arizona; Channel No. 252A, 280A.

9. *It is further ordered*, That this proceeding is terminated.

[2] Williams (pop. 2,386); Wickenburg (pop. 2,698); Kingman (pop. 7,312); Bagdad (pop. 2,079).

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303).)

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-33713 Filed 11-30-78; 8:45 am]

[6712-01-M]

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Editorial Amendments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The frequency 123.1 MHz is improperly designated in one section of our rules as a maritime distress frequency when it is not. Another section of our rules is entitled "Frequencies for use in distress," when it also contains provisions relating to search and rescue operations. We are amending our rules to clear up these inconsistencies. This action will accomplish this amendment.

EFFECTIVE DATE: December 11, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Adopted: November 24, 1978.

Released: November 27, 1978.

Order. In the matter of editorial Amendment of §§ 83.233 and 83.352 of the Commission's rules.

1. Section 83.233 (Frequencies for use in distress.) designates the frequency 123.1 MHz as a distress frequency in the band 118 to 136 MHz. Actually 123.1 MHz is a frequency for Search and Rescue (SAR) activities that is available for assignment to ship stations for scene of action SAR operations between ships and aircraft. Therefore, 123.1 MHz should not be listed under § 83.233 of our rules and we are deleting 123.1 MHz from this section.

2. The title of § 83.352 "Frequencies for use in distress." does not accurately reflect the contents of this section. Section 83.352 also contains rules regarding SAR operations. We are therefore amending the title of § 83.353 to correctly reflect its contents.

3. Regarding questions on matters covered in this document contact Kemp J. Beaty, telephone 202-632-7197.

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

5. In view of the above: *It is ordered*, That the rule amendment set forth is adopted effective December 11, 1978.

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

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

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

Part 83—Stations on Shipboard in the Maritime Services.

1. In § 83.233, the table is amended to read as follows:

§ 83.233 Frequencies for use in distress.

* * * * *

Frequency band	Emission	Carrier frequency
* * * * *		
118 to 136 MHz	A2, A3, A9	121.5 MHz
156 to 162 MHz	F3	156.8 MHz
* * * * *		

* * * * *

2. The title of § 83.352 is amended to read as follows:

§ 83.352 Frequencies for use in distress and search and rescue operations.

* * * * *

[FR Doc. 78-33712 Filed 11-30-78; 8:45 am]

[4910-06-M]

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. RSRM-1, Notice No. 6]

PART 221—REAR END MARKING DEVICES—PASSENGER, COMMUTER, AND FREIGHT TRAINS

Schedule of Penalties

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Amendment to final rule.

SUMMARY: Part 221 establishes requirements for the installation of rear end marking devices on passenger, commuter, and freight trains. The purpose of this notice is to amend Part 221 by the addition of a new appendix which sets forth the schedule of civil penalties that are applicable to any violation of this Part.

DATES: This amendment is effective December 15, 1978.

FOR FURTHER INFORMATION CONTACT:

PRINCIPAL AUTHORS

Principal Program Person: John A. McNally, Office of Safety, Federal Railroad Administration, Washington, D.C. 20590, 202-426-9178.

Principal Attorney: Lawrence I. Wagner, Office of the Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590, 202-426-8836.

SUPPLEMENTARY INFORMATION: Section 5(b) of the Federal Railroad Safety Authorization Act of 1976 (Pub. L. 94-348) required the Secretary of Transportation ("Secretary") to issue such rules as may be necessary to require that "the rear car of all passenger and commuter trains shall have one or more highly visible markers which are lighted during periods of darkness or whenever weather conditions restrict clear visibility;" and "the rear car of all freight trains shall have highly visible markers during periods of darkness or whenever weather conditions restrict clear visibility".

On January 11, 1977, FRA published a final rule prescribing the requirements for the installation of a rear end marking device for use on passenger, commuter, and freight trains (42 FR 2321). The rule establishes performance standards for marking devices and requires that the Federal Railroad Administrator ("Administrator") approve devices that are to be installed.

On December 8, 1977, FRA amended Part 221 by the addition of Appendix A which set forth the specific procedures by which railroads subject to this Part are to obtain approval of the marking devices to be used on passenger, commuter, and freight trains (42 FR 62002). This amendment also postponed, from January 1, 1978 to July 1, 1978, the date by which trains that are subject to Part 221 must be equipped with approved marking devices.

On August 17, 1978, FRA further amended Part 221 by the addition of Appendix B which identified the specific devices that had been approved by FRA as of July 26, 1978 (43 FR 36447). Appendix B became effective on August 25, 1978.

The FRA is now adding Appendix C to Part 221, a penalty schedule applicable to violations of the Part, in accordance with the requirements of section 209 of the Federal Railroad Safety Act of 1970 ("Safety Act"), 45 U.S.C. 438. Section 209(b) provides, in pertinent part, that "[t] he Secretary shall * * * make applicable to any railroad safety rule, regulation, order, or standard issued under this title a civil penalty for violation thereof * * * in such amount, not less than $250 nor more than $2,500 as he deems reasonable." The Secretary has delegated his responsibilities under the Safety Act to the Administrator (49 CFR 1.49(n)).

The penalty schedule in Appendix C is based on the seriousness of the violation. The basic penalty ranges from $500 to $1,000 depending on the section of Part 221 which is violated. The penalty for intentional violation (a violation caused by the knowing and willful failure of the carrier, its offices or agents to comply with the provisions of Part 221) ranges between $1,000 and $2,500 depending upon the section violated. As provided for in section 221.7 (49 CFR 221.7), the Administrator specifically reserves the authority to assess the maximum penalty of $2,500 as well as the authority to assess the minimum penalty of $250 for any specific violation.

As authorized by section 209 of the Safety Act, FRA will attempt to settle violation claims administratively, using procedures similar to those established under the Federal Claims Collection Act (31 U.S.C. 951-953), before transmitting the case to the Attorney General. (See H.R. Rep. No. 1194, 91st Cong., 2nd Sess. (1970)). In no case will a claim be compromised for less than $250; each day the violation continues constitutes a separate offense, pursuant to the provisions of section 209 of the Safety Act.

The addition of Appendix C constitutes a statement of policy by the FRA. In accordance with the provisions of section 533 of the Administrative Procedure Act (5 U.S.C. 533), notice and public procedure are not required and this amendment may be made effective in less than 30 days after publication. Furthermore, FRA has evaluated the addition of this Appendix in accordance with the Department of Transportation's existing and proposed policies for the evaluation of regulatory impacts, discussed in the FEDERAL REGISTER on June 1, 1978 (43 FR 23925), and has concluded that this Appendix will have no measurable regulatory impact.

In light of the foregoing, Title 49 CFR, Chapter II, Part 221 is amended, effective December 15, 1978, as follows:

1. 49 CFR Part 221 is amended by adding a new Appendix C as follows:

APPENDIX C—*Schedule of Civil Penalties*

	Violation	Intentional violation [1]
Section 221.13:		
(a) Marking device (train not equipped)	500	1,000
(b) Marking device (failure to display)	1,000	2,500
(c) Marking device (improper location)	750	1,500
Section 221.15:		
(a) Marking device:		
Unapproved device	500	1,000
Improper intensity, beam width, color, flash rate	500	1,000
(b) Train crew test	500	1,000

[1] For the purpose of this schedule, an intentional violation is the knowing and willful failure of a carrier of its officers or agents to comply with the provisions of this part. The Administrator reserves the authority to assess the maximum penalty of $2,500 for a violation of any section or subsection contained in part 221.

(Sec. 209, 84 Stat. 975 (45 U.S.C. 438); 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 November 27, 1978.

JOHN M. SULLIVAN,
Administrator.

[FR Doc. 78-33682 Filed 11-30-78; 8:45 am]

[4910-06-M]

[FRA State Rail Docket No. 1; Notice No. 2]

PART 270—RAIL BANKING UNDER SECTION 810 OF THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Repeal of Part

AGENCY: Federal Railroad Administration ("FRA"), Department of Transportation ("DOT").

ACTION: Repeal of final rule.

SUMMARY: FRA is repealing 49 CFR Part 270 which sets forth the interim procedures to be utilized by the Federal Railroad Administrator ("Administrator") in acquiring interests in rail properties to be included in the rail bank established under section 810 of the Railroad Revitalization and Regulatory Reform Act of 1976 ("Act").

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Larry A. Friedman, 426-7737.

SUPPLEMENTARY INFORMATION: Section 810 required the Secretary to establish a rail bank consisting of interests in certain lines of railroad in order to preserve them for future use. Interim regulations were issued on April 6, 1978 (43 FR 14472) and public comment invited. The President re-

cently signed into law Pub. L. No. 95-607, the Local Rail Services Assistance Act of 1978. Section 109 of that Act repeals section 810.

Accordingly, Part 270 of Title 49 is deleted.

Dated: November 28, 1978.

JOHN M. SULLIVAN,
Administrator.

[FR Doc. 78-33681 Filed 11-30-78; 8:45 am]

[3510-22-M]

Title 50—Wildlife and Fisheries

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 611—FOREIGN FISHING

PART 672—GROUNDFISH OF THE GULF OF ALASKA

Final Regulations

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Final regulations.

SUMMARY: Final regulations are promulgated to implement two amendments to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska. The first amendment establishes new total allowable levels for foreign fishing (TALFF's) and reserves applicable to vessels of the United States and foreign nations fishing for groundfish in the fishery conservation zone in the Gulf of Alaska. Procedures and criteria are established to apportion reserves to the TALFF's.

Final regulations are also promulgated to implement an amendment to the FMP to permit foreign longline fishermen to take the entire Chirikof TALFF (and any apportioned reserves in that fishing area) for Pacific cod in that portion of the Chirikof fishing area west of 157° W longitude.

EFFECTIVE DATE: December 1, 1978, except that regulations relating to the restriction on the take of Pacific cod west of 157° W longitude (611.92(b)(1) are effective on January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Harry Rietze, Director, Alaska Region, National Marine Fisheries Service, P. O. Box 1668, Juneau, Alaska 98802 Telephone: (907) 586-7221.

SUPPLEMENTARY INFORMATION:

I. HISTORY OF THE AMENDMENTS

On August 28, 1978, the North Pacific Fishery Management Council (the Council) adopted an amendment to the Fishery Management Plan for Groundfish of the Gulf of Alaska. This amendment increased the amount of pollock held in reserve to 133,800 metric tons, with appropriate increases in the reserves of species taken incidental to fishing for pollock. The purpose of the amendment was to assure that an adequate supply of fish was available for potential harvest by U.S. vessels in joint venture operations involving sale of U.S.-caught fish to foreign processing vessels at sea. The amendment superseded the specifications of Total Allowable Level of Foreign Fishing (TALFF), domestic harvesting capacity and reserve established by the FMP, as amended, but retained a fishing year ending October 31, 1979. The amendment was approved by the Assistant Administrator on September 22, 1978, and the amendment and proposed implementing regulations were published for public comment on October 6, 1978 (43 FR 46349).

On June 29, 1978, the Council submitted an amendment to the FMP which would allow foreign longline vessels to harvest the Pacific cod TALFF and apportioned reserves of the entire Chirikof fishing area in the directed longline fishery west of 157° W longitude. This amendment supersedes a provision of the original FMP that restricted the Pacific cod harvest in the Chirikof fishing area west of 157° W longitude to 40% of the TALFF. This amendment was approved by the Assistant Administrator for fisheries on September 8, 1978, and the amendment and proposed implementing regulations were published for public comment on October 13, 1978 (43 FR 47222).

For a more complete explanation of the relation of these amendments to the FMP, see 43 FR 52709, November 14, 1978, (Groundfish of the Gulf of Alaska—Final Regulations).

II. MANAGEMENT-MEASURES ESTABLISHED

The regulations implementing the amendment relating to reserves state the amounts of fish set aside as reserve, and establish a procedure for apportioning amounts of fish from this reserve to the TALFF's during the fishing year. In order to assure that any portion of the reserve that will not be harvested by U.S. fishermen is made available to foreign fisheries in an expeditious manner, the proposed regulations provide that 25 percent of the initial reserve will be allocated to the TALFF every 2 months (bimonthly), beginning January 2, 1979, unless it is determined by the NMFS Regional Director that United States fishing vessels will harvest all of the remaining reserve during the remainder of the plan year. If such a determination is made, the Regional Director will withhold from apportionment to the TALFF's all or part of the scheduled apportionment of the reserve.

A determination that the remaining reserves will be harvested by United States fishing vessels would be based on consideration of: (1) reported U.S. catches and effort by species and area; (2) projected U.S. catch and effort by species and area; and (3) projected and utilized processing capacity of United States fish processors. Interested persons are afforded an opportunity to submit comments up to 15 days prior to the time of making each determination. If, on the basis of such a determination, the Regional Director withholds all or a portion of the scheduled bimonthly apportionment to the TALFF's, and the subsequent performance of United States fishing vessels fails to achieve the anticipated harvest levels, then the amount of fish previously withheld is to be made available for apportionment to TALFF's on the next bimonthly date.

Although there is reference in the plan amendment to a "Special Joint Venture reserve", previously established reserve amounts and the "Special Joint/Venture" reserves are considered one reserve and are treated as one reserve in the regulation.

This amendment is a response to the problem of accurately predicting U.S. harvesting capacity when new fishing arrangements such as joint ventures are being initiated. By establishing reserve amounts of fish which will subsequently be available for harvest by U.S. fishermen or by vessels of foreign nations, depending on the level of U.S. harvest, the possibility of overfishing or of disruption of foreign fisheries in mid-season is diminished and there is greater assurance that optimum yield (OY) will be achieved.

Alternative solutions to the uncertainty in estimating U.S. harvesting capacity in this situation would involve establishing either: (1) a high initial U.S. capacity estimate with lower TALFF's; or (2) a low U.S. capacity with higher TALFF's. If the first alternative were employed, and in-season data subsequently indicated that U.S. vessels would not harvest the entire amount specified as U.S. harvesting capacity, the specifications of U.S. capacity and the TALFF's could be changed only by the time consuming process of amending the FMP and the interest of achieving optimum yield would not be fulfilled. If the second alternative—establishing U.S. harvesting capacity at a low level and TALFF commensurately high—were used, then high U.S. harvests would

either result in overfishing or disruption of foreign fishing depending upon whether or not foreign fishing were abruptly curtailed. Either result appears to be contrary to the purposes and policy of the Act which state that where practicable, plans should be implemented to avoid disruption of fishing.

The chosen course of action, by allowing flexibility depending on anticipated and reported harvest by U.S. vessels, is consistent with National Standard One of the Fishery Conservation and Management Act of 1976 ("the Act") that overfishing be prevented and National Standard 6 of the Act, that ". . . conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches" (Section 1851(a) (1) and (6) of the Act).

The amendment relating to the Chirikoff fishing area TALFF for Pacific cod allows all of the Pacific cod TALFF in the Chirikoff fishing area to be taken in one part of the Chirikoff fishing area.

III. Major Issues; Modifications From Proposed Regulations

IV. Response to Comments

Several comments were received on the proposed regulations relating to reserve levels. These comments were received from a variety of interested parties and related to the timing and mechanism of the reserve release; the level of reserve, U.S. harvest capacity, U.S. processing capacity and OY for sablefish; the level of reserve and U.S. harvest capacity for Pacific cod, and other issues. No comments on the amendment relating to Pacific cod harvests in the Chirikoff fishing area were received. Comments are summarized and responded to by issue.

A. TIMING AND MECHANISM OF THE RESERVE RELEASE

Commentors were concerned that release of reserves would begin in January, and pointed out that joint venture operations will start in the coldest months, in the shortest daylight hours, and in the roughest seas of the year. U.S. fishermen would be using new techniques and gear and would require time to learn to use this equipment effectively. Commentors were concerned that "no input from the North Pacific Council is provided for prior to the Regional Director making his decision." One commentor stressed that the Act encourages the development of underutilized U.S. fisheries including bottomfish off Alaska and that this deserves special consideration. Background data indicating the scope and progress of the proposed joint venture operations was provided. Some commentors indicated that the reserves should be released in an expeditious and orderly manner to allow effective planning of foreign fleet operations. One comment indicated that properly managed reserves are not inconsistent with full utilization of fishery resources.

Response: The reserves and the mechanism to release the reserves were designed to achieve full utilization of the fishing resources yet allow domestic fishermen priority access to the resource. It is possible that initial joint venture operations, especially in the winter months, may experience lower catch rates than would operations under more favorable conditions. Factors such as weather, hours of daylight, seasonal catch rates, learning experience, alternative summer fisheries, and other factors may be considered by the Regional Director in making the determination whether or not, and to what extent, reserves should be released to TALFF. The total reserve level was recommended by the Council based in part upon representations by joint venture interests that fishing under joint venture permits would begin in September of 1978, and that fishing would continue even during winter months. The January 2 date for consideration of release of 25 percent of the reserves is not considered unreasonable. The early date will increase the likelihood of full utilization of available resources if it is determined that joint venture harvests will not reach the amounts formerly anticipated. The determination would be made in part on the basis of at least four months of experience with joint venture operations.

The procedures for release allow the North Pacific Council and members of the general public an opportunity to comment before decisions are made concerning the amount of reserve to be released. The Council has indicated its intention to provide recommendations to the Regional Director on these determinations. Moreover, in an October 3, 1978, letter from the Assistant Administrator for Fisheries, NOAA, to the Chairman of the Council, the Assistant Administrator ". . . anticipated active Council (and public) involvement in making the . . . determinations . . ." and ". . . hoped that the Council would make a particular effort to ensure that any Council meeting at which such recommendations will be discussed receives extensive notice." Concerned parties are encouraged to provide the Council, as well as the Regional Directors, with data and views relating to the determination.

The FCMA does encourage development of underutilized fisheries and this amendment is designed to give priority access to the resources by vessels of the United States.

However, the amounts of established reserves represent optimistic estimates of the amount of fish which joint venture operations will harvest during the fishing year. It is therefore considered reasonable, in view of the competing interest of optimum utilization of available resources and the demonstrated ability of foreign vessels to harvest these resources, to periodically reassess the ability of joint venture operations to harvest and fully utilize the resource.

It is noted that the January 2 release date provides more than "one month lead time". Permits for joint venture operations were issued on June 8, 1978, and operations could have begun on that date. Thus, the "lead time" has been almost seven months.

B. RESERVE LEVELS AND OTHER MATTERS RELATING TO SABLEFISH

Several interested parties stated that the reserve for sablefish was excessively high based on historical incidental catch experience of foreign fishing fleets and suggested lower reserves (less than one percent in one case, 250 metric tons in another case).

Commentators question the validity of the U.S. capacity estimate for sablefish and pointed out that U.S. catches in 1978 will probably be only about 25 percent of the domestic annual harvest (DAH) estimated in the FMP. Thus, the sablefish reserve is said not to be necessary because incidental catches of sablefish by joint venture operations can be accommodated by the amount of fish specified as DAH. Commentators further stated that DAH should be set at more realistic levels when there is a reserve available to accommodate unexpected U.S. harvests.

Comments were received indicating that the OY for sablefish was too high and that the Council has announced its intent to reexamine this OY.

One comment concerned the level of sablefish reserve in relation to U.S. processing capacity, and contended that domestic processing capacity is sufficient to process the entire sablefish OY.

Response: Protection of the sablefish resource is not the purpose of the reserve provisions except to the extent that the provisions help assure that overfishing will not result if U.S. capacity is underestimated. The amount of the reserve is relevant to achieving OY, but not to the question of whether or not the specification of OY for sablefish is adequate to prevent overfishing. Although an incidental effect of establishing a reserve may be to assure that the amount of the OY is not completely taken early in the

season—thus giving the Council an opportunity to examine new data and take appropriate action—the reserve mechanism is primarily designed to assure that the resources available for harvest, up to the limit of OY, are apportioned between U.S. and foreign vessels in a manner consistent with the Act. Establishing reserves to account for incidental harvest of sablefish by joint venture operations does not increase the OY for sablefish, nor do the reserve provisions authorize any harvest in excess of OY amounts. TALFF's have been lowered to the extent that reserves are increased. The OY remains the same.

This amendment does not change the specification of domestic capacity. If the Council determines that domestic capacity has increased, the TALFF's would be lowered proportionately. If U.S. processors have, and will utilize, the capacity to process *all* United States harvested fish from the Alaska groundfish fishery, then the Secretary must deny an application from a foreign vessel to receive U.S. harvested fish (see Section 204(b)(6)(B)(i) of the Act, as amended by Pub. L. 95-354—August 28, 1978).

Because reserve amounts are taken from the TALFF's, the incidental catches allowed for joint venture operations do not impinge upon the prerogatives of U.S. vessels not engaged in joint venture operations.

With regard to the contention that the DAH is too high, several responses are relevant: (1) during part of 1978 foreign fishing was permitted in areas where U.S. vessels could fish, but have not, because of fear of gear conflict with foreign vessels (these regulations were not modified until July, 1978.) Thus, some increase in U.S. catch can be anticipated as a result of this change; (2) 1978 was an excellent year for salmon and some effort that would be expected to be directed to sablefish was directed towards salmon; (3) U.S. fishing for sablefish in the Gulf of Alaska has been growing steadily; (4) there are some recent indications of a decline in availability of sablefish and the high DAH may coincidentally provide some interim protection until the OY can be reexamined and changed appropriately; (5) the DAH level is not the subject of this amendment, although commentors are encouraged to point out to the Secretary and the Council possible problem areas in an FMP.

In response to indications that the OY for sablefish is too high we note, as did some commentators, that the Council is addressing this subject.

The amounts of the incidental catches allowed in joint ventures, which are reflected in increased reserves, are of interest to foreign nations because in this amendment these amounts are taken from the TALFF's. There in no prohibition on trawling for sablefish in the Gulf of Alaska. However, to the extent that the reserves are set higher than required by U.S. vessels engaged in joint venture operations, available resources may go unutilized.

While the reserve mechanism itself is designed to avoid this result, the incidental catches allowed in joint ventures also reflect an attempt to assess the amounts of incidental catch reasonably required to allow harvest of the pollock resource by U.S. vessels. The rate permitted both in permits and reserve specifications was based on incidental catch rates of foreign trawl vessels fishing for pollock. Because of inexperience in using new gear, different vessel size and the necessity of learning new fishing techniques, it was considered that U.S. incidental catch rates would probably exceed the highest rates reported by foreign vessels, and the base rate was adjusted accordingly.

Until data from joint venture operations are available, the incidental catch of participating U.S. vessels is a matter of conjecture. The number arrived at was a good faith effort to balance the uncertainties of a new fishing effort against possible underutilization. The reserve mechanism, and selective release of unutilized reserve amounts, help assure that balance.

C. COMMENTS ON PACIFIC COD RESERVES AND DAH

Comments on the Pacific cod reserves stated that the reserve level may be overestimated based on historic incidental catch levels. Commentors also stated that the DAH may be overestimated, based on indications that the level of harvest by U.S. vessels during 1978 is about 5 percent of 1978 specification of DAH, and U.S. harvest may therefore be about 15,000 metric tons less than anticipated. Commentators state that, in this situation, there is no need for a reserve, and that DAH should be lowered.

Response: These comments warrant thorough analysis and further consideration. It may be that the justification for the Pacific cod reserve levels and the DAH should be reviewed in light of recent catch statistics. If these specifications are overestimated, the alternatives available to the Secretary appear to be: (1) to hold hearings; (2) to withdraw the regulations and reject the amendment or the plan (thus reverting to the TALFF and reserve levels in the original FMP or revert to the Preliminary Management Plan (PMP) if the plan is rejected); or (3) to promulgate final regulations knowing that the amendment might contain an inadequate specification for Pacific cod in the light of new information.

The time required to give notice for, conduct and analyze the results of hearings would mean further delay and confusion. Delay in implementing this amendment may also result in a complete prohibition of foreign fishing because of the risk that the PMP could not be revised and effective in time to allow fishing by January 1. The potential costs of these delays are considered to be high. Rejecting the amendment and implementing the original FMP is not acceptable because the Pacific cod DAH is in the original FMP. An extension of the PMP management regime would not allow for high reserve to foster U.S. groundfish development. Thus, it is considered to be in the national interest to implement the reserves and DAH for Pacific cod as specified. The reserve release provisions at least assure that any unutilized Pacific cod will be available for harvest by foreign nations.

The Council is being notified of these comments received on Pacific cod and is being requested to analyze these comments and other available information and take appropriate action. If the Council finds it appropriate to make adjustments in the reserve level or DAH, these adjustments can be implemented so that foreign fleets will have an opportunity to harvest any increases in 1979.

D. OTHER COMMENTS

Miscellaneous comments were received as follows:

(1) The reporting requirements for joint venture operations are too restrictive.

Response: The reporting requirements are not the subject of these regulations.

(2) If the reserves are released, the allocation should go to the Republic of Korea.

Response: Allocations are the responsibility of the Department of State. It is noted that the comment was transmitted to the Department of State.

(3) High levels of incidental catch by trawl fishermen will harm halibut stocks.

Response: The FMP imposes stringent limitations on incidental catch of halibut by U.S. vessels during those periods when the likelihood of incidental halibut catch is the greatest. These restrictions apply to U.S. vessels fishing in joint venture operations.

(4) The estimate of U.S. catch per vessels day of up to 50 tons per boat is overestimated.

Response: This factor will be reassessed by the Regional Director during the season and reserves will be released should it be determined that the reserves will not be harvested by U.S. vessels.

(5) The OY for pollock can be increased.

Response: No new data was presented to indicate the need for a reassessment.

In addition to the comments received during the comment period on the proposed regulation, several comments were received on the reseves originally established by the FMP prior to amendment (see 43 FR 52709). These comments are listed and responded to below:

A. The reserve is contrary to the applicable governing international fishery agreement (GIFA) which requires TALFF to be determined at the start of the year.

Response: Initial TALFF's are determined at the start of the year. The reserve is designed to avoid lowering TALFF in mid-season and consequent disruption of foreign fishing.

B. Adequate provision for expansion of domestic fishing has been made in the specification of domestic annual harvest (DAH) capacity.

Response: The possibility of joint ventures is not considered in the specification of DAH.

C. Reserves should be apportioned at the earliest possible date. If domestic catch is less than DAH, the remaining amount of fish must be allocated to foreign nations.

Response: The reserve release mechanism is designed to provide early release. To change DAH requires a plan amendment.

D. Procedures must be developed for apportionment of the reserve. The uncertainty of the operation of the reserve provision could act to inhibit domestic fishermen.

Response: This amendment provides such procedures.

E. The 20% reserve should not be applied to all species.

Response: The Regional Director can selectively release reserves as appropriate.

F. Foreign countries will have difficulty in adjusting to mid-year reallocation of reserve, thus leaving some portion of stocks unharvested.

Response: By allowing for possible early release of specified amounts at specific times, it is hoped that foreign nations will be more able to adjust.

G. DAH should be reviewed in mid-year for appropriate reallocation to the TALFF's.

Response: The Council can and should review DAH, whenever appropriate.

V. Modification From Proposed Regulations

Several modifications were made to the proposed regulations in order to clarify the language and the procedures by which reserves would be apportioned.

The word "allocation" was changed to "apportion" throughout the text to assure that there would be no confusion with the function of the Department of State to divide the TALFF into national "allocations".

A new sub-section was added which requires publication in the Federal Register of amounts of apportioned reserves and response to comments received.

Sub-sections were renumbered and headings added to conform to organization of Part 672 and § 611.92 (see 43 FR 52709).

In addition, several technical errors in the specifications of reserve, DAH and TALFF amounts were discovered. The level of the sablefish reserve in the Southeast fishing area was incorrectly calculated, as were the TALFF's for sablefish in the fishing areas. The net impact of the corrections is to raise the sablefish TALFF in each fishing area in order to conform to the specification of total TALFF, to reduce the reserve in the Southeast fishing area and to raise the sablefish reserve in the other fishing areas. The reserve for squid was raised by 100 metric tons to conform to the plan amendment. Column totals and row totals in Table I of 672.20 and 611.92 were changed to reflect these corrections.

VI. Other Matters

As previously stated in the preamble to the Gulf of Alaska groundfish FMP regulations (43 FR 52709, November 14, 1978), the 30-day "cooling off period" required by 5 U.S.C. section 553 for the amendment that establishes new reserves and TALFF's is being reduced to avoid the uncertainty and disruption that would result from changing the specifications of TALFF and reserve after the first month of the fishing year.

The regulations will not be reprinted in total in the Federal Register at this time. The North Pacific Fishery Management Council has indicated its intention to reprint regulations applicable to U.S. vessels and copies of 50 CFR 672 therefore will be available from the Council. 50 CFR 611.92 will be reprinted in conjunction with the rest of 50 CFR 611 on or about January 1, 1979.

The Assistant Administrator for Fisheries, NOAA, under delegation of authority from the Secretary of Commerce, has determined that these regulations and amendment to the FMP for Groundfish of the Gulf of Alaska are consistent with the National Standards, the other provisions of the Act, and other applicable law and do not require a Regulatory Analysis under Executive Order 12044. Negative declarations of an environmental impact for these amendments have been filed with the Environmental Protection Agency.

(16 U.S.C. section 1801 *et seq.*)

Signed at Washington, D.C. this 27th day of November 1978.

Winfred H. Meibohm,
Acting Executive Director,
National Marine Fisheries Service.

(A) Title 50, Part 672 is revised as follows:

(1) 50 CFR 672.20 is amended by revising Table I of paragraph (a) and by adding a new paragraph (c) as follows:

§ 672.20 General limitations.

(a) * * *

Table I.—*Optimum Yield and Reserves*

[Metric tons]

Fishing Areas

Species		Shumagin	Chirikof	Kodiak	Yakutat	Southeast	Total
Pollock	OY	57,000	54,400	40,800	12,500	4,100	168,00
	Reserve	45,200	43,100	32,400	9,900	3,200	133,800
Pacific cod	OY	9,600	4,100	15,300	4,300	1,500	34,800
	Reserve	2,730	1,150	4,420	1,270	430	10,000
Flounder	OY	10,400	2,700	12,000	6,400	2,000	33,500
	Reserve	3,000	800	3,500	1,800	600	9,700
Pacific ocean perch (POP)	OY	2,700	2,700	5,200	7,900	6,500	25,000
	Reserve	900	900	1,600	2,500	2,000	7,900
Other rockfish	OY	300	200	600	3,400	3,100	7,600
	Reserve	100	100	300	1,600	1,400	3,500
Sablefish	OY	2,100	1,400	2,400	3,400	3,700	13,000
	Reserve	700	600	900	1,200	700	4,100

TABLE I.—*Optimum Yield and Reserves* —Continued

[Metric tons]

FISHING AREAS

Species		Shumagin	Chirikof	Kodiak	Yakutat	Southeast	Total
Atka mackerel	OY	4,400	3,600	15,800	1,000	0	24,800
	Reserve	1,000	800	3,500	200	0	5,500
Squid	OY	400	400	400	400	400	2,000
	Reserve	200	200	200	200	200	1,000
Other species*	OY	4,400	3,600	5,000	2,100	1,100	16,200
	Reserve	1,300	1,000	1,500	600	300	4,700

* Includes all stocks of finfish except: (1) those listed above; and (2) salmon, steelhead trout, and Pacific halibut.

* * * * *

(c) *Reserves.*—(1) *Apportionment of reserve amounts.* As soon as practicable after each of the following dates, the Regional Director shall apportion to Total Allowable Level of Foreign Fishing (TALFF) twenty-five (25) percent of the reserve amount, set out in Table I of this section, for each species in each fishing area: January 2, March 2, May 2, and July 2.

(2) *Determination.*—(i) *General.* Before making the apportionment described in paragraph (c)(1) of this section, the Regional Director shall determine whether or not to apportion to the TALFF's all or part of the amounts described in paragraph (c)(1) of this section. The Regional Director may withhold all or part of the 25 percent reserve amount if he determines that the amount concerned, when added to unapportioned reserve amounts, will be harvested by vessels of the United States during the remainder of the fishing year.

(ii) *Factors.* The determination whether or not to withhold all or part of the reserve amounts described in paragraph (c)(2) of this section shall be based upon consideration of the following factors:

(A) Reported U.S. catch and effort by species and area compared to previously projected U.S. harvesting capacity;

(B) Projected U.S. catch and effort by species and areas for the remainder of the fishing year;

(C) Amounts of fish already purchased or processed by U.S. processors during the fishing year, compared to previously projected processing capacity of U.S. processors; and

(D) Projected processing capacity, and utilization of capacity, by U.S. processors for the remainder of the fishing year.

(iii) *Public comment.* (A) Comments may be submitted to the Regional Director concerning whether or not, and the extent to which, vessels of the United States will harvest reserve amounts during the remainder of the fishing year. (Address: NMFS, P.O. Box 1668, Juneau, Alaska 98802).

(B) Comments must be submitted no later than 15 days prior to the dates specified in paragraph (c)(1) of this section.

(C) The Regional Director shall consider any timely comments filed in accordance with this subsection, in making the determination specified in paragraph (c)(2)(i) of this section.

(D) The Regional Director shall compile, in aggregate form, the most recent available reports on: (*1*) level of catch and effort by vessels of the United States fishing subject to this Part; and (*2*) amounts of fish processed by U.S. fish processors. This data shall be available for public inspection during business hours at the National Marine Fisheries Service, Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802, during the last 15 days of each comment period.

(iv) *Procedure.* As soon as practicable after each of the dates stated in paragraph (c)(1) of this section, the Regional Director shall publish in the FEDERAL REGISTER: (A) the final amounts of reserves to be apportioned to the TALFF's; (B) the reasons for the determination that vessels of the United States will, or will not, harvest the amounts available for apportionment to the TALFF's; and (C) responses to any comments received.

(v) *Add-on.* If vessels of the United States fail to harvest any part of a 25 percent apportionment which has been withheld by the Regional Director pursuant to paragraph (c)(2) of this section, the unharvested amount shall be added to the amount of reserves available for apportionment to the TALFF's on the next apportionment date.

* * * * *

(B) Title 50, Part 611 is revised as follows:

§ 611.20 [Amended]

(1) 50 CFR 611.20(c), Table I is amended in the "Gulf of Alaska" portion only as follows:

(1) Change the lines beginning "006", "002", "003", "008", "001", "005", "012", "007", "001", "099", to read as follows:

Species code	Species	Ocean area	Initial TALFF	U.S. capacity review date
006	Cod, Pacific	Gulf of Alaska	[2][3]9,300	Jan. 2 Mar. 2 May 2 July 2
002, 003	Flounders, including yellowfin sole.	do	[2][3]16,600	Do.
008	Mackerel, Atka	do	[2][3]19,300	Do.
011	Perch, Pacific Ocean (POP)	do	[2][3]16,000	Do.
005	Pollock	do	[2][3]20,800	Do.
012	Rockfishes other than POP	do	[2][3]2,100	Do.
007	Sablefish	do	[2][3]4,900	Do.
001	Squid	do	[2][3]1,000	Do.
099	Other species	do	[2][3]11,000	Do.

(2) Delete footnote 2, and substitute new footnote 2 as follows: [2]Annual TALFF period is Nov. 1 through Oct. 31.

(3) Delete footnote 3 and substitute new footnote 3 as follows: [3]Does not include an amount held in reserve.

(4) Delete and reserve footnote 4 at end of table I.

(2) 50 CFR 611.92 is amended by revising Table I at the end of paragraph (b)(1), and by adding new paragraph (b)(1)(ii) as follows:

§ 611.92 Gulf of Alaska groundfish fishery.

* * * * *

(b) * * *

(1) * * *

TABLE I.—*Gulf of Alaska Groundfish Fishery: TALFF and reserve [1] by Species and Fishing Area for 1978–79*

[Metric tons]

Species		FISHING AREAS [2]					
		Shumagin	Chirikof	Kodiak	Yakutat	Southeast	Total
Pollock	TALFF	7,000	6,700	5,000	1,500	600	20,800
	Reserve	45,200	43,100	32,400	9,900	3,200	133,800
Pacific cod [3]	TALFF	2,570	1,150	4,080	1,130	370	9,300
	Reserve	2,730	1,150	4,420	1,270	430	10,000
Flounders	TALFF	5,200	1,300	5,900	3,200	1,000	16,600
	Reserve	3,000	800	3,500	1,800	600	9,700
Pacific Ocean perch (POP)	TALFF	1,700	1,700	3,400	5,000	4,200	16,000
	Reserve	900	900	1,600	2,500	2,000	7,900
Other rockfishes [4]	TALFF	100	100	100	900	900	2,100
	Reserve	100	100	300	1,600	1,400	3,500
Sablefish	TALFF	1,300	800	1,400	1,400	0	4,900
	Reserve	700	600	900	1,200	700	4,100
Atka mackerel	TALFF	3,400	2,800	12,300	800	0	19,300
	Reserve	1,000	800	3,500	200	0	5,500
Squid	TALFF	200	200	200	200	200	1,000
	Reserve	200	200	200	200	200	1,000
Other species [5]	TALFF	3,000	2,500	3,300	1,400	800	11,000
	Reserve	1,300	1,000	1,500	600	300	4,700

[1] The TALFF's specified in this table may be modified during the year if reserves are apportioned to TALFF.
[2] See fig. 3 of app. II to sec. 611.9 for description of fishing areas.
[3] Of the total Pacific cod TALFF, only 3,720 metric tons may be caught west of 157° W. longitude.
[4] The category "other rockfishes" includes all rockfishes other than Pacific Ocean perch.
[5] The category "other species" includes all species of fish except (A) the other fish listed in the table; and (B) shrimp, scallops, salmon, steelhead trout, Pacific halibut, herring, and Continental Shelf fishery resources.

(i) • • •

(ii) *Reserves.*—(A) *Apportionment of Reserve Amounts.* As soon as practicable after each of the following dates, the Regional Director shall apportion to the TALFF's twenty-five (25) percent of the reserve amount set out in Table I of this section for each species in each fishing area: January 2, March 2, May 2, and July 2.

(B) *Determination.*—(*1*) *General.* Before making the apportionment described in paragraph (b)(1)(ii)(A) of this section, the Regional Director shall determine whether or not to apportion to the TALFF's all or part of the amounts described in paragraph (b)(1)(ii)(A) of this section. The Regional Director may withhold all or part of the 25 percent reserve amount if he determines that the amount concerned, when added to unapportioned reserved amounts, will be harvested by vessels of the United States during the remainder of the fishing year.

(*2*) *Factors.* The determination whether or not to withhold all or part of the reserve amounts shall be based upon consideration of the following factors:

(*i*) Reported U.S. catch and effort by species and area, compared to previously projected U.S. harvesting capacity;

(*ii*) Projected U.S. catch and effort by species and area for the remainder of the fishing year;

(*iii*) Amounts of fish already purchased or processed by U.S. processors during the fishing year, compared to previously projected processing capacity of U.S. processors; and

(*iv*) Projected processing capacity and utilization of capacity by U.S. processors for the remainder of the fishing year and.

(*3*) *Public Comment.* (*i*) Comments may be submitted to the Regional Director concerning whether or not, and the extent to which, vessels of the United States will harvest reserve amounts during the remainder of the fishing year. (Address: NMFS, P.O. Box 1668, Juneau, Alaska 98802.)

(*ii*) Comments must be submitted no later than 15 days prior to the dates specified in paragraph (b)(1)(ii)(A) of this section.

(*iii*) The Regional Director shall consider any timely comments filed in accordance with this section, in making the determination specified in paragraph (b)(1)(ii)(B)(*1*) of this section.

(*iv*) The Regional Director shall compile, in aggregate form, the most recent available reports on: (*a*) level of catch and effort by vessels of the United States fishing in the Alaska groundfish fishery; and (*b*) amounts of fish processed by U.S. fish processors. This data shall be available for public inspection during business hours at the National Marine Fisheries Service, Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802, during the last 15 days of each comment period.

(*4*) *Procedure.* As soon as practicable after each of the dates specified in paragraph (b)(1)(ii)(A) of this section the Regional Director shall publish in the FEDERAL REGISTER: (*i*) the final amounts of reserves to be apportioned to the TALFF's; (*ii*) the reasons for the determination that vessels of the United States will, or will not, harvest the amounts available for apportionment to the TALFF's; and (*iii*) responses to comments received.

(*5*) *Add-on.* If vessels of the United States fail to harvest any part of a 25 percent apportionment which has been withheld by the Regional Director pursuant to paragraph (b)(1)(ii)(B) of this section, the unharvested amount shall be added to the amount of reserves available for apportionment to the TALFF's on the next apportionment date.

• • • • •

§ 611.92 [Amended]

(3) Section 611.92(b)(2)(ii)(D) is amended as follows: delete "[Reserved] metric tons of Pacific cod • • •" and substitute "The amount of Pacific cod stated in footnote three of Table I (§ 611.92(b)(1))".

[FR Doc. 78-33609 Filed 11-28-78; 11:52 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.

[3410-15-M]

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

[7 CFR Part 1701]

RURAL TELEPHONE PROGRAM

Proposed Revisions of REA Specification PE-22 for Aerial and Underground Telephone Cable, REA Specification PE-23 for Direct Burial Telephone Cable (Air Core), REA Specification PE-39 for Filled Telephone Cables and REA Specification PE-54 for Filled Buried Wire

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed Rule.

SUMMARY: REA proposes to issue a File With for REA Bulletin 345-13 to announce an addendum to REA Specification PE-22 for Aerial and Underground Telephone Cable, a File With for REA Bulleting 345-14 to announce an addendum to REA Specification PE-23 for Direct Burial Telephone Cable (Air Core), a File With for REA Bulletin 345-67 to announce an addendum to REA Specification PE-39 for Filled Telephone Cables and a File With for REA Bulletin 345-70 to announce an addendum to REA Specification PE-54 for Filled Buried Wire. These addenda are needed to include electrical attenuation requirements which have not been covered in the existing specifications. The effect of this action will provide telephone wire and cable which will have more predictable electrical characteristics that will enhance the electrical transmission properties of telephone plant used in REA telephone borrower systems.

DATE: Public comments must be received by REA no later than: January 30, 1979.

ADDRESS: Persons interested in the revisions of REA Specifications PE-22, PE-23, PE-39, and PE-54 may submit written data, views or comments to the Director, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Telephone Operations and Standards Division during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Warner T. Smith, Chief, Outside Plant Branch, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1340, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number 202-447-3827.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to issue File Withs for REA Bulletins 345-13, 345-14, 345-67, and 345-70. Copies of the proposed addenda to REA Specifications PE-22, PE-23, PE-39, and PE-54 may be secured in person or by written request from the Director, Telephone Operations and Standards Division.

The attenuation requirements covered in these addenda become effective on April 1, 1979, and on January 1, 1980, where noted.

Copies of the addenda will be furnished by REA upon request. Questions concerning the addenda may be referred to the Chief, Outside Plant Branch, Telephone Operations and Standards Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number 202-447-3827.

Dated: November 24, 1978.

C. R. BALLARD,
Assistant Administrator, Telephone.

[FR Doc. 78-33668 Filed 11-30-78; 8:45 am]

[3410-37-M]

Food Safety and Quality Service

[7 CFR Part 2852]

FROZEN GREEN BEANS AND FROZEN WAX BEANS

Proposed United States Standards for Grades; Extension of Comment Period

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Notice Extending Time for Comments on Proposed Rule.

SUMMARY: This notice extends the period for comments to the proposed rule, published October 17, 1978 (43 FR 47755), to revise the United States Standards for Grades of Frozen Green Beans and Frozen Wax Beans.

DATE: Comments must be received on or before February 1, 1979.

ADDRESS: Comments in duplicate should be sent to: Executive Secretariat, FSQS, Room 3167-South, U.S. Department of Agriculture, Washington, D.C. 20250, Attention: Ann Langlois. Comments will be available for public inspection at the same address during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT:

Howard W. Schutz, Processed Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202-447-4693).

SUPPLEMENTARY INFORMATION: The original intention was to give interested parties at least 60 days in which to make comments regarding the proposed rule to revise the United States Standards for Grades of Frozen Green Beans and Frozen Wax Beans.

The proposal was not published in time to allow this full comment period. Therefore, the comment period is extended another 60 days from the publication of this notice.

Adjusted AQL's for the critical defects of the whole and sliced lengthwise styles are also included for comment during the extension. The AQL for Grade A is adjusted from 0.10 to 0.25; the AQL for Grade B is adjusted from 0.25 to 0.65; the AQL for Grade C is adjusted from 1.0 to 2.5. These adjustments will bring the quality of the whole and sliced lengthwise styles in line with the cut, short cut and mixed styles.

Done at Washington, D.C., on November 27, 1978.

SYDNEY J. BUTLER,
Acting Administrator, Food Safety and Quality Service.

[FR Doc. 78-33663 Filed 11-30-78; 8:45 am]

[3410-37-M]

[7 CFR Part 2852]

GRAPEFRUIT JUICE

Proposed United States Standards for Grades; Extension of Comment Period

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Notice Extending Time for Comments on Proposd Rule.

SUMMARY: This notice extends the period for comments to the proposed rule, published June 3, 1978 (43 FR 28511), to revise the United States Standards for Grapefruit Juice.

DATE: Comments must be received on or before June 1, 1979.

ADDRESS: Comments in duplicate should be sent to: Executive Secretariat, FSQS, Room 3167-South, U.S. Department of Agriculture, Washington, DC 20250, Attention: Ann Langlois. Comments will be available for public inspection at the same address during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT:

Thomas E. Crider, Processed Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250 (202-447-4693).

SUPPLEMENTARY INFORMATION: The comments received as a result of the proposal indicate that additional time is needed, and warranted, for all interested parties to give further consideration to the proposal and to submit new or additional comments, data, and arguments. Also, as a result of the numerous comments received and the nature of the comments, the Florida Citrus Processors' Association has requested that the Florida Citrus Commission conduct a nationwide consumer preference study to evaluate the importance of the role color plays in the overall marketing of grapefruit juice.

Done at Washington, D.C. on November 27, 1978.

SYDNEY J. BUTLER,
Acting Administrator,
Food Safety and Quality Service.

[FR Doc. 78-33662 Filed 11-30-78; 8:45 am]

[3410-03-M]

Science and Education Administration[1]

[9 CFR Parts 445 and 447]

NATIONAL POULTRY IMPROVEMENT PLAN AND AUXILIARY PROVISIONS

AGENCY: Science and Education Administration, USDA.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given, under the administrative procedure provisions of 5 U.S.C. 553, that the Department of Agriculture has under consideration proposed amendments to the National Poultry Improvement Plan and Auxiliary Provisions which were recommended by the 1978 Conference of representatives of the poultry industry and State Agencies which cooperate in the administration of the Plan. Included in these proposed amendments is a new program to recognize States which have attained a certain level in their efforts to control and eliminate *Mycoplasma gallisepticum* in turkey breeding flocks. Also, amendments are proposed which reduce the amount of blood testing necessary to monitor chicken breeding flocks for *Mycoplasma gallisepticum* and *Mycoplasma synoviae* under the official control program for the diseases caused by these two organisms. Another amendment is proposed which requires all poultry, baby poultry, or hatching eggs shipped through the United States Postal Service to have a label showing that the product meets the requirements of the U.S. Pullorum-Typhoid Clean classification or an equivalent State program. This amendment is proposed as one step in the Department's effort to locate and stop the dispersion of poultry which may be infected with *Salmonella pullorum* or *Salmonella gallinarum* (typhoid). The General Conference Committee of the National Poultry Improvement Plan would also be expanded to include a member-at-large who is an industry person elected by all voting State delegates to the Plan Conference.

DATE: Comments must be received on or before January 2, 1979, effective date would be date published in FEDERAL REGISTER as a final rule, except as noted.

ADDRESS: Send comments to Dr. James W. Smith, Animal Physiology and Genetics Institute, building 173, BARC-East, Beltsville, Maryland 20705. All written submissions made pursuant to this notice will be made available for public inspection at the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Raymond D. Schar at 301-344-2227.

SUPPLEMENTARY INFORMATION: The National Poultry Improvement Plan is a cooperative State-Federal program through which new technology can be effectively applied to the improvement of poultry breeding stock and hatchery products through the control of hatchery-disseminated diseases. The provisions of the program are changed from time to time to conform with the development of the industry and to utilize new information as it becomes available. These provisions are changed based on recommendations initiated at the biennial National Plan Conference by the official delegates representing participating flockowners, breeders, and hatcherymen from all cooperating States.

Pursuant to section 101(b) of the Department of Agriculture Organic Act of 1944, as amended (7 U.S.C. 429), it is proposed to amend Parts 445 and 447 of Title 9, Chapter IV, Subchapter A, Code of Federal Regulations, to incorporate such recommended amendments and to make incidental changes for clarity and consistency.

PART 445—NATIONAL POULTRY IMPROVEMENT PLAN

1. Section 445.2 would be revised by adding a new paragraph to read as follows:

§ 445.2 Administration.

* * * * *

(e) The cooperating Official State Agency shall concur with the Service in its request to the U.S. Postal Service that no mail shipments of poultry, exhibition poultry, baby poultry, game birds, or hatching eggs, shall be made into or within the State unless the product qualifies as U.S. Pullorum-Typhoid clean or as equivalent to this classification under a State supervised program. The status of the product shall be stated on each carton, box, or bundle of boxes by a unique label or marking which has been approved by the Official State Agency and the Service.[2]

2. Section 445.4 would be revised by adding a new paragraph to read as follows:

§ 445.4 General provisions for all participants.

* * * * *

[1] 9 CFR chapter IV is currently designated Agricultural Research Service. A document in a future Federal Register will redesignate this chapter Science and Education Administration.

[2] Effective date: January 1, 1980.

(e) Each shipment of products from primary breeding flocks intended for subsequent use in breeding flocks within the United States, shall be identified by a properly executed and distributed NPIP Form 15, Report of Sales of Hatching Eggs, Chicks, and Poults.

3. Section 445.10 would be revised by adding a new paragraph to read as follows:

§ 445.10 Terminology and classification; flocks, products, and States.

* * * * *

(i) *U.S. Mycoplasma Gallisepticum Clean State, Turkeys.* (See § 445.44(c).)



Figure 10

4. Section 445.14(b) would be amended by adding a new subparagraph to read as follows:

§ 445.14 Blood testing.

* * * * *

(b) * * *

(4) Any drug, for which there is scientific evidence of masking the test reaction or hindering the bacteriological recovery of Mycoplasma organisms, shall not be fed or administered to poultry within three weeks prior to a test or bacteriological examination upon which a Mycoplasma classification is based.

5. Section 445.23 would be amended by revising introductory paragraph (c)(1)(ii) and (ii)(*a*) and by revising (e)(1)(ii) to read as follows:

§ 445.23 Terminology and classification; flocks and products.

* * * * *

(c) * * *

(1) * * *

(ii) It is a multiplier breeding flock which originated as U.S. M. Gallisepticum Clean chicks from primary breeding flocks and a sample comprised of 50 percent of the birds in the flock, with a maximum of 200 birds and a minimum of 30 birds per flock, has been tested for M. gallisepticum as provided in § 445.14(b) when more than four months of age: *Provided,* That to retain this classification, the flock shall be subjected to one of the following procedures:

(*a*) At intervals of not more than 90 days, a random sample of at least two percent of the birds in the flock, with a maximum of 100 birds and a minimum of 30 birds per pen, whichever is greater, shall be tested; or

* * * * *

(e) * * *

(1) * * *

(ii) It is a multiplier breeding flock which originated as U.S. M. Synoviae Clean chicks from primary breeding flocks and a sample of one percent of the birds in the flock, with a maximum of 100 birds and a minimum of 30 birds, has been tested for M. synoviae as provided in § 445.14(b) when more than four months of age: *Provided,* That to retain this classification, a random sample of at least one percent of the birds, with a maximum of 60 birds and a minimum of 30 birds, shall be tested at intervals of not more than 90 days: *And provided further,* That a sample of less than one percent may be tested at any one time, provided that a minimum of 30 birds per flock, with a minimum of 15 birds per pen, whichever is greater, is tested each time and a total of at least one percent of the birds, or a maximum of 60 birds, is tested within each 90-day period.

* * * * *

6. Section 445.33 would be amended by revising introductory paragraph (c)(1)(ii) and (ii)(*a*) and by revising (e)(1)(ii) to read as follows:

§ 445.33 Terminology and classification; flocks and products.

* * * * *

(c) * * *

(ii) It is a multiplier breeding flock which originated as U.S. M. Gallisepticum Clean chicks from primary breeding flocks and a sample comprised of 50 percent of the birds in the flock, with a maximum of 200 birds and a minimum of 30 birds per flock, has been tested for M. gallisepticum as provided in § 445.14(b) when more than four months of age: *Provided,* That to retain this classification, the flock shall be subjected to one of the following procedures:

(*a*) At intervals of not more than 90 days, a random sample of at least two percent of the birds in the flock, with a maximum of 100 birds and a minimum of 30 birds per pen, whichever is greater, shall be tested; or

* * * * *

(e) * * *

(1) * * *

(ii) It is a multiplier breeding flock which originated as U.S. M. Synoviae Clean chicks from primary breeding flocks and a sample of one percent of the birds in the flock, with a maximum of 100 birds and a minimum of 30 birds, has been tested for M. synoviae as provided in § 445.14(b) when more than four months of age: *Provided,* That to retain this classification, a random sample of at least one percent of the birds, with a maximum of 60 birds and a minimum of 30 birds, shall be tested at intervals of not more than 90 days: *And provided further,* That a sample of less than one percent may be tested at any one time, provided that a minimum of 30 birds per flock, with a minimum of 15 birds per pen, whichever is greater, is tested each time and a total of at least one percent of the birds, or a maximum of 60 birds, is tested within each 90-day period.

* * * * *

7. Section 445.44 would be amended by adding a new paragraph to read as follows:

§ 445.44 Terminology and classification; States.

* * * * *

(c) *U.S. M. Gallisepticum Clean State, Turkeys.* (1) A State will be declared a U.S. M. Gallisepticum Clean State, Turkeys when it has been determined by the Service that:

(i) No M. gallisepticum is known to exist nor to have existed in turkey breeding flocks in production within the State during the preceding 12 months;

(ii) All turkey breeding flocks in production are classified as U.S. M. Gallisepticum Clean or have met equivalent requirements for M. gallisepticum control under official supervision;

(iii) All turkey hatcheries within the State handle products which are classified as U.S. M. Gallisepticum Clean or have met equivalent requirements for M. gallisepticum control under official supervision;

(iv) All shipments of turkey products other than those classified as U.S. M. Gallisepticum Clean, or equivalent, into the State are prohibited;

(v) All persons performing poultry disease diagnostic services within the State are required to report to the Official State Agency within 48 hours the source of all turkey specimens that have been identified as being infected with M. gallisepticum;

(vi) All reports of M. gallisepticum infection in turkeys are promptly followed by an investigation by the Official State Agency to determine the origin of the infection;

(vii) All turkey flocks found to be infected with M. gallisepticum are quarantined until marketed under supervision of the Official State Agency.

(2) Discontinuation of any of the conditions described in paragraph (c)(1) of this section, or if repeated outbreaks of M. gallisepticum occur in turkey breeding flocks described in paragraph (c)(1)(ii) of this section, or if an infection spreads from the originating premises, the Service shall have grounds to revoke its determination that the State is entitled to this classification. Such action shall not be taken until a thorough investigation has been made by the Service and the Official State Agency has been given an opportunity for a hearing.

8. Section 445.52 would be amended by adding a new paragraph to read as follows:

§ 445.52 Participation.

* * * * *

(b) Hatching eggs produced by primary breeding flocks shall be fumigated according to the procedures described in § 447.25(a) of this chapter: *Provided,* That alternative sanitizing procedures may be used with the approval of the Official State Agency in each specific instance and with the general concurrence by the Service in the policy adopted by the Official State Agency.

PART 447—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

9. Section 447.43(a) would be amended and paragraphs (b) and (c) would be revised to read as follows:

§ 447.43 General Conference Committee.

(a) The General Conference Committee shall consist of the Assistant Secretary of Agriculture for Conservation, Research, and Education, or his designee, one member-at-large who is a participant in the National Poultry Improvement Plan and who shall be designated as vice chairman, and one member to be elected, as provided in paragraph (b) of this section, from each of the following regions:

* * * * *

(b) The regional Committee members and their alternates will be elected by the official delegates of the respective regions and the member-at-large will be elected by all official delegates. There shall be at least two nominees for each position, and the voting shall be by secret ballot.

(c) Three regional members shall be elected at each Plan Conference. All members shall serve for a period of four years, subject to the continuation of the Committee by the Secretary of Agriculture, and may not succeed themselves. When there is a vacancy for the member-at-large position, the General Conference Committee shall make an interim appointment and the appointee shall serve until the next Plan Conference at which time an election will be held.

* * * * *

§ 447.45 [Amended]

10. Section 447.45 would be amended by deleting the third sentence.

Done at Washington, D.C., this 24th day of November 1978.

RALPH J. MCCRACKEN,
Acting Director,
Science and Education.

[FR Doc. 78-33607 Filed 11-30-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release No. 34-15355; File No. S7-654]

SECURITIES CONFIRMATIONS

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Commission is extending the time for comment on proposed rulemaking to require securities dealers to disclose on customer confirmations the mark-up or mark-down or similar remuneration received in a "riskless" principal transaction in debt securites. The comment period currently expires on December 1, 1978.

DATES: Comments must be received on or before January 15, 1979.

ADDRESSES: Interested persons should submit three copies of their written views and comments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 and should refer to File No. S7-654. All submissions will be made available for public inspection in the Commission's Public Reference Section, Room 6101, 1100 L Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Jeffrey L. Steele, Esq., Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, 202-755-7587.

SUPPLEMENTARY INFORMATION: On October 6, 1978, the Commission issued Securities Exchange Act Release No. 15220 [1] announcing proposed Rule 15c2-12 and proposed amendments to Securities Exchange Act Rule 10b-10 (17 CFR 240.10b-10). Rule 10b-10 prescribes confirmation delivery and disclosure requirements applicable to brokers and dealers effecting transactions in securites for or with customers.[2] The proposed amendment to Rule 10b-10 would require brokers and dealers trading with customers as principal to disclose the amount of any mark-up or mark-down or similar remuneration received in a "riskless" principal transaction in debt securities other than municipal securities. Proposed Rule 15c2-12 would establish an analogous confirmation disclosure requirement for transactions in municipal securities.

The Commission has received a number of requests to extend the comment period. In view of the complexity and possible impacts of the rulemaking proposal, the Commission has determined to extend the comment period until January 15, 1979.

By the Commission.

SHIRLEY E. HOLLIS,
Assistant Secretary.

NOVEMBER 27, 1978.

[FR Doc. 78-33599 Filed 11-30-78; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 175 and 189]

[Docket No. 78N-0112]

2-NITROPROPANE

Proposed Removal Farm Food Additive Use

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the food additive regulations by deleting provisions for use of 2-nitropropane as a component of adhe-

[1] 43 FR 47538 (1978).

[2] The adoption of Rule 10b-10 was announced by the Commission in Securities Exchange Act Release No. 13508 (May 5, 1977), 42 FR 25318 (1977). In Securities Exchange Act Release No. 15219 (Oct. 6, 1978), 43 FR 47495 (1978), the Commission announced the adoption of amendments to Rule 10b-10.

sives intended to contact food and by listing it as a substance prohibited from addition to human food. This action is taken because the Commissioner of Food and Drugs, having evaluated available data, has concluded that 2-nitropropane is a carcinogen in test animals.

DATES: Comments by January 2, 1979. The Commissioner of Food and Drugs expects to issue final regulations based on this proposal no later than March 1, 1979, which shall be effective upon publication.

ADDRESS: Written comments (preferably four copies) to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 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 St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Section 175.105 provides for the use of 2-nitropropane as a component of food-packaging adhesives under certain prescribed conditions. FDA has received a report by the Department of Health, Education, and Welfare/National Institute for Occupational Safety and Health (HEW/NIOSH) entitled "Chronic Inhalation Exposure of Rats and Rabbits to Nitromethane and 2-Nitropropane." A synopsis of the report is contained in the NIOSH "Current Intelligence Bulletin: 2-nitropropane" dated April 25, 1977. This bulletin states:

In an inhalation study conducted by Huntingdon Research Center under a NIOSH contract (HEW/NIOSH Project No. 210-75-0039), Sprague-Dawley male rats and New Zealand White male rabbits were exposed to commercial grade [ca. 94.5% pure] 2-nitropropane for seven hours per day, five days per week. One group of fifty rats and fifteen rabbits was expsoed to 207 ppm 2-nitropropane; a second group of the same size was exposed to 27 ppm, while group was maintaned as a control. Ten rats from each group were killed after exposure periods of two days, ten days, one month, three months, and six months. Liver neoplasms, described as hepatocellular carcinoma or hepatic adenoma, were observed in all ten rats killed after six months of exposure to 207 ppm 2-nitropropane. No tumors were observed in any other animals in this study, including controls. However, hepatocellular hypertrophy, hyerplasia, and necrosis were reported in rats exposed to 207 ppm 2-nitropropane for three months. In addition, elevated liver weights were found in rats exposed to 207 ppm 2-nitropropane for one, three, and six months. Liver histopathology, as well as the liver weights, of rats exposed to 27 ppm 2-nitropropane did not differ from controls.

Copies of the HEW/NIOSH report and the "Current Intelligence Bulletin: 2-nitropropane" have been placed on public display at the office of the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, and may be seen Monday through Friday from 9 a.m. to 4 p.m., except on Federal legal holidays.

Having evaluated the available data, the Commissioner concludes that the HEW/NIOSH report demonstrates that 2-nitropropane is a carcinogen in test animals. He recognizes that the test was done by inhalation, but the data show that the tumor site is not the lung but the liver, which would indicate systemic absorption. In view of this, he finds that permitting continued use of 2-nitropropane as a food additive is no longer warranted. The Commissioner therefore proposes to amend the food additive regulations to delete provisions for use of 2-nitropropane as a component of fool-packaging adhesives, and to list 2-nitropropane as a substance prohibited from addition to human food. The Commissioner expects to issue the final regulation prohibiting the use of 2-nitropropane as a food additive no later than March 1, 1979, which shall be effective upon publication under section 409(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348 (e)).

The Commissioner is not aware of any data showing that 2-nitropropane used as a food additive is a human carcinogen. He advises that only small amounts of 2-nitropropane remain in food-packaging adhesives from its regulated use. Furthermore, only a small amount of 2-nitropropane could migrate into food from food-packaging adhesives. Therefore, the Commissioner concludes that the potential risk to the public health is not sufficient to require removal from the market of food-contact articles containing 2-nitropropane or the issuance of a public warning against the use of these products. Consequently, the Commissioner is of the opinion that the public health would be adequately served by permitting the use of existing stocks of products containing 2-nitropropane that were manufactured prior to the effective date of the final regulation but prohibiting any future use of 2-nitropropane as a food additive.

Accordingly, the FDA is proposing to amend § 175.105 *Adhesives* (21CFR 175.105), by deleting the use of 2-nitropropane currently permitted in this section, and to amend Part 189, *Substances prohibited from use in human food* (21 CFR Part 189), by adding a new section covering 2-nitropropane.

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

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 402, 409, 701, 52 Stat. 1046-1047 as amended, 1055-1056 as amended, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 342, 348, 371)) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Parts 175 and 189 of Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

§ 175.105 [Amended]

1. In Part 175, § 175.105 *Adhesives* is amended by deleting the item "2-nitropropane" from the substances listed in paragraph (c)(5).

2. In Part 189, Subpart D is amended by adding a new section to read as follows:

§ 189.310 2-Nitropropane.

(a) 2-Nitropropane is the chemical $C_3H_7NO_2$ [Chemical Abstracts Registry Service No. 79-46-9]. It is a synthetic chemical, classified as a flammable liquid, and it is not found in natural products at levels detectable by the official methodology. It has been used in the solvent systems for adhesives.

(b) Food containing any added levels of 2-nitropropane is deemed to be adulterated in violation of the act, based upon an order published in the FEDERAL REGISTER of (insert date of publication of final order in the FEDERAL REGISTER).

Interested persons may, on or before January 2, 1979, submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this proposal will not have a major economic impact as defined by Executive Order 11821 (amended by Excutive Order 11949) and OMB Circular A-107. A copy of the ecomomic impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Dated: November 22, 1978.

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

[FR Doc. 78-33403 Filed 11-30-78; 8:45 am]

[4110-03-M]

[21 CFR Part 352]

[Docket No. 78N-0038]

SUNSCREEN DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Proposed Rulemaking; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Extension of Comment Period.

SUMMARY: This document extends to December 15, 1978, the comment period on the proposal to establish conditions for the safety, effectiveness, and labeling of over-the-counter (OTC) suncreeen drug products. The action is being taken to allow more time for the collection and assessment of data to provide for more meaningful comments on the issue.

DATE: Written comments by December 15, 1978.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fisher Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of August 25, 1978 (43 FR 38206), the Commissioner of Food and Drugs issued a proposal to establish conditions for the safety, effectiveness, and labeling of sunscreen drug products for over-the-counter (OTC) human use. The proposed rule, based on the recommendations of the Panel on Review of Topical Analgesic including antirheumatic, otic, burn, and sunburn treatment and prevention drugs is part of the Food and Drug Administration's ongoing review of OTC drug products. Interested persons were given until November 24, 1978 to comment on the proposal.

In response to the proposal, the Cosmetic, Toiletry and Fragrance Association, Inc., on behalf of its members, requested an extension of the comment period. The association requested a 21-day extension so as to be able to develop a response to the proposal at an association meeting that could not be scheduled before November 24, 1978.

The Commissioner has considered the request and finds that an extension of the comment period is in order.

Accordingly, the comment period is extended to December 15, 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: November 24, 1978.

WILLIAM F. RANDOLPH
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-33510 Filed 11-30-78 8:45 am]

[4110-03-M]

[21 CFR Parts 436 and 446]

[Docket No. 78N-0257]

TETRACYCLINE

Revised Standard Response Line Concentrations; Correction

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule; Correction.

SUMMARY: In FR Doc. 78-26951 appearing at page 44864 in the FEDERAL REGISTER for Friday, September 29, 1978, the following corrections are made on page 44865 in § 436.106(a):

1. The fourth column of the table is corrected by listing "Distilled water" for the items "Methacycline" and "Rolitetracycline."

2. The seventh column of the table is corrected by listing "Distilled water" for the items "Chlortetracycline," "Demeclocycline," "Doxycycline," "Methacycline," "Minocycline," "Oxytetracycline," "Rolitetracycline," and "Tetracycline."

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

John Richards, Federal Register Writer (HFC-11), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

Dated: November 21, 1978.

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

[FR Doc. 78-33423 Filed 11-30-78; 8:45 am]

[4310-02-M]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 32a]

ADULT EDUCATION

NOVEMBER 20, 1978.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Proposed rule.

SUMMARY: It is proposed to add a new Part 32a to Subchapter E, Chapter 1 of Title 25 of the Code of Federal Regulations. These regulations have been prepared as a result of a legislative intent that the Bureau of Indian Affairs operate an educational program for Indian adults. These regulations will govern the administration of programs of Adult Education within the Bureau of Indian Affairs.

DATE: Comments must be received on or before January 2, 1979.

ADDRESSES: Mail written comments to: Assistant Secretary—Indian Affairs, Attn: Director of Indian Education Programs, 1951 Constitution Ave. NW., Washington, D.C. 20245. Deliver hand carried comments to: Assistant Secretary—Indian Affairs, Attn: Director of Indian Education Programs, 18th and C Sts. NW., Department of the Interior, Room 3512, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Mary F. Asbill, Bureau of Indian Affairs, Office of Indian Education Programs, 18th and C Sts. NW., Department of the Interior, Room 3518, Washington, D.C., Telephone 202-343-7387.

SUPPLEMENTARY INFORMATION: Monies have been appropriated, identified and allotted to Bureau Area Offices since Fiscal Year 1955. These rules are being proposed to give guidance to the administration of those funds. The rules will insure that the Bureau Adult Education Program will provide educational opportunities and learning experiences for adult Indians to enable them to gain skills needed to improve their ability to function as individuals and as members of families and communities.

The authority for the Assistant Secretary to issue these rules is contained under the Act of April 30, 1908, (35 Stat. 72). This notice is published in exercise of authority delegated by the Secretary of Interior to the Assistant Secretary—Indian Affairs by 230 DM 2.

It has been determined that these proposed regulations are not a major federal action within the scope of the

National Environmental Policy Act of 1969, 42 U.S.C. 4223(2)(c).

The primary author of this document is Mary F. Asbill, Education Specialist, Office of Indian Education Programs, Bureau of Indian Affairs, Washington, D.C., 202-343-7387.

It is proposed to add a new Part 32a to Subchapter E, Chapter 1 of Title 25 of the Code of Federal Regulations to read as follows:

PART 32a—ADULT EDUCATION

Sec.
32a.1 Purpose and scope.
32a.2 Definitions.
32a.3 Annual program planning.
32a.4 Contracting Adult Education Program funds.
32a.5 Annual program reports.

AUTHORITY: the Act of April 30, 1908, 35 Stat. 72, 25 U.S.C. 295.

§ 32a.1 Purpose and Scope.

This Part governs the expenditure of funds appropriated for the Adult Education programs of the Bureau of Indian Affairs. It gives guidance to educational opportunities and learning experiences for adult Indians which are designed to improve their ability to function as individuals and members of communities.

This Part applies to all Bureau Adult Education programs whether operated under contract or otherwise; except as otherwise provided for by law or regulation.

§ 32a.2 Definitions.

As used in this Part:

(a) "Assistant Secretary" means the Assistant Secretary—Indian Affairs, Department of the Interior or his authorized representative.

(b) "Adult Education" means programs that will enable adults to: (1) become functionally literate; (2) pass the General Equivalency Diploma test or otherwise raise their levels of educational achievement; (3) obtain employment or to improve their employment status through education and training; and (4) enable them to meet other individual educational and/or training needs or interests.

(c) "Adult Student" is a person who is 16 years of age or older and is not already enrolled in a formal education program.

(d) "Indian Tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(e) "Indian" means a person who is a member of an Indian tribe.

§ 32a.3 Annual program planning.

For each Fiscal Year, the Area, Agency or Tribal contractor responsible for establishing classes or programs for adult Indians will develop a written plan which will encompass the following:

(a) An annual needs assessment which will be conducted within the community or communities where Bureau Adult Education programs are to be funded. This annual assessment will determine the types of programs needed by community members, the number of students wishing to enroll, and the time and or day most desired for programs to be held.

(b) Establish priorities for types of programs;

(c) Program objectives to be met;

(d) Resources to be used (staff, materials, facilities and funds);

(e) Activities to meet program objectives; and

(f) Scheduled evaluation of activities.

This annual plan shall be on file in the originating office and in the bureau of Indian Affairs Area Director's office. For contracting purposes, the annual plan shall become a part of the negotiated contract.

§ 32a.4 Contracting Adult Education Program funds.

Contracts for Adult Education Program funds will follow all appropriate rules and regulations including those contained in 25 CFR Subchapter Y Part 271 (Pub. L. 93-638, Indian Self-Determination and Education Assistnce Act of 1975).

§ 32a.5 Annual program reports.

All Adult Education programs funded under this Part will make an annual report to the Director, Office of Indian Education Programs, BIA. Reporting forms and instructions will be available in each Bureau Area and Agency office.

It is hereby certified that the economic and inflationary impacts of this proposed regulation have been carefully evaluated in accordance with Executive Order 11821. The Assistant Secretary—Indian Affairs has determined that the provisions of Executive Order 11821 do not apply.

FORREST J. GERARD,
Assistant Secretary,
Indian Affairs.

[FR Doc. 78-33679 Filed 11-30-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 50]

[FRL 985-6]

REVIEW OF THE CARBON MONOXIDE AIR QUALITY STANDARD

Advance Notice of Proposed Rulemaking

AGENCY: Environmental Protection Agency.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: On April 30, 1971, the Environmental Protection Agency published in the FEDERAL REGISTER (36 FR 8186) a National Ambient air Quality Standard for carbon monoxide. That standard was republished on November 25, 1971 and transferred to Part 50 of Title 40 of the Code of Federal Regulations (36 FR 22384, 40 CFR § 50.8). Both the primary (health-based) and secondary (welfare-based) standards were set at 40 milligrams per cubic meter (35 ppm) maximum 1-hour and 10 milligrams per cubic meter) (9 ppm) maximum 8-hour, concentrations not to be exceeded more than once per year. The scientific, technical, and medical basis for these standards are contained in the current air quality criteria document for carbon monoxide. This document (AP-62) was published by the U.S. Department of Health, Education, and Welfare in March 1970.[1]

Pursuant to the provisions of Sections 108 and 109(d) of the Clean Air Act, as amended, EPA is now reviewing, updating, and revising the AP-62 criteria document for carbon monoxide. Upon completion of this process, a draft of the revised document will be available for review by interested members of the public and will be submitted to EPA's Science Advisory Board for review. A FEDERAL REGISTER notice will announce its availability, which is anticipated by late November. In addition, as EPA develops issue papers relating to the standard review, the public will also be given notice through the FEDERAL REGISTER of the status and availability of these papers. The public will be provided opportunity to comment through public forums and/or written comments.

FOR FURTHER INFORMATION CONTACT:

Joseph Padgett at Environmental Protection Agency, Strategies and Air Standards Division (MD-12), Research Triangle Park, North Carolina 27711; telephone (919) 541-5204.

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[1] Not published in the FEDERAL REGISTER. Copies are available at the EPA Library (MD35), Research Triangle Park, N.C. 27711.

Dated: November 21, 1978.

DOUGLAS COSTLE,
Administrator.

[FR Doc. 78-33463 Filed 11-30-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 21049; RM-2749]

COMMERCIAL TELEVISION NETWORK PRACTICES AND ABILITY OF STATION LICENSEES TO SERVE THE PUBLIC INTEREST

Further Notice of Inquiry; Correction

AGENCY: Federal Communications Commission.

ACTION: Erratum (Correction).

SUMMARY: This action corrects errors that occurred in the heading of the Further Notice of Inquiry concerning Commercial Television Network Practices, FR Doc. 78-30279, published in the FEDERAL REGISTER on October 26, 1978, at 43 FR 50126.

DATES: Comments must be received on or before December 1, 1978 and reply comments must be received on or before December 15, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Rebecca A. Brown, Rules Office, Telephone: 202-632-7024.

Released: November 24, 1978.

In the matter of Commercial Television Network Practices and Ability of Station Licensees to Serve the Public Interest, Docket No. 21049, (RM-2749).[1]

[1]See 43 FR 50126, October 26, 1978.

The Further Notice of Inquiry in the above entitled matter, (FCC 78-736, released October 20, 1978), is modified by the following corrections:

(a) Adding "(RM-2749)" directly underneath "Docket No. 21049" in the heading;

(b) Amending the caption to read "Commercial Television Network Practices and Ability of Station Licensees to Serve the Public Interest."

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-33695 Filed 11-30-78; 8:45 am]

[6712-01-M]

[47 CFR Part 97]

[Gen. Docket No. 78-250]

ADMINISTRATION OF TELEGRAPHY EXAMINATIONS TO HANDICAPPED APPLICANTS FOR OPERATOR LICENSES IN THE AMATEUR RADIO SERVICE

Order extending time for filing comments and reply comments

AGENCY: Federal Communications Commission.

ACTION: Order Extending Time to File Comments.

SUMMARY: The FCC is inquiring into the administration of its telegraphy examinations to handicapped persons who apply for amateur radio licenses. The comment period ends November 30, 1978. Mr. Norman Kaplan has petitioned to extend the comment period. The comment period is being extended to encourage as wide a participation in the proceeding as possible.

DATES: The comment period is extended to March 30, 1979. The reply comment period is extended to April 30, 1979.

ADDRESSES: Send comments to: The Secretary, FCC, 1919 "M" Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Cassler, Personal Radio Division, Safety and Special Radio Services Bureau, 202-634-6620.

SUPPLEMENTARY INFORMATION: See attached document.

Adopted: November 21, 1978.

Released: November 24, 1978.

In the matter of the administration of telegraphy examinations to handicapped applicants for operator licenses in the Amateur Radio Service, Gen Docket No. 78-250.[1]

1. On August 24, 1978, the Commission released a Notice of Inquiry into the administration of telegraphy examinations to handicapped applicants for operator licenses in the Amateur Radio Service. Comments were due no later than November 30, 1978. Reply comments were due no later than December 29, 1978.

2. A petition to extend the comment period to March 30, 1979 was submitted by Mr. Norman Kaplan of the Disabled American Veterans, North Miami Beach, Florida. Mr. Kaplan cites the need for as many handicapped persons to participate in the proceeding as possible. Because of the special nature of this proceeding, we agree with petitioner.

3. Accordingly, the Commission, by the Chief, Safety and Special Radio Services Bureau, pursuant to delegated authority granted to him by § 0.331 orders that the comment period and the reply comment period in General Docket No. 78-250 are extended to March 30, 1979, and April 30, 1979, respectively.

CARLOS V. ROBERTS,
Chief, Safety and Special Radio Services Bureau.

[FR Doc. 78-33714 Filed 11-30-78; 8:45 am]

[1]See 43 FR 37729, August 24, 1978.

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.

[3410-05-M]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

1978 WHEAT AND BARLEY CROPS

Determinations Regarding the Proclamation of National Program Acreages

AGENCY: Agricultural Stabilization and Conservation Service.

ACTION: Notice of Determination of National Program Acreages for the 1978 Crops of Wheat and Barley.

SUMMARY: This notice is to proclaim a revised national program acreage for the 1978 crops of wheat and barley in order to determine the program allocation factor for these commodities. This action is taken in accordance with applicable provisions of the Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977. The provisions of the 1949 Act, as amended, authorize the Secretary of Agriculture, based on latest information, to revise the national program acreage which he initially proclaims by August 15 (for wheat) and November 15 (for barley) of each calendar year for the crop harvested in the next succeeding calendar year.

DATE: December 1, 1978.

ADDRESSES: Production Adjustment Divison, 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 revise the 1978-crop barley and wheat national program acreages first proclaimed for the purpose of determining the national allocation factor for such commodities as authorized in Sections 105A(d)(1) and 107A(d)(1) of the Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977 (hereinafter referred to as the "Act"). These provisions authorize the Secretary to revise the national program acreage which he initially proclaimed for any crop year for the commodity for the purpose of determining the allocation factor if he determines that such revision is necessary based upon the latest available information. The Secretary has determined that the 1978-crop wheat and barley national program acreages shall be revised based on the latest available information. Therefore, it is essential that this decision be made effective as soon as possible since the proclamation of the revised national program acreages is required as soon as such decision is made. This decision directly affects other decisions to be made by the Secretary on November 30, 1978; therefore, it is impracticable and contrary to the public interest to comply with the 30-day effective date requirement of 5 U.S.C. 553 and the 60-day public comment period requirement of Executive Order 12044. Therefore, this notice of determination shall become effective upon date published in the FEDERAL REGISTER.

NOTICE OF DETERMINATIONS

1. *Revised National Program Acreage for 1978-Crop Wheat.* It is hereby proclaimed that the final national program acreage for the 1978 crop of wheat shall be 58.8 million acres. The revised national program acreage is based on the following data:

(a) Estimated domestic consumption, 1978-79 (million bushels)	770
(b) Plus estimated exports, 1978-79 (million bushels)	1,150
(c) Minus estimated imports, 1978-79 (million bushels)	−2
(d) Minus adjustment to decrease stocks to desired level (million bushels)[1]	−76
(e) Divided by national weighted average farm program yield (bushels/acre)	31.3
(f) Equals: 1978 national program acreage (million acres)	58.8

[1]Desired carryover of U.S. wheat stocks is equal to 7.5 percent of world consumption of wheat. Such consumption during the 1977-78 marketing year is estimated to be 398.8 million metric tons (MMT) (399.0×0.075=29.9 MMT×36.74 (bushel conversion factor)=1,100 million bushels (desired level of U.S. carryover wheat stocks)). 1977-78 carryover wheat stocks were 1,176 million bushels resulting in a 76 million bushel stock adjustment.

2. *Revised National Program Acreage for 1978-Crop Barley.* It is hereby proclaimed that the final national program acreage for the 1978 crop of barley shall be 7.5 million acres. The revised national program acreage is based on the following data:

(a) Estimated domestic consumption, 1978-79 (million bushels)	347
(b) Plus estimated exports, 1978-79 (million bushels)	40
(c) Minus estimated imports, 1978-79 (million bushels)	−10
(d) Minus adjustment to decrease stocks to desired level (million bushels)[1]	−21
(e) Divided by national weighted average farm program yield (bushels/acre)	47.6
(f) Equals: 1978 national program acreage (million acres)	7.5

[1]Desired carryover of U.S. feed grain stocks is equal to 5.7 percent of world consumption of coarse grains. Such consumption during the 1977-78 marketing year is estimated to be 688.0 million metric tons (MMT) (688.0×0.057=39.2 MMT (desired level of U.S. feed grain carryover stocks)). The barley component of the feed grain total has been determined to be 150 million bushels (3.3 MMT×45.93 (bushel conversion factor). 1977-78 carryover barley stocks were 171 million bushels resulting in a 21 million bushel stock adjustment.

NOTE.—It has been determined that this document does contain a major proposal requiring preparation of an Impact Analysis Statement. The Impact Analysis Statement will be available from Bruce R. Weber (ASCS), 202-447-7987 after December 15, 1978.

NOTE.—The ASCS, to meet requirments of the National Environmental Policy Act (P.L. 91-190, 45 U.S.C. 4321 et seq.), has determined that the impact on the human environment is not significantly different from the impact discussed in an Environmental Impact Statement filed for the initial announcement of the 1978 program, and therefore no additional statement is necessary.

Signed at Washington, D.C., on November 24, 1978.

CAROL TUCKER FOREMAN,
Acting Secretary.

[FR Doc. 78-33488 Filed 11-30-78; 8:45 am]

[3410-15-M]

Rural Electrification Administration

DRAFT ENVIRONMENTAL IMPACT STATEMENT

Notice is hereby given that the Rural Electrification Administration (REA) intends to prepare a draft environmental impact statement in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969 in connection with a request from Alabama Electric Cooperative (AEC), P.O. Box 550, Andalusia, Alabama, 36420, (AC 205-222-2571) to use REA guaranteed loan funds which would provide financing for AEC's obtaining a leasehold interest in properties in Alabama containing coal reserves presently being mined. AEC proposes to have the existing mining company continue to mine for AEC's account under proposed contractual arrangements subject to REA approval. The properties involved are located in Lamar, Winston, Marion and Franklin Counties. It is anticipated that the

coal will be transported by barge on the Black Warrior and Tombigbee Rivers and/or by railroad to power plants owned by AEC.

AEC as part of its ongoing search for sources of coal for its power plants has explored viable alternatives for obtaining coal supply and their environmental impacts to determine the most effective, economical and environmentally acceptable arrangements for obtaining reliable sources of coal to meet its needs.

REA will consider the need for the supply of coal and the environmental effects resulting from the proposed contractual arrangements described above, as well as the environmental effects of other alternatives.

Interested persons are invited to submit comments, questions and/or recommendations which may be helpful in preparing the draft environmental impact statement. Comments should be forwarded to Mr. Richard F. Richter, Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C., 20250. Additional information may be obtained from AEC at the address shown above.

Any loan or loan guarantee which may be made pursuant to AEC's application to REA will be subject to, and release of funds contingent upon REA's reaching satisfactory conclusions with respect to, environmental effects. Final action will be taken only after compliance with environmental statement procedures required by the National Environmental Policy Act of 1969.

Dated at Washington, D.C., this 27th day of November, 1978.

ROBERT W. FERAGEN,
Administrator, Rural Electrification Administration.

[FR Doc. 78-33606 Filed 11-30-78; 8:45 am]

[6325-01-M]

CIVIL SERVICE COMMISSION

REVISION TO QUALIFICATION STANDARD

Land Surveying Series, GS-1373

AGENCY: U.S. Civil Service Commission.

ACTION: Notice.

SUMMARY: The Civil Service Commission has revised the basic requirements for qualification as a land surveyor within the Federal service. The changes will facilitate the procurement of qualified candidates at grade levels GS-5 through GS-15 for land surveyors for the Federal service.

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Donald G. Brauer, Chief, Science and Engineering Occupations Section, Standards Division, Bureau of Policies and Standards, U.S. Civil Service Commission, 1900 E Street NW., Washington, D.C. 20415, 202-632-5612.

SUPPLEMENTARY INFORMATION: The current qualification requirements were published in 1970 before the present level of consistency in registration requirements among the Boards of Registration in the States, Territories, and the District of Columbia was reached. Consistency in requiring subject matter intensive written examinations has now been achieved which allows the substitution of successful completion of the examinations for the currently required credit hours.

LAND SURVEYING SERIES, GS-1373

BASIC REQUIREMENTS FOR ALL POSITIONS GS-5 THROUGH GS-15

Add alternative C.

C. Alternatives as described in paragraphs A or B, except that the requirement of up to 30 semester hours, including the 6 semester hours of surveying, may be satisfied by a current registration as a land surveyor in a State, Territory, or the District of Columbia, obtained by written examination. Such registration must have been obtained under conditions outlined in the National Council of Engineering Examiners Unified Model Law for Registration of Surveyors. Candidates wishing to be considered under this alternative must show evidence of registration based on successful completion of the written examinations. Registrations granted prior to adoption of the Uniform Law by the State, Territory, or District of Columbia are not acceptable under this option.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-33489 Filed 11-30-78; 8:45 am]

6325-01-M]

IMPROVING COMMISSION REGULATIONS

Report on Implementation of Executive Order 12044

AGENCY: United States Civil Service Commission.

ACTION: Notice of Final Report on Implementation of Executive Order 12044.

SUMMARY: The Civil Service Commission published its draft report on implementation of Executive Order 12044, "Improving Government Regulations" for public comment on May 23, 1978 (43 FR 22157). The Commission received only one response to its draft report. This response was favorable and raised no major issues. Accordingly, the Commission has adopted its draft report as its final report on implementation of Executive Order 12044. This report outlines:

(1) A description of the process for developing regulations;

(2) The changes made to comply with the order;

(3) Proposed criteria for defining significant regulations;

(4) Reasons for not establishing criteria for determining which regulations require regulatory analyses;

(5) Proposed criteria for selecting existing regulations for review.

FOR FURTHER INFORMATION CONTACT:

Nathaniel L. Brown, Civil Service Commission, Bureau of Policies and Standards, 1900 E Street NW., Washington, D.C. 20415, (202-632-5623).

The Civil Service Commission's regulatory process is described in the appendix. The following changes have been made to comply with the Executive order. The Commission has:

(1) Developed a procedure to provide an opportunity for early participation by interested parties;

(2) Developed proposed criteria for identifying significant regulations;

(3) Established a requirement that proposed significant regulations are to be published in the FEDERAL REGISTER for public comment in addition to its current practice of obtaining comments from Federal agencies, labor organizations, and other interested parties directly;

(4) Developed a procedure for publishing a semiannual agenda of regulations in the FEDERAL REGISTER; and

(5) Developed proposed criteria for selecting exisitng regulations for review.

These changes are described in the appendix.

REGULATORY ANALYSIS

Section 3(a) of the Executive order requires that each agency establish criteria for determining which regulations require regulatory analysis. The Commission is the central personnel agency of the executive branch of the Government. The Commission, as directed or authorized by statute or by order of the President, serves as the personnel management staff agency of the President. In this capacity, the Commission develops and issues regulations for personnel management operations in executive agencies. The Commission does not believe it likely that a statute, Executive order or civil

service rule would make it necessary for the Commission to issue regulations that would so affect the general economy as to make a regulatory analysis appropriate. However, the Commission may, at its discretion, prepare a regulatory analysis on any proposed regulation. Consequently specific criteria for determining which regulations require regulatory analysis are not established.

REVIEW OF EXISTING REGULATIONS

The Commission has established criteria for review of existing regulations. Those criteria are described in section 4 of the appendix. The Commission will publish a list of existing regulations for review in the FEDERAL REGISTER on December 1, 1978.

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

APPENDIX—PROCEDURES FOR DEVELOPING, SIMPLIFYING AND REVIEWING REGULATIONS

1. PURPOSE. The purposes of this chapter are to establish policy and objectives for simplifying and improving the quality of regulations; prescribe procedures for issuing new regulations and for reviewing existing regulations; and to assign responsibility for ensuring that the objectives of Executive Order 12044 are achieved. The requirements of this chapter do not apply to regulations that are issued in response to an emergency or which are governed by short-term statutory or judicial deadlines. In these cases, the intiating office shall include, for publication in the FEDERAL REGISTER, a statement of the reasons why it is impractical or contrary to the public interest for that office to follow the requirements of this chapter. Such a statement shall include the name of the official responsible for this determination.

2. POLICY. It is the policy of the Commission that regulations shall be as clear and simple as possible and shall be developed through a process which ensures that:

a. The need for and purposes of the regulations are clearly established;

b. The regulations are clear, precise, and understandable;

c. The regulations have been coordinated with all offices which have a program interest in them;

d. An opportunity exists for early participation and comment by Federal agencies and other interested parties;

e. Relevant issues are considered and analyzed;

f. Compliance costs, paperwork and other burdens on those who may be affected are minimized; and

g. Comments are considered and an adequate response is prepared.

3. RESPONSIBILITIES OF THE INITIATING OFFICES. a. "Initiating office" means each Commission office or organization which has responsibility for developing regulations for issuance by the Commission.

b. The head of each initiating office has primary responsibility for:

(1) Preparing a brief summary, early in the regulatory process, for the Commission on the issues and alternatives involved in the matter requiring regulation;

(2) Developing proposed regulations in accordance with the policy stated in this chapter;

(3) Ensuring that the public has an early and meaningful opportunity to participate in the development of regulations through a variety of ways;

(4) Ensuring that the public is given at least 60 days to comment on significant regulations unless circumstances require a shorter review period;

(5) Providing a brief statement of the reasons for a shorter time period when it is not possible to give the public at least 60 days to comment on significant regulations;

(6) Establishing and carrying out a systematic procedure for reviewing and revoking or revising existing regulations; and

(7) Informing the Commission on proposed or final regulations of the:

(a) Reason and legal authority for the regulation;

(b) Objective(s) of the regulation;

(c) Relevant issues involved and the alternatives explored for achieving the objectives of the regulation;

(d) Probable reporting requirements; and

(e) Opportunities for interested parties to participate in the regulatory process.

4. REVIEWING EXISTING REGULATIONS. a. Each initiating office shall establish procedures for periodically reviewing all their existing regulations and revoking or revising those regulations which it determines are not achieving their intended purpose.

b. In identifying existing regulations for review and possible revocation or revision and in determining the order in which they are to be reviewed, each initiating office shall consider:

(1) The nature and extent of complaints or suggestions about operations under the regulations;

(2) The continued need for the regulation;

(3) the need for eliminating conflicts and inconsistencies in its own regulations or those of other initiating offices;

(4) The length of time since the regulations have been evaluated or the degree to which the factors resulting in a need for regulation have changed;

(5) The burdens imposed on those directly or indirectly affected by the regulations; and

(6) The need to simplify or clarify the language of the regulations.

5. SIGNIFICANT REGULATIONS. Each initiating office shall use the following criteria in identifying which regulations are significant regulations.

a. A significant regulation is a regulation in which:

(1) A statute, Executive order or civil service rule to be implemented provides substantial discretion to the Commission over the practices, procedures or standards for achieving what is required;

(2) The coverage of State or local governments or individuals is on a national basis; or

(3) There is a substantial or recurring reporting requirement.

(b) Editorial changes to significant regulations such as a change in an office address, references cited, or changes made to simplify or clarify the language are not themselves significant regulations. However, an amendment which changes a practice, procedure, or standard of significant regulations may itself be a significant regulation.

c. When a regulation does not meet the criteria for a significant regulation, the initiating office shall include a statement to that effect at the time the regulations are proposed.

d. The Commission shall approve proposed or final significant regulations for publication in the FEDERAL REGISTER for public comment or adoption. In approving proposed or final significant regulations for public comment or adoption, the Commission will consider, as appropriate, whether:

(1) The proposed regulation is needed;

(2) The direct and indirect effects of the regulation have been adequately considered;

(3) Alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen;

(4) Public comments have been considered and an adequate response has been prepared;

(5) The regulation is written in plain English and is understandable to those who must comply with it;

(6) An estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation;

(7) The name, address and telephone number of a knowledgeable official is included in the publication; and

(8) A plan for evaluating the regulation after its issuance has been developed.

6. SEMIANNUAL AGENDA OF SIGNIFICANT REGULATIONS. a. Each initiating office shall submit to

the Issuance System Manager an agenda of significant regulations under development or review by May 1 and November 1 of each year.

b. The agenda shall describe the regulations being considered, the reason and legal basis for the action being taken, and the status of regulations previously listed on the agenda.

c. Each item on the agenda shall include the name and telephone number of a knowledgeable official.

d. The agenda also shall include existing regulations scheduled for review.

e. The Issuance System Manager shall prepare the regulatory agenda and submit it to the Commission for consideration and approval.

f. The Executive Assistant to the Commissioners shall publish the regulatory agenda in the FEDERAL REGISTER by June 1 and December 1 of each year.

7. PROCESS FOR DEVELOPING SIGNIFICANT REGULATIONS. The following is a brief description of the process for developing and issuing significant regulations. the items listed are the minimum steps necessary for compliance with Executive Order 12044.

a. Prior to developing draft regulations the initiating office prepares a brief summary early in the regulatory process to the Commission on the issues and alternatives involved in the matter requiring regulation.

b. The initiating office discusses the problems, statute, civil service rule, or Executive order with appropriate IAG Committees, labor organizations, or other interested parties for suggestions and recommendations.

c. The initiating office prepares draft regulations and circulates them among Commission offices and appropriate IAG Committees who have a program interest for comments and suggestions.

d. The initiating office forwards the draft regulations to the Commission for consideration and approval to publish in the FEDERAL REGISTER for public comment and additional consultation with Federal agencies, State and local governments as appropriate, labor organizations, or other interested parties.

e. The initiating office forwards the final version of the regulations with its response to the major issues raised in the public comments to the Commission for approval and publication in the FEDERAL REGISTER as final regulations.

[FR Doc. 78-33722 Filed 11-30-78; 8:45 am]

[3510-13-M]

DEPARTMENT OF COMMERCE

National Bureau of Standards

SIMPLIFIED PRACTICE RECOMMENDATION

Intent to Withdraw

In accordance with § 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10), notice is hereby given of the intent to withdraw Simplified Practice Recommendation R 3-60, "Metal Lath (Expanded and Sheet) and Metal Plastering Accessories."

It has been tentatively determined that this standard is technically inadequate and that revision would serve no useful purpose because the subject matter of R 3-60 is adequately covered by the American Society for Testing and Materials' standard ASTM C 847-77, "Standard Specification for Metal Lath" and the American National Standard Institute's standard ANSI A42.4-1967, "Specifications for Interior Lathing and Furring."

Any comments or objections concerning this intended withdrawal of this standard should be made in writing to Standards Development Services, National Bureau of Standards, Washington, D.C. 20234, on or before January 2, 1979. The effective date of withdrawal will not be less than 60 days after the final notice of withdrawal. Withdrawal action terminates the authority to refer to a published standard as a voluntary standard developed under the Department of Commerce procedures from the effective date of withdrawal.

Dated: November 28, 1978.

ERNEST AMBLER,
Director.

[FR Doc. 78-33673 Filed 11-30-78; 8:45 am]

[3510-13-M]

[COMM REQ 294 & 315]

VOLUNTARY PRODUCT STANDARD ACTION OF WITHDRAWAL

In accordance with § 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10), notice is hereby given of the withdrawal of Voluntary Product Standard PS 3-66, "TFE-Fluorocarbon (Polytetrafluoroethylene) Resin Skived Tape."

This withdrawal action is being taken for the reason that PS 3-66 is adequately covered by the American Society for Testing and Materials' standard ASTM D 3308, "Standard Specification for TFE-Fluorocarbon Resin Skived Tape," and duplication is inappropriate and not in the public interest. This action is taken if furtherance of the Department's announced intentions as set forth in the public notice appearing in the FEDERAL REGISTER of September 8, 1978, (43 FR 40050) to withdraw this standard.

The effective date for the withdrawal of this standard will be January 30, 1978. This withdrawal action terminates the authority to refer to this standard as a voluntary standard developed under the Department of Commerce procedures.

Dated: November 27, 1978.

ERNEST AMBLER,
Director.

[FR Doc 78-33601 Filed 11-30-78; 8:45 am]

[3510-12-M]

National Oceanic and Atmospheric Administration

ENVIRONMENTAL IMPACT STATEMENT PREPARED ON PROPOSED WASHINGTON COASTAL MANAGEMENT PROGRAM AMENDMENT NO. 1

Public Hearing

Notice is hereby given that the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold public hearings for the purpose of receiving comments on the Draft Environmental Impact Statement (DEIS) Prepared on the Proposed Washington Coastal Management Program Amendment No. 1: Deletion of the Evans Policy Statement.

The hearing schedule is:

DECEMBER 19, 1978

Peninsula College, Little Theatre, 1502 East Laurisden, Port Angeles, Washington. This hearing will begin promptly at 7:00 p.m.

DECEMBER 20, 1978

Federal Building, South Auditorium, 4th Floor, 915 2nd Avenue, Seattle, Washington. This hearing will be held in two sessions, from 1:30 p.m. until 4:00 p.m. and from 7:00 p.m. until 10:00 p.m.

The views of interested persons and organizations on the adequacy of the impact statement and/or the Amendment to the Washington Coastal Management Program are solicited, and may be expressed orally or in written statements. Persons or organizations wishing to be heard on this matter should contact the Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235 (phone: 202/632-5231), so that an appearance schedule may be prepared. In addition, requests for presentations will be accepted immediately prior to the hearing. Presentations are scheduled on a

first-come, first-served basis, and should be limited to ten minutes in order to assure that all views can be heard. Office of Coastal Zone Management staff may wish to question speakers following the conclusion of his/her statement. If time permits, additional statements (and general discussion) may be scheduled at the conclusion of presentations. No verbatim transcript of the hearing will be maintained; but staff present will record the general thrust of the remarks.

As part of his review of the Amendment to the Washington Coastal Management Program, the Assistant Administrator for Coastal Zone Management will consider fully all comments received at these hearings, as well as written statements submitted to, and received by OCZM on or before January 31, 1979. As part of the procedures leading toward approval of this amendment, a Final Environmental Impact Statement will be prepared pursuant to the National Environmental Policy Act of 1969 and its implementing guidelines which reflect his consideration of these comments. All written comments received by OCZM prior to the deadline will be included in the FEIS.

Dated: November 28, 1978.

R. L. CARNAHAN,
Acting Assistant Administrator for Administration.

[FR Doc. 78-33660 Filed 11-30-78; 8:45 am]

[3510-03-M]

Maritime Administration

RECONSTRUCTION OF FOUR MA DESIGN C5-S-75A CARGO VESSELS TO MA DESIGN C8-S-75C FULL CONTAINERSHIP VESSELS

Computation of Foreign Cost

Notice is hereby given of the intent of the Maritime Subsidy Board, pursuant to the provisions of Section 501 (a) of the Merchant Marine Act, 1936, as amended, to compute the estimated foreign cost of the reconstruction of four MA Design C5-S-75a cargo vessels to MA Design C8-S-75c full containership vessels.

Any person, firm or corporation having any interest (within the meaning of Section 501(a)) in such computations may file written statements by the close of business on December 12, 1978, with the Secretary, Maritime Subsidy Board, Maritime Administration, Room 3099B, Department of Commerce Building, 14th & E Streets, N.W., Washington, D.C. 20230.

Dated: November 28, 1978.

By order of the Maritime Subsidy Board, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 33711 Filed 11-30-78; 8:45 am]

[6820-33-M]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

IMPROVING GOVERNMENT REGULATIONS

Semiannual Agenda of Regulations

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Semiannual agenda of significant regulations under development or review.

SUMMARY: Pursuant to Section 2 of Executive Order 12044, the Committee is not planning to issue or review any significant regulations during the period December 1, 1978 through May 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. C. W. Fletcher, Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201, Telephone: 703/557-1145.

C. W. FLETCHER,
Executive Director.

[FR Doc. 78-33672 Filed 11-30-78; 8:45 am]

[6355-01-M]

CONSUMER PRODUCT SAFETY COMMISSION

UPHOLSTERED FURNITURE FLAMMABILITY

Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission staff has recommended that the Commission publish a proposed safety standard to address the possible hazards of ignition of upholstered furniture by cigarettes. Before deciding whether to propose a flammability standard, the Commission will hold a meeting to hear the views of representatives of the upholstered furniture industry, as well as of any other interested persons on the staff briefing package.

DATES AND ADDRESSES: The meeting will be on December 20, 1978 beginning at 9:30 a.m., at Room 2008 of the New Executive Office Building, 17th and G Streets, NW., Washington, D.C.

Any persons wishing to make presentations should contact Richard A. Danca, Office of the Secretary, Third floor, 1111-18th Street, NW., Washington, D.C., 202-634-7700 by December 13, 1978.

Copies of the staff briefing package are available at the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT:

L. James Sharman, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, 301-492-6453.

SUPPLEMENTARY INFORMATION: On September 15, 1977, the Commission found, preliminarily, that a mandatory standard is necessary to protect the public from the unreasonable risk of the occurrence of fire leading to death or personal infury, or significant property damage, associated with the cigarette ignition of upholstered furniture. Prior to reaching this decision, the Commission had reviewed (1) a draft proposed mandatory standard developed by the National bureau of Standards and submitted by Commission staff, (2) voluntary action proposals submitted by industry associations, and (3) a petition from the state of California (FP 77-2) that the Commission adopt the California upholstered furniture flammability standards as the national standard. At that time, FP 77-2 had not yet been evaluated by the staff as the California standard was still undergoing revision.

Upon making its preliminary finding, the Commission directed the staff to revise the draft standard in order to reduce the number and frequency of tests called for in the standard and to reduce the testing costs. The staff was directed to present briefing materials for such a revised standard, to evaluate voluntary action proposals by industry, and to evaluate petition FP 77-2.

The staff has recently completed these tasks and has submitted a briefing package to the Commission on upholstered furniture flammability. The staff recommends that the Commission publish the draft standard in the briefing package.

During the development of the briefing package, various industry groups have requested meetings to discuss issues regarding regulation of upholstered furniture flammability. Pursuant to these requests, the Commission has decided to hold a public meeting to hear the views of industry before deciding what action to take regarding cigarette ignition of upholstered furniture. The Commission is also interested in hearing the views of any other

persons who may have an interest in the issue.

Under the Flammable Fabrics Act and the Administrative Procedure Act which govern the issuance of regulations concerning flammable fabrics, the Commission is not required to provide an opportunity for oral presentations of views before a standard is proposed. However, the Commission believes it would be beneficial to hold a public meeting for the purpose of hearing the views of industry members and any other interested persons, including small businesses and consumers or representatives of consumer groups, before deciding on whether to publish the revised standard submitted by its staff, as a proposed standard.

Therefore, the Commission will hold a public meeting on December 20, 1978 from 9:30 a.m. to 5:00 p.m., in Room 2008, New Executive Office Building, 17th and G Streets, NW., Washington, D.C. for the purpose of hearing views on a possible upholstered furniture flammability standard. Those who wish to speak on the contents of the briefing package should advise Richard A. Danca, Office of the Secretary, Consumer Product Safety Commission, 1111-18th Street, NW., Washington, D.C. 20207 202-634-7700 before December 13, 1978 of the amount of time needed.

Time will be allotted by the Office of the Secretary depending on the number of requests received. The Commission requests that comments at the meeting focus on the contents of the staff briefing package, which is available at the Office of the Secretary.

Dated: November 29, 1978.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 78-33812 Filed 11-30-78; 8:45 am]

[6740-02-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RI77-108, RI78-48, RI78-62]

JOHN P. BOOTH & ASSOCIATES ET AL.

Order Granting Petition for Special Relief

NOVEMBER 22, 1978.

On June 23, 1977, John P. Booth & Associates (Booth) and on April 6, 1978, Sun Oil Company (Sun) filed petitions for special relief in Docket Nos. RI77-108 and RI78-48, respectively. On May 1, 1978 Atlantic Richfield Company (Atlantic) filed a petition for special relief in Docket No. RI78-62. The petitions were filed pursuant to Section 2.76 of the Commission's General Policy and Interpretations. All petitions requested a rate of 67¢/Mcf for gas sold to Northern Natural Gas Company (Northern) from the following wells: Bick No. 1, E. McMinimy No. 1, McMinimy No. 1, Swayze No. 1. The subject wells are located in Clark County, Kansas.

Booth, a small producer and operator of the property, owns a 40.0% net working interest. Sun, a large producer, owns a 13.6% net working interest in the property. Atlantic Richfield Company, a large producer, owns the remaining 29.8% net working interest in the property.

Booth and Sun amended their petitions on May 2, 1978. Atlantic amended its petition on May 22, 1978. The amended petitions request a rate of 58¢ plus applicable ad valorem taxes.

Booth's sale of gas is being made under a contract dated June 14, 1961, pursuant to a small producer certificate issued in Docket No. CS72-0371. Sun's sale of gas is made under a separate contract dated September 14, 1961, on file as Sun's FERC Gas Rate Schedule No. 395. Atlantic's sale is covered by two contracts dated August 18, 1961, and June 12, 1961, on file as Atlantic's FERC Gas Rate Schedule No. 462 and No. 234, respectively. The requested rate is contractually authorized under all contracts. Booth is currently collecting 35¢/Mcf while Sun and Atlantic are collecting 29.5¢/Mcf.

The petitioners propose to install a rental compressor at an estimated cost of $22,622.[1] Installation of compression will enable the production of the estimated 438,820 Mcf of gas remaining to be recovered over the next five years.

Booth filed data in support of the petition on the following dates: August 29, 1977, September 30, 1977, December 12, 1977, February 27, 1978, which has been clarified and refined through recent telephone conversations between staff and the working interest owners in regard to the project costs and proposed investment.

Staff has reviewed the detail filed in support of the proposed investment of $22,622, and, based thereon, finds the estimate to be acceptable. Staff has reviewed the applicants' annual estimated expenses of $31,176, and finds them to be reasonable. A 5% annual inflation factor was applied in projecting total estimated production expenses of $177,968 for the remaining productive life.

[1] Reflects site preparation cost, including a road, as well as compressor installation expense. The estimated cost excludes annual rental expense.

Staff has used the above costs along with the 365,445 Mcf of reserves, attributable to 100% of the net working interest in a traditional cost study.[2] The results of this analysis indicate that 58¢ per Mcf plus ad valorem tax will be required to allow the working interest owners to recover all costs associated with this project over its 5 year life including a 15% rate of return. Thus, the requested rate is cost supported.

Notices of the several petitions were issued and published in the FEDERAL REGISTER (Booth issued July 12, 1977, published in the FEDERAL REGISTER July 20, 1977 (42 FR 37237); Sun issued May 23, 1978, published in the FEDERAL REGISTER May 31, 1978 (43 FR 23644); Atlantic issued July 17, 1978, published in the FEDERAL REGISTER July 24, 1978 (43 FR 31964); Booth, Sun and Atlantic amendment issued September 25, 1978, published in the FEDERAL REGISTER October 5, 1978 (43 FR 46074)). No protests or petitions to intervene were filed in response to the notices.

We conclude, after studying the data submitted and the Staff's analysis thereof, that it is in the public interest to grant special relief to petitioners.

The Commission orders:

(A) The petitions of John P. Booth & Associates, Atlantic Richfield Company and Sun Oil Company, as amended are granted;

(B) John P. Booth & Associates, Sun Oil Company, and Atlantic Richfield Company be authorized to collect a total rate of 58¢/Mcf at 14.40 psia, including adjustments, plus applicable ad valorem taxes for the sale of the subject gas effective upon the date of the Commission order herein or date of completion of the proposed work, whichever is later, subject to the conditions set forth in paragraphs (C) and (D), below;

(C) Booth must file a statement signed by Northern Natural Gas Company that work has been completed to its satisfaction within 30 days of the effective date specified in paragraph (B) above;

(D) Booth, Sun, and Atlantic shall separately file a Notice of Independent Producer Rate Change in Docket No. CS72-0371, FERC Gas Rate Schedule No. 395, and FERC Gas Rate Schedules No. 462 and 234 respectively, within 30 days of the date of the order herein.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[2] See Appendix A, attached hereto.

Sun Oil Co., Docket No. RI78-48, Atlantic Richfield Co., Docket No. RI78-62, John P. Booth & Associates, Docket No. RI77-108, Wells: Bick No. 1, East McMinimy No. 1, McMinimy No. 1, Swayze No. 1, Sitka Unit, Clark County, Kans.

[Unit cost of gas]

Line No. and item	Amount
1. Net working interest volumes:	
2. Gas—Mcf at 14.40 lb/in ²a [1]	365,445
3. Liquids—bbl	0
4. Cost of production:	
5. Return on rate base [2]	$10,538
6. D.D. & A. [3]	22,622
7. Production expense [4]	177,968
8. Regulatory expense [5]	365
9. Total cost of production	211,493
10. Unit cost of gas (cents per/Mcf):	
11. Cost of production [6]	57.87
12. Production tax [7]	.09
13. Total unit cost [8]	57.96

[1]Net working interest volumes.
[2]Line 12 of sheet 3 times 0.15 times 5-year productive life.
[3]Line 6 of sheet 2.
[4]Estimated first year operating expense for four wells is $32,208 and includes $18,000 for compressor rental. The first year operating expense is escalated 5 pct per year.
[5]0.1 cent per Mcf.
[6]Line 9 divided by line 2.
[7]0.09 cent per Mcf.
[8]Excludes ad valorem taxes.

[Investment and depreciation]

Line No. and item	Amount
1. Investment:	
2. Remaining net book value	$0
3. Compressor installation costs	22,622
4. Total investment	22,622
5. Less salvage	0
6. Depreciable cost	22,622
7. Depreciation per unit [1]	0.061902

[1]Line 6 divided by 365,445 Mcf.

Sun Oil Co., Docket No. RT78-48, Atlantic Richfield Co., Docket No. RT78-62, John P. Booth & Associates, Docket No. RI77-108, Wells: Bick No. 1, East McMinimy No. 1, McMinning No. 1, Swayze No. 1, Sitka Unit, Clark County, Kans.

[Average annual investment and annual rate base]

Line No. and year (a) and (b)	Annual N.W.I. production (Mcf) (c)	Beginning of year investment (d)	Depreciation [1] (e)	End of year investment (f)	Average investment [2] (g)
1. Average investment:					
2. 1	103,827	$22,622	$6,427	$16,195	$19,409
3. 2	84,533	16,195	5,233	10,962	13,579
4. 3	69,142	10,962	4,280	6,682	8,822
5. 4	61,878	6,682	3,830	2,852	4,767
6. 5	46,065	2,852	2,852	0	1,426
7. Total	365,445		22,622		48,003
8. Average annual investment [3]					9,601
9. Annual rate base:					
10. Average annual investment					9,601
11. Average annual working capital allowance [4]					4,449
12. Total annual rate base					14,050

[1]Column (c) times line 7 of sheet 2.
[2](Column (d) plus column (f)) divided by 2.
[3]Column (g) of line 7 divided by 5-yr productive life.
[4]0.125 times line 7 of Sheet 1 divided by 5-yr productive life.

[FR Doc. 78-33560 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket Nos. G-4420, et al.]

Hassie Hunt Exploration Co.

CORPORATE NAME CHANGE

NOVEMBER 22, 1978.

Notice is hereby given that all certificates, rate schedules and pending applications and proceedings listed in the attached Schedule A are redesigned to reflect the corporate name change from Hassie Hunt, Incorporated to Hassie Hunt Exploration Company, effective January 1, 1978.

KENNETH F. PLUMB,
Secretary.

SCHEDULE A.—*Certificate and Rate Schedule Information for Hassie Hunt Exploration Co.*

Name certificate filed under	Certificate docket No.	Field	Area	Purchaser
Rate schedule No.:				
3 Hassie Hunt, Inc	G-4420	Maxie	Acadia Parish, La	Transcontinental Gas P/L Corp.
4 ....do	G-4421	Lisbon	Claiborne Parish, La	Texas Eastern Transmission Corp.
6 ....do	G-4421	Sligo	Bossier Parish, La	Texas Gas Transmission Corp.
7 ....do	G-4421	....do	....do	Arkansas Louisiana Gas Co.
13 ....do	G-4421	Cotton Valley	Webster Parish, La	United Gas Pipeline Co.
18 ....do	G-10010	Longstreet	DeSoto Parish, La	Arkansas Louisiana Gas Co.
19 ....do	G-14109	Rosseau	LaFourche Parish, La	Transcontinental Gas P/L Corp.
20 ....do	G-14303	Maxie	Acadia Parish, La	Texas Gas Transmission Corp.
23 ....do	G-18967	Sugar Creek	Claiborne Parish, La	Arkansas Louisiana Gas Co.
24 ....do	G-19249	South Pass, block 24	Plaquemines Parish, La	Tennessee Gas Pipeline Co.
25 ....do	G-20172	Sugar Creek	Claiborne Parish, La	Texas Gas Transmission Corp.
26 ....do	G-19115	Alta Loma	Galveston County, Tex	Natural Gas P/L Co. of America
29 ....do	CI-61-645	North Rosseau	LaFourche Parish, La	Texas Gas Transmission Corp.
30 ....do	CI-62-591	North Puckett	Pecos County, Tex	El Paso Natural Gas Co.
31 ....do	CI-63-606	Sugar Creek	Claiborne Parish, La	Texas Gas Transmission Corp.
32 ....do	CI-64-581	Cotton Valley	Webster Parish, La	Do.
33 ....do	CI-64-577	....do	....do	Do.
34 ....do	CI-65-862	North Rosseau	LaFourche Parish, La	Do.
35 ....do	CI-65-596	Eugene Island	Offshore, Louisiana	Michigan Wisconsin P/L Corp.
36 ....do	CI-67-138	Thibodaux	LaFourche Parish, La	Transcontinental Gas P/L Corp.
37 ....do	CI-69-722	Northeast Lisbon	Claiborne Parish, La	Texas Eastern Transmission Corp.
38 ....do	CI-69-783	....do	....do	Texas Gas Transmission Corp.
39 ....do	CI-70-980	....do	....do	Texas Eastern Transmission Corp.
40 ....do	CI-72-424	North Puckett	Pecos County, Tex	El Paso Natural Gas Co.
41 ....do	CI-72-542	West Cameron	Offshore, Louisiana	Michigan Wisconsin P/L Co.
43 ....do	CI-74-529	....do	....do	Do.

SCHEDULE A.—*Certificate and Rate Schedule Information for Hassie Hunt Exploration Co.*

Name certificate filed under	Certificate docket No.	Field	Area	Purchaser
Rate schedule No.:				
44 .....do	CI-75-272	Sugar Creek	Claiborne Parish, La	Arkansas Louisiana Gas Co.
46 .....do	CI-78-160	Pavillion	Fremont County, Wyo	Montana Dakota Utilities
Formerly HHEC rate schedule No. 1.	CI-77-260	Ship Shoal blocks 290/291	Offshore, Louisiana	Michigan Wisconsin P/L Co.

[FR Doc. 78-33561 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. E-7738]

BOSTON EDISON CO.

Extension of Time

NOVEMBER 24, 1978.

On November 17, 1978, the Department of Justice filed a motion for extension of the schedule for submitting briefs to the Commission in this proceeding. The motion states that the Department has found the price squeeze issue to be more complex and the solution more difficult than originally anticipated. On November 17, 1978, the Massachusetts Towns filed an answer stating that they have no objection to an extension of time if only granted to the Justice Department. The Towns also oppose an extension of the date for reply briefs so that Commission disposition will not be delayed.

Upon consideration, notice is hereby given that the briefing schedule is extended as follows for all parties:

Initial Briefs, on or before November 24, 1978.

Reply Briefs, on or before December 29, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33630 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. CP77-551]

CITIES SERVICE GAS CO.

Petition to Amend

NOVEMBER 22, 1978.

Take notice that on November 13, 1978, Cities Service Gas Company, (Petitioner), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP77-551 a petition to amend the order issued November 23, 1977, in said docket pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(c) of the Regulations thereunder (18 CFR 157.7(c)) so as to authorize an increase in the total cost limitations provided by said order, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The Commission's order of November 23, 1977, authorized the construction, at a cost not to exceed $300,000, of certain natural gas facilities for miscellaneous rearrangements in the calendar year of 1978. It is stated in the instant petition that, due to three highway projects being completed in calendar year 1978, the necessary expenditures for miscellaneous rearrangements will be approximately $1,000,000. Consequently, Petitioner seeks a waiver of the total cost limitations for budget-type certificates for miscellaneous rearrangements pursuant to Section 157.7(c)(2)(ii) of the Commission's Regulations to permit an increase in those limitations from $300,000 to $1,000,000.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 14, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33631 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. RP79-4]

CITIES SERVICE GAS CO.

Order Accepting for Filing and Suspending Rate Increase Subject to Conditions

NOVEMBER 22, 1978.

On October 23, 1978, Cities Service Gas Company (Cities) filed revised tariff sheets [1] under Section 4(e) of the Natural Gas Act designed to increase jurisdictional annual revenues by $22,245,595. The increased rates are predicated on a test period based on actual costs for the twelve months ending July 31, 1978, as adjusted for known changes in costs which are expected to be incurred by the end of the test period on April 30, 1979. Cities proposes a November 23, 1978 effective date.

Public notice of the filing was issued on October 25, 1978, providing for protests or petitions to intervene to be filed on or before November 9, 1978. Petitions to intervene were filed by parties listed in Appendix A. All have demonstrated an interest in the proceeding which justifies their participation. Accordingly, intervention to all parties listed is hereby granted.

In the proposed rates, Cities has reflected increases in operating costs, taxes and the rate of return. Cities has used the *United* method of rate design, but has classified and allocated its costs according to the *Seaboard* method. The company has reflected costs of facilities recently certificated by order issued October 16, 1978 in Docket No. CP78-459, including net costs of $13,986,968 from plant additions which may not be in service before the new rates take effect. In addition, the proposed rates and the underlying cost of service for the test period reflect a weighted average cost of purchased gas of 66.23¢ per Mcf and a GRI Funding Unit of 1.2 mills per Mcf.

Based upon a review of Cities filing, the Commission finds that the proposed higher rates sought in this filing have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept Cities' proposed rate increase for filing, suspend its effectiveness for five months until April 23, 1979, at which time it may become effective subject to refund, and subject to the conditions stated below, and set the matter for hearing.

In Opinion No. 24, the Commission directed Cities to classify and allocate costs according to the *United* methodology, and specifically rejected the

[1] Fourth Revised Sheet No. 6 to Original Volume No. 1, First Revised Sheet No. 91 to Original Volume No. 2 of Cities FERC Gas Tariff.

Seaboard method employed by the company in this filing.[2]

The *United* formula gives greater weight to the annual volumes of gas a pipeline has available for sale than the physical capacity of a pipeline. Use of the *United* method more closely relates a customer's cost responsibility to his use of the pipeline's facilities when there is significant underutilization of a pipeline's capacity. In Opinion 24, the Commission found significant curtailment on an annual basis, and a heavy reliance on storage withdrawals to meet peak demand on Cities' system. Even where lines downstream of Cities storage facilities continue to be used at near full capacity, this results in significant underutilization of capacity, particularly upstream of Cities storage facilities.

Cities' filing reflects continuing curtailment on an annual basis, and dependence on large storage withdrawals to meet peak demand. All the factors which prompted the Commission to apply the *United* formula in Opinion No. 24 continue to prevail in this filing. No significant difference of material fact or changed circumstances have been shown to set this filing apart from Cities prior filing. No useful purpose would be served by relitigating this issue in this docket.[3] It is appropriate, therefore, to summarily dispose of this issue on the merits without proceeding to an evidentiary hearing. Cities is directed to file revised tariff sheets reflecting the *United* method of cost classification and cost allocation.

As it is Commission policy[4] to allow into rate base only the costs of facilities which are used and useful to the ratepayers, Cities cannot include the costs of its recently certificated plant additions if they are not in service by the time the proposed rates go into effect. Consequently, acceptance of the present tariff sheets reflecting the cost of these facilities is specifically conditioned upon Cities' filing of revised tariff sheets to eliminate costs associated with any facilities not in service on or before April 30, 1979.

Cities has indicated that it will file revised tariff sheets to reflect a change in purchase gas cost and to include the 1979 GRI Funding Unit of 3.55 mills per Mcf. To avoid double recovery of costs, the Commission has ordered that companies eliminate from rates certain AGA costs that are being covered through GRI payments.[5] If any related expenses are included in its test period cost of service, Cities should reflect resulting reductions to R & D in its revised tariff sheets. These revised tariff sheets should also reflect the actual balance of advance payments as of April 30, 1979.

The Commission orders:

(A) Subject to the conditions of Ordering Paragraph (B), Cities Service proposed Fourth Revised Sheet No. 6 to Original Volume No. 1 and First Revised Sheet No. 91 to Original Volume No. 2 of Cities FERC Gas Tariff are accepted for filing, and suspended for five months until April 23, 1979 at which time they may become effective subject to refund.

(B) Cities shall file revised tariff sheets to reflect: (1) the *United* method of cost classification, allocation and rate design; (2) the elimination of those costs associated with facilities not in service on or before April 30, 1979; (3) the current cost of purchased gas reflected in Cities' most recent PGA filing prior to the effective date of the proposed rates; (4) the actual balance of advance payments as of April 30, 1979; and (5) the effective GRI Funding Unit on the effective date of the increased rates and any resulting reduction in R&D costs as per Opinion No. 30.

(C) Staff shall serve top sheets on or before February 26, 1979.

(D) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (18 CFR 3.5(d) shall convene a settlement conference in this proceeding to be held within 10 days after the service of Staff's top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary and to rule on all motions (except motions to sever, consolidate or dismiss) as provided for in the rules of practice and procedure.

(E) The petitioners to intervene listed in Appendix A to this order shall be permitted to intervene in this proceeding subject to the Commission's rules and regulations; *Provided,* however, that the participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in the petitions to intervene; and *Provided, further,* that the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order entered in this proceeding.

By the Commission.

KENNETH F. PLUMB,
Secretary.

APPENDIX A

1. Union Gas System Inc.
2. Midwest Gas Users Association
3. City of Springfield, Missouri and the Board of Public Utilities of Springfield, Missouri
4. City Group Gas Defense Association
5. Colorado Interstate Gas Company
6. The Gas Service Company
7. Arkansas Louisiana Gas Company
8. Kansas State Corporation Commission

[FR Doc. 78-33632 Filed 11-30-78; 8:45 am]

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[2] *Cities Service Gas Company,* Opinion No. 24, issued August 29, 1978 in Docket No. RP74-4 (slip Opinion 7-15) Rehearing denied in Opinion No. 24-A, issued October 31, 1978.

[3] See; Section 154.63(e)(2)(ii) of the Regulations.

[4] *Panhandle Eastern Pipeline Company* v. *F.P.C.* 236 F.2d 606 (3rd Cir. 1956); See also: *Citizens of Allegan County, Inc.* v. *FPC* 414F.2d 1125 (D.C. Cir. 1969).

[5] *Gas Research Institute,* Opinion No. 30, issued September 21, 1978 in Docket No. RP78-76, at p. 31.

[6740-02-M]

[Docket No. ES79-13]

EL PASO ELECTRIC

Application

NOVEMBER 24, 1978.

Take notice that on November 14, 1978, El Paso Electric Company (Applicant), filed an application with the Federal Energy Regulatory Commission (Commission) seeking authority pursuant to Section 204 of the Federal Power Act to issue up to 2,000,000 shares of common stock no par value (New Common Stock). The Applicant is a Texas corporation, with its principal business office at El Paso, Texas, and is engaged in the electric utility business in Texas and New Mexico in an area in the Rio Grande Valley extending approximately 110 miles northwesterly from El Paso to the Caballo Dam in New Mexico and approximately 120 miles southeasterly from El Paso to Van Norn with a population of approximately 536,000 of whom 400,000 reside in metropolitan El Paso.

The Applicant presently proposes to issue and sell up to 2,000,000 shares of New Common Stock at competitive bidding in accordance with the Commission's regulations. The Applicant expects to invite bids on or about January 15, 1979, and to receive bids on or about January 23, 1979.

The proceeds from the sale of the New Common Stock will be used to reduce outstanding short-term debt incurred for construction purposes. the short-term debt is expected to aggregate approximately $56 million at the time of sale and prior to the application of the proceeds. For the purpose of financing its construction program through 1981, the Company estimates that approximately $320 million, in addition to the proceeds from the sale of the New Common Stock, will be required from outside sources.

Any persons desiring to be heard or to make any protest with reference to said application should, on or before December 7, 1978, file with the Federal Energy Regulatory Commission, 825

North Capitol Street, N.E., Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33633 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. RP78-76]

GAS RESEARCH INSTITUTE

Order Granting Rehearing

NOVEMBER 22, 1978.

On October 23, 1978, Tennessee Gas Pipeline Company, a division of Tenneco, Inc. (Tennessee) petitioned for rehearing or, in the alternative, clarification of Opinion No. 30,[1] issued September 21, 1978. In Opinion No. 30, the Commission approved the Gas Research Institute's 1979 research and development program and stated that jurisdictional members of the Gas Research Institute (GRI) would be permitted to collect a general funding unit of 3.5 mills per Mcf of "funding service" volumes in 1979.

In its Opinion, the Commission noted [2] that certain interstate pipeline members of GRI are currently collecting through their underlying rates amounts associated with the American Gas Association (AGA) Utility Research and Coal Gasification Programs. GRI will assume responsibility for funding these coal gasification programs in 1979.[3] Since GRI is funded through a surcharge to pipeline company rates, it appeared that a double recovery of funding for the transferred projects would occur if pipelines were permitted to collect the GRI surcharge without revising underlying pipeline rates.

To eliminate this duplication of funding, the Commission's staff had recommended that those pipeline companies that are currently funding the AGA projects be required to file revised tariff sheets to reduce base tariff rates to reflect the lowered expense of contributing to AGA. California supported staff's recommendation. No other party commented on this point.

In response to staff's recommendation, the Commission stated: [4] The Commission hereby puts jurisdictional pipeline companies on notice that they will be permitted to collect the 3.5 mills per Mcf GRI funding unit in 1979 only upon the condition that the costs of funding the transferred AGA projects are eliminated from their base tariff rates by the filing of revised tariff sheets.

Tennessee submits that this condition would appear to disallow the flow-through of costs incurred for funding the AGA coal gasification projects through December 31, 1978.

Tennessee explains that AGA operates its R&D programs on a fiscal year basis from July through June, and it bills its members after December to recover program costs. Payments to AGA are, therefore, made during the last six months of the AGA fiscal year. For the fiscal year July, 1977 through June, 1978, for example, both AGA's billing to Tennessee and Tennessee's payment to AGA were made in March, 1978. Since GRI will assume administration of AGA's R&D projects as of January 1, 1979, in 1979 AGA will, according to Tennessee, bill its members only for coal gasification project costs incurred during the period July, 1978 through December, 1978.

Tennessee explains further that every six months it files tariff sheets tracking its R&D costs. Due to the delay in recovery under each tracking filing, Tennessee says it will not fully recover amounts already paid to AGA until June 30, 1979. The 1979 payment to AGA, if made before March 30, 1979, will be recovered over the fiscal year beginning July 1, 1979. Thus, Tennessee's R&D tracking filings would not reflect a downward adjustment for the elimination of payments to AGA for transferred coal gasification projects until July 1, 1980. Yet, no double recovery of funding for the transferred coal gasification projects would occur.

Accordingly, Tennessee asks that the Commission grant rehearing of Opinion No. 30 or, alternatively, to clarify the Opinion to provide that while jurisdictional pipeline companies may collect the 1979 GRI funding unit only if the costs of funding the transferred AGA projects are eliminated from base tariff rates, such condition shall not apply to payments made to AGA on or after January 1, 1979 for coal gasification project costs incurred prior to January 1, 1979. The Commission finds that Tennessee has shown good cause to grant rehearing and to modify Opinion No. 30 as requested.

The Commission orders:

(A) Tennessee's October 23, 1978 petition for rehearing of Opinion No. 30 shall be granted.

(B) Opinion No. 30 shall be modified to provide that a jurisdictional pipeline may collect the 1979 GRI funding unit of 3.5 mills per Mcf only upon the condition that the costs of funding transferred AGA coal gasification projects are eliminated from the pipeline's base tariff rates: *Provided, however,* That such condition shall not apply so as to require elimination of payments actually made to AGA on or after January 1, 1979 for coal gasification project costs incurred by AGA prior to January 1, 1979 until such payments have been recovered through jurisdictional rates.

(C) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33634 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. RP78-76]

GAS RESEARCH INSTITUTE

Gas Research Institute Adjustment to Rates and Charges

NOVEMBER 24, 1978.

Take notice that on November 16, 1978, Natural Gas Pipeline Company of America (Natural) submitted as part of its FERC Gas Tariff, Third Revised Volume No. 1, Thirty-Sixth Revised Sheet No. 5, to be effective January 1, 1979.

Natural states that the revised tariff sheet reflects the GRI adjustment related to the Gas Research Institute's 1979 Research and Development Program as approved by Commission Opinion No. 30 (RP78-76) issued September 21, 1978.

Copies of this filing have been mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 7, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33635 Filed 11-30-78 8:45 am]

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[1] *Gas Research Institute,* Docket No. RP78-76, "Opinion and Order Approving the Gas Research Institute's 1979 Research and Development Program", Opinion No. 30, issued September 21, 1978.

[2] *Ibid,* at 31 (mimeo ed.).

[3] The projected 1979 level of funding is $18.7 million.

[4] *Ibid.*

[6740-02-M]

[Docket Nos. ER76-469 and ER76-508]

IDAHO POWER CO.

Compliance Filing

NOVEMBER 24, 1978.

Take notice that Idaho Power Company (Company) tendered, on November 8, 1978, a filing in purported compliance with Commission Opinion Nos. 809 and 809-A.

The Company states that all parties of record have been served with copies of this filing.

Any person desiring to be heard or to protest said application should file a petition to intervene, protest or comment with the Federal Energy Regulatory Commission, 825 North Capitol, N.E., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions, protests or comments should be filed on or before December 12, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this submittal are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33636 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. ES79-14]

IOWA SOUTHERN UTILITIES CO.

Application

NOVEMBER 24, 1978.

Take notice that on November 8, 1978, Iowa Southern Utilities Company (Applicant) filed an application with the Commission pursuant to Section 204 of the Federal Power Act and Part 34 of the Commission's regulations, for authorization to negotiate for the private placement of up to $15,000,000 of short-term First Mortgage Bonds or Debentures. Applicant is incorporated under the laws of the State of Delware with its principal business office at Centerville, Iowa, and is engaged in the electric utility business in 24 counties in Iowa.

The proceeds from the sale of Bonds will be used as part of the external capital requirements for 1979 to finance Company's construction program.

Any person desiring to be heard or to make any protest with reference to the application should on or before December 7, 1978, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33637 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-62]

LONE STAR GAS CO., A DIVISION OF ENSERCH CORP.

Application

NOVEMBER 22, 1978.

Take notice that on November 7, 1978, Lone Star Gas Company, a Division of Enserch Corporation (Applicant), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP79-62 an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(c) of the Regulations thereunder (18 CFR 157.7(c)) for a certificate of public convenience and necessity authorizing the construction, during the calendar year 1979, and operation of facilities to make miscellaneous rearrangements on its system, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in making miscellaneous rearrangements which would not result in any material change in the service presently rendered by Applicant.

Applicant states that the total cost of the proposed facilities would not exceed $300,000, which cost Applicant would finance from cash on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 14, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33638 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-58]

METROPOLITAN EDISON CO.

Proposed Tariff Change

NOVEMBER 24, 1978.

Take notice that Metropolitan Edison Company (Met-Ed), on November 13, 1978, tendered for filing increased rates for all-requirements service to Hershey Electric Company and the Borough of Kutztown, Pennsylvania, served at transmission voltage under rate "RT", and to the Boroughs of Goldsboro, Lewisberry, and Royalton, Pennsylvania, served at distribution voltage under rate "RP". Met-Ed states that also tendered for filing are increased rates for partial requirements and wheeling service to Allegheny Electric Cooperative, Inc. Met-Ed further states that, based on the calendar year 1979 test period, the proposed rates would produce $3,637,945 in additional revenues from all-requirements customers and $1,134,552 in additional revenues from Allegheny.

Met-Ed requests an effective date of January 12, 1979, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Met-Ed's affected jurisdictional customers and the Pennsylvania Public Utility Commission, according to Met-Ed.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest or comment with the Federal Energy Regulatory Commission, 825 North Capitol, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of

Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests or comments should be filed on or before December 18, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33639 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. CI65-781]

MOBIL OIL CORP.

Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

NOVEMBER 22, 1978.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before December 1, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI65-781 D, Jan. 30, 1974.....	Mobil Oil Corp., 3 Greenway Plaza East, Houston, Tex. 77046.	Cities Service Oil Co., Northwest Lovedale Field, Harper County, Okla.	(1)	.....

[1] Mobil proposes that its certificate be terminated and its rate schedule canceled.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 78-33629 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. ER78-44]

NEW ENGLAND POWER CO.

Order Accepting Compliance Filing

NOVEMBER 22, 1978.

On September 19, 1978, the New England Power Company (NEPCO) filed an unexecuted Power Contract for System Power Unreserved with the Town of Hudson (Hudson) in compliance with Ordering Paragraph (A) of the Initial Decision in this docket, issued July 13, 1978.[1]

This filing modifies an unexecuted Power Contract between NEPCO and Hudson filed with this Commission on November 3, 1977 which purported to effectuate the terms of a Letter Agreement between the parties dated January 13, 1977. The Letter Agreement, *inter alia*, summarized the charges, terms and conditions under which NEPCO would supply System-Power Unreserved to NEPCO and included the following provision:

"It is understood that the price for the capacity set forth above, *including transmission* (emphasis added), is firm at $53.00 per kilowatt year through October 31, 1978. Thereafter, the company reserves the right to adjust the price for said capacity on a cost of service basis. The price for energy will be at the Company's actual monthy system average production cost (fuel only)."

The final paragraph of the Letter Agreement provided that the parties would proceed to develop, based on such letter agreement, a formal agreement for the supply of System Power Unreserved, "including appropriate additional detailed provisions". The charges specified for System Power Unreserved under the Power Conract of November 3, 1977 were the sum of the following:

(1) A demand charge of $47.00 per kW-year.

(2) A Pool Transmission Facilities transmission charge of $6.00 per kW-year.

(3) A subtransmission charge as provided in NEPCO's FPC Electric Tariff, Original Volume No. 1, or in any superseding subtransmission tariff (at the time of filing equal to $1.20 per kW-year).

(4) An energy charge equal to the fuel cost allocable to energy delivered under the Power Contract.

NEPCO reserved the right to file unilaterally for an increase in charges on a "cost of service basis" after October 31, 1978.

The July 13, 1977 Initial Decision found the Letter Agreement to be a le-

[1] This decision was made final by the Commission's Notice of Final Decision issued September 5, 1978.

gally binding contract between the parties. In addition, the judge ruled that the Power Contract "to the extent that it provides for a subtransmission (connector) charge (T-1 rate) is unjust and unreasonable". Ordering Paragraph (A) directed NEPCO to revise its filing to conform with the above findings and conclusion. The revised Power Contract filed September 19, 1978 differs from the original contract only in that it eliminates the subtransmission charge.

Notice of NEPCO's compliance filing was issued on September 27, 1978, with comments, protests or petitions due on or before October 13, 1978.

On October 12, 1978, Hudson filed a "Protest and Petition to Reject Compliance Filing." In its petition Hudson contends that, although the Revised Power Contract would result in the same level of charges for NEPCO's sales of System Power-Unreserved to Hudson as contemplated in the Initial Decision, the restatement of $53.00 per kW-year demand charge as the sum of a $47.00 per kW-year capacity charge plus a $6.00 per kW-year transmission charge constitutes an impermissible deviation from the terms of the Letter Agreement. Specifically, Hudson asserts that the differentiated statement of costs taken together with NEPCO's reservation of the right to unilaterally adjust such charges after October 31, 1978 would permit NEPCO to adjust either component of the demand charge to Hudson regardless of the level of system average costs. Hudson requests the Commission to reject the Revised Power Contract and order NEPCO to amend such contract to state the demand charge as $53.00 per kW-year, thereby eliminating the splitting of such demand charge into separate components.

On October 26, 1978, NEPCO filed a "Response of New England Power Company to Protest and Petition to Reject Compliance Filing". In their response, NEPCO argues that, in including the separate cost components in the Revised Contract, NEPCO was merely incorporating in the contract the details of the items which constitute the price term agreed upon. In addition, NEPCO asserts that Hudson is fully protected by the fact that any attempt by NEPCO to increase the rate at issue must be cost justified in all respects.

As stated in the Initial Decision, under the 1977 Letter Agreement the Company can adjust the price for " 'all transmission' on a cost of service basis after October 31, 1978." Until such adjustment has been made and approved by the Commission, the contract must conform with the findings in the Initial Decision, as affirmed by Commission Notice issued September 5, 1978. Specifically, the revised contract must conform with the finding that the contract filed November 3, 1977, to the extent that it provides for a subtransmission (connector) charge (T-1 rate), is unjust and unreasonable.

It appears that NEPCO's filing conforms with the Commission's decision in this matter in that the subtransmission charged has been eliminated from the Revised Power Contract. Accordingly, Hudson's motion to reject the compliance filing is denied and the Revised Power Contract is accepted for filing to become effective May 2, 1977.

The Commission orders:

(A) The Petition to reject the Compliance Filing filed by the Town of Hudson is hereby denied.

(B) The Revised Power Contract for System Power-Unreserved between NEPCO and the Town of Hudson filed September 19, 1978 is accepted for filing as of May 2, 1977. This acceptance for filing does not constitute approval of any service, rate, charge classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the above-designated rate schedule; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted against NEPCO.

(C) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33640 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-57]

NEW ENGLAND POWER CO.

Filing

NOVEMBER 24, 1978.

Take notice that New England Power Company (NEP) on November 13, 1978, tendered for filing proposed amendments to the presently effective demand charge for the sale of System Power Unreserved power to various parties.

NEP states that the proposed amendments are filed in accordance with Paragraph E of Schedule III—C of its FERC Electric Tariff, Original Volume Number 2 and Article VI of Power Contracts between NEP and Fitchburg Gas & Electric Co., the Town of Hudson, Mass. and the Village of Lyndonville, Vt. that provide for a unilateral filing by NEP in order to adjust the rate set forth in the agreements on a cost of service basis.

NEP further states that the present rate has been in effect, without change, since November 1, 1975.

NEP requests an effective date of January 12, 1979, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 18, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33641 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. ER78-509]

NORTHERN INDIANA PUBLIC SERVICE

Order Accepting for Filing and Suspending Proposed Increase, Granting Interventions, Denying Motions To Reject, Instituting Procedures

NOVEMBER 22, 1978.

On July 27, 1978, Northern Indiana Public Service Company (NIPSCO) tendered for filing [1] proposed changes in its FERC electric service tariff (Third Revised Volume No. 1). The proposed changes would increase revenues for jurisdictional sales and service by $8,380,952 to its eight municipal customers (Towns) [2] and its 12 cooperative customers [3] (Cooperatives). The

[1] NIPSCO's submittal of additional data in response to two Secretary's deficiency letters (dated August 17, 1978 and October 6, 1978, respectively) completed its filing on October 23, 1978.

[2] The municipal customers (Towns) are the Towns of Bremen, Winamac, Walkerton, Argos, Brookston, Kingsford Heights, Etna Green, and Chalmers, Indiana.

[3] The cooperative customers (Cooperatives) are Wabash Valley Power Association, Inc. ("Wabash"), Carroll County Rural Electric Membership Corporation, Fulton County Rural Electric Membership Corporation, Jasper County Rural Electric Membership Corporation, Kankakee Valley Rural Electric Membership Corporation, Kosciusko County Rural Electric Membership Corporation, Marshall County Rural Electric Membership Corporation, Newton

Footnotes continued on next page

proposed increases are based on the projected twelve (12) month period ending December 31, 1978.[4]

Public notice of NIPSCO's filing was issued on August 1, 1978 with responses due on or before August 11, 1978.

On August 11, 1978, the Towns filed a document entitled "Petition of the Towns of Bremen, Indiana, *Et Al.*, For Leave To Intervene, Motion To Reject Rate Filing, And, In The Alternative, Complaint And Request For Suspension Of Rate Schedule And Hearing." In addition to their request for intervenor status, the Towns raise a number of objections to NIPSCO's filing in support of their Motion to reject or, in the alternative, request for a 5 month suspension. The objections are summarized as follows:

(1) NIPSCO's failure to supply certain support data (such as comparative billing data, supporting calculations and work papers) is in violation of Section 35.13(b)(1) and Section 35.13 (4)(iii) of the Commission's Regulations.

(2) The existence of a price discrimination between NIPSCO's proposed VA-1 Wholesale Rates and its Retail Rates 624 (approved by the Public Service Commission of Indiana on September 28, 1977) adversely affects Bremen's ability to serve its (Bremen's) present retail customers and attract new customers located in the service area common to NIPSCO and Bremen. (Price Squeeze)

(3) NIPSCO's use of a beginning and end of year method instead of the 13-monthly average plant balances method in computing its rate base is inconsistent with Commission precedent.

(4) NIPSCO has not supplied adequate support data for use of a new 3.36% depreciation expense rate.

(5) NIPSCO's use of the Average and Excess Demand Method for demand allocation purposes is improper.

(6) NIPSCO's method of allocating general plant is inconsistent with Commission precedent.

The Cooperatives, on August 11, 1978, filed a document entitled "Motion to Reject, and Petition to Intervene." In that document, the Cooperatives request intervenor status and raise certain issues in addition to those issues propounded by the Towns:

(1) Projected O&M Expenses.

(2) Preparation of Period II data.

(3) Excessive overall rate of return of 9.29% and excessive rate of return on common equity of 12.50%.

(4) Inclusion of certain environmental facilities in the rate base.

(5) Purchase power expenses.

(6) Mismatch of fuel revenues and expenses.

(7) Land held for future use.

The City of Rensselaer (Rensselaer) on August 11, 1978, filed a protest and petition to intervene. In support of its pleading, Rensselaer states that, because it has previously proposed to receive service[5] under Rates VA-1 and VA-5,[6] it will be directly affected by NIPSCO's proposed rate increases.

On September 6, 1977, the Towns moved to file a supplement to their pleading within 10 days after NIPSCO has filed its responses to Staff's deficiency letters. Further, the Towns ask that the Commission not take any action with respect to NIPSCO's filing (as completed by NIPSCO's submittal of additional information in response to Staff's deficiency letters) until the Towns file and the Commission has had an opportunity to review such supplement.[7]

On October 5, 1978, the Cooperatives filed a supplement to their August 11, 1978 pleading. In that supplement, the Cooperatives essentially reiterate in more detail the arguments raised in their prior pleading. Additionally, the Cooperatives object to NIPSCO's failure to synchronize the interest expense used to compute NIPSCO's income tax liability with the interest expense used to compute its weighted cost of capital for rate of return purposes. The Cooperatives also emphasize NIPSCO's use of stale Period I data. Specifically, the Cooperatives argue that § 35.13(b)(4)(iii) precludes the use of Period I data when that data is more than 7 months old. According to the Cooperatives, the period from December 31, 1977 (the last day of NIPSCO's Period I data) to September 13, 1978 (the date NIPSCO filed additional data in response to Staff's first deficiency letter) represents a 44 day stale period. The Cooperatives' computation is in error. Section 35.13(4)(iii) in pertinent part reads:

> (iii) The statement of the cost of service should contain unadjusted system costs for the most recent twelve consecutive months for which actual data are available (Period I) including return, taxes, depreciation, and operating expenses, and an allocation of such costs of the service rendered: *Provided, however*, That the last day of the 12 months of actual experience shall not be more than seven months prior to the date of tender for filing of the proposed notice of change in rates and charges.

Computing the 7 month rule consistent with the above provision, 7 months from December 31, 1977 to July 27, 1978 (the date of NIPSCO's *tender* for filing) is less than 7 months.

Discussion

We note that NIPSCO has not explained how it has functionalized its general plant. In *Minnesota Power & Light Company*, Opinion No. 20, issued August 3, 1978 in Docket Nos. E-9499, *et al.*, we held that general plant should be allocated on the basis of labor ratios. Further, we held that labor ratios should be used in allocating general plant in succeeding cases. In subsequent orders,[8] we indicated that the use of labor ratios in functionalizing general plant was a "general rule" and held that the burden on the applicant was "to show that the labor ratios are unreasonable as applied to the company, not merely that its alternative method might be reasonable." NIPSCO bears this same burden in the instant case.

We also note that the present VA-11 Rate (and all of the proposed Rates) contain a future gross revenue tax adjustment clause. NIPSCO will be re-

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County Rural Electric Membership Corporation, Noble County Rural Electric Membership Corporation, LaGrance County Rural Electric Membership Corporation, Steuben County Rural Electric Membership Corporation, Warren County Rural Electric Membership Corporation, and White County Rural Electric Membership Corporation.

[4] See, Appendix A for a description of the present and proposed rates.

[5] Although Rensselaer is not presently served by NIPSCO, Rensselaer requested service under the VA-1 and VA-5 Rates in the ER78-236 proceeding. See, *Northern Indiana Public Service Company*, Docket No. ER78-236, (Order issued April 6, 1978).

[6] The VA-5 Rate is for municipal customers who desire service but are not located on the Company's electrical supply lines which are suitable and adequate for supplying the service requested. NIPSCO does not currently provide any service under Rate VA-5. At present, Rensselaer is the only municipal system within NIPSCO's service area to which the VA-5 rate would apply. Rates VA-1 and VA-5 are virtually identical. However, VA-5 differs from VA-1 in that VA-5 contains a surcharge provision which would cover the costs of adding such additional facilities as NIPSCO finds necessary to serve Rensselaer. Rate VA-5 also would require that the City sign an "all-requirements" contract with NIPSCO, which is not required under Rate VA-1. See, *Northern Indiana Public Service Company*, Docket No. ER78-236 (Order issued April 6, 1978).

[7] The Towns have informed the Director of the Office of Electric Power Regulation by letter dated October 2, 1978 about the continuing deficiencies of the July 27, 1978 filing as modified by NIPSCO's response to the Secretary's first deficiency letter. In any event, we believe the Towns' motion is unnecessary inasmuch as the Commission has 30 days (from the date the filing is *completed*) to suspend or reject the filing. During this interval, any party may amend or supplement its pleading within the limitation of § 1.11 of the Commission's Regulations. As of this date, the Towns have not filed a supplement to their August 11, 1978 pleading.

[8] *Pennsylvania Electric Company*, Docket No. ER78-494 (Order issued September 27, 1978); *Public Service Company of Indiana*, Docket No. ER78-513 (Order issued August 25, 1978). *Public Service Company of Colorado*, Docket No. ER78-507 (Order issued October 4, 1978).

quired to file supporting data as specified in Section 35.13 of the Commission's Regulations prior to the implementation of the future gross revenue tax adjustment clause.

Additionally, we are of the opinion that the language of present and proposed availability clauses for the VA-11 Rate [9] and the VA-5 Rate [10] are unduly restrictive in that the availability clauses, on their face, prevent further wholesaling of power and energy purchased under the respective rate schedules. In a recent order,[11] the Commission, after examining an availability clause which contained similarly worded language, stated:

Such a provision may unduly restrict the electric operation of purchasers under the tariff. In addition, this provision may be unduly discriminatory in that other agreements filed by Empire with the Commission do not contain a similar provision. In the recent order approving settlement in *Gulf States Utilities Company*, Docket No. ER76-816 (issued October 20, 1978), this Commission established a per se rule against direct resale prohibition, such as the one here, finding such provisions to be unduly restrictive and anticompetitive. Accordingly, we will direct Empire to remove the offending resale prohibition. However, recognizing the Company's legitimate need for orderly power supply planning, we will declare these restrictive provisions null and void and of no legal effect ninety (90) days from the date of issuance of this order. This time period will allow Empire to refile substitute tariff provisions appropriate for system planning.

We believe the above discussion is germane to our examination of the Va-11 and VA-5 availability clauses in the instant docket. Accordingly, we shall declare the restrictive language in availability clauses for the VA-11 and VA-5 Rates null and void and of no legal effect ninety (90) days from the date of the issuance of this order. NIPSCO shall file within ninety days of the issuance of this order a revised rate schedule excluding such restrictive language.

Inasmuch as the identical surcharge provision applicable to the VA-5 Rate (Which NIPSCO proposes to charge Rensselaer for the construction of facilities to provide service to Rensselaer) is subject to litigation in the ER78-236 proceeding, our determination of the justness and reasonableness of this surcharge will be made dependent on the outcome of the ER78-236 proceeding. Also, we shall direct the Presiding Judge to convene a prehearing conference within 15 days from the date of this order for the purpose of hearing Towns' request for data necessary to present their *prima facie* showing on the price squeeze issue.

Our review indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful. The Commission shall deny the Cooperatives' and Towns' motions to reject, and shall accept the submittal for filing and suspend the proposed November 23, 1978, effective date [12] after which the rates and services will go into effect on January 23, 1979, subject to refund.

Rensselaer, Cooperatives and Towns shall be entitled to intervene in this docket and may raise at hearing all of the issues alleged in their petitions to intervene, including additional cost of service issues which Petitioners have reserved the right to raise after a more thorough review of NIPSCO's filing.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the Federal Power Act that the Commission enter upon a hearing concerning the lawfulness of the proposed rate increase submitted for filing by NIPSCO, establish procedures for that hearing, and that the proposed rate increase be accepted for filing, suspended, and the use thereof deferred, all as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Act and by the Federal Power Act, particularly Sections 205, 206, 301, 308, and 309 thereof, and pursuant to the Commission's Rules of Practice and Procedure and to the Regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justnesss and reasonableness of the rate increase proposed by NIPSCO in this docket.

(B) Pending the hearing and decision thereon, the proposed increased rates and charges by NIPSCO originally submitted on July 27, 1978, are hereby accepted for filing, suspended for two months, and the use thereof deferred until January 23, 1979, when they shall become effective, subject to refund.

(C) Rensselaer, Cooperatives and Towns are hereby permitted to intervene in this proceeding subject to the rules and Regulations of the Commission; *Provided, however,* that participation by such intervenors shall be limited to matters set forth in their petitions to intervene; and *Provided, further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(D) The Federal Energy Regulatory Commission Staff shall serve top sheets in this proceeding on or before March 22, 1978.

(E) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose shall preside at a prehearing conference in this proceeding to be held within 10 days of the issuance of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The Judge is authorized to establish procedural dates and to rule upon all motions (except motions to consolidate and sever, and motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(F) The Presiding Judge shall convene a prehearing conference within 15 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Strteet, N.E., Washington, D.C. 20426, for the purpose of hearing petitioners' request for data required to present their case, including a *prima facie* showing, on the price squeeze issue. NIPSCO shall be required to respond to the discovery requests authorized by the Administrative Law Judge within 30 days, and the Cooperatives shall file their case-in-chief of the price squeeze issue within 30 days after the Company's response.

(G) The Towns' and Cooperatives' motions to reject, and in the alternative, suspend for 5 months are hereby denied.

(H) The future gross tax adjustment clause in NIPSCO's filing shall remain inoperative pending the filing of supporting data as specified in § 35.13 of the Regulations.

(I) Within 90 days of the date of issuance of this order, NIPSCO shall file a revised rate schedule excluding the restrictive language contained in the availability clause for the VA-5 and VA-11 Rate. This order is without prejudice to NIPSCO to file within that ninety day period appropriate tariff provisions in accordance with the discussion in the body of this order. Such refiling shall be subject to Commission review and approval.

(J) The reasonableness of the surcharge provision applicable to the VA-5 rate shall depend upon the resolu-

[9] The language of the VA-11 availability clause reads: Available only to non-profit rural electric membership corporations, organized under the "Rural Electric Membership Corporation Act" of Indiana, for purchases of electric energy to be used solely for retail sale to ultimate users.

[10] The language of the VA-5 availability clause in pertinent part reads: Available to municipals [Towns] * * * for their own use and for distribution and retail sales to ultimate users supplied service direct by the municipal system.

[11] *Empire District Electric Company*, Docket No. ER78-591 (Order issued October 27, 1978).

[12] Since NIPSCO has not changed its initial request for an effective date of September 1, 1978, the filing will be assigned an effective date of November 23, 1978 (30 days after NIPSCO completed its filing).

tion of such issue in ER78-236 proceeding.

(K) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33642 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-56]

NORTHERN STATES POWER CO.

Filing

NOVEMBER 24, 1978

Take notice that Northern States Power Company (Northern States) on November 13, 1978, tendered for filing Supplement No. 2, dated November 6, 1978, to the Interconnection and Interchange Agreement, dated September 16, 1977, with the City of LeSueur, Minnesota.

Northern States indicates that Supplement No. 2 terminates Supplement No. 1 and amends Article IV of the Interconnection and Interchange Agreement deleting sections no longer needed because LeSueur has agreed to purchase its power and energy requirements from Northern States.

Northern States further indicates that Supplement No. 2 adds a new §4.09 *Services to be Rendered*, providing the following Service Schedules:

"A-1," Load Pattern Power,
"C," Emergency and Scheduled Outage Energy,
"E," Economy Energy,
"H," Peaking Power.

Northern States proposes an effective date of December 20, 1978, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions and protests should be filed on or before December 18, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33643 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. CP77-263]

NORTHWEST PIPELINE CORP.

Petition To Amend

NOVEMBER 22, 1978.

Take notice that on November 9, 1978 Northwest Pipeline Corporation (Petitioner), 315 East Second Street South, Salt Lake City, Utah 84111, filed in Docket No. CP77-263 a petition to amend the Commission's order issued December 6, 1977, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation and exchange of natural gas with RMNG Gathering Company (RMNG) from additional acreages in Garfield County, Colorado and in Grand County, Utah, and to authorize the delivery of the natural gas to RMNG at additional delivery points, pursuant to an exchange agreement of February 2, 1977 (Exchange Agreement), as amended, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is indicated that pursuant to the order of December 6, 1977, Petitioner was authorized to sell to and exchange natural gas with RMNG pursuant to the Exchange Agreement. It is further indicated that Petitioner filed its first petition to amend the Commission's order on May 25, 1978, and its second petition to amend the order on August 7, 1978, in conjunction with exchange agreement amendments dated September 12, 1978, February 20, 1978, June 21, 1978, and July 18. Petitioner's first two amendments, which requested authority for the transportation of natural gas from additional acreages and delivery points, are both pending further action by the Commission.

By the instant petition to amend the Commission's order, Petitioner requests authority to exchange natural gas with RMNG pursuant to four additional amendments to the exchange agreement as amended, dated October 3, 4, 5, and 6, 1978.

The petition stated that the October 3, 1978 amendment adds three new delivery points in Garfield County, Colorado; that the October 4, 1978 amendment adds additional acreages in Garfield County, Colorado, and Grand County, Utah, that would be subject to the Exchange Agreement; that the October 5, 1978, amendment adds to new delivery points in Garfield County, Colorado and one new delivery point in Grand County, Utah; and that the October 6, 1978 amendment adds one new delivery point in Garfield County, Colorado.

It is stated that Petitioner has arranged with Colorado Interstate Gas Company for the transportation or purchase of natural gas from the wells mentioned in the October 3, 1978 amendment, pursuant to a gas gathering and transportation agreement of March 16, 1976, as amended October 12, 1978; that Petitioner has agreed with the Southwest Gas Corporation (Southwest) for the transportation or purchase of the volumes of natural gas which Southwest has available from the wells mentioned in the October 5, 1978 amendment, pursuant to a Gas Purchase, Gathering and Transportation Agreement dated September 12, 1978; and that Petitioner is presently negotiating with Walter S. Fees, a small producer, for the purchase of natural gas from the well mentioned in the October 6, 1978 amendment.

It is stated that the additional volumes of natural gas delivered by Petitioner to RMNG for transportation and exchange pursuant to the above described October amendments would be redelivered to Petitioner at the existing RMNG exchange meter located on Petitioner's main line. RMNG would not have the right to purchase any of this natural gas, it is asserted. It is stated that the additional volume of natural gas from these wells would be 1,200 Mcf per day. It is stated that a transportation rate of 8.0 cents per Mcf would be charged for these volumes. It is further stated that Petitioner would construct any necessary jurisdictional facilities to connect these additional wells to delivery points on RMNG's gathering system pursuant to the gas-purchase budget-type authorization issued Petitioner on September 30, 1977 in Docket No. CP77-507.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 14, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33644 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-348]

NORTHWEST PIPELINE CORP.

Amendment

NOVEMBER 22, 1978.

Take notice that on November 9, 1978, Northwest Pipeline Corporation (Applicant), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP78-348 an amendment to its application filed pursuant to Section 7(c) of the Natural Gas Act in the instant docket to provide for the transportation for Colorado Interstate Gas Company (CIG) of natural gas from three additional wellheads and for blanket authority to add further wellhead delivery points from CIG to Applicant all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

The application in this proceeding sought authorization to transport up to 5,000 Mcf per day of natural gas for the account of CIG from seven wells located in Garfield County, Colorado, based on a three-part rate schedule. Further, it is indicated that the agreement between the parties, dated March 16, 1978, provides that Applicant may purchase up to 25 percent of the gas received from CIG at a price equal to that paid by CIG for such gas.

Applicant asserts that the blanket authorization requested would permit the timely connection of volumes of gas available to CIG and, in the future would eliminate the need to file for Commission authorization each time an additional well is developed.

It is stated that the rate structure contained in the agreement dated March 16, 1978 remains unchanged for the transportation and purchase of natural gas from the additional wells.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 14, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33645 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-55]

OHIO POWER CO.

Filing

NOVEMBER 20, 1978.

Take notice that American Electric Power Service Corporation (AEP) on November 13, 1978 tendered for filing on behalf of its affiliate, Ohio Power Company (Ohio), Supplement No. 6 dated October 16, 1978 to the Interconnection Agreement dated January 1, 1952, between Ohio and Ohio Edison Company, designated Ohio Rate Schedule FPC No. 25.

AEP states that Section 1 of Supplement No. 6 provides for an increase in the Demand Charge for Short Term Power from $0.60 to $0.70 per kilowatt per week. AEP further states that Section 2 of Supplement No. 6 provides for an increase in the transmission charge for third party Short Term Power Transactions from $0.15 per kilowatt per week to $0.175 per kilowatt per week. AEP indicates that since the use of Short Term Power cannot be accurately estimated for the twelve months period succeeding the date of filing, it is impossible to estimate the increase in revenues resulting from this supplement for such period. AEP further indicates that Exhibit I which was included with the filing of this Supplement, demonstrates that the increase in revenues which would have resulted had the Supplement been in effect during the twelve month period ending August 1978, would have been $654,154.72 (i.e., from $20,297,682.77 to $20,951,837.49) for sale.

AEP proposes an effective date of October 23, 1978, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Ohio Edison Company and the Public Utilities Commission of Ohio, according to AEP.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 18, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33646 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. CP77-619]

PANHANDLE EASTERM PIPE LINE CO.

Petition To Amend

NOVEMBER 22, 1978.

Take notice that on November 14, 1978, Panhandle Eastern Pipe Line Company (Petitioner), 3000 Bissoret, Houston, Texas 77001, filed a petition in Docket No. CP77-619 pursuant to Section 7(c) of the Natural Gas Act, to amend the order of the Commission issued May 2, 1978 in said docket, to authorize Petitioner to utilize presently owned compressor facilities and thus avoid purchasing new compressor facilities, all as is more fully set forth in the petition which is on file with the Commission and open for public inspection.

It is stated that the order of May 2, 1978 authorized Petitioner to construct a 150.4 mile pipeline, and install 15,600 compressor horsepower facilities. Petitioner states that it can save $455,000 in facilities costs if the Order is amended to authorize Petitioner to (1) relocate 1270 compressor horsepower presently located at the Denison II Compressor Station to the Poling Compressor Station, Carson County, Texas; (2) relocate 1000 compressor horsepower presently located at the Masterson Compressor Station to the Griffith Compressor Station, Moore County, Texas; (3) relocate 600 compressor horsepower from the Richland Compressor Station to the Hanes Compressor Station, Cimmarron County, Oklahoma; and (4) install 1800 compressor horsepower of new facilities at the Masterson Compressor Station, Moore County, Texas. It is stated that these modifications in the Order would result in an additional 70 compressor horsepower for the pipeline.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 14, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas

Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearng therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33647 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-75]

PANHANDLE EASTERN PIPE LINE CO.

Application

NOVEMBER 22, 1978.

Take notice that on November 14, 1978, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP79-75 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain compressors, pipelines and related facilities in Greeley, Hamilton and Kearny Counties, Kansas, necessary to connect new supplies of natural gas, all as more fully set forth in the application filed with the Commission and open for public inspection.

It is stated that Applicant has agreed with Dernick, Land and Company, Remuda Corporation, and Sam A. Kinard to purchase natural gas to be produced from approximately 30,000 acres in the aforementioned Kansas counties; that in order to connect these natural gas volumes with Applicant's existing pipeline system, additional pipelines, compressors, and related facilities are necessary; and that the cost of these facilities is estimated to be $4,383,000, all of which would be financed with funds available to Applicant.

Specifically, it is stated that the following facilities would be required:

(1) A compressor station located in Hamilton County, Kansas, equipped with 1400 compressor horsepower;

(2) 18.5 miles of 4-inch pipeline, 15.5 miles of 6-inch pipeline, and 15.5 miles of 8-inch pipeline in Greeley and Hamilton County, Kansas;

(3) 12.5 miles of 8-inch high pressure discharge pipe in Hamilton and Kearny Counties, Kansas.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 14, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33648 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket Nos. ER78-460 and ER78-483]

POTOMAC EDISON CO.

Order Accepting for Filing and Suspending Proposed Rate Increase, Denying Motions, Granting Intervention, Providing for Hearing, and Establishing Price Squeeze Procedures

NOVEMBER 22, 1978.

On June 26, 1978, pursuant to Section 205 of the Federal Power Act, the Potomac Edison Company (Potomac) submitted for filing a proposed rate increase applicable to six wholesale customers. The proposed rates represent an increase to these wholesale customers of approximately $989,507 for the twelve month period succeeding the proposed effective date of July 25, 1978.[1] Additionally, the filed tariff would eliminate any reference to certain former customers of Potomac located in Pennsylvania whose service requirements were transferred to West Penn Power Company as of January 1, 1977. In support of its filing, Potomac relied on increases in the cost of capital, labor, materials and supplies since it last increased its rate to thse wholesale customers.[2]

On July 11, 1978, Potomac submitted for filing under Section 206 of the Act the same rate representing an increase of $264,346 based on the same test period applied to the Town of Front Royal, Virginia. Potomac did not request an effective date for the proposed filing, which was designated Docket No. ER78-483.[3]

With these separate filings, Potomac would have bifurcated what is essentially one rate case, involving a request for $1,253,853 in increased wholesale revenues for the twelve months ending December 31, 1977. Potomac's action was significant in light of our Regulations in that each portion of its bifurcated submission represented an increase of less than one million dolars, for which our Regulations require only Period I test data, whereas, considered as a whole, the proposed rate increase exceeds that dollar threshold and require Period II data as well. Potomac did not submit a complete request for an increased rate until July 11, 1978, the date of its Front Royal submission.

On August 14, 1978, Potomac filed a Motion for Rehearing and Reconsideration of the Commission's July 31, 1978 letter order.[4] Potomac asserts,

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[1] Potomac's case-in-chief, which is based on a test period consisting of the twelve months ended December 31, 1977, indicates increased revenues of approximately $999,846, or 18.44%, for that period.

[2] Notice of the filing was issued on July 6, 1978, with protests or petitions to intervene due on or before July 14, 1978. On July 10 and July 14, respectively, Potomac's cooperative and municipal customers filed petitions to intervene. The issues raised in these petitions will be discussed *infra*.

On July 14, 1978, the Honorable Charles McC. Mathias, Jr., United States Senator, submitted comments on behalf of Cities. These comments will be treated as a protest and considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestant a party to these proceedings. 16 CFR 1.1(b).

An untimely notice of intervention, filed on July 17, 1978, by the Public Service Commission of Maryland requests suspension of Potomac's proposed rates, alluding to the potential effect of the rate increases upon various public service companies subject to that Commission's jurisdiction and upon ultimate consumers within the State of Maryland.

[3] Notice of the filing was issued on July 19, 1978, with protests or petitions to intervene due on or before July 28, 1978. On July 26, 1978, the Town of Front Royal, Virginia, filed a petition to intervene and raised issues which will be discussed *infra*.

[4] By notice dated November 9, 1978, the Secretary indicated that, pursuant to Section 1.34(c) of the Commission's Rules and

Footnotes continued on next page

inter alia, that it was error to consolidate the proceedings. According to Potomac, the filing in Docket No. ER78-460 does not involve fixed rate contracts and is, therefore, subject to Section 205 of the Act, whereas the filing in Docket No. ER78-483 has been characterized as a fixed rate contract and, therefore, the increase in rates covered by such contract is subject to Section 206 of the Act. Potomac alleges that consolidation of the dockets would somehow confuse, complicate and lengthen the regulatory process. To the contrary, we have determined that consolidation was necessary because identical rates and test data are at issue regarding similarly situated wholesale customers. The burden of proof is on the applicant to demonstrate the justness and reasonableness of each proposed increase. No new facts or arguments were raised in the Company's motion that provide a basis for reconsidering an original order. Accordingly, Potomac's motion for reconsideration is herein denied.

By submittals filed September 28, 1978, and October 25, 1978, Potomac cured the deficiencies and completed its filing.[4] The consolidated application involves a proposed rate increase of $1,303,928 (16.46%) for the twelve month period succeeding July 1, 1978. The consolidated filing would apply to one investor-owned utility, two cooperative customers, and four municipal customers.[5]

Notice of the consolidated filing was issued on October 5, 1978, with comments, protests or petitions to intervene due on or before October 16, 1978.

On October 12, 1978, Old Dominion Electric Cooperative, Inc., Shenandoah Valley Electric Cooperative, Inc., and BARC Electric Cooperative, Inc. ("Cooperatives") jointly filed a protest, petition to intervene, and request for a five month suspension and hearing.[7]

The Cooperatives challenge Potomac's 15.26% requested rate of return on common equity as unjustified and in excess of the return on common equity approved by the Commission in Opinion No. 13.[8] However, the cited opinion does not quantify a particular return that must be used in all cases. This issue is properly the subject of a full evidentiary hearing which we shall herein order.

Cooperatives also object to (a) an adjustment to test year expenses to normalize the effect of a recent increase in the West Virginia Business and Occupation Tax which is currently subject to judicial challenge by Potomac and other utilities; (b) a cost of service adjustment for annualized wage and salary increases during the 1977 test year, allegedly without corresponding revenue and productivity data; (c) an asserted failure to adhere to the "rolled-in" transmission allocation method; and (d) a possible exaggeration of losses as reflected in the development of demand and energy allocation factors. These issues can only be determined after an evidentiary hearing.

Further, Cooperatives protest the Company's request that the Commission waive its notice requirements to permit an effective date of June 21, 1978.[9] The Cooperatives contend that retroactive effectiveness for the Period II and other data filed September 28 would place an unreasonable burden upon the Cooperatives. In particular, Cooperatives in Virginia are regulated by the Virginia Corporation Commission and it would be impossible for them to recover any retroactive wholesale increase from their retail customers. They would impose upon them an unjust and unreasonable financial burden. With respect to the effective date, the Company has not shown good cause pursuant to Section 35.11 to waive the Commission's notice requirements. We will, therefore, deny Potomac's request for a June 21, 1978 or a July 25, 1978 effective date.

As a corollary to their arguments concerning retroactive effectiveness, Cooperatives claim that the Company's Period I data are more than seven months old and therefore stale under Section 35.13 of our Regulations. However, Section 35.13 of the Regulations speaks to the "date of tender for filing" and not to the date on which the filing is considered complete. Potomac's submittals were tendered within the prescribed seven month period for Period I data.

On October 16, 1978, a Supplemental Protest, Petition to Intervene and Request For Five Month Suspension was filed by the Cities of Hagerstown, Thurmont and Williamsport, Maryland ("Cities"), which are wholesale customers subject to Potomac's proposed rate increase.[10] In support of their request for a five month suspension, Cities raised several of the same issues raised by Cooperatives. In addition, Cities question the propriety of a transfer of property between Potomac and its affiliate, West Penn Power. Cities further maintain that the proposed wholesale rates, being substantially in excess of Potomac Edison's comparable retail rates, give rise to a "price squeeze." *Conway Corp.* v. *F.P.C.*, 510 F. 2d 1264 (1975), *aff'd*, 426 U.S. 271 (1976). Pursuant to the policy set forth in Order no. 563, and in Section 2.17 of our Regulations, we shall herein provide for the initiation of price suqeeze procedures. Finally, Cities protest the company's request for a retroactive effective date.[11]

Footnotes continued from last page

Regulations, Potomac's Motion for Reconsideration was denied by operation of law. We have since determined that Section 1.34 does not apply to Motions for Reconsideration. Potomac's motion, therefore, cannot be denied by operation of law pursuant to that section and is properly denied by the Commission's order herein.

[4] On September 28, 1978, the Company submitted Period II data (for the 12 month period ending June 30, 1979), a revised Statement M (Schedules 1 and 2) and Statement N (Schedule 1) of Period I of the initial filing and additional testimony, requesting the Commission "to waive any applicable requirements, not already complied with, in its Rules and Regulations in connection with this submittal and to permit the proposed rate to become effective as originally requested on June 21, 1978 and July 7, 1978, by the Company.

Potomac's September 28, 1978 filing, however, failed to include comparative revenues with the Period II data. The Company was notified of the deficiency by Commission letter dated October 16, 1978 and provided such data in its October 25, 1978 filing.

[5] *See* Attachment No. 1 for designations.

[7] On July 10, 1978, Cooperatives had filed a protest and Petition to Intervene and Request For Five Month Suspension and Hearing based upon Potomac's June 26, 1978 filing in ER78-460. All of the issues raised in the July 10th petition were again raised in the October 12th petition, except for the challenge of Potomac's inclusion of Accumulated Job Development Tax Credit (AJDTC) in the Company's capital structure as a component from Common Equity. Potomac removed AJDTC from its capital structure in its September 28, 1978 submittal of Period II data.

[8] *Idaho Power Company*, Docket No. ER76-469 and ER76-508, issued May 5, 1978.

[9] In its original submittal in Docket No. ER78-460 dated June 21, 1978, but not received by the Secretary until June 26, Potomac requested an effective date of July 25, 1978. In subsequent filings it requested an effective date of June 21, 1978. Since we intend to deny any waiver of our notice requirements, there is no need to resolve this inconsistency in pleadings.

[10] On July 14, 1978, Cities filed a protest, Petition to Intervene, motion to Reject and Motion for Maximum Suspension Period in Docket No. ER78-460. In support of their motion to reject, Cities argued that the Commission should consider the filings in Docket Nos. ER78-460, and 483 together and require Potomac to submit Period II data as required by Section 35.13. The Commission's July 31, 1978 consolidation letter requiring Period II data has effectively granted this motion. Many of the arguments raised by Cities in favor of the maximum suspension period are included in their supplemental Petition and will be discussed in connection with that pleading. In addition, Cities take issue with Potomac's inclusion of a tax adjustment in its proposed fuel adjustment clause as well as certain tariff provisions pertaining to minimum load and power factors and minimum bills. Again, these are matters appropriately left to resolution in the hearing process.

[11] Cities filed a Protest and Motion to Reject the Company's request on November 13, 1978. In it, they again protest a retroactive effective data and argue in favor of rejecting the entire filing based on defective period I data.

On October 16, 1978, Front Royal filed a Protest, Petition to Intervene, and Motion to Reject.[12] Front Royal contends that the Period II data submitted by Potomac are deficient in that the Company has failed to provide a "full explanation of the basis of each of the estimated figures" as required under Section 35.13. We would simply note that by letter dated October 16, 1978 we require the Company to file additional data in support of its Period II figures. Upon receipt of that data on October 25, 1978, we determined that the filing was complete.

In addition, Front Royal questions the method by which the AFUDC rate was determined and the appropriateness of the 45-day working cash allowance in this case. Front Royal also raises questions as to the effect of the Allegheny Power system reorganization on the proposed rate increase. Again, these issues are properly the subject of an evidentiary hearing. Finally, Front Royal reserves the right to allege price squeeze after comparing Potomac's wholesale and retail rates.

On November 6, 1978, Potomac filed its response to its wholesale customers' interventions. Potomac noted that while all of the cost-of-service issues may require investigation, there is no basis for a five-month suspension.

We find that participation by the Petitioners, Cities, Cooperatives and Front Royal in this proceeding may be in the public interest. Accordingly, the Commission will grant the Petitioners' interventions pursuant to Section 1.8(d) of our Regulations.

With respect to those rates to the six wholesale customers subject to Section 205, our review of the filing indicates that the proposed rates have not been shown to be just and reasonable. We therefore will suspend the proposed rates and charges for one day and permit them to become effective subject to refund on November 26, 1978.

In connection with the assignment of an effective date, we note that the Commission did not issue an order within the thirty day period prescribed by Section 205(d) of the Act. We maintain, however, that this does not limit our power to suspend the proposed rates under the following analysis. Potomac filed its proposed rates for six of its wholesale customers under Section 205 on June 26, 1978. Two weeks later and *before* the passage of the thirty days, Potomac submitted a Section 206 filing for Front Royal, a seventh wholesale customer taking a service identical to one of the services involved in the Section 205 filing and under identical rates. Because the Commission made the determination that the July 11, 1978 filing was essentially a part of the June 26, 1978 filing, the thirty day period can be deemed to have commenced when the entire submittal was tendered; *viz.*, on July 11, 1978. We repeat that the Company should not be permitted to subvert the purposes underlying Section 35 of our Regulations by bifurcating what is essentially one rate case. Thus, the Commission's July 31, 1978 letter consolidating the two sets of filings and requiring additional data was issued within the thirty day period.

Even if we considered the two filings as wholly independent of one another, there is an additional legal basis for the exercise of the Commission's suspension power in this case. The letter consolidating the two dockets and citing deficiencies in the filings was prepared and approved by the Commission at a public meeting on July 26, 1978. Aside from minor editorial revisions, the letter was to be issued as approved by the Commission at its July 26th meeting. No member of the Commission requested that the letter be returned for additional approval before issuance. The letter was then delivered to the Office of the Secretary with instructions that it be issued by July 27, 1978, *i.e.*, within the thirty day period. The letter, however, was not issued until July 31, 1978. Thus, failure to issue the order within the thirty days resulted from a mere clerical error and did not result from a change in policy decision by members of the Commission.

It is well established that an administrative agency has an inherent power to correct mistakes resulting from oversight or inadvertence. *American Trucking Associations* v. *Frisco Transportation*, 358 U.S. 133, (1958). In *Frisco*, the Supreme Court held that the Interstate Commerce Commission had the power to correct a certificate which originally contained certain limitations but, as a result of an inadvertent clerical error, was issued without such limitations. The Court emphasized, however, that this power extends only to reopening prior proceedings to correct a mistake and not to modify a certificate to execute a policy change or newly developed policies. Chief Justice Warren, speaking for the Court, pointed out that the Commission's enabling act provides that:

"The Commission shall conduct its proceedings under any provision of law in such manner as will best conduce to the proper dispatch of business and to the ends of justice." This broad enabling statute, in our opinion, authorized the correction of inadvertent ministerial errors. To hold otherwise would be to say that once an error has occurred the Commission is powerless to take remedial steps. This would not, as Congress provided, "best conduce to the ends of justice." In fact, the presence of authority in administrative officer tribunals to correct such errors has long been recognized—probably so well recognized that little discussion has ensued in the reported cases. 358 U.S. at 145, 79 S. Ct. at 177, 3 L. Ed. 2d at 181.[13]

In suspending the proposed rate increase subject to the Section 205, the Commission is acting in accordance with a decision made at a public meeting to issue a letter order consolidating the two dockets and citing deficiencies. The Commission, in suspending the effective date of the new rate at this time, is, therefore, acting "to correct [the Secretary's] mistake" and not attempting to "execute a policy change or newly developed policies." *Frisco, supra.* This action is consistent with and, indeed, required by our legislative mandate to regulate electric utility companies engaged in interstate commerce in such a way as to promote the public interest. Clearly, the public interest is best served in this case by preventing the customers from being the innocent victims of a clerical mistake, permitting the rates to become effective after one day suspension, subject to refund, and allowing the parties to litigate the issue of the reasonableness of the proposed rates. We do not mean to suggest that the general public interest standard can be invoked to override the more specific policy mandates of Section 205. We are simply saying that, where the Commission has made a clear decision to exercise its discretionary power, this power cannot be vitiated through a mere clerical error.

With respect to those rates filed for the Town of Front Royal, the Commission has determined that an investigation under Section 206 should be instituted. The proposed rate is accepted for filing, then, to become effective for Front Royal as modified on the date of a final order.

The Commission orders:

[12] On July 28, 1978, Front Royal filed a protest and petition to Intervene in Docket No. ER78-483. The arguments raised in that petition were incorporated into the October 16, 1978 petition.

[13] In *Wiley* v *United States*, 245 F. Supp. 669, (E.D. Ill. 1965) the court was faced with a similar situation in that the ICC's certificate granted broader authority than the evidence justified. Stating that the "case should be considered as one in which the Commission does have the power to revoke or modify a certificate," *Id.* at 667, the court held that although the certificate is the final step in the administrative process, the Commission has power to revoke wholly or partially, without resort to Section 212(a), certificates issued as a result of inadvertence or mistake. The distinction, as viewed by the Illinois court, is one between conscious policy and, as in *Frisco*, "error in the administrative process of fashioning [a] certificate." *Id.* at 676. *See*, also *Strickland Transportation Co.* v. *United States*, 274, F. Supp. 921 (N.D. Texas 1967).

(A) The Cooperatives' Cities', and Front Royal's Motions to Reject the filing are hereby denied.

(B) Potomac's Motion for Reconsideration of the Commission's July 31, 1978, letter is hereby denied.

(C) Waiver of the Commission's notice requirements is hereby denied.

(D) The filings subject to Section 205 are accepted for filing and suspended for one day to become effective November 26, 1978, subject to refund. The filing subject to Section 206 is set for investigation under that section and the proposed rate is accepted for filing to become effective for Front Royal as modified on the date of a final order.

(E) Pursuant to Section 2.17 of the Commission's Regulations, we hereby order initiation of price squeeze procedures.

(F) The petitioners, the Cities, Cooperatives, and the Town of Front Royal, are hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission: *Provided, however,* that participation by such intervenors shall be limited to the matters set forth in their petitions to intervene: *and provided further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the DOE Act and by the Federal Power Act and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rates proposed by Potomac Edison Company.

(H) The staff shall serve top sheets in this proceeding on or before February 1, 1979.

(I) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge shall convene a conference in this proceeding to be held within ten (10) days of the serving of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The designated Law Judge is authorized to establish procedural dates and to rule upon all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(J) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33649 Filed 11-30-78; 8:48 am]

[6740-02-M]

[Project No. 2305]

SABINE RIVER AUTHORITY OF TEXAS AND SABINE RIVER AUTHORITY, STATE OF LOUISIANA

Application for Approval of Revised Recreation Plan

NOVEMBER 21, 1978.

Take notice that an application was filed May 24, 1978, by the Sabine River Authority, State of Louisiana (correspondence to: Mr. R. D. Morgan, Chief Engineer, Sabine River Authority of the State of Louisiana, P.O. Box 44155 Capitol Station, Baton Rouge, Louisiana 70804) under the Federal Power Act, 16 U.S.C. §§ 791a-825r, for approval of revised plans for recreational development at the constructed Toledo Bend Project, FERC No. 2305. The Authority is, with the Sabine River Authority of Texas, a joint licensee of the project, located on the Sabine River in Newton, Sabine, and Shelby Counties, Texas, and Sabine and De Soto Parishes, Louisiana. The project occupies lands of the Sabine National Forest.

The revised recreation plan proposed by the Authority is for the Louisiana portion of the project. A revised plan is also being proposed by the Sabine River Authority of Texas for the Texas portion of the project. A separate notice will be issued for that plan when the filing is completed.

The received plan of the Sabine River Authority, State of Louisiana calls for transferring the responsibility for recreational development now vested with it to the Louisiana State Parks and Recreation Commission (La SPARC). The present recreation plan for the project approved some 16 recreational areas on the Louisiana shore. La SPARC would trade land in these areas to acquire land to develop two major state parks to be known as North and South Toledo Bend Parks, under two consecutive five year programs. It is anticipated that the North Toledo Bend State Park would be constructed during the first five year period, would consist of approximately 1,000 to 1,200 acres, and would be located on the northern half of the Louisiana side of the reservoir. The park would offer water-related recreational opportunities such as swimming, boating, skiing, and fishing, as well as facilities for activities usually available in large state parks including camping grounds, hiking trails, playgrounds and cabins. The South Toledo Bend State Park, which would be constructed during the second five year period, would be a 1,200-acre facility near the project dam. Striped bass fishing is already established. Other recreational opportunities would be similar to those described for the North Toledo Bend Park. The estimated cost for both parks is 9.7 million dollars.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before January 2, 1979. The Commission's address is: 825 N. Capitol Street, N.E., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33650 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. CI79-115]

SHELL OIL CO.

Limited-Term Certificate Application

NOVEMBER 22, 1978.

Take notice that on November 3, 1978, Shell Oil Company (Shell), P.O. Box 2099, Houston, Texas 77001, filed in Docket No. CI79-115 an application for a limited-term certificate of public convenience and necessity with pregranted abandonment authority requesting that Applicant be authorized to sell in interstate commerce, for resale, natural gas produced by Applicant from Mississippi Canyon Block 311 Field, Offshore Louisiana to Florida Gas Transmission Company, pursuant to the provisions of Section 7 of the Natural Gas Act, as amended, and Section 2.70 of the Commission's Rules of Practice and Procedure.

Applicant states that it is seeking a limited-term certificate of public convenience and necessity for a term from the date of initial delivery of gas to Florida at Southern's facilities in West Delta Block 133 until such time as both Shell and Florida are prepared to deliver and receive the subject gas at the Mississippi Canyon Block 311 Platform "A" facility, or until such time as Shell no longer has the capacity to

gather gas to West Delta Block 133 through its crude oil pipeline, whichever is earlier.

Any person desiring to be heard or to make any protest with reference to said application, on or before December 13, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33651 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. RI78-83]

SIDWELL OIL & GAS, INC.

Special Relief; Order Granting Petition for Special Relief and Permitting Intervention

NOVEMBER 22, 1978.

On July 28, 1978, Sidwell Oil and Gas, Inc. (Sidwell) filed a petition for special relief in Docket No. RI78-83 pursuant to Section 2.76 of the Commission's General Policy and Interpretations. Sidwell, a small producer,[1] requested a rate of 69.44¢ per Mcf at 14.65 p.s.i.a. for the sale of its 75% working interest share[2] of natural gas produced from the L.O. Brooks #1 Well, Section 224, Block 2, GH & H Survey, Farwell Creek (Morrow Lower) Field, Hansford County, Texas. The gas is sold to Panhandle Eastern Pipe Line Company (Panhandle).

PROCEDURAL HISTORY

Notice of Sidwell's petition for special relief was issued September 15, 1978 (43 Fed. Reg. 43363). A timely petition to intervene was filed October 2, 1978 by Panhandle.

PROPOSAL

Under the terms of its March 15, 1971 gas purchase contract with Panhandle, Sidwell currently collects a rate of 40.05¢ per Mcf at 14.65 p.s.i.a. Panhandle has agreed by contract amendment dated May 19, 1978 to pay Sidwell the rate authorized by the Commission.

Sidwell proposes to purchase and install a pumping unit at the well in order to remove Lower Morrow formation water. Water encroachment is causing a decline in natural gas production from the well. The total installation cost is $31,777, of which $23,833 is assigned to Sidwell's 75% working interest. It is estimated that such new investment will result in the production of an additional 114,455 Mcf of reserves[3] over the remaining production life of 3.75 years.

COST ANALYSIS

Staff's analysis indicates that Sidwell's remaining net book investment, based on its 75% working interest, is $11,591. Operating expenses over the remaining 3.75 years of productive life are estimated at $19,559. Operating expense is based on a first year expense of $4,865 for the 75% working interest, escalated at an annual rate of 5% over the remaining life of the project. Sidwell's share of estimated reserves is 80,476 Mcf.

Using the above data and traditional Commission methodology, Staff prepared a cost study to determine what rate will provide both recovery of costs and a 15% rate of return. The results show that the requested rate is cost-supported.

The Commission has reviewed Staff's analysis and concluded that the requested rate is cost-supported and that it is in the public interest to grant Sidwell's petition for special relief.

The Commission orders: (A) The petition for special relief of Sidwell Oil and Gas, Inc. in Docket No. RI78-83 is hereby granted.

(B) Sidwell is authorized to collect a total rate of 69.44¢ per Mcf at 14.65 p.s.i.a. for the sale of gas from the L.O. Brooks #1 Well, Section 224, Block 2, GH & H Survey, Farwell Creek (Morrow Lower) Field, Hansford County, Texas to Panhandle Eastern Pipe Line Company, effective on the date of this order or the date the proposed work is completed, whichever is later, subject to the condition set forth in paragraph (C) below.

(C) Within 30 days of the effective date of this order, as defined in ordering paragraph (B), Sidwell must file a statement signed by Panhandle Eastern Pipe Line Company that the proposed pumping unit has been installed to its satisfaction.

(D) Panhandle Eastern Pipe Line Company (Panhandle) is permitted to intervene in the above-entitled proceeding, subject to the Rules and Regulations of the Commission; *Provided, however,* that its participation shall be limited to matters affecting asserted rights and interests specifically set forth in its petition for leave to intervene and *Provided, further,* that the admission of Panhandle in the manner provided shall not be construed as recognition by the Commission that Panhandle might be aggrieved because of any order or orders entered in this proceeding, and that Panhandle agrees to accept the record as it now stands.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33652 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. CP75-376]

TENNESSEE GAS PIPELINE CO., A DIVISION OF TENNECO INC.

Application To Amend

NOVEMBER 22, 1978.

Take notice that on June 14, 1978, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P. O. Box 2511, Houston, Texas 77001, filed in Docket No. CP75-376 an application to amend the Commission's order of December 2, 1975, issued pursuant to Section 7(c) of the Natural Gas Act in said docket so as to authorize the rendition of natural gas service to Manchester Gas Company (Manchester) under a new Gas Sales Contract providing for a revised Daily Volume Limit (DVL) for a Manchester delivery point, all as more fully set forth in the application which is on file with the Commission and open to public inspection.[1]

[1] Small producer certificate issued August 12, 1971 in Docket No. CS71-124.

[2] The remaining 25% of the working interest is owned by Texaco and is not covered by this petition.

[3] Sidwell's share of these reserves is approximately 80,476 Mcf.

[1] This proceeding was commenced before the FPC. By joint regulation of October 1,

Footnotes continued on next page

Applicant states it was granted certificate authorization by the Federal Power Commission's Order, issued December 2, 1975, among other things, to serve Manchester under Applicant's Rate Schedule CD-6 in lieu of Applicant's Rate Schedules G-6 and to render such service with revised DVLs by delivery points. Accordingly, Applicant states it is now serving Manchester under its Rate Schedule CD-6 and the terms and conditions of an associated Gas Sales Contract (Contract) between the parties dated July 24, 1975, which provides for the sale and delivery by Applicant of a contracted demand of 7,570 Mcf of natural gas per day.

Applicant asserts that pursuant to the December 2, 1975 order Applicant and Manchester executed such Contract which provides for the following DVLs by delivery points:

(1) Manchester Delivery Point, 7,248 Mcf.
(2) Hooksett Delivery Point, 322 Mcf.

Applicant asserts that by letter dated April 19, 1978, Manchester requested that Applicant change the DVL for the Manchester delivery point from 7,248 Mcf per day to 7,570 Mcf per day. Manchester asserted that gas was available during the 1977-78 winter at the Hooksett delivery point, which because of the DVL restriction at the Manchester delivery point, could not be made available instead at the Manchester delivery point where it was needed. If Manchester had been able to utilize at the Manchester delivery point gas available to the Hooksett delivery point, Manchester could have reduced its use of propane-air for peak shaving requirements by 16,906 Mcf, which corresponds to 43,956 gallons of propane at a savings of $64,580.92 to its customers, it is said.

Applicant states that the increase in the DVL for the Manchester delivery point would provide Manchester with operational flexibility between its two delivery points, and further states that although the total of the proposed DVL's would exceed Manchester's contracted demand of 7,570 Mcf per day, Manchester would not be entitled to take on any day a total of more than 7,570 Mcf at its two delivery points.

Applicant states it is agreeable to such a change in service for Manchester and, accordingly, Manchester and Applicant have entered into a Precedent Agreement dated June 5, 1978 which would provide, among other things, for the execution, upon receipt of Commission authorization, of a new Gas Sales Contract providing for a revised DVL for the Manchester delivery point.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 14, 1978, file with the Federal energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33653 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-53]

TENNESSEE GAS PIPELINE CO., A DIVISION OF TENNECO INC.

Amendment To Application

NOVEMBER 22, 1978.

Take notice that on November 7, 1978, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant) P. O. Box 2511, Houston, Texas 77001, filed in Docket No. CP78-53 an amendment to its application filed in the instant docket pursuant to Section 7(c) of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) so as to authorize the receipt of natural gas from an additional source of supply, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

It is indicated that on October 31, 1977, Applicant filed an application in the instant docket seeking authorization to transport in interstate commerce volumes of natural gas for high priority industrial uses, and that pursuant to the Commission's order of December 27, 1977, in the instant docket Applicant was granted temporary authorization to transport up to 400 Mcf per day of natural gas for W. G. Bush & Company (Bush), which gas was to be produced by Louisiana Land & Exploration Company, *et al.* (LL&E), from a well in Tyler County, Texas. Applicant states that it is presently transporting and delivering such volumes of gas to West Tennessee Public Utility District (West Tennessee), for the account of Bush pursuant to the above authorization and to a transportation contract between Applicant, West Tennessee, and Bush, dated December 27, 1977, which contract is on file in Applicant's FERC Gas Tariff, Sixth Revised Volume No. 2, as Rate Schedule T-58.

It is stated that the production from the LL&E well has declined from a total production of 400 Mcf per day to a total production of approximately 130 Mcf of gas per day in August 1978, and that production during September 1978 averaged 99 Mcf per day. It is further stated that as a result of such declining production, Bush has arranged to purchase additional gas supplies, for the remainder of the term ending February 7, 1980, for which authorization herein has been granted, from Raine Oil & Gas, dba John W. Raine, (Raine), from the West Lake Arthur Field, Jefferson Davis Parish, Louisiana. Consequently, Applicant, West Tennessee, and Bush have entered into a precedent agreement dated October 31, 1978, and, upon receipt of the requested authorization, said companies will execute a contract which contract would supersede the December 27, 1977, contract and would provide for an additional receipt point by Applicant. Applicant indicates that it would receive, in addition to volumes for the related fuel and use requirements, volumes of gas for the account of Bush at an additional point of receipt at the interconnection of the facilities of Applicant and those of Phillips Petroleum Company (Phillips), in Jefferson Davis Parish, Louisiana, and would deliver such volumes to West Tennessee at Applicant's existing Sardis Sales Meter Station Delivery Point to West Tennessee, for the account of Bush. Combined deliveries from LL&E and Raine would not exceed 400 Mcf per day, it is stated.

The amendment states that Bush would pay applicant each month for volumes of gas received at both receipt points and transported hereunder: (1) a demand charge to be determined by multiplying $1.17 by the maximum daily quantity, less any demand charge credit provided therein, if applicable; and (2) a volume charge equal to 14.22 cents per Mcf multiplied by (a) the total of the daily volumes delivered during such month or (b) the number of days in said month multiplied by 66-2/3 percent of the maximum daily quantity, whichever is greater, less any applicable annual minimum bill credit as provided therein, which rate is a negotiated rate based on Applicant's system average haul cost applied to the mileage for the Jefferson Davis Parish receipt point. Further, Applicant would receive each day for its fuel and use requirements a volume of natural gas equal to 6.09 percent of the volume transported for such day, it is said.

Footnotes continued from last page
1977 (10 CFR 1000.1), it was transferred to the FERC.

It is stated that initially Bush would pay Raine a price of $1.89 per Mcf for the subject gas. It is further stated that the gas is produced from onshore areas and that absent the present arrangements, Raine would sell the gas herein to the intrastate market. Consequently, approval of the transportation arrangement proposed would make additional gas available to the interstate market which Raine states would not otherwise be sold in the interstate market, it is stated.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 13, 1978, file with the Federal Energy Regulatory Commission, Washington, D. C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33654 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. RP79-9]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Petition for Waiver of Commission Regulations

NOVEMBER 22, 1978.

On November 13, 1978, Transcontinental Gas Pipe Line Corporation (Transco) filed a Petition for Waiver of Commission Regulations pursuant to Section 1.7 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 1.7). Transco seeks waiver of the regulation concerning the 5 year period for rate base treatment of advance payments (18 C.F.R. Part 201, Account 166(F)).

Transco states that due to a blowout and the resultant loss of a drilling well and platform, Transco Exploration Company (Exploration) requested Transco to seek waiver of the relevant regulation. Exploration's outstanding balance effected is $1,866,502.93 (Block A-563) and $149,917.56 (Block A-564).

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 4, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33655 Filed 11-30-78; 8:45 am]

[6740-02-M]

[Docket No. RI77-25]

WOODS EXPLORATION & PRODUCING CO. ET AL.

Special Relief; Order Granting Special Relief and Permitting Intervention

NOVEMBER 22, 1978.

BACKGROUND

On January 10, 1977, Woods Exploration and Producing Company, *et al.* (Woods), a small producer, filed a petition for special relief in Docket No. RI77-25 pursuant to Section 2.76 of the Commission's General Policy and Interpretations. Woods initially requested authorization to charge and collect a total rate of 70.72¢/Mcf for the sale of gas produced from six wells [1] located in the East Bernard Field, Wharton County, Texas. The subject gas is being sold to Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., (Tennessee) under a gas sales contract dated April 18, 1960, pursuant to a small producer certificate issued in Docket No. CS71-270. Woods amended its petition in the subject docket on June 23, 1978, requesting a rate of 79.828¢/Mcf.

Woods proposed to install plunger lifts and stopcocks on each of the six wells, perform workovers on four of the wells, and add a third stage of compression. Petitioner and staff were in disagreement with regard to both cost and reserve estimates. During the period of time in which staff and Woods were attempting to resolve their differences, it became necessary to perform the proposed work in order to avoid losing the productive capability of the wells. Staff believes the performance of the proposed work before Commission approval of the petition for special relief was warranted because if the work had not been performed production from the majority of the wells would have been lost and attempts to restore production, if successful, would have been more costly.

Notices of the initial and amended petitions were issued on January 28, 1977, and August 8, 1978, respectively and were published in the FEDERAL REGISTER on February 8, 1977, and August 16, 1978 (42 Fed. Reg. 7996, 43 Fed. Reg. 36322). Tennessee filed an untimely petition to intervene in reference to the initial petition stating neither opposition, nor support for the subject petition.

DISCUSSION

An informal conference was held on January 25, 1978, (notice issued January 10, 1978 published in the FEDERAL REGISTER on January 24, 1978, (43 Fed. Reg. 3310). Subsequently, on April 11 and 24, 1978, Woods supplied staff with all invoices in support of the remedial work, current operating expenses and all the reserve data requested by staff.

Based on the data and invoices supplied by Woods, staff has determined that there is no remaining book investment and that total new capital investment amounted to $43,654. It is anticipated that this expenditure will enable the recovery of the remaining estimated 1,631,314 Mcf of salable reserves over the estimated thirteen year productive life. Staff has examined invoices on current operating expenses and historical operating expenses, and estimates future expenses will total $941,479 over the estimated remaining productive life.

Staff employed the above costs and reserves in a traditional cost study which provides for recoupment of all costs including a 15% rate of return. The results of this study, indicate that the rate is justified.

The Commission finds: (1) The requested rate is cost supported and special relief would, therefore, be in the public interest.

(2) The participation of Tennessee Gas Pipeline Company in this proceeding may be in the public interest.

The Commission orders: (A) The petition for special relief, as amended, filed by Woods Exploration and Producing Company, *et al.*, is hereby granted;

(B) Woods Exploration and Producing Company is authorized to charge and collect a total rate of 79.828 cents per Mcf at 14.65 psia for sales of natural gas produced from the Matusek Well No. 1, the A. T. Leveridge Well No. 2, the Roberts Well No. 1, the A. M. Wallace Well No. 1, the J. A. Wallace Well No. 1, and the H. M. Leveridge Well No. 1 to Tennessee Gas Pipeline Company effective as of the date

[1] The six wells are: Matusek No. 1, A. T. Leveridge No. 2, D. Roberts No. 1, A. M. Wallace No. 1, J. A. Wallace No. 1 and H. M. Leveridge No. 1.

of this order, subject to the condition set forth in paragraph (C) below;

(C) Within 30 days of the date of this order, Woods must file an amended contract signed by Woods Exploration and Producing Company and Tennessee Gas Pipeline Company providing for the payment of the rate approved.

(D) Tennessee Gas Pipeline Company is permitted to intervene in the above-entitled proceeding, subject to the Rules and Regulations of the Commission; *Provided, however,* that its participation shall be limited to matters affecting asserted rights and interests specifically set forth in its petition for leave to intervene; and *Provided, further,* that the admission of Tennessee in the manner provided shall not be construed as recognition by the Commission that Tennessee might be aggrieved because of any order or orders entered in this proceeding, and that Tennessee agrees to accept the record as it now stands.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33656 Filed 11-30-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1017-4]

NATIONAL AIR POLLUTION CONTROL TECHNIQUES ADVISORY COMMITTEE

Renewal

In accordance with section 14 of the Federal Advisory Committee Act (Pub. L. 92-463) the U.S. Environmental Protection Agency announces the renewal of the National Air Pollution control Techniques Advisory Committee. It has been determined that renewal of this advisory committee is in the public interest in connection with the performance of duties imposed on the Agency by law. The charter which continues the National Air Pollution Control Techniques Advisory Committee through December 1, 1980, unless otherwise sooner terminated, will be filed at the Library of Congress.

FOR FURTHER INFORMATION CONTACT:

Mary Anne Beatty, EPA Committee Management Officer (PM-213), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, 202-755-0866.

Dated: November 24, 1978.

DAVID G. HAWKINS,
Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 78-33592 Filed 11-30-78; 8:45 am]

[6560-01-M]

[FRL 1017-5]

RHODE ISLAND DRINKING WATER

Determination of Primary Enforcement Responsibility

This public notice is issued under section 1413 of the Safe Drinking Water Act as amended and 40 CFR 142, National Interim Primary Drinking Water Regulations Implementation.

A submission, dated October 19, 1977, has been received from the Director of the Rhode Island Department of Health requesting a determination that that agency qualifies for primary enforcement responsibility for public water systems in the State of Rhode Island, in accordance with the provisions of the Act.

On February 15, 1978 I determined that the Rhode Island Department of Health met all conditions of the Act and subsequent regulations for the assumption of primary enforcement responsibility for public water systems in the State of Rhode Island.

My preliminary determination was published at 43 FR 18611 on May 1, 1978 and opportunity was given to request a public hearing or to submit written comments on the State's application. Such a request was subsequently received and a public hearing was convened on July 19, 1978 in Providence, Rhode Island.

Comments received from 10 individuals at the public hearing centered around four principal concerns:

a) Lack of coordination between the Health Department and other State programs having responsibility for or impact on water supply quality (E.G. highway construction, land use planning, and waste disposal);

b) Inadequate monitoring and protection of existing and potential water supply sources, particularly in the areas of toxic chemicals and sanitary landfill leachates;

c) The reluctance or inability of the Health Department to take timely, forceful action to bring about necessary improvements in local water supply operations. A key issue here was the adequacy and availability of necessary surveillance and legal personnel; and

d) The Health Department's generally unresponsive attitude toward meaningful public involvement in agency decisionmaking.

For the following reasons, I believe the Health Department has adequately responded to these comments:

a) A detailed written reply to each of the concerns raised by the two principal organizations appearing at the July 19 hearing has been submitted to the Regional Administrator;

b) A public participation consultant has been hired to advise the Department, and particularly the water supply program, on ways to better inform the public of agency findings and actions and involve them in regulatory policy-making;

c) A full-time public participation coordinator is being employed on the staff of the Water Supply Division;

d) Two additional sanitary engineers are being hired in the Water Supply Division to provide increased surveillance of and technical assistance to local water supply operations;

e) The Health Department maintains a legal counsel and assistant which are available to assist the Water Supply Division in developing and interpreting regulations and carrying out enforcement actions;

f) Additional laboratory equipment has been purchased to support the Department's ongoing survey of organic chemicals (particularly the trihalomethanes) in public water systems throughout the State and to permit more efficient storage and retrieval of all water supply testing results;

g) A contract is being negotiated to develop capability within the Health Department to determine the carcinogenic potential of raw and finished drinking waters across the State; and

h) A contract is being negotiated to evaluate the Department's interactions with other State and Regional agencies having water supply responsibilities and to recommend ways to improve communications and increase coordination with such agencies.

Therefore, I am affirming my determination that the Rhode Island Department of Health has met all conditions of the Safe Drinking Water Act and subsequent regulations for the assumption of primary enforcement responsibility for public water systems in the State of Rhode Island.

Dated: November 22, 1978.

WILLIAM R. ADAMS, JR.,
Regional Administrator.

[FR Doc. 78-33591 Filed 11-30-78; 8:45 am]

[6325-01-M]

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

OPEN COMMITTEE MEETINGS

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby

given that a meeting of the Federal Prevailing Rate Advisory Committee will be held on:

THURSDAY, DECEMBER 21, 1978

The meeting will convene at 10 a.m., and will be held in Room 5A06A, Civil Service Commission Building, 1900 E Street, NW., Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Civil Service Commission thereon.

The scheduled meeting will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Chairman of the Civil Service Commission under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C section 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Civil Service Commission, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning the meeting may be obtained by contacting the Secretary, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, D.C. 20415 (202-632-9710).

JEROME H. ROSS,
Chairman, Federal Prevailing Rate Advisory Committee.

NOVEMBER 27, 1978.

[FR Doc. 78-33598 Filed 11-30-78; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[NADA 35-775V]

BIO-NEERING INTERNATIONAL, INC.

Bio-Dex 100; Withdrawal of Approval of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Director of the Bureau of Veterinary Medicine withdraws approval of a new animal drug application (NADA) providing for an iron hydrogenated dextran injectable used in baby pigs for iron deficiency anemia. The sponsor, Bio-Neering International, Inc., requested this action.

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

David N. Scarr, Bureau of Veterinary Medicine (HFV-214), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: Bio-Neering International, Inc., 930 Thompson Drive, Florissant, MO 63031, is sponsor of NADA 35-775V, which provides for the intramuscular use of iron hydrogenated dextran for baby pigs for the prevention and treatment of iron deficiency anemia. The application was originally approved March 17, 1967. On May 16, 1978, the agency requested submission of additional information concerning the application. In response by letter of June 23, 1978, the firm indicated that it is no longer in business and requested that the NADA be withdrawn.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 35-775V and all supplements thereto for Bio-Neering International Bio-Dex 100 is hereby withdrawn, effective December 1, 1978.

Dated: November 21, 1978.

TERENCE HARVEY,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 78-33375 Filed 11-30-78; 8:45 am]

[4110-03-M]

[Docket No. 78N-0231; DESI 11641]

CHLORPROPAMIDE

Drugs for Human Use; Drug Efficacy Study Implementation; Announcement

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice classifies chlorpropamide as an effective oral hypoglycemic agent and sets forth the conditions for marketing the drug for this indication.

DATES: Bioavailability supplements to approved new drug applications (NDA's) due on or before May 30, 1979. Other supplements due on or before January 30, 1979.

ADDRESSES: Communications forwarded in response to this notice should be identified with the reference number DESI 11641, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): division of Metabolism and Endocrine Drug Products (HFD-130), Rm. 14B-04, Bureau of Drugs.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Requests for guidelines on conducting bioavailability studies: Division of Biopharmaceutics (HFD-520), 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.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT:

Herbert Gerstenzang, 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: In a notice published in the FEDERAL REGISTER of July 9, 1966 (31 FR 9426), each holder of a new drug application

that became effective prior to October 10, 1962, was requested to submit to the Food and Drug Administration (FDA) reports containing the best data available in support of the effectiveness of each such product for the claimed indications. That information was needed to facilitate a determination by FDA, with the assistance of the National Academy of Sciences-National Research Council (NAS-NRC), whether each claim in the labeling is supported by substantial evidence of effectiveness, as required by the Drug Amendments of 1962. Because the holder of the new drug application described below did not submit the information requested by the July 9, 1966 notice, the drug was not reviewed by NAS-NRC.

NDA 11-641; Diabinese Tablets containing 100 milligrams or 250 milligrams chlorpropamide per tablet; Pfizer Laboratories, Division of Pfizer, Inc., 235 East 42d St., New York, NY 10017.

After again being invited to submit data, the firm did so on September 11, 1970. The data and all available information were reviewed by FDA and found to provide substantial evidence of the drug's effectiveness as an oral hypoglycemic agent.

Labeling for oral hypoglycemic drugs is presently undergoing revision. Proposed labeling was published in the FEDERAL REGISTER of July 7, 1975 (40 FR 28587), and when this labeling is finalized, the indications stated below may have to be revised.

As stated in the FEDERAL REGISTER of August 23, 1977 (42 FR 42311), the provision of 21 CFR 320.22(c) waiving bioavailability data for certain drugs does not necessarily apply to drug products first announced as effective in DESI notices published after January 7, 1977. As this is the first notice announcing that chlorpropamide is effective, chlorpropamide tablets have also been reviewed for actual or potential bioequivalence problems. It has been determined that chlorpropamide tablets should be added to the list of drugs for which bioavailability data are not waived.

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the products specifically named above, this notice applies to any drug product that is not the subject of an approved new drug application and is identical to a product named above. It may also be applicable, under 21 CFR 310.6, to a similar or related drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drug products are effective for the indication set forth in the labeling conditions below.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug is in tablet form suitable for oral adminstration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indications are as follows:

(Name of drug) is indicated in uncomplicated diabetes millitus of the stable, mild or moderately severe, nonketotic, maturity-onset type that cannot be completely controlled by diet alone.

3. *Marketing status.* a. Marketing of such drug products that are the subject of a new drug application approved prior to October 10, 1962, may be continued provided that, on or before January 30, 1979, the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.1(f)).

In addition, to permit full approval of such application on the basis of effectiveness, as well as safety, the holder of the application is required to supplement its application on or before May 30, 1979. To provide evidence demonstrating the in vivo bioavailability of the drug. Guidelines on conducting bioavailability studies are available from the Division of Biopharmaceutics.

b. Marketing of such drug products that are not now the subject of a new drug application may not lawfully occur prior to the approval of an abbreviated new drug application (21 CFR 314.1(f)) for such products. Applications for these products shall contain evidence to demonstrate the bioavailability of the drug. Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

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: November 21, 1978.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 78-33372 Filed 11-30-78; 8:45 am]

[4110-03-M]

[Docket No. 78N-0376]

INTERNATIONAL NUTRITION, INC.

Pig Ration Ban-250, Custom Mix Feed Medicated; Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This is a notice of opportunity for hearing on a proposal by the Director, Bureau of Veterinary Medicine, to refuse to approve an application for an animal feed bearing or containing a new animal drug sponsored by International Nutrition, Inc. The Director proposes to refuse approval because the animal feed would contain new animal drugs in a combination that has not been approved.

DATES: A written appearance requesting a hearing must be submitted by January 2, 1979. Data and analysis upon which a request for hearing relies must be submitted by January 30, 1979.

ADDRESS: Written appearances and data and analysis to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

William B. Bixler, Bureau of Veterinary Medicine (HFV-220), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4438.

SUPPLEMENTARY INFORMATION: International Nutrition, Inc., 6664 "L" Street, Omaha, NE 68117, is a manu-

facturer of animal feeds and is registered under section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) for manufacturing medicated feeds. The firm filed an application (C105-694V) under section 512(m)(1) of the act (21 U.S.C. 360b(m)(1)) dated June 4, 1976 for approval of Pig Ration Ban-250, an animal feed bearing or containing in combination the following drugs:

Banminth Premix-48 (pyrantel tartrate 48 grams per pound).
Aureo SP-250 (chlortetracycline 20 grams per pound; sulfamethazine 4.4 percent; procaine penicillin 10 grams per pound).

In a letter dated July 15, 1976, the application was returned to the applicant in accordance with § 558.4(c)(2) (21 CFR 558.4(c)(2)) on the grounds that no regulation has been promulgated under section 512(i) of the act upon which the approval must rely under section 512(m)(1)(B) of the act.

The application was refiled by letter dated November 22, 1976, again requesting approval of the combination of new animal drugs on the grounds that: (1) Regulations have been published under section 512(i) of the act for each of the drugs, and (2) data included in a master file were incorporated by reference purporting to demonstrate, among other things, that Banminth does not interfere with the antibacterial activity of ASP-250 and that the anthelmintic activity of Banminth is not diminished by the presence of ASP-250 in swine feeds. For the purpose of approval under section 512(m)(1)(B) of the act, the firm cites § 558.125 *Chortetracycline, procaine penicillin, and sulfamethazine* (21 CFR 558.145) and § 558.485 *Pyrantel tartrate* (21 CFR 558.485) as regulations published under section 512(i) of the act. The firm contends that the new animal drug regulatory structure in the act permits the manufacture and sale of an animal feed containing two distinct new animal drugs, each of which is the subject of a regulation reflecting an approved new animal drug application, so long as the safety and effectiveness of each component in the new combination is appropriately supported in the finished feed. It contends that this is true even when, as in this case, each of the new animal drugs is the subject of a separate new animal drug regulation.

The Director of the Bureau of Veterinary Medicine agrees that combinations of new animal drugs are approvable on the basis of regulations established for each drug, provided, however, that the regulations specifically cross-reference one another to authorize the combination. The Director also agrees that authorization of these combinations must be based on the safety and effectiveness of each component in the new combination. The data must provide substantial evidence of effectiveness and safety, including data showing the combination to be safe and effective for the animal and data to establish the absence of unsafe residues of the drugs and their metabolites from the edible products of treated animals. No specific authorization has been established under section 512(i) for combining pyrantel tartrate with chlortetracycline-sulfamethazine-penicillin.

The applicant argues that appropriate data on safety and effectiveness under section 512(m) have been submitted and that the data provide an adequate basis for approval of such combinations. The Director does not agree that the statute contemplates the submission of data under section 512(m) regarding the safety and effectiveness of new animal drug premixes. The statute provides for submitting the information under section 512(b) of the act and for an approval granted for an application filed under section 512(b) to result in publication of a regulation under section 512(i) of the act. No application has been filed under section 512(b) of the act for the requested combination of new animal drugs and consequently no regulation has been published under section 512(i) as a basis for approval of the requested combination through an application filed under section 512(m) of the act.

In enacting the Animal Drug Amendments of 1968, Congress introduced a unique procedure for the approval of an application for manufacturing an animal feed bearing or containing a new animal drug. Before a new animal drug can be approved for use in manufacturing a medicated feed, an application must be filed with the Bureau of Veterinary Medicine under section 512(b) of the act, which provides that the following information be included:

(1) [F]ull reports of investigations which have been made to show whether or not such drug is safe and effective for use;

(2) a full list of the articles used as components of such drug;

(3) a full statement of the composition of such drug;

(4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug;

(5) such samples of such drug and of the articles used as components thereof, of any animal feed for use in or on which such drug is intended, and of the edible portions or products (before or after slaughter) of animals to which such drug (directly of in or on animal feed) is intended to be administered, as the Secretary may require;

(6) specimens of the labeling proposed to be used for such drug, or in case such drug is intended for use in animal feed, proposed labeling approporiate for such use, and specimens of the labeling for the drug to be manufactured, packed, or distributed by the applicant;

(7) a description of practicable methods for determing the quantity, if any, of such drug in or on food, and any substance formed in or on food, because of its use; and

(8) the proposed tolerance or withdrawal period or other use restrictions for such drug if any tolerance or withdrawal period or other use restrictions are required in order to assure that the proposed use of such drug will be safe.

Upon approval of any animal drug application, a regulation is published under section 512(i) of the act, which section provides as follows:

(i) When a new animal drug application filed pursuant to subsection (b) is approved the Secretary shall by notice, which upon publication shall be effective as a regulation, publish in the FEDERAL REGISTER the name and address of the applicant and the conditions and indications of use of the new animal drug covered by such application, including any tolerance and withdrawal period or other use restrictions and, if such new animal drug is intended for use in animal feed, appropriate purposes and conditions of use (including special labeling requirements) applicable to any animal feed for use in which such drug is approved, and such other information, upon the basis of which such application was approved, as the Secretary deems necessary to assure the safe and effective use of such drug. * * *

Before an animal feed bearing or containing a new animal drug can be approved, an application must be filed with the Bureau of Veterinary Medicine under section 512(m)(1) of the act, which provides the following:

(m)(1) Any person may file with the Secretary an application with respect to any intended use or uses of an animal feed bearing or containing a new animal drug. Such person shall submit to the Secretary as part of the application (A) a full statement of the composition of such animal feed, (B) an identification of the regulation or regulations (relating to the new animal drug or drugs to be used in such feed), published pursuant to subsection (i), on which he relies as a basis for approval of his application with respect to the use of such drug in such feed, (C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such animal feed, (D) specimens of the labeling proposed to be used for such animal feed, and (E) if so requested by

the Secretary, samples of such animal feed or components thereof.

The procedures in section 512 of the act require that a new animal drug (singly or in combination) be approved as safe and effective as demonstrated by substantial evidence before the drug can be the subject of an application for its use in the manufacture of a medicated animal feed.

Therefore, notice is given to the above-listed firm and to any other interested persons who may be adversely affected that the Director gives opportunity for a hearing under section 512(m)(2)(B) on a proposal to issue an order under section 512(m)(3)(A) of the act, refusing to approve medicated feed application C105-694V on the ground that there is not in effect a regulation under section 512(i) of the act (identified in that application) on the basis of which the application may be approved.

If the applicant or any other interested person elects to exercise the right to an opportunity for hearing under section 512(m)(3)(A) of the act and § 514.200 of the regulations (21 CFR 514.200), that a person must file with the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, a written appearance requesting a hearing and giving the reason why the application should be approved.

The failure of the applicant to file a timely written appearance and a request for hearing as required by § 512.200 constitutes an election not to take advantage of the opportunity for hearing, and the Director of the Bureau of Veterinary Medicine will summarily enter a final order refusing to approve the application.

A request for hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing.

If it conclusively appears from the face of the information and factual analyses in the request for hearing that there is no genuine and substantial issue of fact that precludes the refusal to approve the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person who requests a hearing, making findings and conclusions, denying a hearing.

If a hearing is requested and is justified by the applicant's response to this notice of opportunity for hearing, the issues will be defined, an administrative law judge will be assigned, and a written notice of the time and place at which the hearing will begin will be issued as soon as practicable.

Four copies of all submissions under this notice must be filed with the Hearing Clerk, Food and Drug Administration. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, responses to this notice may be seen in the office of the Hearing Clerk (FFA-305), Food and Drug Administration, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512(m), 82 Stat. 348-350 (21 U.S.C. 360b(m))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84).

Dated: November 21, 1978.

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

[FR Doc. 78-33374 Filed 11-30-78; 8:45 am]

[4110-03-M]

[NADA 65-145V]

MERCK SHARP & DOHME

Dihydrostreptomycin; Withdrawal of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Director of the Bureau of Veterinary Medicine withdraws approval of new animal drug application (NADA) providing for the certification of nonsterile dihydrostreptomycin sulfate veterinary. The sponsor, Merck Sharp & Dohme, requested this action.

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

David N. Scarr, Bureau of Veterinary Medicine (HFV-214), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1846.

SUPPLEMENTARY INFORMATION: Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., Rahway, NJ 07065, is the sponsor of NADA 65-145V, which provides for the certification of nonsterile dihydrostreptomycin sulfate veterinary. By letter dated February 3, 1978, the firm requested that approval of NADA 65-145V be withdrawn because the drug is no longer being marketed, and waived opportunity for a hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is hereby given that approval of NADA 65-145V and all supplements thereto is hereby withdrawn, effective December 1, 1978.

Dated: November 21, 1978.

TERENCE HARVEY,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 78-33373 Filed 11-30-78; 8:45 am]

[4110-08-M]

National Institutes of Health

REPORT ON BIOASSAY OF C. I. VAT YELLOW 4 FOR POSSIBLE CARCINOGENICITY

Availability

C. I. vat yellow 4, (CAS 128-66-5) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Divison of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of C. I. vat yellow 4, a commercial formulation containing dibenzo(b,def)chrysene-7,14-dione, for possible carcinogenicity was conducted by administering the test chemical in feed to Fischer 344 rats and B6C3F1 mice. Applications of C. I. vat yellow 4 include use as a dyestuff in wool, silk and synthetic fibers, as a paper pigment, and as a military smokescreen and signaling agent.

It is concluded that under the conditions of this bioassay, the formulated product containing C. I. vat yellow 4 was not carcinogenic for male or female Fisher 344 rats or for female B6C3F1 mice, but was carcinogenic for male B6C3F1 mice, causing an increased incidence of lymphomas.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20014.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: November 1, 1978.

THOMAS E. MALONE,
Acting Director, National Institutes of Health.

[FR Doc. 78-33109 Filed 11-30-78; 8:45 am]

[4110-08-M]

National Institutes of Health

REPORT ON BIOASSAY OF PIPERONYL SULFOXIDE FOR POSSIBLE CARCINOGENICITY

Availability

Piperonyl sulfoxide (CAS 120-62-7) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Divison of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of technical-grade piperonyl sulfoxide for possible carcinogenicity was conducted by administering the test chemical in feed to Fischer 344 rats and B6C3F1 mice. Applications of the chemical include use as an insecticide enhancer.

It is concluded that under the conditions of this bioassay, technical-grade piperonyl sulfoxide was not carcinogenic for male or female Fischer 344 rats or for female B6C3F1 mice, but was carcinogenic for male B6C3F1 mice, producing an increased incidence of hepatocellular carcinomas.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20014.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: November 1, 1978.

THOMAS E. MALONE,
Acting Director,
National Institutes of Health.

[FR Doc. 78-33110 Filed 11-30-78; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF SULFISOXAZOLE FOR POSSIBLE CARCINOGENICITY

Availability

Sulfisoxazole (CAS 127-69-5) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of sulfisoxazole for possible carcinogenicity was conducted by administering the chemical by gavage to Fischer 344 rats and B6C3F1 mice. Applications of the chemical include use as an antimicrobial drug.

It is concluded that under the conditions of this bioassay, sulfisoxazole was not carcinogenic for either Fischer 344 rats or B6C3F1 mice.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20014.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: November 1, 1978.

THOMAS E. MALONE,
Acting Director,
National Institutes of Health.

[FR Doc. 78-33108 Filed 11-30-78; 8:45 am]

[4110-12-M]

Office of the Secretary

[Contract No. HEW-100-78-0031]

PANEL STUDY OF INCOME DYNAMICS

Contract Award

Pursuant to Section 606 of the Community Services Act of 1974 (Pub. L. 93-644) 42 USC 2946, this agency announces the award of Contract No. HEW-100-78-0031 to the Regents of the University of Michigan, 260 Research Administration Building, Ann Arbor, Michigan, 48105, to continue the "Panel Study of Income Dynamics" for the eleventh year. The purpose is to continue the annual interviews with a sample of about 6000 heads of households. The study analyzes the changing welfare of these families and individuals through the years, with particular emphasis on jobs, income and family structure in the lower income population. The study has become the best source of predicting the number of people who may become eligible for some income-tested program over future time period, as opposed to the number of people eligible for a current program. The analyses help in estimating the causes for and methods of escape from poverty as well as the relationship of government programs to changing welfare. The estimated cost of this contract is $786,000 and intended completion date is October 31, 1978.

Dated: November 27, 1978.

HENRY AARON,
Assistant Secretary for
Planning and Evaluation.

[FR Doc. 78-33612 Filed 11-30-78; 8:45 am]

[4310-70-M]

DEPARTMENT OF THE INTERIOR

National Park Service

EVELYN HILL, INC.

Intention to Negotiate Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that on or before January 2, 1979, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Evelyn Hill, Inc., authorizing it to continue to provide concession facilities and services for the public at Statue of Liberty National Monument for a period of approximately ten (10) years from January 1, 1978.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment may be reviewed in the Office of the Superintendent, Statue of Liberty National Monument, Liberty Island, New York, New York 10004.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1977, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision, in effect, grants, Evelyn Hill, Inc., as the present satisfactory concessioner, the right to meet the terms of responsive proposals for the proposed new contract and a preference in the award of the contract, if, thereafter, the proposal of Evelyn Hill, Inc., is substantially equal to others received. In the event a responsive proposal superior to that of Evelyn Hill, Inc., (as determined by the Secretary) is submitted, Evelyn Hill, Inc., will be given the opportunity to meet the terms and conditions of the superior proposal the Secretary considers desirable, and, if it does so, the new contract will be negotiated with Evelyn Hill, Inc. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be submitted on or before January 2, 1979, to be considered and evaluated.

Interested parties should contact the Chief, Division of Concessions Management, National Park Service, Washington, D.C. 20240, for informa-

tion as to the requirements of the proposed contract.

Dated: November 21, 1978.

IRA J. HUTCHISON,
Acting Director,
National Park Service.

[FR Doc. 78-33610 Filed 11-30-78; 8:45 am]

[4310-31-M]

Geological Survey

KNOWN RECOVERABLE COAL RESOURCE AREA

West Glendive, Mont.

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and Section 8A of the Mineral Leasing Act of February 25, 1920, as added by Section 7 of the Federal Coal Leasing Amendments Act of 1975 (P.L. 94-377, August 4, 1976), Federal lands within the State of Montana have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(26) MONTANA

West Glendive (Montana) Known Recoverable Coal Resource Area; March 29, 1978; 299,394 acres.

A diagram showing the boundaries of the area classified for leasing has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, MS 609, Box 25046, Federal Center, Denver, Colorado 80225.

Dated November 22, 1978.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 78-33605 Filed 11-30-78; 8:45 am]

[4310-84-M]

Bureau of Land Management

[AA-6703-A and A-6703-B]

ALASKA NATIVE CLAIMS SELECTION

On May 21 and November 8, 1974, The Tatitlek Corporation, for the Native village of Tatitlek, filed selection applications AA-6703-A and AA-6703-B, respectively, under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (Supp. V, 1975)), for the surface estate of certain lands in the Tatitlek area, including lands within the Chugach National Forest (Proclamation, July 23, 1907, as amended).

As to the lands described below, the applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with Federal laws leading to acquisition of title.

This decision approves approximately 7,110 acres of national forest lands for conveyance to The Tatitlek Corporation, for a cumulative total of approximately 63,879 acres. This does not exceed the 69,120 acres permitted under Sec. 12(a)(1).

In view of the foregoing, the surface estate of the following described lands, located within Chugach National Forest and selected pursuant to Sec. 12(a), aggregating approximately 7,110 acres, is considered proper for acquisition by The Tatitlek Corporation and is hereby approved for conveyance pursuant to Sec. 14(a) of the Alaska Native Claims Settlement Act:

COPPER RIVER MERIDIAN, ALASKA
(UNSURVEYED)

T. 12 S., R. 7 W.,
Secs. 12 and 13 (fractional), all.
Containing approximately 955 acres.

T. 13 S., R. 7 W.,
Sec. 3 (fractional), all;
Sec. 10 (fractional), all;
Sec. 11, all;
Sec. 17 (fractional), all;
Sec. 21, all;
Sec. 28, all.
Containing approximately 3,405 acres.

T. 11 S., R. 8 W.,
Secs. 11 and 12 (fractional), all;
Secs. 13 and 14, all;
Sec. 24, all.
Containing approximately 2,750 acres.
Aggregating approximately 7,110 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971, (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (Supp. V, 1975)); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (Supp. V, 1975)), the following public easements, referenced by easement identification number (EIN) on the easement maps in case file AA-6703-EE, are reserved to the United States and subject to further regulation thereby:

a. (EIN 8a D9 G) An easement one hundred (100) feet in width for a proposed road from log transfer dock and public use easement EIN 8b G on the south shore of Fish Bay northeasterly to public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

b. (EIN 8b G) A log transfer dock and public use easement upland of the mean high tide line in Sec. 13, T. 12 S., R. 7 W., Copper River Meridian, on the south shore of Fish Bay. The easement is ten (10) acres in size and is used for camping, vehicle use, staging and as a log transfer dock.

c. (EIN 9 D9) A continuous linear easement twenty-five (25) feet in width upland of and parallel to the mean high tide line in order to provide access to and along the marine coastline and use of such shore for purposes such as beaching of watercraft or aircraft, travel along the shore, recreation and other similar uses. Deviations from the waterline are permitted when specific conditions so require, e.g., impassable topography or waterfront obstruction. This easement is subject to the right of the owner of the servient estate to build upon such easement a facility for public or private purpose, such right to be exercised reasonably and without undue or unnecessary interference with or obstruction of the easement. When access along the marine coastline is to be obstructed, the owner of the servient estate will be obligated to convey to the United States an acceptable alternate access route, at no cost to the United States, prior to the creation of such obstruction.

d. (EIN 14a G) An easement one hundred (100) feet in width for a proposed road from log transfer dock and public use easement EIN 14b G on the south shore of Galena Bay southeasterly to public lands. This road roughly follows Millard Creek and includes a southerly branch roughly following Copper Creek. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

e. (EIN 14b G) A log transfer dock and public use easement upland of the mean high tide line in Sec. 11, T. 11 S., R. 8 W., Copper River Meridian, on the south shore of Galena Bay near the mouth of Millard Creek. The easement is ten (10) acres in size and is used for camping, vehicle use, staging and as a log transfer dock.

f. (EIN 19a G) An easement one hundred (100) feet in width for a proposed road from log transfer dock and public use easement EIN 19b G on the east shore of Irish Cove southwesterly to public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

g. (EIN 19b G) A log transfer dock and public use easement upland of the mean high tide line in Sec. 3, T. 13 S., R. 7 W., Copper River Meridian, located just south of the north section line on the east shore of Irish Cove. The easement is ten (10) acres in size and is used for camping, staging and vehicle use.

h. (EIN 20a G) An easement one hundred (100) feet in width for a proposed road from log transfer dock and public use easement EIN 20b G on the east shore of Two Moon Bay southeasterly, to where it branches in Sec. 28, T. 13 S., R. 7 W., Copper River Meridian, then continues on to public lands to the south and east. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

i. (EIN 20b G) A log transfer dock and public use easement upland of the mean high tide line in Sec. 17, T. 13 S., R. 7 W., Copper River Meridian, on the east shore of

Two Moon Bay. The easement is ten (10) acres in size and is used for camping, vehicle use, staging and as a log transfer dock.

j. (EIN 41 C) The right of the United States to enter upon the lands hereinabove granted for cadastral, geodetic or other survey purposes is reserved, together with the right to do all things necessary in connection therewith.

These reservations have not been conformed to the Departmental easement policy announced March 3, 1978. Conformance is contingent upon resolution of the litigation *Calista, et al. v. Andrus* and implementation of the Secretary's new easement policy.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1970))), contract, permit, right-of-way or easement, and the right of the lessee, contractee, permittee or grantee to the complete enjoyment of all rights, privileges and benefits thereby granted to him;

3. Requirements of Sec. 22(k) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 715; 43 U.S.C. 1601, 1621(k) (Supp. V, 1975)), that, as to the portion of the above-described lands located within the boundaries of a national forest (a) until December 18, 1976, the sale of any timber from such lands is subject to the same restrictions relating to the export of timber from the United States as are applicable to national forest lands in Alaska under rules and regulations of the Secretary of Agriculture and (b) until December 18, 1983, such lands shall be managed under the principles of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands;

4. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (Supp. V, 1975)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section; and

5. The terms and conditions of the agreement dated January 18, 1977, between the Secretary of the Interior, Chugach Natives, Inc., The Tatitlek Corporation and other Chugach village corporations. A copy of the agreement shall be attached to and become a part of the conveyance document and shall be recorded therewith. A copy of the agreement is located in the Bureau of Land Management easement case file for The Tatitlek Corporation, serialized AA-6073-EE. Any person wishing to examine this agreement may do so at the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501.

The Tatitlek Corporation is entitled to conveyance of 115,200 acres of land selected pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act. To date, approximately 64,277 acres of this entitlement have been approved for conveyance; the remaining entitlement of approximately 50,923 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of the Alaska Native Claims Settlement Act, conveyance of the subsurface estate of the lands described above will be granted to Chugach Natives, Inc. when conveyance is granted to The Tatitlek Corporation for the surface estate, and shall be subject to the same conditions as the surface conveyance.

There are no inland water bodies considered to be navigable within the lands described.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the FEDERAL REGISTER and once a week, for four (4) consecutive weeks in both the ANCHORAGE TIMES and THE CORDOVA TIMES. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate and any parties who failed or refused to sign the return receipt shall have until January 2, 1979, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

4. If The Tatitlek Corporation or Chugach Natives, Inc. objects to any easement which is identified herein for reservation in the conveyance, which is subject to the discretion of the State Director and not reserved pursuant to an express Secretarial directive, a petition for reconsideration must be filed within 30 days from receipt of service with the State Director, Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510. A copy of the petition should be served upon the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. If a petition for reconsideration is not filed, it will be deemed that the right to contest any such easement has been waived.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510.

If an appeal is to be taken, the adverse parties to be served are:

The Tatitlek Corporation, P.O. Box 758, Cordova, Alaska 99574.
Chugach Natives, Inc., 912 East 15th Avenue, Anchorage, Alaska 99501.

SUE A. WOLF,
Chief, Branch of Adjudication.

[FR Doc. 78-33658 Filed 11-30-78; 8:45 am]

[4310-84-M]

[AA-6649-A through AA-6649-D]

ALASKA NATIVE CLAIMS SELECTION

The Atxam Corporation filed village selection applications AA-6649-A, June 13, 1974; AA-6649-B, November 13, 1974; AA-6649-C, December 13, 1974 and AA-6649-D, December 18, 1974, as amended, under the provisions of section 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (Supp. V, 1975)), for the surface estate of certain lands in the Aleutian Islands area, including lands within the Aleutian Islands National Wildlife Refuge (Executive Order (EO) 1733).

As to the lands described below, the applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with Federal laws leading to acquisition of title.

This decision approves approximately 66,165.04 acres of national wildlife refuge lands for conveyance to the Atxam Corporation, for a cumulative total of approximately 66,165.04 acres.

This does not exceed the 69,120 acres permitted under section 12(a)(1).

In view of the foregoing, the surface estate of the following described lands, selected pursuant to section 12(a), aggregating approximately 89,156.04 acres, is considered proper for acquisition by the Atxam Corporation, and is hereby approved for conveyance pursuant to section 14(a) of the Alaska Native Claims Settlement Act:

LANDS WITHIN THE ALEUTIAN ISLANDS NATIONAL WILDLIFE REFUGE (EO 1733)

U.S. Survey 2015, Lot 2, situated on the southwesterly shore of Nazan Bay at Atka, Akta Island, Alaska.

Containing .04 acre.

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

T. 92 S., R. 175 W.
Sec. 3 (fractional), all;
Sec. 4, all;
Secs. 5 to 10 (fractional), inclusive, all;
Secs. 30 and 31 (fractional), all.

Containing approximately 2,675 acres.

T. 91 S., R. 176 W.
Secs. 5, 8, and 9, all;
Secs. 15 and 16, all;
Secs. 21, 22, and 27, all;
Secs. 28, 29, and 32 (fractional), all;
Secs. 33 to 36, inclusive, all.

Containing approximately 8,390 acres.

T. 92 S., R. 176 W.
Secs. 1, 2, and 3 (fractional), all;
Sec. 4, all;
Secs. 5, 6, and 7 (fractional), all;
Secs. 8 and 9, all;
Secs. 10 to 13 (fractional), inclusive, all;
Sec. 15 (fractional), all;
Secs. 16 to 21, inclusive, all;
Sec. 22 (fractional), excluding U.S. Survey 2015;
Secs. 23 to 26 (fractional), inclusive, all;
Secs. 27 to 35, inclusive, all;
Sec. 36 (fractional), all.

Containing approximately 17,100 acres.

T. 93 S., R. 176 W.
Secs. 7 to 10 (fractional), inclusive, all;
Secs. 13 to 25 (fractional), inclusive, all;
Sec. 36 (fractional), all.

Containing approximately 5,220 acres.

T. 91 S., R. 177 W.
Secs. 2, 3, and 4 (fractional), all;
Secs. 9, 10, and 11 (fractional), all;
Secs. 14 and 15 (fractional), all;
Secs. 22, 23, and 24 (fractional), all.

Containing approximately 2,980 acres.

T. 92 S., R. 177 W.
Secs. 11 to 15 (fractional), inclusive, all;
Sec. 20, all;
Secs. 21 and 22 (fractional), all;
Secs. 23 to 26, inclusive, all;
Sec. 27 (fractional), all;
Secs. 28 and 29, all;
Sec. 30 (fractional), all.

Containing approximately 8,020 acres.

T. 93 S., R. 177 W.
Secs. 1 and 2 (fractional), all;
Secs. 3 to 6, inclusive, all;
Sec. 9, all;
Sec. 10 (fractional), all;
Sec. 11, all;
Sec. 12 (fractional), all;
Secs. 15 to 21 (fractional), inclusive, all;
Sec. 30 (fractional), all.

Containing approximately 7,716 acres.

T. 93 S., R. 178 W.
Secs. 13 and 14, all;
Secs. 15, 16, and 17 (fractional), all;
Sec. 18, all;
Secs. 19 to 23 (fractional), inclusive, all;
Sec. 24, all;
Secs. 25, 26, and 27 (fractional), all.

Containing approximately 5,374 acres.

T. 93 S., R. 179 W.
Secs. 21 to 27 (fractional), inclusive, all;
Sec. 32 (fractional), all;
Secs. 33 and 34, all;
Secs. 35 and 36 (fractional), all.

Containing approximately 5,305 acres.

T. 94 S., R. 179 W.
Secs. 1 and 2 (fractional), all;
Sec. 3, all;
Secs. 4, 5, and 7 (fractional), all;
Secs. 9, 10, and 11 (fractional), all;
Secs. 14 to 20 (fractional), inclusive, all;
Sec. 30 (fractional), all.

Containing approximately 3,385 acres.

Aggregating approximately 66,165.04 acres within the Aleutian Islands National Wildlife Refuge (EO 1733).

LANDS OUTSIDE THE ALEUTIAN ISLANDS NATIONAL WILDLIFE REFUGE (EO 1733)

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

T. 52 S., R. 73 W.
Secs. 21 to 24, inclusive, all;
Sec. 25, excluding Mineral Survey 306;
Secs. 26, 27, and 28, all;
Secs. 33 and 34, all;
Sec. 35, excluding Mineral Survey 305;
Sec. 36, excluding Mineral Survey 306.

Containing approximately 7,638 acres.

T. 54 S., R. 78 W.
Secs. 1 to 6 (fractional), inclusive, all;
Secs. 7 to 10, inclusive, all;
Secs. 11 and 12 (fractional), all;
Secs. 13 to 17, inclusive, all.

Containing approximately 8,473 acres.

T. 53 S., R. 79 W.
Secs. 21, 22 and 26 (fractional), all;
Sec. 27, all;
Secs. 28, 29 and 32 (fractional), all;
Secs. 33 and 34, all;
Secs. 35 and 36 (fractional), all.

Containing approximately 4,100 acres.

T. 78 S., R. 124 W.
Portions of land on Unalaska Island, excluding any offshore islands, rocks and pinnacles within the following protracted description:
Sec. 1, all;
Secs. 2, 3, and 4 (fractional), all;
Sec. 9 (fractional), all;
Sec. 11, all.

Containing approximately 2,780 acres.

Aggregating approximately 22,991 acres *outside* the Aleutian Islands National Wildlife Refuge (EO 1733).

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities and appurtenances, of whatsoever nature, acrruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (Supp. V, 1975)); and

2. Pursuant to section 17(b) of the Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (Supp. V, 1975)), the following public easements, referenced by easement identification number (EIN) on the easement maps in case file AA-6649-EE are reserved to the United States and subject to further regulation thereby:

a. (EIN 2 D9) An easement for an existing access trail fifty (50) feet in width from the village of Atka northwesterly to Korovin Bay. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

b. (EIN 4 C4) A continuous linear easement twenty-five (25) feet in width upland of and parallel to the mean high tide line in order to provide access to and along the marine coastline and use of such shore for purposes such as beaching of watercraft or aircraft, travel along the shore, recreation and other similar uses. Deviations from the waterline are permitted when specific conditions so require, e.g., impassable topography or waterfront obstruction. This easement is subject to the right of the owner of the servient estate to build upon such easement a facility for public or private purposes, such right to be exercised reasonably and without undue or unnecessary interference with or obstruction of the easement. When access along the marine coastline easement is to be obstructed, the owner of the servient estate will be obligated to convey to the United States an acceptable alternate access route, at no cost to the United States, prior to the creation of such obstruction.

c. (EIN 5 C) The right of the United States to enter upon the lands herein granted for cadastral, geodetic or other survey purposes is reserved, together with the right to do all things necessary in connection therewith.

d. (EIN 7a D9) A fishery management and public use easement upland of the mean high tide line in Sec. 3, T. 54 S., R. 78 W., Seward Meridian, on the south shore of Canoe Bay. The easement is one (1) acre in size and is used for camping, vehicle use and for fishery management purposes.

e. (EIN 7c D9) A bush airstrip easement two hundred and fifty (250) feet in width and three thousand (3,000) feet in length. Located in Sec. 5, T. 54 S., R. 78 W., Seward Meridian. This size is minimum for public safety.

f. (EIN 7d D9) An easement for an existing access trail twenty-five (25) feet in width from airstrip easement EIN 7c D9 northerly to the shore of Canoe Bay. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

g. (EIN 8 E) An easement for an existing access trail twenty-five (25) feet in width from easement EIN 2 D9 northeasterly along the north shore of Nazan Bay. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

h. (EIN 9 E) An easement for a proposed access trail twenty-five (25) feet in width from the northeast end of Vasilief Bay in T.

93 S., R. 178 W., Seward Meridian, northerly to public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

i. (EIN 10 E) An easement for a proposed access trail twenty-five (25) feet in width from the northwest end of Vasilief Bay in T. 93 S., R. 179 W., Seward Meridian northerly to public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

j. (EIN 11 E) An easement for a proposed access trail twenty-five (25) feet in width from airstrip easement EIN 7c D9 in T. 54 S., R. 78 W., Seward Meridian southerly to public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

k. (EIN 12 E) An easement for a proposed access trail twenty-five (25) feet in width from site easement EIN 14 E (EIN 7 C4, Sand Point) at the head of Canoe Bay northeasterly along the left bank of Four Bear Creek to public lands. the usage of roads and trails will be controlled by applicable State or Federal law or regulation.

l. (EIN 13 E) An easement for a proposed access trail twenty-five (25) feet in width from site easement EIN 14 E (EIN 7 C4, Sand Point) at the head of Canoe Bay southeasterly to public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

m. (EIN 14 E) A one (1) acre site easement upland of the mean high tide line in Sec. 12, T. 54 S., R. 78 W., Seward Meridian on the eastern shore of Canoe Bay and the left bank of Four Bear Creek at its junction with Canoe Bay River. The site is for camping, staging and vehicle use.

These reservations have not been conformed to the Departmental easement policy announced March 3, 1978. Conformance is contingent upon resolution of the litigation *Calista, et al v. Andrus* and implementation of the Secretary's new easement policy.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1970))), contract, permit, right-of-way or easement and the right of the lessee, contractee, permittee or grantee to the complete enjoyment of all rights, privileges and benefits thereby granted to him;

3. Grazing lease A-060872 to The Alaska Offshore Marine Services, Inc. on Unalaska Island within T. 78 S., R. 124 W., Seward Meridian, under the act of March 4, 1927 (44 Stat. 1452; 48 U.S.C. 471, 471a and 471o);

4. The naval airspace reservation of Executive Order 8680 dated February 14, 1941;

5. Requirements of section 22(g) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 714; 43 U.S.C. 1601, 1621(g) (Supp. V, 1975)), that (a) the above-described lands which were within the boundaries of the Aleutian Islands National Wildlife Refuge on December 18, 1971, remain subject to the laws and regulations governing use and development of such refuge, and that (b) the right of first refusal, if said land or any part thereof is ever sold by the above-named corporation, is reserved to the United States;

6. Requirements of section 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (Supp. V, 1975)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section; and

7. The terms and conditions of the agreement dated January 18, 1977, between the Secretary of the Interior, The Aleut Corporation, the Atxam Corporation and other Aleut village corporations. A copy of the agreement shall be attached to and become a part of the conveyance document and shall be recorded therewith. A copy of the agreement is located in the Bureau of Land Management easement case file for Atxam Corporation, serialized AA-6649-EE. Any person wishing to examine this agreement may do so at the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501.

The Atxam Corporation is entitled to conveyance of 92,160 acres of land selected pursuant to section 12(a) of the Alaska Native Claims Settlement Act. To date, approximately 89,156.04 acres of this entitlement have been approved for conveyance; the remaining entitlement of approximately 3,003.96 acres will be conveyed at a later date.

Pursuant to section 14(f) of the Alaska Native Claims Settlement Act, conveyance of the subsurface estate of the lands described above, excluding those lands which have been withdrawn by EO 1733 and which are reserved thereby as a national wildlife refuge, shall be granted to The Aleut Corporation when conveyance is granted to the Atxam Corporation for the surface estate, and shall be subject to the same conditions as the surface conveyance. Section 12(a)(1) provides that when a village corporation selects the surface estate of lands within a national wildlife refuge system, the regional corporation may make selections of the subsurface estate, in an equal acreage, from other lands withdrawn by section 11(a) within the region.

There are no inland water bodies considered to be navigable within the lands described.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the FEDERAL REGISTER and once a week, for four (4) consecutive weeks, in the ANCHORAGE TIMES. Any party claiming a property interest in land affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate and any parties who failed or refused to sign the return receipt shall have until January 2, 1979 to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

4. If Atxam Corporation or The Aleut Corporation objects to any easement which is identified herein for reservation in the conveyance, which is subject to the discretion of the State Director and not reserved pursuant to an express Secretarial directive, a petition for reconsideration must be filed within 30 days from receipt of service with the State Director, Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510. A copy of the petition should be served upon the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. If a petition for reconsideration is not filed, it will be deemed that the right to contest any such easement has been waived.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510.

If an appeal is to be taken, the adverse parties to be served are:

Atxam Corporation, Atka Rural Branch, Atka, Alaska 99502.
The Aleut Corporation, 833 Gambell Street, Anchorage, Alaska 99501.

SUE A. WOLF,
Chief, Branch of Adjudication.

[FR Doc. 78-33659 Filed 11-30-78; 8:45 am]

[4310-84-M]

NEVADA

Amendment of Notice of Realty Action—Sale

On November 9, 1978, a NOTICE was pulbished in the FEDERAL REGISTER, Thursday, November 9, 1978, at pages 52292-52293, stating that certain public lands in Nevada would be sold at public auction on December 13, 1978. Included in the sale procedure was a provision that for each parcel, the highest bidder will be required to pay full bid price immediately at the sale.

A protest has been received suggesting that, because of the high values of lands involved, many parties would not be able to arrange for financing prior to the sale. Therefore, the NOTICE is amended as follows:

1. The requirement that the highest bidder be required to pay the full bid price immediately at the sale is deleted.

2. The highest bidder will be required to submit a nonrefundable deposit of one-fifth of the full bid price immediately at the sale. The remainder of the full bid price shall be paid within 30 days of the sale. Failure to pay the full bid price within 30 days shall result in cancellation of the sale of the parcel, and the deposit shall be forfeited and disposed of as other receipts of sale.

ARNOLD E. PETTY,
Acting Assoicate Director.

NOVEMBER 28, 1978.

[FR Doc 78-33661 Filed 11-30-78; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-3]

DOXYCYCLINE

Notice of Commission Hearing on Relief, Bonding, and the Public Interest

Recommendation of "violation" issued. In connection with the Commission's investigation under section 337 of the Tariff Act of 1930 of alleged unfair methods of competition and unfair acts in the importation and sale of doxycycline in the United States, the presiding officer recommended on October 16, 1978, that the Commission grant complainant's motion for summary determination as to all issues and determine that there is a violation of section 337. Interested persons may obtain copies of the presiding officer's recommendation by contacting the Office of the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Commission hearing scheduled. The Commission will hold a hearing beginning at 10 a.m., e.s.t., on Tuesday, February 6, 1979, in the Commission's Hearing Room (Room 331), 701 E Street N.W., Washington, D.C. 20436. The purpose of the hearing is for the Commission to receive oral presentations concerning appropriate relief, bonding, and the public interest in the event that the Commission determines that there is a violation of section 337. This hearing will be held on one day only in order to facilitate the completion of this investigation within time limits under law and to minimize the burden of this hearing upon the parties to the investigation. The procedure for the hearing follows.

Oral presentations on relief, bonding, and the public interest. A party to the investigation, an interested agency, a public-interest group, or any interested member of the public may make an oral presentation on relief, bonding, and the public interest.

1. *Relief.* In the event that the Commission finds a violation of section 337, it can issue (1) an order which could result in the exclusion from entry of doxycycline into the United States or (2) an order which could result in requiring respondents to cease and desist from alleged unfair methods of competition or unfair acts in the importation and sale of doxycycline. During the course of the investigation, the question was raised as to whether the Commission could issue both an order that would exclude foreign-produced doxycycline from entry into the United States and an order that would require respondents to cease and desist from sales of foreign-produced doxycycline already imported into the United States (see the presiding officer's Recommended Determination, finding of fact No. 7, p. 7). The Commission is interested in receiving information on all three alternatives.

2. *Bonding.* In the event that the Commission finds a violation of section 337 and orders some form of relief, that relief would not become final for a 60-day period, during which the President would consider the Commission's report. During this period, the doxycycline, which is the subject of this investigation, would be entitled to enter the United States under a bond determined by the Commission and prescribed by the Secretary of the Treasury. Accordingly, the Commission is interested in what bond should be determined, if any.

3. *The public interest.* In the event that the Commission finds a violation of section 337 and orders some form of relief, the Commission must consider the effect of that relief upon the public interest. Accordingly, the Commission is interested in the effect of any exclusion order, cease and desist order, granted either alternatively or together, upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States and (4) U.S. consumers.

A party to the Commission's investigation, an interested agency, a public-interest group, or any interested person wishing to make an oral presentation concerning relief, bonding, and the public interest will be limited to no more than 30 minutes. Participants will be permitted an additional 5 minutes each for summation after all presentations have been made. Participants with similar interests may be required to share time. The order of oral presentations will be as follows: complainant, respondents, interested agencies, public-interest groups, other interested members of the public, and Commission investigative staff. Summations will follow the same order.

How to participate in the hearing. If you wish to appear at the Commission's hearing, you must file a written request to appear with the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, no later than the close of business (5:15 p.m., e.s.t.) on Wednesday, January 10, 1979. Your written request must indicate whether your oral presentation will concern relief, bonding, the public interest, or a combination of these.

Written submissions to the Commission. The Commission requests that written submissions be filed prior to the hearing in order to focus the issues and facilitate the orderly conduct of the hearing.

1. *Written comments and information concerning relief, bonding, and the public interest.* Parties to the Commission's investigation, interested agencies, public-interest groups, and any other interested members of the public are encouraged to file written comments and information concerning relief, bonding, and the public interest. These written submissions will be very useful to the Commission in the event that it determines that there is a violation of section 337 and that relief should be granted.

Written comments and information concerning relief, bonding, and the public interest shall be submitted as follows. First, complainant shall file a detailed proposed Commission action, including a proposed determination of bonding, a proposed order granting relief, a discussion of how this order will be enforced, and a discussion of the effect of its proposals on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers, with the Secretary to

the Commission no later than the close of business on Tuesday, December 26, 1978. Second, other parties, interested agencies, public-interest groups, and other interested members of the public shall file written comments and information concerning the action which complainant has proposed, any available alternatives, and the advisability of any Commission action in light of the public-interest considerations listed above no later than the close of business on Monday, January 22, 1979.

2. *Written report on the public-interest factors to be submitted by the Commission investigative staff.* The Commission's investigative staff will file and serve upon all parties a formal report on the public-interest factors to be considered by the Commission together with the staff's recommendations and conclusions no later than January 22, 1979.

Additional information. The original and 19 true copies of all written submissions must be filed with the Secretary to the Commission. If you wish to submit a document (or a portion thereof) to the Commission in confidence, you must request *in camera* treatment. Your request should be directed to the Chairman of the Commission and must include a full statement of the reasons the Commission should grant such treatment. The Commission will either accept the submission in confidence or return the submission to you. All nonconfidential written submissions will be open to public inspection at the Secretary's Office.

Notice of the Commission's investigation was published in the FEDERAL REGISTER of May 2, 1973 (38 FR 10837), and the Notice of Reactivation was published in the FEDERAL REGISTER of February 21, 1978 (43 FR 7273).

Issued: November 27, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-33604 Filed 11-30-78; 8:45 am]

[4410-09-M]

DEPARTMENT OF JUSTICE

Office of the Attorney General

[AAG/A Order No. 19-78]

PRIVACY ACT OF 1974

Amended System of Records

On Thursday, April 27, 1978, notice of the existence of a system of records maintained by the Drug Enforcement Administration entitled "Investigative Reporting and Filing System" JUSTICE/DEA-008 was published in the FEDERAL REGISTER pursuant to 5 U.S.C. 552a(e)(4).

Notice is hereby given that pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the Drug Enforcement Administration, Department of Justice, proposes to further refine this system. The new system (Investigative Reporting and Filing System) will provide for the automated retrieval of certain demographic and administrative data relating to confidential sources of information. This capability will provide management with the ability to meet internal requirements for review of confidential sources of information and better enable management to assess the effectiveness of the use of confidential sources of information.

The amended system notice is reprinted below. Changes have been italicized.

Appropriate reports have been filed with Congress and the Office of Management and Budget.

Dated: November 20, 1978.

KEVIN D. ROONEY,
Assistant Attorney General for Administration.

JUSTICE/DEA-008

System name:

Investigative Reporting and Filing System.

System location:

Drug Enforcement Administration; 1405 I Street, N.W.; Washington, D.C. 20537. Also, field offices. See Appendix 1 for list of addresses.[1]

Categories of individuals covered by the system:

A. Drug offenders
B. Alleged drug offenders
C. Persons suspected of drug offenses
D. Confidential informants
E. Defendants
F. Witnesses
G. Non-implicated persons with pertinent knowledge of some circumstance or aspect of a case or suspect. These are pertinent references of fact developed by personal interview or third party interview and are recorded as a matter for which a probable need for recall will exist. In the regulatory portion of the system, records are maintained on the following categories of individuals: (a) Individuals registered with DEA under the Comprehensive Drug Abuse Prevention and Control Act of 1970; (b) Responsible officials of business firms registered with DEA; (c) Employees of DEA registrants who handle controlled substances or occupy positions of trust related to the handling of controlled substances; (d) Applicants for DEA registration and their responsible employees.

Categories of records in the system:

The investigative Reporting and Filing System includes, among other things, a system of records as defined in the Privacy Act of 1974. Individual records, i.e., items of information on an individual, may be decentralized in separate investigative file folders. Such records, as well as certain other records on persons and subjects not covered by the Act, are made retrievable and are retrieved by reference to the following subsystems.

A. The Narcotics and Dangerous Drugs Information System (NADDIS) consists of two centralized automated indices and machine records on subjects cited in and extracted from investigative reports. The two indices represent a name index and a number index which are used to access one or more specific records for examination. The system serves as both an index to the more voluminous written reports upon which it is based and as an autonomous means for developing investigative leads and aids in selecting source materials for studies of a strategic nature. The system is accessible by telecommunications by appropriately equipped DEA headquarters and field offices. Records which comprise the system are also accessed by special computer runs. These runs are typically generated from selection criteria which cannot be utilized (input) via the telecommunications equipment. Bulk products generated via off-line runs may be formatted on computer tape, in printout or on microfiche depending on the needs of the user.

Direct references to the discrete file folders in which the source reports are filed are provided within each record. Therefore, the NADDIS records point to the more comprehensive manual reports maintained centrally at Headquarters. Records are retrievable by name and by certain identifying numbers in the on-line mode and by virtually any record data element in the off-line mode.

B. The Confidential Source Subsystem within the Investigative Reporting and Filing System consists of demographic and administrative data concerning: (a) persons who under the specific direction of a DEA agent, with or without the expectation of payment or other valuable consideration, furnish information regarding drug trafficking, or perform other lawful services; and (b) persons who furnish information to DEA on an occasional basis.

The information contained in this subsystem is extracted directly from investigative files and confidential informant files contained in the system.

[1] Published at 43 FR 44718 on September 28, 1978.

This subsystem contains no names. The subsystem consists of alphanumeric identifiers coupled with demographic and administrative data concerning the confidential source. The subsystem serves primarily as an administrative tool to enable DEA management to perform periodic revivs of confidential sources required by DEA guidelines and regulations, to enable DEA to maintain more effective management controls over the expenditure of funds to confidential sources and to enable DEA to more systematically assess the performance of particular confidential sources. In addition, the system will generate statistical reports which will assist DEA management in evaluating the overall effectiveness of the utilization of confidential sources of information.

The system is accessed by designated ADP terminals on the strictest need to know basis.

C. Manual name indices covering regional and district investigative activities are maintained by DEA field offices. A residual card index is retained by DEA headquarters that predates the automated central index. The items of information on the manual index records are extracted only from investigative reports and point to the more comprehensive information in pertinent investigative file folders. The records in the field office indices are subsets of the central automated and manual indices. Records are retrievable by name only by this manual technique. Four basic categories of files are maintained within the Investigative Reporting and Filing System. DEA does not maintain a dossier type file in the traditional sense on an individual. Instead, the files are compiled on separate investigations, topics and on a functional basis for oversight and investigative support, (a) Criminal Investigative Case Files; (b) General Investigative Files, Criminal and Regulatory; (c) Regulatory Audit and Investigative Files; (d) Confidential Informant Files.

The basic document contained in these files is a multipurpose report of investigation (DEA-6) in which investigative activities and findings are rigorously documented. The reports pertain to the full range of DEA criminal drug enforcement and regulatory investigative functions that emanate from the Comprehensive Drug Prevention and Control Act of 1970. Within the categories of files listed above, the general file category includes preliminary investigations of a criminal nature, certain topical or functional aggregations and reports of preregistrant inspections/investigations. The case files cover targeted conspiracies, trafficking situations and formal regulatory audits and investigations. Frequently the criminal drug cases are the logical extension of one or more preliminary investigations. The distinction between the case file and general file categories, therefore, is based on internal administrative policy and should not be construed as a differentiation of investigation techniques or practices. These files, except for Confidential Informant Files, contain also adopted reports received from other agencies to include items that comprise, when indexed, individual records within the meaning of the Act. The central files maintained at DEA Headquarters include, in general, copies of investigative reports and most of the supporting documents that are generated or adopted by DEA Headquarters and field offices.

Authority for maintenance of the system:

This system is established and maintained to enable DEA to carry out its assigned law enforcement and regulatory functions under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91-513), Reorganization Plan No. 2 of 1973, and to fulfill United States obligationsunder the Single Convention on Narcotic Drugs.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

This system may be used as a data source or reference facility for numerous summary, management and statistical reports produced by the Drug Enforcement Administration. Only on rare occasions do such reports contain identifiable individual records. Information contained in this system is provided to the following categories of users as a matter of routine use for law enforcement and regulatory purposes: (a) Other federal law enforcement and regulatory agencies; (b) State and local law enforcement and regulatory agencies; (c) Foreign law enforcement agencies with whom DEA maintains liaison; (d) The Department of Defense and Military Departments; (e) The Department of State; (f) U.S. intelligence agencies concerned with drug enforcement; (g) The United Nations; (h) Interpol; (i) To individuals and organizations in the course of investigations to elicit information.

In addition, disclosures are routinely made to the following categories for the purposes stated: (a) To federal agencies for national security clearance purposes and to federal and state regulatory agencies responsible for the licensing or certification of individuals in the fields of pharmacy and medicine; (b) To the Office of Management and Budget upon request in order to justify the allocation of resources; (c) To State and local prosecutors for assistance in preparing cases concerning criminal and regulatory matters; (d) To the news media for public information purposes; and (e) To respondents and their attorneys for purposes of discovery, formal and informal in the course of an adjudicatory, rulemaking, or other hearing held pursuant to the Controlled Substances Act of 1970.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management inspection conducted under the authority of 44 U.S.C. 2904 and 2906.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Administration regulations include detailed instructions for the preparation, adoption, handling, dissemination, indexing of individual records, storage, safeguarding of investigative reports and the accounting of disclosure of individual records.

Storage:

1. The Headquarters central files and the field office subsets of the Investigative Reporting and Filing System are maintained in standard file folders. Standard formats are employed. Manual indices are maintained using standard index record formats.

2. The Narcotics and Dangerous Drugs information subset is stored electronically on the Department of Justice computer center separate from DEA Headquarters.

Retrievability:

Access to individual records is gained by reference to either the automated or manual indices. Retrievability is a function of the presence of items in the index and the matching of names in the index with search argument names or identifying numbers in the case of the automated system. Files

identified from field office indices are held by the field office and Headquarters. Files identified from the automated index may not be held by the interested office, but the originators of such files are identified. In addition a number of telecommunication terminals have been added to the existing network.

Safeguards:

The Investigative Reporting and Filing System is protected by both physical security methods and dissemination and access controls. Fundamental in all cases is that access to investigative information is limited to those persons or agencies with a demonstrated and lawful need to know for the information in order to perform assigned functions.

1. Physicial security when investigative files are attended is provided by responsible DEA employees. Physical security when files are unattended is provided by the secure locking of material in approved containers or facilities. The selection of containers or facilities is made in consideration of the sensitivity or National Security Classification, as appropriate, of the files and the extent of security guard and/or surveillance afforded by electronic means.

2. Protection of the automated index is provided by physical, procedural and electronic means. The Master file resides on the Department of Justice computer center and is physically attended or guarded on a full-time basis. Access or observation to active telecommunications terminals is limited to those with a demonstrated need to know for retrieval information. Surreptitious access to an unattended terminal is precluded by a complex signon procedure. The procedure is provided only to authorized DEA employees. For certain terminals, access is further restricted by cryptological equipment.

3. An automated log of queries is maintained for each terminal. Improper procedure results in no access. Terminals are signed-off after use. The terminals are otherwise located in locked facilities after normal working hours.

4. The dissemination of investigative information on an individual outside the Department of Justice is made in accordance with the routine uses as described herein or otherwise in accordance with the conditions of disclosure prescribed by the Act. The need to know of the recipient is determined in both cases by DEA as a prerequisite of the release.

Retention and disposal:

Records contained within this system except for those in general files are retained for fifty-five (55) years. Records in general files are retained for twenty (20) years. System manager(s) and address:

Assistant Administrator for Enforcement; Drug Enforcement Administration; 1405 I Street, NW., Washington, D.C. 20537.

Record source categories:

(a) DEA personnel; (b) Cooperating individuals; (c) Suspects and defendants; (d) Federal, State and local law enforcement and regulatory agencies; (e) Other federal agencies; (f) Foreign law enforcement agencies; (g) Business records by subpoena; (h) Drug and chemical companies; (i) Concerned citizens.

Systems exempted from certain provisions of the Act:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4) (G) and (H), (e)(5) and (8), (f), (g), (h) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the FEDERAL REGISTER.

[FR Doc. 78-33657 Filed 11-30-78; 8:45 am]

[4410-01-M]

Antitrust Division

UNITED STATES V. GOLDEN GATE SPORTFISHER'S, INC.

Proposed Consent Judgment and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16 (b)-(h), that a proposed consent judgment and competitive impact statement as set out below have been filed with the United States District Court for the Northern District of California in *United States* v. *Golden Gate Sportfisher's, Inc.*, Civil No. 78-1608 WWS. The complaint in this case alleges that the defendant, an association of charter sportfishing boat owners, combined with co-conspirators to fix, maintain and stabilize the prices which the members of the association charge to carry passengers in California in violation of Section 1 of the Sherman Act.

The proposed judgment prohibits defendant from entering into any agreement to fix the prices charged by sportfishing boats for carrying passengers and from recommending that its members or any other person use or adhere to any price. It also forbids defendant to attempt to influence its members or any other person regarding prices or to put into effect any procedure the effect of which is to fix, maintain or stabilize the price to be charged for passage on sportfishing boats.

Public comment is invited within the statutory 60 day comment period. Such comments and responses thereto will be published in the FEDERAL REGISTER and filed with the Court. Comments should be directed to Anthony E. Desmond, Chief, San Francisco Office, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, San Francisco, California 94102.

Dated: October 26, 1978.

CHARLES F. B. MCALEER,
Special Assistant for Judgment Negotiations.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

United States of America, Plaintiff, v. *Golden Gate Sportfishers, Inc.*, Defendant.

Civil No. C78-1608 WWS.

Filed: October 26, 1978.

STIPULATION

It is stipulated by and between the undersigned parties, plaintiff United States of America, and defendant, Golden Gate Sportfishers, Inc., by their respective attorneys, that:

1. The parties consent that a final judgment in the form hereto attached may be filed and entered by the Court upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act [15 U.S.C. § 16] and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent which it may do at any time before the entry of the proposed final judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to plaintiff and defendant in this or any other proceeding.

Dated: October 6, 1978.

For the Plaintiff: John H. Shenefield, *Assistant Attorney General;* Robert B. Ross; William E. Swope; Charles F. B. McAleer; Anthony E. Desmond, *Attorneys, Department of Justice.*

For the Defendant: John Connell, *Attorney for Defendant.*

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

United States of America, Plaintiff, v. *Golden Gate Sportfishers, Inc.*, Defendant.

Civil No. C78-1608 WWS.

Filed: October 26, 1978.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on July 19, 1978, and defendant, Golden Gate Sportfishers, Inc., having appeared by its counsel,

and both parties by their respective attorneys having consented to the making and entry of this Final Judgment without admission by any party in respect to any issue;

Now, therefore, before any testimony has been taken herein, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed, as follows:

I

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The complaint states claims upon which relief may be granted against the defendant under Section I of the Sherman Act [15 U.S.C. § 1].

II

As used in this Final Judgment:

(A) "Defendant" means defendant Golden Gate Sportfishers, Inc.;

(B) "Person" means any individual, partnership, corporation, association, firm, or any other business or legal entity;

III

The provisions of this Final Judgment shall apply to the defendant and to each of its officers, directors, agents, employees, chapters, successors and assigns, and to all other persons, including members of the defendant, in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant is enjoined and restrained from directly or indirectly:

(A) Entering into, adhering to, maintaining, or furthering any contract, agreement, understanding, plan or program, to fix, establish, or maintain prices charged by sportfishing boats to carry passengers.

(B) Advocating, suggesting, urging, inducing, compelling, or in any other manner influencing or attempting to influence members of the defendant and/or any other person to use or adhere to any price to be charged for passage on sportfishing boats;

(C) Policing, urging, coercing, influencing, or attempting to influence in any manner any member or any other person, or devising or putting into effect any procedure (including but not limited to picketing) the effect of which is to fix, maintain, or stabilize prices to be charged by members or any other persons for passage on sportfishing boats.

V

Defendant is ordered and directed:

(A) Within 60 days after entry of this Final Judgment to serve a copy of this Final Judgment together with a letter identical in text to that attached to this Final Judgment as Appendix A, upon each of those persons who are or have been officers or members of defendant at any time since January 1, 1977.

(B) To serve a copy of this Final Judgment together with a letter identical in text to that attached to this Final Judgment as Appendix A, upon all of its future members at such time as they become members;

(C) To file with this Court and serve upon the plaintiff within sixty (60) days after the date of entry of this Final Judgment an affidavit as to the fact and manner of compliance with subsection A of this Section V.

VI

(A) For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in the possession or under the control of defendant, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, directors, agents, partners, members, or employees of defendant, who may have counsel present, regarding any such matters.

(B) Defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by a defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

VII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

VIII

Entry of this Final Judgment is in the public interest.

Dated: ————

United States District Judge.

APPENDIX A

Re: Final Judgment in *United States* v. *Golden Gate Sportfishers, Inc.*, Civil No. C78-1608 WWS

Dear Sir: Enclosed herewith is a copy of a Final Judgment entered ————, 1978, in *United States* v. *Golden Gate Sportfishers, Inc.*, Civil No. C78-1608 WWS. The terms of the Final Judgment require that a copy of said Judgment as well as this letter be served upon you. You should read the terms of the Final Judgment carefully and note that you as a member of the association are bound by its provisions. The purpose of this letter is to enable you to better understand those provisions.

The essence and intent of the Final Judgment is that you should make your own pricing and profit decisions without consulting with any other sportfishing boats or organization of such boats. This includes not only the price of passage, but also any discounts, or concessions in the charges for rental fishing equipment, tackle, or bait. Prices should not be a subject of agreement. Nor should you attempt to influence the prices charged by others, whether such influence be in the form of persuasion or coercion.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

United States of America, Plaintiff, v. *Golden Gate Sportfishers, Inc.*, Defendant.

Civil No. C78-1608 WWS.

October 26, 1978.

COMPETITIVE IMPACT, STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act [15 U.S.C. §§ 16(b)(h), P.L. 93-528 (December 21, 1974)], the United States of America hereby files this Competitive Impact Statement relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On July 19, 1978, the United States filed a civil complaint under Section 4 of the Sherman Act [15 U.S.C. § 4] alleging that defendant Golden Gate Sportfishers, Inc., violated Section 1 of the Sherman Act [15 U.S.C. § 1]. The complaint alleges a combination and conspiracy in unreasonable restraint of interstate commerce, the substantial terms of which were that the defendant and various coconspirators agreed to raise and fix the prices which members of the defendant charge to carry passengers.

II

PRACTICES AND EVENTS GIVING RISE TO THE ALLEGED VIOLATION OF THE ANTITRUST LAWS

The defendant Golden Gate Sportfishers, Inc., is an association of licensed captains and boat owners engaged in carrying sportfishermen on fishing trips. The association's 130 members are located in California from Crescent City near the Oregon border to Morro Bay in Southern California. Most of the members are located in the San Francisco Bay area. Many customers are from States other than California and they reserve passage using interstate telephone calls and letters. Out of state passengers that pay with credit cards and checks cause paperwork and funds to be transferred in-

terstate. Many of the fishing trips result in passengers being carried outside the jurisdictional waters of California.

The Government contends that beginning sometime prior to February 1977, the defendant and its members combined and conspired to raise the prices charged by members for carrying passengers on fishing trips. The Government would have shown at trial that for many years defendant and its members established prices by holding meetings at which the prices for passage were agreed upon. The effects of this combination and conspiracy, the Government contends, were that prices were fixed at noncompetitive levels and that competition among members of the defendant was restricted, thus depriving the customers of the benefits of free and open competition in the sale of passage for fishing trips.

III

EXPLANATION OF THE PROPOSED CONSENT JUDGMENT

The proposed consent judgment expressly requires the defendant to serve all of its present members and all of its future members with copies of the judgment. Defendant is prohibited by the consent judgment from having any agreement or understanding concerning the prices charged for fishing trips by members or any other person. Further, the defendant is prohibited from suggesting or publishing a recommendation of prices to be charged by members or others for fishing trips. The defendant may not attempt to influence the price charged by members or others, or to police the prices charged by members or others.

To assist the defendant's members in understanding and abiding by all the provisions of the consent judgment, the defendant is required to accompany its service of the judgment on each member with a letter, the text of which is appended to the judgment, which explains those provisions.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

Any potential private plaintiffs who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies that they would have had were the proposed consent judgment not entered. However, pursuant to Section 5(a) of the Clayton Act [15 U.S.C. § 15(a)], as amended, this judgment may not be used as *prima facie* evidence in private litigation.

V

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED CONSENT JUDGMENT

The proposed consent judgment is subject to a stipulation by and between the United States and the defendant, which provides that the United States may withdraw its consent to the proposed judgment at any time until the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed consent judgment provides for the Court's retention of jurisdiction of this action in order, among other reasons, to permit either of the parties thereto to apply to the Court for such orders as may be necessary or appropriate for the modification of the final judgment.

As provided by Section 2(b) of the *Antitrust Procedures and Penalties Act* [15 U.S.C. § 16(b)1], any persons wishing to comment upon the proposed judgment may, for a sixty-day period prior to the effective date of the proposed judgment, submit written comments to the United States Department of Justice, Attention Anthony E. Desmond, Chief, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102. The Department of Justice will file with the Court and publish in the FEDERAL REGISTER such comments and its response to them. In evaluating any and all such comments, the Department will determine whether there is any reason for withdrawal of its consent to the proposed judgment.

VI

ALTERNATIVES TO THE PROPOSED CONSENT JUDGMENT CONSIDERED BY THE UNITED STATES

An alternative to the proposed Consent Judgment considered by the Department of Justice was a full trial on the merits. It was determined that such a trial involving substantial expense to the United States as well as the commitment of manpower, was not warranted since the equitable remedies set forth in the proposed Consent Judgment will be effective to restore competition in sportfishing businesses on the California coast. Moreover, the remedies set forth in the proposed Consent Judgment provide for all the relief requested in the Complaint.

VII

DETERMINATIVE DOCUMENTS

Since there are no materials or documents which were determinative in formulating a proposal for a consent judgment, none are being filed by the plaintiff pursuant to Section 2(b) of the *Antitrust Procedures and Penalties Act* [15 U.S.C. § 16(b)].

Dated: October 26, 1978.

ANTHONY E. DESMOND,
Attorney, Department of Justice.

[FR Doc. 78-33628 Filed 11-30-78; 8:45 am]

[4510-30-M]

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 28th day of November 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

Applications Received During the Week Ending Nov. 24, 1978

Name of applicant and location of enterprise	Principal product or activity
Williams and Isbell, Inc., Bowling Green, Ky	Motel and restaurant.
American Orange Corp., Wauchula and Arcadia, Fla	Process fresh oranges into frozen concentrated orange juice and frozen single strength orange juice.
Gold & White, Inc., Lamar and Monroe Counties, Ga	Shopping center.
Troupco Enterprises, Inc., LaGrange, Ga	Hotel.
Hudson Shipbuilders, Inc., Jackson County, Miss	Construction of new vessels both fishing and oil-field support type.
The Steinthal Corp., Roxboro, N.C	Manufacture of parachutes and related items.
Southern Minnesota Beet Sugar Cooperative, Renville, Minn.	Manufactured beet sugar.
Burnstad Bros. Inc., Tomah, Wis	Retail supermarket products and dry goods department store.
Olympic Sea Foods Co., Charleston, Oreg	Sea food processing plant.
Holiday Inn of Edinburg, Edinburg, Tex	Motor hotel.
Colonial Manor of Linn, Mo., Linn, Mo	Nursing home patient care.

[FR Doc. 78-33694 Filed 11-30-78; 8:45 am]

[4510-43-M]

Mine Safety and Health Administration

[Docket No. M-78-80-C]

EASTERN ASSOCIATED COAL

Petition for Modification of Application of Mandatory Safety Standard

Eastern Associated Coal Corporation, 1728 Koppers Building, Pittsburgh, Pennsylvania 15219, has filed a petition to modify application of 30 CFR 75.305 (weekly examinations of return airways) to its Federal No. 1 Mine in Marion County, W.Va. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition is as follows:

(1) The petition pertains to certain return airways projecting through extensive abandoned areas of the mine.

(2) The slate roof of these areas has so deteriorated as to cause massive roof falls which render safe travel virtually impossible.

(3) The return airways, although fallen and unsafe for travel, allow sufficient flow of air to effectively ventilate the affected areas of the mine.

(4) It is exceedingly hazardous to conduct weekly ventilation and methane tests in the entries of the return airways.

(5) As an alternative, the petitioner outlines a proposed use of an air quality monitoring system using eleven check points.

(6) The petitioner states that this alternative will provide no less protection than that provided by the standard.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before January 2, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available at that address.

Dated: November 20, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-33717 Filed 11-30-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-54-M]

PORTLAND-MONSON SLATE CO.

Petition for Modification of Application of Mandatory Safety Standard

The Portland-Monson Slate Co., Monson, Maine, 04464, has filed a petition to modify application of 30 CFR 57.11-50 (escapeways) to its No. 5 Mine in Piscataquis County, Maine.

The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition is as follows:

(1) The mine exists in very competent rock which requires no support.

(2) Because the mine is extremely wet and there are no combustibles in the shaft or tunnels, the potential for fire is minimal.

(3) In lieu of a second shaft opening to the surface, the petitioner proposes to construct a refuge chamber as outlined in 30 CFR 57.11-52.

(4) The petitioner states that this alternative will achieve no less protection than that provided by the standard.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before January 2, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available at that address.

Dated: November 20, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-33716 Filed 11-30-78; 8:45 am]

[4510-28-M]

Office of the Secretary

[TA-W-3421, etc.]

AILEEN, INC. ET AL.

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-3421: Abilene, Texas Textile Plant; TA-W-3422: Strasburg, Virginia Sewing Plant; TA-W-3423: Brookneal, Virginia Sewing Plant; TA-W-3421: Culpeper, Virginia Sewing Plant; TA-W-3425: Edinburg, Virginia Textile Plant; TA-W-3426: Flint Hill, Virginia Sewing Plant; TA-W-3426A: Flint Hill, Virginia Cutting Plant; TA-W-3427: New Market, Virginia Sewing Plant; TA-W-3428: Victoria, Virginia Sewing Plant; TA-W-3428A: Monterey, Virginia Sewing Plant; TA-W-3429: Woodstock, Virginia Cutting Plant (formerly located in Edinburg); TA-W-3429A: Woodstock, Virginia Warpknit Plant; TA-W-3430: Woodstock, Virginia Shipping Facility.

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3421-3430: 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 28, 1978 in response to a worker petition received on March 20, 1978 which was filed on behalf of workers and former workers producing women's, misses' and children's sportswear at the following plants and facilities of Aileen, Incorporated: Abilene, Texas; Strasburg, Virginia; Brookneal, Virginia; Culpeper, Virginia; Edinburg, Virginia; the Flint Hill, Virginia Sewing Plant; New Market, Virginia; the Victoria, Virginia Sewing Plant; the Woodstock, Virginia Cutting Plant; and the Woodstock, Virginia Shipping Facility. The investigation was expanded to include the following Aileen, Incorporated facilities: the Flint Hill, Virginia Cutting Plant, the Monterey, Virginia Sewing Plant, and the Woodstock, Virginia Warpknit Plant. The investigation revealed that the garments produced at Aileen, Incorporated included women's, misses'

and children's shirts, sweaters, jackets, blouses, skirts, slacks and shorts.

The Notice of Investigation was published in the FEDERAL REGISTER on April 11, 1978 (43 FR 15205-15206). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Aileen, Incorporated, 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. With respect to workers at the Culpeper, Virginia Sewing Plant; the New Market, Virginia Sewing Plant and the Monterey, Virginia Sewing Plant and 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 investigation revealed that employment of production workers at the Culpeper, the New Market, and the Monterey, Virginia Sewing Plants increased in 1977 compared to 1976 and increased in the first seven months of 1978 compared to the same period in 1977. At each of these three plants, average quarterly employment increased in every quarter compared to the same quarter of the previous year beginning with the first quarter in 1977 and continuing through the second quarter of 1978.

With respect to workers at the Abilene, Texas Textile Plant; the Strasburg, Virginia Sewing Plant; the Brookneal, Virginia Sewing Plant; the Edinburg, Virginia Textile Plant; the Flint Hill, Virginia Sewing Plant; the Flint Hill, Virginia Cutting Plant; the Victoria, Virginia Sewing Plant; the Woodstock, Virginia Cutting Plant; the Woodstock, Virginia Warpknit Plant; and the Woodstock, Virginia Shipping Facility all of the group eligibility requirements of Section 222 of the Act have been met.

U.S. imports of women's, misses' and children's blouses and shirts increased from 1975 to 1976, from 1976 to 1977, and in the first half of 1978 compared to the first half of 1977.

U.S. imports of women's, misses' and children's slacks and shorts increased from 1975 to 1976, from 1976 to 1977 and in the first half of 1978 compared to the first half of 1977. The ratio of imports to domestic production increased in each year from 1975 through 1977.

U.S. imports of women's, misses' and children's coats and jackets increased on an absolute basis and relative to domestic production from 1975 to 1976 and from 1976 to 1977.

U.S. imports of women's, misses' and children's skirts increased absolutely and relatively from 1975 to 1976 and then decreased in 1977. The absolute level of imports and the import to domestic production ratio in 1977 were higher than the averages for the period 1973 through 1976. Imports increased in the first half of 1978 compared to the first half of 1977.

U.S. imports of women's, misses' and children's sweaters increased in each successive year from 1973 through 1976. In 1977, imports of sweaters were 9.0 percent above the average level of imports for the years 1973 through 1976. In the first quarter of 1978, imports increased compared to the first quarter of 1977. The ratio of imports of sweaters to domestic production in 1977 was above the import to domestic production ratio recorded in each year in the 1973 through 1975 time period.

A Departmental survey of customers of Aileen, Incorporated indicated that many customers decreased their purchases from Aileen, Incorporated and increased purchases of imported women's, misses' and children's sportswear from 1976 to 1977 and in the first half of 1978 as compared to the first half of 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 women's, misses' and children's sportswear produced at Aileen, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In acordance with the provisions of the Act, I make the following certification:

All workers of the following facilities of Aileen, Incorporated engaged in employment related to the production of women's, misses' and children's sportswear who became totally or partially separated from employment on or after the indicated impact date and before any indicated termination date are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Investigation No.	Plant location	Impact date	Termination date
TA-W-3421	Abilene, Tex., textile plant	Mar. 15, 1977	None.
TA-W-3422	Strasburg, Va., sewing plant	do	Do.
TA-W-3423	Brookneal, Va., sewing plant	do	Oct. 1, 1977.
TA-W-3425	Edinburg, Va., textile plant	do	None.
TA-W-3426	Flint Hill, Va., sewing plant	do	Do.
TA-W-3426A	Flint Hill, Va., cutting plant	Aug. 13, 1977	Do
TA-W-3428	Victoria, Va., sewing plant	Mar. 15, 1977	Oct. 1, 1977.
TA-W-3429	Woodstock, Va., cutting plant	do	Do.
TA-W-3429A	Woodstock, Va., warpknit plant	Aug. 26, 1977	None.
TA-W-3430	Woodstock, Va., shipping facility	Mar. 15, 1977	Jan. 1, 1978.

I further determine that all workers at the Culpeper, Virginia Sewing Plant, the New Market, Virginia Sewing Plant and the Monterey, Virginia Sewing Plant are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-33718 Filed 11-30-78; 8:45 am]

[4510-28-M]

[TA-W-3823]

AMERICAN BILTRITE, INC., TRENTON, 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-3823: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on June 12, 1978 in response to a worker petition received on June 2, 1978 which was filed by the United Rubber, Cork, Linoleum and Plastic Workers of America on behalf of workers and former workers producing floor tile at the Trenton, New Jersey plant of American Biltrite, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on June 27, 1978 (43 FR 27925). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of American Biltrite, 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.

Imports of vinyl floor coverings increased absolutely in value from $6.86 million in 1976 to $9.84 million in 1977, and increased from $4.44 million in the first half of 1977 to $7.01 million in the first half of 1978. The ratio of imports to domestic production increased from 0.92 percent in 1976 to 1.21 percent in 1977, and increased from 1.19 percent in the first half of 1977 to 1.57 percent in the first half of 1978.

Imports of smooth surface tile (which includes ceramic, mosaic and cork) increased in value from $55.84 million in 1976 to $86.65 million in 1977, and increased from $42.35 million in the first half of 1977 to $68.51 million in the first half of 1978.

The Trenton, New Jersey plant of American Biltrite, Inc., ceased production and laid off all but a few workers in February 1978.

American Biltrite began purchasing imported vinyl floor tile from Taiwan and Canada in March 1978. These imports are like the lower-priced vinyl tile formerly produced at the subject plant in Trenton, New Jersey. In addition, the company began importing "luxury" vinyl from the English licensee of American Biltrite in June 1978.

Several major purchasers of vinyl floor tile from American Biltrite who were surveyed purchase imported flooring products. Some of these customers reduced purchases of vinyl floor tile from the company while increasing purchases of imported flooring products in 1977 compared to 1976 and in the first quarter of 1978 compared to the first quarter of 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 vinyl floor tile produced at the Trenton, New Jersey plant of American Biltrite, Inc., contributed importantly to the decline in sales or production and to the total or partial separation of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Trenton, New Jersey plant of American Biltrite, Inc., who became totally or partially separated from employment on or after June 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 22nd day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-33702 Filed 11-30-78; 8:45 am]

[4510-28-M]

[TA-W-3672]

AMERICAN GIRL COAT CO., INC., NEW BRUNSWICK, 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-3672: 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 and children's coats at American Girl Coat Company, Incorporated, New Brunswick, New Jersey.

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 determination was based upon information obtained principally from officials of American Girl, 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. 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 2252 thousand dozen in 1976 to 2723 thousand dozen in 1977. Imports declined from 590 thousand dozen in the first quarter of 1977 to 572 thousand dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

The Department conducted a survey of customers of American Girl in 1976, 1977 and the first quarter of 1978. A manufacturer that accounted for a significant portion of American Girl's sales in 1976 reduced purchases from American Girl and increased purchases of imported ladies' coats in 1977 compared to 1976. This manufacturer went out of business in late 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 the ladies' coats and children's coats produced at American Girl Coat Company, Incorporated, New Brunswick, New Jersey contributed importantly to the decline in sales or production and to the total or partial separation of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of American Girl Coat Company, Incorporated, New Brunswick, New Jersey who became totally or partially separated from employment on or after April 25, 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 22nd day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-33704 Filed 11-30-78; 8:45 am]

[4510-28-M]

[TA-W-3814]

ARONICA SPORTSWEAR INC., NEW YORK, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3814: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on June 7, 1978 in response to a worker petition received on May 26, 1978 which was filed by the International Garment Workers Union on behalf of workers and former workers of Aronica Sportswear Incorporated, New York, New York, formerly producing ladies' coats, blazers, dresses, and some skirts. The investigation revealed that the plant primarily produced women's skirts.

The Notice of Investigation was published in the FEDERAL REGISTER on June 20, 1978 (43 FR 26499). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Aronica Sportswear Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility

requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

United States imports of women's, misses' and children's skirts declined from 791 thousand dozen in 1976 to 654 thousand dozen in 1977. The ratio of imports to domestic production fell from 14.2 in 1976 to 10.2 in 1977.

The Aronica Sportswear, Incorporated went out of business September 21, 1977.

CONCLUSION

After careful review, I determine that all workers of Aronica Sportswear Incorporated, New York, 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 21st day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-33705 Filed 11-30-78; 8:45 am]

[4510-28-M]

[TA-W-3742]

ASARCO, INC., EAST HELENA, MONT.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 23, 1978 in response to a worker petition received on May 19, 1978 which was filed by the United Steelworkers of America on behalf of workers and former workers engaged in converting slag to zinc at the East Helena, Montana plant of ASARCO, Incorporated.

Notice of Investigation was published in the FEDERAL REGISTER on June 6, 1978 (43 FR 24633-34). No public hearing was requested and none was held.

During the course of the investigation, it was determined that in the period of possible coverage, there were no involuntary separation of workers at the ASARCO plant in East Helena, Montana. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 27th day of November 1978.

HAROLD A. BRATT,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-33698 Filed 11-30-78; 8:45 am]

[4510-28-M]

[TA-W-3359]

BORDENTOWN INDUSTRIES, INC., BORDENTOWN, 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-3359: 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 3, 1978 which was filed by the United Shoe Workers of America on behalf of workers and former workers producing ladies' sportswear at Bordentown Industries, Incorporated, Bordentown, New Jersey. The investigation revealed that until late 1976 Bordentown produced ladies' raincoats and jackets.

The Notice of Investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14776-77). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Bordentown Industries, Incorporated, its customers (manufacturers), the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's coats and jackets increased in 1975 compared to 1976. Imports increased in 1976 compared to 1977.

U.S. imports of women's, misses' and children's slacks and shorts increased from 1975 to 1976 and from 1976 to 1977. Imports increased in the first quarter of 1977 compared to the first quarter of 1978.

A survey by the Department revealed that customers of Bordentown terminated purchases of women's jackets and raincoats in 1977 compared to 1976 and increased purchases of imports. The firm attempted to change product lines and obtain other customers but was not able to make the transition.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' sportswear, jackets and raincoats produced at Bordentown Industries, Incorporated, Bordentown, New Jersey contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Bordentown Industries, Incorporated, Bordentown, New Jersey who become totally or partially separated from employment on or after July 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 27th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-33696 Filed 11-30-78; 8:45 am]

[4510-28-M]

[TA-W-3447]

F & A FASHIONS, LONG BRANCH, N.J.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 30, 1978 in response to a worker petition received on February 24, 1978 which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing children's coats at F & A Fashions, Long Branch, New Jersey.

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.

Due to the short term of operation of F & A Fashions and to the seasonality of the children's coat industry, there is not sufficient information in this case upon which to base a determination. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 22d day of November 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-33699 Filed 11-30-78; 8:45 am]

[4510-28-M]

[TA-W-4306]

FARWELL MANUFACTURING, INC., FARWELL, MICH.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 30, 1978 in response to a worker petition received on October 27, 1978 which was filed on behalf of workers and former workers producing moldings for small automobiles (upper and lower inside windows) at the Farwell, Michigan plant of Farwell Manufacturing, Incorporated.

Notice of investigation was published in the FEDERAL REGISTER on November 7, 1978 (43 FR 51866). No public hearing was requested and none was held.

The petitioners requested withdrawal of the petition. On the basis of the withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 27th day of November 1978.

HAROLD A. BRATT,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-33706 Filed 11-30-78; 8:45 am]

[4510-28-M]

[TA-W-3638]

JOLEE 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-3638: 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's garments at Jolee Fashions, Incorporated, Passaic, New Jersey. The investigation revealed that the plant primarily produces women's unlined shirt jackets, dresses, skirts, blouses and vests.

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 determination was based upon information obtained principally from officials of Jolee Fashions, its customers (manufacturers), customer of the manufacturers, 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 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 total or partial separation, or threat thereof, and to the absolute decline in sales or production.

During 1976 and through October in 1977 Jolee Fashions produced women's unlined shirt jackets. In November 1977 Jolee Fashions shifted production to women's dresses, skirts, blouses and vests, when the only manufacturer Jolee was working for, ceased purchasing shirt jackets from the subject firm.

The Department conducted a survey of the principal manufacturers for which Jolee Fashions worked in 1976 and 1977. None of the manufacturers surveyed purchased imported ladies' shirt jackets, dresses, skirts, blouses or vests. A survey was conducted of the customers of one manufacturer, whose sales declined during the period under consideration. None of the customers surveyed decreased purchases from the manufacturer and increased purchases of imported ladies' shirt jackets during the period under investigation.

CONCLUSION

After careful review, I determine that all workers of Jolee Fashions, Incorporated, Passaic, 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 22nd day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-33703 Filed 11-30-78; 8:45 am]

[4510-28-M]

[TA-W-4009]

L. N. GROSS CO., NEW YORK, N.Y.

Certification Regarding Eligibiliy 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-4009: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 31, 1978 in response to a worker petition received on July 26, 1978 which was filed on behalf of workers and former workers selling ladies' sweaters and ladies' knitted sportswear at the New York, New York sales office of L. N. Gross Company. The investigation revealed that L. N. Gross is an apparel manufacturer involved in the production through contractors, of the garments it sells.

The Notice of Investigation was published in the FEDERAL REGISTER on August 8, 1978 (43 FR 35131). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of L. N. Cross Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's sweaters increased from 1975 to 1976. In 1977, imports of sweaters increased 9.0 percent over the average level of imports for the years 1973 through 1976. In the first quarter of 1978, imports increased compared to the first quarter of 1977. The ratio of imports of sweaters to domestic production in 1977 was above the import to domestic production ratio recorded in each year in the 1973 to 1975 time period.

U.S. imports of women's, misses' and children's blouses and shirts increased from 1976 to 1977. Imports increased in the first six months of 1978 compared to the first six months of 1977.

U.S. imports of women's, misses' and children's slacks and shorts increased from 1976 to 1977. Imports increased in the first six months of 1978 compared to the first six months of 1977.

U.S. imports of women's, misses' and children's coats and jackets increased from 1976 to 1977.

U.S. imports of women's, misses' and children's skirts increased from 1975 to 1976 and then decreased in 1977. The absolute level of imports and the imports to domestic production ratio in 1977 were higher than the averages for the period 1973 to 1976. Imports increased in the period January through June 1978 compared to the same period in 1977.

U.S. imports of women's, misses' and children's dresses increased in the period January through June, 1978 compared to the same period in 1977.

L. N. Gross Company is an apparel manufacturer that designs and supervises the production by contractors of ladies' knitted sweaters and ladies' knitted sportswear, such as T-shirts, slacks, jackets, skirts and dresses. A Departmental survey of the customers of L. N. Gross Company revealed that several customers increased their purchases of imported ladies' sweaters, blouses and sportswear and decreased purchases from L. N. Gross from 1976 to 1977 and during the first six months of 1978 compared to the first six months of 1977.

L. N. Gross Company increased its company imports of ladies' sweaters and ladies' knitted sportswear on an absolute basis and as a proportion of total sales in the first seven months of 1978 as compared to the same period in 1977. Workers in the New York sales office are not involved in the design and supervision of the imported products.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' sweaters, dresses, skirts, blouses, jackets and slacks sold at the New York, New York sales office of L. N. Gross Company contributed importantly to the decline in sales and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the New York, New York facility of L. N. Gross Company who became totally or partially separated from employment on or after July 24, 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 21st day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-33700 Filed 11-30-78; 8:45 am]

[4510-28-M]

[TA-W-4028]

MIDWEST FOOTWEAR CO., INC., SULLIVAN, 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-4028: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on August 2, 1978 in response to a worker petition received on July 31, 1978 which was filed on behalf of workers and former workers producing women's dress and casual shoes at Midwest Footwear Company, Incorporated, Sullivan, Missouri.

The Notice of Investigation was published in the FEDERAL REGISTER on August 11, 1978 (43 FR 35759-60). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Midwest Footwear Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

On July 7, 1976 the Department issued a certification of eligibility to apply for adjustment assistance for workers at Midwest Footwear (TA-W-656). The period of certification expired on July 7, 1978.

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 and Misses' Nonrubber Footwear, Except Athletic" declined from 213.9 million pairs in 1976 to 204.4 million pairs in 1977, and increased from 107.6 million pairs in the first six months of 1977 to 111.4 million pairs in the first six months of 1978. The ratio of imports to domestic production of Women's and Misses' Nonrubber Footwear, Except Athletic increased from 127.6 percent in 1976 to 134.6 percent in 1977, and declined from 137.9 percent in the first six months of 1977 to 135.9 percent in the first six months of 1978.

A customer survey conducted by the Department revealed that customers reduced purchases from Midwest Footwear and increased purchases of imported women's shoes in the first eight months 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 women's dress and casual shoes produced at Midwest Footwear Company, Incorporated, Sullivan, Missouri contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Midwest Footwear Company, Sullivan, Missouri who became totally or partially separated from employment on or after July 8, 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 22nd day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-33701 Filed 11-30-78; 8:45 am]

[4510-28-M]

[TA-W-4051]

PHELPS DODGE CORP., SAFFORD, ARIZ.

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-4051: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on August 8, 1978 in response to a worker petition received on August 7, 1978 which was filed on behalf of workers and former workers developing a copper mine at the Safford, Arizona Branch of Phelps Dodge Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on August 29, 1978 (43 FR 38634-38635). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Phelps Dodge Corporation, *American Metal Market*, the American Bureau of Metal Statistics, the U.S. Department of the Interior, 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.

The Department's investigation revealed that the workers at Safford are developing a mine for the eventual production of copper. Mine development is integrated into the company's production of copper, coming, as it does, after copper exploration and before copper production.

The mine development program at Safford, Arizona is part of the Western Operations of Phelps Dodge Corporation. Workers at four facilities of the Western Operations have been certified as eligible to apply for trade adjustment assistance: The Morenci, Arizona Branch (TA-W-2423), the New Cornelia Branch, Ajo, Arizona (TA-W-2421), the Douglas Reduction Works, Douglas, Arizona (TA-W-2420) and the Western General Offices, Douglas, Arizona (TA-W-3108). Production of copper at three of these certified facilities comprised the pre-

ponderance of total copper production by the Western Operations in 1976, 1977 and the first eight months of 1978.

U.S. imports of refined copper increased from 147 thousand short tons in 1975 to 384 thousand short tons in 1976 and to 391 thousand short tons in 1977. Imports increased from 164 thousand short tons in the first six months of 1977 to 327 thousand short tons in the first six months of 1978.

The ratio of imported refined copper to domestic production increased from 8.6 percent in 1975 to 21.0 percent in 1976 and to 22.2 percent in 1977. The ratio increased from 15.0 percent in the first six months of 1977 to 35.9 percent in the first six months of 1978.

The level of imports of copper is affected by the differential between the domestic producers price for copper and the price established by trhe LME (London Metal Exchange). When the LME price drops more than the estimated transportation cost of 5 cents per pound below the domestic producers price, the demand for imported copper increases. During the last nine months of 1977 and the first six months of 1978, the average LME price had fallen almost 8 cents per pound below the average domestic producers price.

The major factor contributing to depressed prices has been an oversupply of imported and domestic copper, as evidenced by U.S. inventory levels for refined copper. U.S. inventories of refined copper were higher in every month of 1977, except December, when compared to the same month in 1976. Inventories in December 1977 were less than one percent below December 1976 levels. In the first six months of 1978, inventories surpassed levels in the same months of 1977, with the exception of March which was only marginally below the same month in the previous year. The abundant supply of copper stocks in the forseeable future provides no reason for domestic consumers of copper to maintain ties with domestic producers for purposes of a guarantee against copper shortages. consequently, in 1977 and in the first half of 1978, when many domestic copper producers curtailed production because of the depressed market price for copper, imports of refined copper increased in 1977 compared to 1976 and doubled in the first half of 1978 compared to the same period in 1977.

Price pressure from imported copper has reduced the ability of domestic producers to profitably mine domestic ore and convert it to copper concentrate and refined copper. Estimated costs of production at Phelps Dodge's major producing facilities are equal to or above the domestic producers' price for copper, causing the company to lose money or at best, break even. the depressed market price for copper caused by increased imports has reduced Phelps Dodge Corporation's profit level. As a result the corporation has instituted budget cuts, including cutbacks in the mine development program at Safford.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with refined copper produced by Phelps Dodge Corporation contributed importantly to the total or partial separation of workers of the mine development program at Safford Branch, Safford, Arizona. In accordance with the provisions of the Act, I make the following certification:

All workers of Phelps Dodge Corporation, Safford Branch, Safford, Arizona who became totally or partially separated from employment on or after July 31, 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 27th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-33708 Filed 11-30-78; 8:45 am]

[4510-28-M]

[TA-W-3993]

ROCKWELL INTERNATIONAL, ROCKWELL-DRAPER DIVISION, TUPPER LAKE, 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-3993: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 25, 1978 in response to a worker petition received on July 18, 1978 which was filed on behalf of workers and former workers producing bobbin blanks, loom skids, boxing material, and semi-finished loom parts at the Tupper Lake, New York plant of Rockwell International in the Rockwell-Draper Division. The investigation revealed that lumber was a secondary product at the plant.

The Notice of Investigation was published in the FEDERAL REGISTER on August 1, 1978 (43 FR 33840-41). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Rockwell International, the U.S. Department of Commerce, the U.S. International Trade Commission, the American Textile Machinery Association, 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 all power looms increased relative to domestic production from 133.4 percent in 1976 to 206.2 percent in 1977. The ratio of imports to domestic production increased from 168.4 percent in the first half of 1977 to 385.0 percent in the first half of 1978.

Production of bobbin blanks and other wooden loom component blanks at Tupper Lake was part of the integrated production of weaving looms at Rockwell's Hopedale, Massachusetts plant. Retail customers decreased their purchases of weaving looms from Rockwell during the past two years, while increasing their import purchases of that product (TA-W-2197).

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with weaving looms produced by Rockwell contributed importantly to the decline in sales or production of bobbin blanks and wooden loom part blanks at the Tupper Lake, New York plant and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Tupper Lake, New York plant of Rockwell International's Draper Division who became totally or partially separated from employment on or after February 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 27th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-33787 Filed 11-30-78; 8:45 am]

[4510-28-M]

[TA-W-3244]

WARNER GEAR DIVISION OF BORG-WARNER CORP., MUNCIE, 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-3244: 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 10, 1978 which was filed by the United Automobile Workers of America on behalf of workers and former workers producing transmissions at the Muncie, Indiana plant of the Warner Gear Division of Borg-Warner Corporation.

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 determination was based upon information obtained principally from officials of the Warner Gear Division, 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.

With respect to workers producing transmissions for light trucks, marine and industrial vehicles, 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.

Warner Gear produces transmissions on order, therefore sales are equal to production. Sales of transmissions for light trucks, marine and industrial vehicles increased from 1976 to 1977 and increased in the first quarter of 1978 compared to the first quarter of 1977.

With respect to workers producing passenger car manual transmissions, 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.

U.S. imports of manual transmissions for passenger cars and light trucks increased from 1976 to 1977. A Department survey, however, revealed that from 1976 to 1977 customers did not replace passenger car manual transmissions purchased from Warner Gear with imported transmissions.

CONCLUSION

After careful review, I conclude that all workers of the Muncie, Indiana plant of the Warner Gear Division of Borg-Warner Corporation are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-33697 Filed 11-30-78; 8:45 am]

[7555-01-M]

NATIONAL SCIENCE FOUNDATION

AD HOC SUBCOMMITTEE FOR THE REVIEW OF THE CONTROLLED ECOSYSTEM POPULATIONS EXPERIMENT (CEPEX) OF THE ADVISORY COMMITTEE FOR OCEAN SCIENCES

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

NAME: *Ad Hoc* Subcommittee for the Review of the Controlled Ecosystem Populations Experiment (CEPEX) of the Advisory Committee for Ocean Sciences.

DATE AND TIME: 19 December 1978; 9:00 A.M. to 5:30 P.M.

PLACE: National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550, Room 643.

TYPE OF MEETING: Closed.

CONTACT PERSON:
Dr. Bruce Malfait, Acting Head, International Decade of Ocean Exploration Section, Room 606, National Science Foundation, Washington, D.C. 20550, telephone (202)632-7356.

PURPOSE OF SUBCOMMITTEE: To provide advice and recommendations concerning support for research on CEPEX.

AGENDA: To review and evaluate proposed research for the CEPEX project during 1979 and 1980 as part of the recommendation process for awards.

REASON FOR CLOSING: The review process includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

AUTHORITY TO CLOSE MEETING: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

NOVEMBER 28, 1978.

[FR Doc. 78-33715 Filed 11-30-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

APPLICATIONS FOR LICENSES TO EXPORT NUCLEAR FACILITIES OR MATERIALS

Pursuant to 10 CFR 110.70, "Public Notice of Receipt of an Application", please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, N.W., Washington, D.C.

Dated this date November 27, 1978, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

GERALD G. OPLINGER,
Assistant Director, Export/Import and International Safeguards, Office of International Programs.

Name of applicant, date of application, date received, application number	Material type	Special nuclear material in kilograms		End-use	Country of ultimate destination
		Total element	Total isotope		
Transnuclear, Inc., Nov. 13, 1978, Nov. 14, 1978 XSNMO1412.	93.3 pct enriched uranium.	19.398	18.098	Fuel for HFR reactor	Netherlands.
Transnuclear, Inc., Nov. 13, 1978, Nov. 14, 1978, XSNMO1413.	3.25 pct enriched uranium.	34,801	1,131.033	Reload fuel for Unterwester unit I.	West Germany.

[FR Doc. 78-33624 Filed 11-30-78; 8:45 am]

[7590-01-M]

[Docket No. 11000213]

GENERAL ATOMIC CO.

Application for Facility Export License

Please take notice that General Atomic Company, San Diego, California, has submitted to the Nuclear Regulatory Commission an application for a license to authorize the export of a TRIGA Mark I research reactor with a thermal power level of 100 kilowatts to the Government of Morocco and that the issuance of this license is under consideration by the Nuclear Regulatory Commission.

No license authorizing export of the reactor will be issued until the Nuclear Regulatory Commission determines that the export is within the scope of and consistent with the terms of an agreement for cooperation arranged pursuant to Section 123 of the Atomic Energy Act of 1954, as amended (Act), nor until the Nuclear Regulatory Commission has found that:

(a) The export complies with the requirements of the Act and the Commission's regulations set forth in 10 CFR, Chapter 1, and

(b) The reactor proposed to be exported is a utilization facility as defined in the Act and the Commission's regulations.

Unless on or before January 2, 1979, a request for hearing is filed with the Nuclear Regulatory Commission, or a petition for leave to intervene is filed by any person whose interest may be affected by the proceeding, the Director of the Office of International Programs may, upon making the determinations and findings noted above, cause to be issued to General Atomic Company a facility export license and cause to be published in the FEDERAL REGISTER a notice of issuance of the license. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Nuclear Regulatory Commission will issue a notice of hearings or an appropriate order.

A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, N.W., Washington, D.C.

Dated at Bethesda, Maryland this 17th day of November, 1978.

GERALD G. OPLINGER,
Assistant Director, Export/Import and International Safeguards, Office of International Programs.

[FR Doc. 78-33625 Filed 11-30-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-522 and 50-523]

PUGET SOUND POWER & LIGHT CO., ET AL. (SKAGIT NUCLEAR POWER PROJECT, UNITS 1 AND 2)

Reconstitution of Board

Samuel W. Jensch, Esq., was Chairman of the Atomic Safety and Licensing Board for the above proceeding. Mr. Jensch has retired and therefore is unable to continue his service on this Board.

Accordingly, Valentine B. Deale, Esq., whose address is 1001 Connecticut Avenue, N.W., Washington, D.C. 20036 is appointed Chairman of this Board. Reconstitution of the Board in this manner is in accordance with § 2.721 of the Commission's Rules of Practice, as amended.

Dated at Bethesda, Maryland, this 27th day of November 1978.

JAMES R. YORE,
Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc. 78-33626 Filed 11-30-78; 8:45 am]

[7590-01-M]

[Docket No. 50-206]

SOUTHERN CALIFORNIA EDISON CO. & SAN DIEGO GAS AND ELECTRIC CO.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 38 to Provisional Operating License No. DPR-13, issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Unit No. 1 (SO-1), the facility, located in San Diego County, California. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to: (1) reduce the maximum allowable rate for pressurizer heatup from 195°F/hour to 100°F/hour, (2) increase the maximum allowable rate for pressurizer cooldown from 195°F/hour to 200°F/hour, and (3) delete the provisions of the Respiratory Protection Program (Section 6.12).

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 30, 1977 (Proposed Change No. 68), (2) Amendment No. 38 to License No. DPR-13 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Mission Viejo Branch Library, 24851 Chrisanta Drive, Mission Viejo, California. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 17th day of November, 1978.

For the Nuclear Regulatory Commission.

THOMAS V. WAMBACH,
Acting Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-33627 Filed 11-30-78; 8:45 am]

[18010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 15350; SR-DTC-78-5]

THE DEPOSITORY TRUST CO.

Order Approving Proposed Rule Change

NOVEMBER 22, 1978.

On March 24, 1978, and by Amendment No. 1 submitted April 5, 1978, The Depository Trust Company ("DTC"), 55 Water Street, New York, New York 10041, 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 a proposed rule change which would authorize the European Options Clearing Corporation ("EOCC") to become a pledgee in DTC. The proposed rule change would enable an EOCC clearing member who has sold an option on a United States security on the European Options Exchange to satisfy its margin obligations to EOCC by directing a DTC participant bank (with whom the EOCC clearing member has a correspondent relationship) to effect a book-entry movement of underlying securities from the participant's account to the EOCC pledgee account. In addition, an EOCC clearing member could satisfy an exercise notice by directing its DTC participant correspondent bank to move securities by book-entry to the account of another DTC participant bank acting for the exercising EOCC clearing member. EOCC would be able to release securities from their pledgee status by communication to DTC.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14656, April 12, 1978) and by publication in the FEDERAL REGISTER (43 FR 16579, April 19, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change 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 change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies and in particular, the requirements of Section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change contained in File No. SR-DTC-78-5 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc. 78-33602 Filed 11-30-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[License No. 03/04-0081]

CAPITAL INVESTMENT CO. OF WASHINGTON

Approval of Application for Transfer of Control of Licensed Small Business Investment Company

On September 20, 1978, a notice was published in the FEDERAL REGISTER that an application had been filed with the Small Business Administration pursuant to (13 CFR 107.701(1978)) for transfer of control of the Capital Investment Company of Washington (CICW), a District of Columbia corporation, and a Federal Licensee under the Small Business Investment Act of 1958, as amended, with its office to be located at 1010 Wisconsin Avenue, NW., Washington, D.C. 20007, to Iona Corporation, a Delaware corporation.

Interested parties were given until the close of business on October 5, 1978, to submit written comments on the application to SBA and no written comments were received.

SBA has been informed that the conditions imposed by the SBA relative to the proposed transfer of control (which were set forth in the notice published in the FEDERAL REGISTER on September 20, 1978, mentioned above) have been met. Accordingly, notice is hereby given that having considered the application and all pertinent information, the SBA approves the transfer of control of CICW effective November 15, 1978.

Catalogue of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: November 22, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-33615 Filed 11-30-78; 8:45 am]

[8025-01-M]

[Application No. 06/06-5207]

CAPITAL-MANAGEMENT SERVICES, INC.

Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Capital-Management Services, Inc. (applicant) with the Small Business Administration pursuant to 13 CFR 107.102 (1978).

The officers and directors are as follows:

Louise Lingo, 1918 Broken Bow, No. Little Rock, Arkansas 72116, President and Director.

Mahesh Kapadia, 813 Koehler, Sherwood, Arkansas 72116, Vice President and Director.

George S. Ivory, Jr., #17 Lakeside Drive, Little Rock, Arkansas 72204, Secretary and Director.

C. W. Tracy, Rt. 1, Box 648, Benton, Arkansas 72015, Treasurer and Director.

David L. Hale, 2823 North Pierce, Little Rock, Arkansas 72207, General Manager and Director.

Robert Byrns, P. O. Box 808, Cabot, Arkansas 72023, Director.

C. C. Jones, 1715 W. 35th Street, North Little Rock, Arkansas 72116, Director.

The applicant will maintain its principal place of business at 4801 North Hills Boulevard, North Little Rock, Arkansas 72116. It will begin operations with $152,500 of private capital derived from the sale of 305 shares of stock to the officers and directors listed above.

The applicant will conduct its operations principally in the State of Arkansas.

As a small business investment company under Section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA rules and regulations.

Notice is hereby given that any person may, not later than December 18, 1978, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in North Little Rock, Arkansas.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: November 24, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-33616 Filed 1-30-78; 8:45 am]

[8025-01-M]

[Application No. 05/05-5134]

CONTROL DATA COMMUNITY VENTURES FUND, INC.

Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under Section 301(d) of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661, *et. seq.*), has been filed by Control Data Community Ventures Fund, Inc. (applicant) with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1978).

The officers, directors, and stockholders are as follows:

Philip J. Bifulk, 2108 Timmy Street, St. Paul, Minnesota 55120, President and Director.
Eugene L. Baker, 5409 Malibu Drive, Edina, Minnesota 55436, Vice President and Director.
Edward E. Strickland, 5935 Christmas Lake Road, Excelsior, Minnesota 55331, Secretary, Treasurer and Director.
David M. Noer, 1200 Wine Spring Land, Baltimore, Maryland 21204, Director.
George F. Fray, 105 Belmore Road, Lutherville, Maryland 21093, Director.
Commercial Credit Company, 100% Stockholder.

The applicant, a Delaware corporation, will maintain an office at 8100 34th Avenue South, Bloomington, Minnesota 55420, and will begin operations with $502,500 of paid-in capital and paid in surplus derived from the sale of 10,000 shares of common stock to the Commercial Credit Company.

The applicant will operate within the investment policies § 107.101(c) of the regulations. The applicant anticipates being both equity and loan oriented in its investment decisions and policy. Applicant will establish a broad, flexible financing policy intended to meet the various and diverse requirements of prospective applicants across the full range of such small business concerns.

Applicant anticipates achieving a major portion of its return through growth in its equity investments, and to the extent practicable will emphasize equity investments in qualifying small business concerns with attractive growth potentials.

Applicant intends to offer management consulting services to its clients and other small business concerns. Consulting services will be performed by applicant's officers, directors and employees, and will include general business and accounting systems analysis. The consulting services will be offered independently of applicant's financing program.

Commercial Credit Company, applicant's parent corporation, is also the parent corporation, of Control Data Capital Corporation, another licensee.

Applicant has no present plans of operations which relate to applicant's affiliated companies. Applicant does not anticipate participation financings by applicant and affiliated companies, and does not anticipate management services provided by applicant's affiliated companies in conjunction with financing by applicant. However, it is possible that small concerns financed by applicant may be associated with one or more of applicant's affiliated companies as suppliers or customers or otherwise. In any such event, should it occur, applicant's financing would be independent of any such association. Some of applicant's affiliated companies provide consulting services to businesses. It is possible that customers of such affiliated companies may also receive financial assistance from applicant. In any such event, applicant's financing would be independent of any consulting services provided, and to the extent such consulting services were deemed by the SBA to be "management services" under § 107.601 of the applicable SBA Regulations, compliance with such regulations would be provided.

As a small business investment company under Section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management and the probability of successful operations of the applicant under this management, including adequate profitability and financial soundness, in accordance with the Act and SBA Rules and Regulations.

Any person may, not later than December 18, 1978, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Bloomington, Minnesota.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 17, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-33617 Filed 11-30-78; 8:45 am]

[8025-01-M]

EASTERN SEABOARD INVESTMENT CORP. ET AL.

License Revocations

Notice is hereby given that the corporations listed below, each licensed by the Small Business Administration (SBA) to operate solely as small business investment companies (SIBCs) under the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 et seq.), were defendents in civil actions brought by SBA. The complaint in each action alleged among other matters violations of the Act and the SBA Regulations promulgated thereunder. In each action the court determined and adjudged that the respective corporation had violated, or failed to comply with, the Act and the Regulations.

Name	Location	Date licensed	License No.
Eastern Seaboard Investment Corp.	Springfield, Mass.	Dec. 20, 1963	01/01-0060
Growth SBIC	Coronado, Calif.	June 11, 1971	09/07-0085
Intermountain Capital Corp. of Utah	Salt Lake City, Utah	May 31, 1963	08/11-0020
Investcal SBIC	Beverly Hills, Calif.	Sept. 20, 1960	09/14-0012

Section 308(d) of the Act provides that the license of an SBIC may be forfeited if such company is determined and adjudged by a court of the United States to have violated the provisions of the Act.

Pursuant to the above authority, and subsequent to the determination and adjudication of the Court in each

voted case, SBA hereby revokes the licenses of the corporations identified above and accordingly, all powers, privileges, rights and franchises heretofore derived from such licenses have been forfeited.

(Catalogue of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 22, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc 78-33623 Filed 11-30-78; 8:45 am]

[8025-01-M]

[License No. 05/05-0130]

FEDERATED CAPITAL CORP.

Issuance of a Small Business Investment Company License

On July 28, 1978, a notice was published in the FEDERAL REGISTER (43 FR 32908) stating that an application had been filed by Federated Capital Corporation, 20000 West Twelve Mile Road, Southfield, Michigan 48076, with the Small Business Administration (SBA), pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1978)) for a license as a small business investment company.

Interested parties were given until close of business August 14, 1978, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-0130 on November 14, 1978, to Federated Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, of Small Business Investment Companies.)

Dated: November 24, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-33618 Filed 11-30-78; 8:45 am]

[8025-01-M]

[License No. 05/05-0129]

P. R. PETERSON VENTURE CAPITAL CORP.

Issuance of a Small Business Investment Company License

On July 20, 1978, a notice was published in the FEDERAL REGISTER (43 FR 31253) stating that an application had been filed by P. R. Peterson Venture Capital Corporation, 3726 Oregon Avenue South, St. Louis Park, Minnesota 55426, with the Small Business Administration (SBA), pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1978)) for a license as a small business investment company.

Interested parties were given until close of business August 21, 1978, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-0129 on September 12, 1978, to P. R. Peterson Venture Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, of Small Business Investment Companies.)

Dated: November 20, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-33619 Filed; 11-30-78 8:45 am]

[8025-01-M]

[License No. 06/06-0205]

RICE COUNTRY CAPITAL, INC.

Filing of Application for Approval of a Conflict of Interest Transaction Between Associates

Notice is hereby given, pursuant to Section 107.1004(e) of the Regulations governing small business investment companies (13 CFR 107.1004 (1978)), of a request for approval of a conflict of interest transaction between Rice Country Capital, Inc. (Licensee), P.O. Box 215, Eagle Lake, Texas 77434, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 et seq.), and an Associate.

Licensee was licensed by SBA on November 1, 1978. It has two classes of stock authorized: (1) Class A Voting common which is owned 100 percent by The First National Bank (the Bank), 100 Commerce, Eagle Lake, Texas 77434; and (2) Class B Non-Voting common of which the Bank owns approximately 20 percent. None of the other Class B shareholders owns as much as 10 percent.

It is proposed that Licensee provide financial assistance to Mr. Steve K. Balas to purchase a tractor. Mr. Balas is the son-in-law of Mr. J. R. Thomas, a director and Class B shareholder of the Licensee. As such, Mr. Balas is considered to be an Associate of the Licensee as defined by § 107.3(e) of SBA's rules and regulations.

The proposed financing falls within the purview of § 107.1004(b)(1) of the regulations and requires a written exemption from SBA. SBA is considering a request for such exemption.

Notice is further given that any person may, not later than December 18, 1978, submit to SBA in writing, comments on the proposed transaction. Any such communication should be addressed to: Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in Eagle Lake, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 22, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-33620 Filed 11-30-78; 8:45 am]

[8025-01-M]

[License No. 06/06-0178]

TAX INVESTMENTS CONCEPTS, INC.

Notice is hereby given, pursuant to Section 107.1004(e) of the Regulations governing small business investment companies (13 CFR 107.1004 (1978)), of a request for approval of a conflict of interest transaction between Tax Investments Concepts, Inc. (Licensee), 2200 Classen Boulevard, Oklahoma City, Oklahoma 73106, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. et seq.), and an Associate.

Licensee was licensed on September 10, 1975. It is owned by approximately 12 shareholders with William Daniel, Sr., president of Licensee, owning 100 percent of the Class A Voting Stock. Mr. Daniel also owns approximately 51 percent of Jones, Penn & Company, which provides bookeeping services to the portfolio concerns of Licensee. Pursuant to the provisions of § 107.3(f) of the Regulations, this bookkeeping concern is deemed to be an Associate of Licensee.

It is proposed that Licensee provide financial assistance to Forrest W. Olson, Jr., to form his own accounting firm under the name of Olson & Company. Mr. Olson is the president of Jones, Penn & Company. As such, pursuant to the provisions of § 107.3(c) of the Regulations, Mr. Olson is also deemed to be an Associate of Licensee.

Therefore, the proposed financing falls within the purview of § 107.1004(b)(1) of the Regulations and

requires a written exemption from SBA. SBA is considering a request for exemption.

Notice is further given that any person may, not later than December 18, 1978, submit to SBA in writing, comments on the proposed transaction. Any such communication should be addressed to: Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Oklahoma City, Oklahoma.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 17, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-33621 Filed 11-30-78; 8:45 am]

[8025-01-M]

[Proposed License No. 09/09-0226]

WEST COAST VENTURE CAPITAL

Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to § 107.102 of the regulations governing small business investment companies (CFR 107.102 (1978)) by West Coast Venture Capital, a limited partnership, 20700 Valley Green Drive, Cupertino, California 95014, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. et seq).

THE PROPOSED GENERAL PARTNER AND LIMITED PARTNERS OWNING 10 OR MORE PERCENT OF THE PARTNERSHIP CAPITAL

GENERAL PARTNER

West Coast Venture Capital, Inc., 20700 Valley Green Drive, Cupertino, California 95014.

Gary W. Kalbach, President, Director and General Manager, 11701 Putter Way, Los Altos, California 94022 (100 percent).

Carl Berg, Secretary and Director, 37 Barry Lane, Atherton, California 94025.

Ralph Rodriguez, Vice President and Director, 14578 Carnelian Glen Court, Saratoga, California 95050.

Roger L. Mosher, Assistant Secretary and Director, 6 Bergesen Court, Atherton, California 94025.

LIMITED PARTNERS

Carl Berg, 37 Barry Lane, Atherton, California 94025 (38.0 percent).

Ralph Rodriguez, 14578 Carnelian Glen Court, Saratoga, California 95050 (11.8 percent).

John A. Sobrato, 94 Isabella Avenue, Atherton, California 94025 (11.8 percent).

The Applicant will begin operations with initial private capital of $850,000. The Limited Partners will make a subsequent contribution of $425,000, on or before two years from date of approval of the application. The Applicant will establish a broad financing policy in order to meet the diverse requirements of small business concerns in need of financing. The Applicant recognizes the need for both equity investments and loans, but will emphasize equity investments, with particular interest toward start-up situations. In addition to investments, the Applicant intends to render management services to clients, if necessary.

Matters involved in SBA's consideration of the application include (1) the general business reputation and character of the proposed owners and management, (2) the reasonable prospects for successful operation of the new SBIC under such management (including adequate profitability and financial soundness, in accordance with the Act and regulations), and (3) whether the proposed licensing would be in the furtherance of the purpose of the Act.

Notice is hereby given that any person may not later than December 18, 1978 submit written comments to the Deputy Associate Administrator, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in Cupertino, California.

(Catalog of Federal Domestic Programs No. 59.011, Small Business Investment Companies)

Dated: November 22, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-33622 Filed 11-30-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1546]

ALASKA

Declaration of Disaster Loan Area

The cities of Craig and Wrangell, which lie within the political subdivision known as Judicial District No. 1, in Alaska, constitute a disaster area because of damage caused by wind, heavy rain and seawaves which occurred on November 1, 1978. Applications will be processed under the provisions of Public Law 94-305. Interest rate will be 7⅜ for this disaster declaration. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on January 25, 1979, and for economic injury until the close of business on August 24, 1979, at: Small Business Administration, District Office, Suite 200, Anchorage Legal Center, 1016 West Sixth Avenue, Anchorage, Alaska 99501, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 24, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-33613 Filed 11-30-78; 8:45 am]

[8025-01-M]

[Application No. 09/09-5232]

CALIFORNIA COASTAL EQUITIES, INC.

Application for License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. *et seq.*), has been filed by California Coastal Equities, Inc. (applicant), with the Small Business Administration (SBA), pursuant to 13 CFR 107.102(1978).

The officers, directors and stockholders of the applicant are as follows:

Kewmars Tabatabay, President, Director, 420 Paseo Del Mar, Palos Verdes Estates, California 90274.

Harold V. Sullivan II, Secretary, Treasurer, Director, 1704 Dalton Road, Palos Verdes Estates, California 90274.

K.A.R. Investments, 100 percent Stockholder, 2780 Lomita Boulevard, Torrance, California 90505.

Mr. Tabatabay owns 66⅔ percent of K.A.R. Investments and Mr. Sullivan owns the remaining 33⅓ percent.

The applicant, a California Corporation, with its principal place of business at 2780 Lomita Boulevard, Torrance, California 90505, will begin operations with $500,000 of paid-in capital and paid-in surplus derived from the sale of 500,000 shares of common stock.

The applicant will conduct its activities principally in the State of California, and in other areas within the United States of America.

Applicant intends to provide assistance to all qualified socially or economically disadvantaged small business concerns as the opportunity to profitably assist such concerns is presented.

As a small business investment company under Section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to

small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed management, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and SBA Rules and Regulations.

Any person may, not later than January 18, 1979, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Torrance, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 17, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-33614 Filed 11-30-78; 8:45 am]

[4810-25-M]

DEPARTMENT OF THE TREASURY

Office of the Secretary

TREASURY SMALL BUSINESS ADVISORY COMMITTEE

Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-263, notice is hereby given that a meeting of the Treasury Small Business Advisory Committee will be held on December 12 and 13, 1978 at the Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, D.C. and the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, D.C.

On Tuesday, December 12, the Subcommittees on Capital Formation, Tax Policy and Tax Administration will meet from 10:00 A.M. to 12:30 P.M. in rooms 4426, 4125 of the Main Treasury Building and Room 3313 of the Internal Revenue Service Building, respectively. On December 12, from 2:00 P.M. to 5:30 P.M., the Subcommittee on Capital Formation will meet in room 4426 of the Main Treasury Building and the Subcommittees on Tax Policy and Tax Administration will meet jointly in Room 3313 of the Internal Revenue Service Building. The Committee as a whole will reconvene in room 4121 of the Main Treasury Building on Wednesday, December 13 at 9:30 A.M. and will meet until approximately 12:30 P.M.

The Committee was formed to provide a means of communication between the small business community and Treasury officials on numerous economic issues, including capital formation, tax policy, tax administration, and governmental regulations. The Capital Formation Subcommittee will address issues relating to general problems encountered by small businesses in seeking equity capital, specific institutional investor problems in investing in small businesses, and proposed ERISA changes to encourage pension funds to invest in small businesses; the Tax Policy Subcommittee will focus on topics including accumulated earnings tax, carryover basis and additional death tax, simplified LIFO, and estimated tax; and the Tax Administration Subcommittee agenda will include an update on IRS small business workshops, appeal procedures, and the negative withholding provisions of the Revenue Act of 1978 and their impact on small businesses. The Tax Policy Subcommittee and Tax Administration Subcommittee will jointly consider certain recommendations on ERISA.

The meeting will be open to the public. A limited number of seats will be available on a first come, first serve basis. In order to facilitate admittance, persons interested in attending are asked to call 566-3887 so that confirmation of space and access procedures can be provided.

Interested persons may file a written statement with the Committee before, during or after the meeting. The Chairman will, as time permits, entertain oral comments from members of the public attending the meeting. Persons interested in making oral statements are asked to call 566-3887 before 5:00 P.M. on December 11.

Minutes of the meeting will be available on request from the Treasury Small Business Advisory Committee thirty days after the meeting.

Inquires may be directed to Paul L. Lee, Executive Assistant to the Deputy Secretary, Department of the Treasury, Main Treasury Building, Room 3325, 15th and Pennsylvania Avenue, NW., Washington, D.C. 20220, telephone (202) 566-3887.

Dated: November 27, 1978.

ROBERT CARSWELL,
Deputy Secretary.

[FR Doc. 78-33674 Filed 11-30-78; 8:45 am]

[4510-29-M]
[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 78-18]

EMPLOYEE BENEFIT PLANS

Exemption From the Prohibitions Respecting a Transaction Involving the Allen and O'Hara Employees' Profit-Sharing Trust

AGENCIES: Department of the Treasury/Internal Revenue Service; Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption enables Allen and O'Hara, Inc. (the Employer) to purchase an office building owned by North Little Rock Professional Building, Inc. (the Corporation), a corporation which is wholly-owned by the Allen and O'Hara Employees' Profit Sharing Trust (the Trust).

FOR FURTHER INFORMATION CONTACT:

Timothy Smith, Prohibited Transactions and Projects Section Employee Plans Technical Branch, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attn: E:EP:PT:1, 202-566-6761. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On October 3, 1978, notice was published in the FEDERAL REGISTER (43 FR 45664) of the pendency before the Internal Revenue Service and the Department of Labor (the Agencies) of an exemption from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code and from the provisions of section 406(a), 406(b)(1), and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) for a transaction described in the application submitted by the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Agencies in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Internal Revenue Service (the Service). In addition, the notice stated that any interested person might submit a written request that a hearing be held relating to this exemption. No public comments and

no requests for a hearing were received by the Service.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 4975(c)(2) of the Code and section 408(a) of the Act does not relieve a fiduciary or party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Code and the Act. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with subsection (a)(1)(B) of the Act, nor does the fact that the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 4975(c)(1)(F) of the Code and section 406(b)(3) of the Act.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Code and the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

(4) This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978, (43 FR 22319).

EXEMPTION

In accordance with section 4975(c)(2) of the Code and section 408(a) of the Act and the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722, and ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Agencies make the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the plan and of the participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plan.

Accordingly, the following exemption is hereby granted under the authority of section 4975(c)(2) of the Code and section 408(a) of the Act and in accordance with the procedures set forth in Rev. Proc. 75-26 and ERISA Procedure 75-1.

The taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code and the restrictions of section 406(a) and section 406(b)(1) and 406(b)(2) of the Act shall not apply to the transaction involving the sale of the North Little Rock Professional Building from the Corportation to the Employer for $375,000, in cash, provided that the sale price is not less than the fair market value of the property.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 22nd day of November, 1978.

FRED J. OCHS,
Director, Employee Plans Division, Internal Revenue Service.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 78-33495 Filed 11-27-78; 12:13 pm]

[4830-01-M]
[4510-29-M]

[Applications No. D-293, 294]

MAJESTIC PAINT CENTERS, INC. EMPLOYEES' RETIREMENT TRUST AND THE YENKIN MAJESTIC EMPLOYEES' RETIREMENT PLAN

Proposal to Grant an Exemption for Transactions

AGENCIES: Department of the Treasury/Internal Revenue Service; Department of Labor.

ACTION: Proposal for an exemption.

SUMMARY: This notice contains a proposal for an exemption from certain prohibited transactions provisions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). This exemption, if granted, would permit the Yenkin Majestic Employees' Retirement Plan and the Majestic Paint Centers, Inc., Employees' Retirement Trust (the Plans) to make a loan to the Yenkin Majestic Paint Corporation and the Majestic Paint Centers, Inc. (Yenkin/Majestic).

DATES: Written comments and requests for a public hearing must be received by the Internal Revenue Service (the Service) on or before January 2, 1979.

ADDRESS: All written comments and all requests for a hearing (preferably six copies) should be addressed to the Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: E:EP:PT:2, Applications No. D-293, 294.

FOR FURTHER INFORMATION CONTACT:

Charles Scalera of the Prohibited Transactions Staff of the Employee Plans Division, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: E:EP:PT:2) (202-566-3045). This is not a toll free number.

SUPPLEMENTARY INFORMATION: Yenkin/Majestic and the Plans have requested an exemption from the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (E) of the Code. These applications were filed pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

SUMMARY OF REPRESENTATIONS

The applications contain representations with regard to the pending exemption which are summarized below. Interested persons are referred to the applications and supporting documents on file with the Service and the Department of Labor (the Department) for a complete statement of the representations of the Applicants.

1. Yenkin/Majestic are Ohio corporations engaged in the manufacture of paints and paint by-products. Yenkin/Majestic maintain the Plans which have approximately 89 participants. Among the trustees of the Plans are Merom Brachman and Bernard K. Yenkin who are officers and shareholders of Yenkin/Majestic.

2. Yenkin/Majestic and the Plans have requested an exemption for certain equipment loan transactions in the amount of $160,000 between the Plans and Yenkin/Majestic (the trucking loans) and also for an additional $60,000 loan for the purchase of latex emulsion equipment.

3. Prior to July 1, 1974, it had been an established practice for the Plans to enter into equipment purchase loans with Yenkin/Majestic.

4. The collateral securing these loans generally consisted of the following: Chattel mortgages or equivalent security interest in trucking equipment including tractors, trailers, and tank wagons.

5. As a result of these transactions the Plans have never experienced any defaults or losses.

6. The loans generally have provided greater returns to the Plans than the return that has been available from alternative investment opportunities.

7. The proposed loans will bear an interest rate of not less than one-half (½) to one (1) percent above interest rates charged by area banks for transactions involving loans on similar equipment. These loans will be for a term of thirty-six (36) months vs. forty-eight (48) months allowed by area banks.

8. Each loan will be represented by a cognovit promissory note and will be secured by the equipment financed. The trucking loans will be secured by the following types of equipment: a) Diesel-powered over-the-road three axle tractors such as used by the national commercial cross-country trucking lines, with such tractor/trailer units capable of pulling loaded trailers or tankwagons in a total weight range of eighty thousand pounds; b) Liquid transport two-axle stainless steel tankwagons for all-weather interstate movement of chemicals, such as used by commercial bulk-tanker carriers and having capacity to haul product in the load range of sixty-five hundred/seven thousand gallons; c) Box-type enclosed two-axle trailers capable of interstate movement of normal forty thousand pound loads of bulk or finished goods such as moved by commercial trucking lines, and including trailers with cooling units used for hauling of perishables. Security agreements and U.C.C. financing statements will be executed by Yenkin/Majestic and the Plans will be filed with the recorder's office, Franklin County, Ohio, and the office of the Secretary of State of Ohio.

9. The security agreements which will be filed will contain warranties by Yenkin/Majestic to the effect that they have full right, title and interest to the collateral securing the loan with the exception of the security interest granted to the Plans and that they shall keep the collateral free from any adverse lien or claim.

10. Prior to the Plans making a trucking loan, the Plans' trustees will obtain a statement from a local bank that such bank would provide financing to Yenkin/Majestic for the specific item of equipment the Plans propose to finance and which sets forth the terms of such financing.

11. The ratio of fair market value of the collateral securing the trucking loans will always be in excess of 150 percent of the loan balance.

12. Appraisals on the emulsion equipment from USS Chemicals and The Sherwin-Williams Company establish that its value is in excess of $100,000.00.

13. Insurance against loss or damage to the colleteral from fire or other hazards will be procured and maintained by Yenkin/Majestic until the loan is repaid. The insurance policy will contain a Loss Payable clause which will provide for payment to the Plans as their interests may appear.

14. If a piece of equipment is damaged and its collateral value is diminished, the loan and mortgage will be paid off according to the rule of 78.

15. In addition to a guarantee executed by Yenkin/Majestic, three major shareholders of Yenkin/Majestic have represented that they will immediately repay to the Plans, in accordance with a guarantee they will execute, the outstanding balance and accrued interest due on any money loaned by the Plans in the event the loan is more than 30 days in arrears or Yenkin/Majestic fails to comply with any terms or conditions of the loan.

16. The Plans contained total assets or $1,080,000.00 as of March 1977. The amounts of the loans will represent less than 21 percent of each of the Plans' total assets.

17. As noted above, the applications represent that the proposed loan transactions are in the interest of the Plans and their participants and protective of the rights of participants and beneficiaries because the proposed loans will provide higher yields and greater security than is otherwise available to the Plans through alternative investments.

Notification of Interested Persons

Upon publication by the Internal Revenue Service and the Department of Labor of the proposal for an exemption sought herein, notice of the pending exemption will be disseminated to all active and retired participants and their beneficiaries within ten (10) days of the publication of it in the Federal Register.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code to which the exemption does not apply, including any prohibited transaction provisions to which the exemption does not apply, and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interests of participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption contained herein does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department and the Service must find that the exemption is administratively feasible, in the interest of the Plans and its participants and beneficiaries, and protective of the rights of the participants and beneficiaries of the Plans;

(4) The pending exemption, if granted, is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is the subject of an exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the Federal Register for Wednesday, May 24, 1978 (43 FR 22319).

Written Comments and Hearing Request

Pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, the Department and the Service are required to offer an opportunity for a public hearing where a pending exemption relates to section 406(b) of the Act and section 4975(c)(1) (E) or (F) of the Code. Any interested person may submit a written request that a hearing be held relating to the pending exemption. Such written request must be received by the Service on or before January 2, 1979 and should state the reasons for such person's request for a hearing and the nature of such person's interest in the pending exemption.

All interested persons are also invited to submit written comments on the pending exemption contained herein. In order to receive consideration such comments must be received by the Service on or before January 2, 1979.

All written comments and all requests for a hearing (preferably six copies) should be addressed to the Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: E:EP:PT:2 (D-293, 294). The applications for exemption referred to herein, all such comments relating thereto, and, all requests for a hearing will be available for public inspection at the Internal Revenue Service National Office Reading Room, Room 1565, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, and at the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

PROPOSED EXEMPTION

Based upon the applications referred to above, the Service and the Department have under consideration the granting of the requested exemption, under authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722, whereby the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the equipment loans described above provided that the loan is no less favorable to the Plans than a loan which could be obtained in an arm's-length transaction with an unrelated party.

The pending exemption, if granted, will be subject to the express conditions that the material facts and representatives contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C. this 22nd day of November, 1978.

FRED J. OCHS,
Director, Employee Plans Division, Internal Revenue Service.

IAN D. LANOFF,
Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 78-33494 Filed 11-27-78; 12:13 pm]

[4510-29-M]
[4830-01-M]

[Application No. D-485]

SMITH BARNEY REAL ESTATE FUND

Proposed Exemption for Certain Transactions

AGENCIES: Department of the Treasury/Internal Revenue Service Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This dodcument contains a notice of pendency before the Department of Labor and the Internal Revenue Service (the Agencies) of a proposed exemption from the prohibited transaction restrictions imposed by the Employee Retirement Income Security Act of 1974 (the Act) and from certain excise taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt loan to the Smith, Barney Real Estate Fund (the Fund) from lenders who are fiduciaries or other service providers with respect to the qualified plans participating in the Fund. The proposed exemption, if granted, would affect the Fund, participants and beneficiaries of the individual plans participating in the Fund, and certain other fiduciaries or other service providers with respect to those participating plans.

DATE: Written comments must be received by the Internal Revenue Service on or before December 29, 1978.

ADDRESS: All written comments (at least six copies) should be addressed to the Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attn: E:EP:PT. The application for exemption and all comments relating thereto will be available for public inspection at the Internal Revenue Service National Office Reading Room, Room 1567, 1111 Constitution Avenue, NW., Washington, D.C. 20224 and at the Public Documents Room of Pension and Welfare Benefit Programs, Room N-4677, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

Timothy Smith of the Internal Revenue Service (202-566-6761). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Agencies of a proposed exemption from the restrictions of section 406(a)(1) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A), (B), (C), and (D) of the code. The proposed exemption was requested in an application filed by the trustees of the fund, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

SUMMARY OF FACTS AND REPRESENTATIONS

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Agencies for the complete representations of the applicants.

The fund is a group trust formed for the purpose of providing qualified pension and profit-sharing plans with a medium for pooling a portion of their funds for investment in real estate and interests in real estate. By letter dated November 24, 1975, the Internal Revenue Service determined that the Fund met the requirements of section 401(a) of the code, and was exempted from Federal income tax under section 501(a) of the Code. The Fund is in the process of becoming operational.

The applicant has represented that a number of the plans expected to participate in the Fund will have several trusts, that many of these trusts will be trusteed by, or receive other services from, banks and insurance companies based in or near New York City, and these same banks and insurance companies are major real estate lenders that are the Fund's primary source of financing. The applicant expects that many of the lenders on which the Fund expects to rely for financing or which already hold mortgages on properties which the fund would like to acquire will be disqualified persons or parties in interest because of their position as fiduciaries or other service providers of plans which participate in the Fund. The applicant represents that the decision of a plan to participate in the Fund will be solely within the control of a fiduciary who is independent of any entiry which is or may become a lender to the Fund and that these lenders will not be plan fiduciaries with respect to any plan assets invested in the Fund. The applicant also represents that these lenders will have no influence with regard to the disposition of plan assets invested in the Fund or in the management of the Fund.

The plan fiduciary responsible for overall management of a plan initiates a plan's participation in the Fund. In relation to a paricipating plan the Fund occupies a position equivalent to that of every other trust created under than plan. The trustees of any other trust created under a participating plan have no authority over the

assets of the Fund. Participating plans acquire interests in the Fund that may not be assigned, transferred, pledged or otherwise encumbered by the plans. A plan's interest in the Fund may be liquidated if the plan notifies the trustees of the Fund and tenders the interest for redemption. Except in unusual circumstances, the Fund invests only in income producing properties. It is anticipated that the Fund's investments will be primarily in multifamily residential properties, shopping centers, office buildings and other commercial properties. The Fund intends to diversify its investments geographically and will consider areas throughout the continental United States.

In order to enable the Fund to diversify its investments and to increase its potential return on investments, the Fund is empowered to borrow part or all of the purchase price of acquired property and to grant recourse or nonrecourse mortgages to secure the borrowings. The Fund is also empowered to assume existing mortgages and to acquire property subject to existing mortgages. Loans negotiated by the Fund will be sought on a competitive basis from as large a number of potential lenders as possible. With respect to assumed loans, the Fund must accept the mortgages as previously established, and may not influence or negotiate the terms. The Fund must rely on mortgage financing and other loans in connection with its real estate acquisition in order to most effectively serve the interests of the plans. Financing enables the Fund to maintain liquidity and thus remain in a position both to avail itself of new real estate investment opportunities and to facilitate the redemption of interests of participating plans. Financing of acquisitions also permits the Fund to diversify its investments to protect against large losses due to adverse conditions in a particular segment of the country or of the economy. The Fund also anticipates the acquisition of assumed loans when the mortgages bear economically favorable rates of interest. In addition, the Fund may wish to purchase attractive properties with reasonable mortgages that do not permit prepayment or that contain harsh prepayment penalty provisions.

The applicant suggested that the exemption contain the condition that a loan would be exempt provided the lender is not a trustee under any pension plan owning more than 20% of the units in the fund outstanding during the time of the loan. The Agencies chose not to incorporate this condition in the exemption for two reasons. A substantive prohibition against a lender's exercise of any influence with respect to any plan assets invested in the Fund is more consistent with the maintenance of a prohibition against self-dealing on the part of the lender, and, even if the Agencies chose to apply an objective percentage test, the focus of the test would be on the aggregate percentage of ownership of all plans trusteed by the lender and not on the percentage of ownership of any one plan.

The applicant also suggested that in the case of a loan negotiated by the Fund, the exemption contain the condition that the outstanding principal amount of all loans to the Fund from any one lender may not exceed 30% of the outstanding principal amount of all loans to the Fund from all lenders immediately after the loan. The Agencies chose not to incorporate this limitation because of its uncertain benefits and because the interests of the plans and their participants and beneficiaries are adequately protected by the prohibition against a lender's exercise of any influence with respect to any plan assets invested in the Fund.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code and section 408(a) of the Act does not relieve a fiduciary or other disqualified person or party in interest from certain other provisions of the Code and the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fuduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(E) or (F) of the Code, and section 406(b) of the Act;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code and section 408(a) of the Act, the Agencies must find that the exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(4) The proposed exemption, if granted, will be supplemental to and not in derogation of, any other provisions of the Code and the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the Federal Register for Wednesday, May 24, 1978 (43 F.R. 22319).

Written Comments

All interested persons are invited to submit written comments on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the addresses set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Agencies are considering granting the requested exemption under the authority of section 4975(c)(2) of the code and section 408(a) of the Act and in accordance with procedures set forth in ERISA Procedure 75-1 and Rev. Proc. 75-26.

Section I—*Definitions.* For purposes of this exemption:

(a) A lender is an insurance company qualified to do business in a State or a bank or similar financial institution supervised by the United States or a State.

(b) An affiliate of a lender is—

(1) Any person directly or indirectly controlling, controlled by or under common control with the lender ("control") means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(2) Any officer, director, partner or employee of the lender or any relative of such persons (the term "relative" means a relative as that term is defined in section 3(15) of the Act, or a "member of the family" as that term is defined in section 4975(e)(6) of the Code, or a brother, sister or spouse of a brother or a sister);

(3) Any corporation or partnership of which any person described in subparagraph (b)(2) is an officer, director, or partner unless that person described in that paragraph exercises no control to cause a plan maintained by the corporation or partnership to participate in the Fund.

Section II—Effective upon granting this exemption, the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A), (B), (C), and (D) of the Code and the restrictions of section 406(a) of the Act shall not apply to loans to the Fund from lenders who may be disqualified persons or parties in interest solely because of their position as a fiduciary or other service provider to qualified plans participating in the Fund, or because of a relationship to the fiduciary or other service provider de-

scribed in section 4975(e)(2)(G), (H), or (I), of the Code or section 3(14)(G), (H), or (I), of the Act. If a loan is exempt, transactions ancillary to the loan, such as the appraisal of the property held as security, the transfer in trust of property to secure the loan and the payment of interest, shall also be exempt. The exemption shall be subject to the following conditions:

(a) The lender and any of its affiliates shall have no discretionary responsibility nor exercise any influence over the management or disposition oa a plan's assets invested in the Fund. A plan's participation in the Fund must be be solely within the control of a fiduciary independent of the lender and its affiliates. If a lender violates this condition, liability for the excise taxes imposed upon disqualified persons participating in the prohibited transaction resulting from a subsequent non-exempt loan from that lender to the Fund will be borne by that lender.

(b) The terms of a loan are as favorable to the Fund as an arm's-length transaction with unrelated party would be.

(c) The Fund will maintain or cause to be maintained, for a period of six years from the date of each loan, the records necessary to enable the duly authorized employees of the Agencies, any employer or employees covered by a participating plan, any employee organization any of whose members are covered by a participating plan and any participant or beneficiary of a plan participating in the fund, to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the Fund's fiduciaries, the records are lost or destroyed prior to the end of such six-year period; and (2) no lender shall be subject to the taxes imposed by section 4975(a) and (b) of the Code or the civil penalty which may be assessed under section 502(i) of the Act merely because the records are not maintained or are not available for examination as required.

The pending exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C. this 22nd day of November, 1978.

FRED J. OCHS,
Director, Employee Plans Division, Internal Revenue Service.

IAN D. LANOFF,
Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 78-33496 Filed 11-27-78; 12:13 pm]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

ART ADVISORY PANEL OF THE COMMISSIONER OF INTERNAL REVENUE

Availability of Report on Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Availability of Report on Closed Meetings of the Art Advisory Panel.

SUMMARY: The Report is now available.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V 1975), *as amended by* Government in the Sunshine Act, Pub. L. No. 94-409, section 5(c), 90 Stat. 1247 (1976); section 8d(3) of the Office of Management and Budget (OMB) Circular No. A-63 (3-27-74), as supplemented, and section 12b of the Department of Treasury Directive 10-06.E (9-2-77): A report summarizing the closed meeting activities of the Art Advisory Panel during 1977, has been prepared. A copy of this report has been filed with the Assistant Secretary of Treasury for Administration and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1565, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 22319).

FOR FURTHER INFORMATION CONTACT:

Tom Hartnett, T:C:E:A, 1111 Constitution Avenue, NW., Room 5240, Washington, D.C. 20224, telephone 202-566-4427—(Not a toll free telephone number).

WILLIAM E. WILLIAMS,
Acting Commissioner.

[FR Doc. 78-33709 Filed 11-30-78; 8:45 am]

[4830-01-M]

TAX BASE FOR EXCISE TAX—MOTOR VEHICLE INDUSTRIES

New Determination of Constructive Sale Price

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Notice of new determination of constructive sale price for motor vehicle industries.

SUMMARY: Because of a change in the law concerning the method of computing constructive sale price, the Internal Revenue Service would appreciate information comparing prices at which trucks and tractors are sold at retail with the prices of such vehicles sold at other than retail.

DATE: Written comments should be mailed or delivered by December 15, 1978.

ADDRESS: Written comments should be mailed or delivered to Chief, Wage, Excise, and Administrative Provisions Branch (T:I:WEA), Internal Revenue Service, room 5203, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Mr. Harold Baer, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, telephone 202-566-4606 (not a toll-free telephone number).

SUPPLEMENTARY INFORMATION: Effective January 1, 1979, under Pub. L. 95-458, the established retail price and the cost floor limitation currently used for retail sales of trucks, tractors, trailers and semi-trailers will no longer be factors in arriving at the tax base. Instead the constructive sale price for excise tax purposes will be a percentage of the actual sales price. In general, the percentage will be based on the highest price manufacturers and producers ordinarily sell such items at wholesale.

Separate sales of automotive parts or accessories are not affected by this provision.

Because of the change in the law, the Internal Revenue Service would appreciate information concerning the proper percentage to be established for segments of the motor vehicle industry. In particular, information is wanted comparing prices at which trucks and tractors are sold at retail with trucks and tractors sold at other than retail.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978.

Dated: November 29, 1978.

JOHN L. WITHERS,
Assistant Commissioner, Technical.

[FR Doc. 78-33781 Filed 11-30-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

NOVEMBER 28, 1978.

This application for long-and-short haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before December 18, 1978. FSA No. 43633, Trans-Continental Freight Bureau, Agent's No. 529, requests authority for reduced rates on wheat from Colorado, Kansas, Nebraska and Wyoming points on the Union Pacific to Pacific Coast Ports for export. The rates are in Supp. 60 to its Tariff 29-P, ICC 1958, to become effective December 16, 1978. Grounds for relief—Motor/Rail and market competition.

By the Commission

H. G. HOMME, Jr.,
Secretary.

[FR Doc 78-33692 Filed 11-30-78; 8:45 am]

[7035-01-M]

[Notice No. 747]

ASSIGNMENT OF HEARINGS

NOVEMBER 28, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

No. MC 139482 (Sub-No. 58F), New Ulm Freight Lines, Inc., now being assigned for hearing on January 10, 1979, (1 day), at New York, NY, in a hearing room to be later designated.

No. MC 144622 (Sub-No. 2F), Glenn Bros. Meat Co., Inc., now being assigned for hearing on January 11, 1979, (1 day), at New York, NY, in a hearing room to be later designated.

No. MC 71593 (Sub-No. 10F), Forwarders Transport, Inc., now being assigned for hearing on January 12, 1979, (1 day), at New York, NY., in a hearing room to be later designated.

No. MC 143869 (Sub-No. 1), Douglas Express, Inc., now assigned December 11, 1978, at Atlanta, Georgia is canceled and application dismissed.

No. MC 144296F, Lewis Bus Lines, Inc., now assigned for hearing December 6, 1978, at Augusta, Georgia is canceled and application dismissed.

No. MC 35628 (Sub-No. 397F), Interstate Motor Freight System, now assigned January 9, 1979, at Lansing, Michigan is canceled and transferred to Modified Procedure.

No. MC 116110 (Sub-No. 18), P.C. White Truck Line, Inc., now being assigned for continued hearing on November 27, 1978, (1 week), at Birmingham, Alabama, at Kahler Plaza Hotel, 800 20th Street South.

No. MC 99610 (Sub-No. 27), Ross Neely Express, Inc., now being assigned for continued hearing on December 7, 1978, (2 days), at Birmingham, Alabama, Room 430, Federal Building, 1800 5th Avenue North.

No. MC 77972 (Sub-No. 30), Merchants Truck Line, Inc., No. MC 97310 (Sub-No. 25) Sharron Motor Lines, Inc., No. MC 99610 (Sub-No. 27), Ross Neely Express, Inc., No. MC 116110 (Sub-No. 18), P.C. White Truck Line, Inc., now being assigned for continued hearing on February 5, 1979, (1 week), at Atlanta, Georgia at Room 305, 1252 West Peachtree Street N.W.

No. MC 109173 (Sub-No. 4F), Delta Bus Company, now assigned for hearing on January 15, 1979, at Lansing, Michigan is canceled and application dismissed.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-33680 Filed 11-30-78; 8:45 am]

[7035-01-M]

[Notice No. 226]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 24, 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.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

MOTOR CARRIERS OF PROPERTY

MC 10875 (Sub-45TA), filed August 8, 1978. Applicant: BRANCH MOTOR EXPRESS CO., 114 Fifth Avenue, New York, NY 10011. Representative: G. G. Heller (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Paper and paper products*, serving the plant site of Alabama Kraft Company, at or near Mahrt, AL, as an off-route point in connection with applicant's authorized routes, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): The Mead Corporation, Courthouse Plaza Northeast, Dayton, OH 45463. SEND PROTESTS TO: Maria B. Kejss, Trans. Assistant, 26 Federal Plaza, New York, NY 10007.

MC 26396 (Sub-210TA), filed October 30, 1978. Applicant: POPELKA TRUCKING CO., d.b.a. THE WAGGONERS, P.O. Box 990, Livingston, MT 59047. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Lumber, lumber products and wood products*, from Lewistown, MT., to points in the states of WY, CO, ND, SD, NE, KA, OK, MN, IA, MO, AR, WI, IL, IN, KY, AND TN, FOR 180 days. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): Eunice G. Russ Traffic Manager, Brans S. Corporation, Southwest Airport Road, Corvallis, OR. 97330. SEND PROTESTS TO: Paul J. Labane DS, ICC, 2602 First Avenue North, Billings, MT. 59101.

MC 35890 (Sub-51TA), filed October 27, 1978. Applicant: BLODGETT FURNITURE SERVICE, INC., 5650 Foremost Drive SE., Grand Rapids, MI 49508. Representative: Ronald C. Nesmith, P.O. Box 4403, Chicago, IL 60680. *Carpets, rugs, carpet padding and articles used in the manufacture, sale and distribution of carpets, rugs and carpet padding* from the facilities of General Felt Industries, Inc., and subcontractors for General Felt Industries, Inc., at or near Eddystone, Fairless Hills, and Philadelphia, PA; Camden and Trenton, NJ; Ft. Wayne, IN; Shelbyville, TN; Dallas, TX; Columbus and Tupelo, MS; and Los Angeles, CA; to points in the United

States (except AK and HI), for 180 days. SUPPORTING SHIPPER(S): General Felt Industries, Inc., Park 80 Plaza West-One, Saddle Brook, NJ 07662. SEND PROTESTS TO: C. R. Flemming, DS, I.C.C., Rm 225 Federal Bldg., Lansing, MI 48933.

MC 103993 (Sub-941TA), filed October 18, 1978. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James B. Buda (same as above). *Lumber and lumber products,* from Detroit and Port Huron, MI, and their commercial zones, to points in the states of OH, PA, IL, IN, KY, TN, WI, IA, NE, KS, MN, MD, WV and WM, for 180 days. RESTRICTED to traffic originating at the storage facilities of Green Forest Lumber Ltd., at or near Windsor and Chatham, Ontario, Canada. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Green Forest Lumber Ltd., 250 Merton Street, Toronto, Ontario, Canada M4S 2Y6. SEND PROTESTS TO: J. H. Gray, District Supervisor, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 112962 (Sub-13TA), filed October 30, 1978. Applicant: CRUPPER TRANSPORT CO., INC. 25 South Third, Kansas City, KS 66118. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. *Tanks, grain bins and related equipment, materials and supplies* between the facilities of Butler Manufacturing Co. at Kansas City, MO and points in the states of CO, IA, IL, KS, MN, NE, ND, OK, SD and WI, for 180 days. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): Butler Mfg. Co., 7400 E. 13th Street, Kansas City, MO 64126. SEND PROTESTS TO: Vernon V. Coble, DS, ICC, 600 Federal Bldg., 911 Walnut Street, Kansas City, MO 64106.

MC 113434 (Sub-117TA), filed October 18, 1978. Applicant: GRA-BELL TRUCK LINE, INC., 679 Lincoln Avenue, Holland, MI 49423. Representative: Miss Wilhelma Boersma, 1600 First Federal Building, Detroit, MI 48226. *Such merchandise as is dealt in by wholesale, retail and chain grocery and food business houses and in connection therewith materials and supplies used in the conduct of such business,* except commodities in bulk, from the facilities of Fostoria Distribution Service Company at or near Fostoria, OH to points in MI, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Fostoria Distribution Service Company, P.O. Box D, Fostoria, OH 44830. SEND PROTESTS TO: C. R. Flemming, District Supervisor, 225 Federal Building, Lansing, MI 48933.

MC 113666 (Sub-139TA), filed October 18, 1978. Applicant: FREEPORT TRANSPORT, INC., 1200 Butler Road, Freeport, PA 16229. Representative: Daniel R. Smetanick, Vice President (same as above). *Plastic pellets,* in bulk, in tank vehicles, from Donora, PA to Buffalo and Lockport, NY, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Polycom, Inc., Donora Industrial Park, Washington Street, Donora, PA 15033. SEND PROTESTS TO: John J. England, District Supervisor, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 114045 (Sub-513TA), filed October 18, 1978. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, Dallas, TX 75261. Representative: J. B. Stuart (same as above). *Drugs, medicines, toilet preparations and health care items,* from Washington, DC and Easton, MD to San Leandro, CA, for 180 days. SUPPORTING SHIPPER(S): Burton, Parsons & Co., Inc., 120 Westhampton Avenue, Washington, DC 20027. SEND PROTESTS TO: Opal M. Jones, Trans. Assistant, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 114890 (Sub-84TA), filed October 30, 1978. Applicant: COMMERCIAL CARTAGE CO., 343 Axminster Dr., Fenton, MO 63026. Representative: David A. Cherry, P.O. Box 1540, Edmond, OK 73034. *Fertilizer and ingredients,* in bulk, in tank vehicles, from Walnut Ridge, AR, to points in AL, AR, CO, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MO, NE, TN and TX, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Frit Industries, Inc., P.O. Box 850, Ozark, AL 36360. SEND PROTESTS TO: P. E. Binder, DS, ICC, Rm 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 115162 (Sub-436TA), filed October 18, 1978. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same as above). *Plastic articles, including plastic bags, shrink film and poly tubes* (except commodities in bulk, in tank vehicles) from Mexico, MO to points in states of AL, TX, FL, NJ, LA, GA, NC, SC, TN, KY, PA, NY, MS and VA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Mexico Plastic Company, 2000 W. Boulevard, Mexico, MO 65265. SEND PROTESTS TO: Mabel E. Holston, Trans. Asst., Room 1616, 2121 Building, Birmingham, AL 35203.

MC 115517 (Sub-9TA), filed October 18, 1978. Applicant: B & L TRUCKING CO., INC., Route 4, Albemarle, NC 28001. Representative: Joshua J. Morton, Jr., P.O. Box 267, Albemarle, NC 28001. *Pipe, pipe fittings and insulation used in building brick kilns, hospitals, school buildings and commercial buildings* from Albemarle, NC, point or origination, to the states of CO, CA, TX, AL, WA, and IA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Lorch Plumbing & Heating Co., Inc., P.O. Box 1339, Albemarle, NC 28001. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 115654 (Sub-118TA), filed October 27, 1978. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Henry E. Seaton, 939 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. *Such commodities as are dealt in by grocery and food business houses* from Blue Ash, OH, to points in KY and WV, for 180 days. SUPPORTING SHIPPER(S): General Foods Corp., 250 North Street, White Plains, NY 10625. SEND PROTESTS TO: Glenda Kuss, Trans. Asst., ICC, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 117730 (Sub-31TA), filed October 27, 1978. Applicant: KOUBENEC MOTOR SERVICE, INC., Route 47, Huntley, IL 60142. Representative: Stephen H. Loeb, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Hospital supplies and drugs,* in vehicles equipped with mechanical refrigeration, from the facilities of Abbott Laboratories at North Chicago, IL, to King of Prussia, PA, Jersey City, NJ, Baltimore, MD, Buffalo and Albany, NY and Dedham, MA, for 180 days. SUPPORTING SHIPPER(S): Abbott Laboratories, 1400 Sheridan Road, North Chicago, IL 60064. SEND PROTESTS TO: Lois M. Stahl, Trans. Asst., ICC, 219 South Dearborn Street, Rm 1386, Chicago, IL 60604.

MC 119726 (Sub-146TA), filed October 27, 1978. Applicant: N.A.B. TRUCKING CO., INC., 1644 W. Edgewood Avenue, Indianapolis, IN 46217. Representative: James L. Beattey, Suite 1000, 130 E. Washington Street, Indianapolis, IN 46204. *Rubber and plastic articles, and combined rubber and plastic articles and materials, supplies, and equipment used in the manufactur of the above named commodities* (except in bulk) from the plantsite of Entek Corporation of America, at or near Irving, TX, to those States in and east of KS, NE, ND, OK, SD, and TX, and from the above destination states to the plantsite of Entek Corporation of America at or near Irving, TX, for 180 days. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): Entek Corporation of America, 104 County Line Road, Irving, TX 75060. SEND PROTESTS TO: Beverly J.

Williams, Trans. Asst., ICC, Federal Bldg. and U.S. Courthouse, 46 East Ohio Street, Rm 429, Indianapolis, IN 46204.

MC 125916 (Sub-6TA), filed October 25, 1978. Applicant: NORWOOD TRANSPORTATION, INC., 2330 South 7200 West, Magna, UT 84044. Representative: Macoy A. McMurray, Suite 800, Beneficial Life Tower, 36 South State Street, Salt Lake City, UT 84111. *Pumice*, in bulk, from the Wrights Creek Mine near Malad, ID, to Salt Lake City, UT., and its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Hess Pumice Products, 643 North 300 West, Malad, ID. (J. Marvin Hess, Co-Owner). SEND PROTESTS TO: Lyle D. Helfer DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 126118 (Sub-106TA), filed October 27, 1978. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). *Synthetic rubber*, from Beaumont, TX and its commercial zone to hot Springs, AR and its commercial zone, for 180 days. Common control may be involved. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): Alliance Rubber Co., P.O. Box 730, Hot Springs, AR 71901. SEND PROTESTS TO: Max H. Johnston, DS, ICC, 285 Federal Building, 100 Centennial Mall North, Lincoln, NE 68508.

MC 126196 (Sub-11TA), filed October 25, 1978. Applicant: BALCHOWSKE TRUCK LINE, INC., Route 1, Fairmont, MN 56031. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. *Feed and feed ingredients; and grain, soybean, and seed products and by-products* (except commodities in bulk, in tank vehicles) from the facilities of Archer Daniels Midland Company located at or near Red Wing, MN to points in CO, IL, IA, KS, MO, NE, ND, SD and WI, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Archer Daniels Midland Company, P.O. Box 1470, Decatur, IL 62525. SEND PROTESTS TO: Delores A. Poe, Trans. Assistant, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 129991 (Sub-3TA), filed October 27, 1978. Applicant: JENSEN TRUCKING CO., INC., P.O. Box 402, American Fork, UT 84003. Representative: Jack L. Jensen (same as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Steel-fabricated and raw*, from Spanish Fork, UT, to points in TX, NM, CO, WY, MT, ID, AZ, CA, NV, WA and OR, under a continuing contract or contracts with Kirby Building Systems, for 180 days. SUPPORTING SHIPPER(S): Kirby Building Systems, 1550 N. Kirby Dr., Spanish Fork, UT. SEND PROTESTS TO: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 133566 (Sub-125TA), filed October 27, 1978. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46947. Representative: Thomas J. Beener, Beinhauer & Rouhana, One World Trade Center, Suite 4959, New York, NY 10048. *Sand*, in packages, from Brooklyn, NY., to points in Indiana, Ohio, Illinois, and MI, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Amstar, 1251 Avenue of the Americas, New York, NY. 10020. SEND PROTESTS TO: J. H. Gray DS, ICC, 343 West Wayne Street, Suite 113, Fort Wayne, IN. 46802.

MC 133883 (Sub-7TA), filed October 27, 1978. Applicant: GERALD N. EVENSON, INC., 835 1st Street Southwest, Pelican Rapids, MI 56572. Representative: Gene P. Johnson, P.O. Box 2471, Fargo ND 58108. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Frozen boxed meat*, (1) from Chicago, IL to Ames, IA, Rochester and St. Cloud, MN, Fargo, Grand Forks, Minot and Bismarck, ND, Aberdeen, Mitchell and Rapid City, SD and Billings, MT and (2) from Portland, OR to Chicago, IL, under a continuing contract or contracts with Kloster Dakota Franchising, Inc., for 180 days. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): Kloster Dakota Franchising, Inc., 1407 24th Avenue South, Grand Forks, ND 58201. SEND PROTESTS TO: Ronald R. Mau, DS, RM 268 Federal Bldg. and U.S. P.O., 657 2nd Avenue North, Fargo, ND 58102.

MC 134082 (Sub-15TA), filed October 18, 1978. Applicant: K. H. TRANSPORT, INC., 4796 Linthicum Road, Dayton, OH 21036. Representative: Chester A. Zyblut, Esq., 366 Executive Building, Washington, DC 20005. (a) *Foodstuffs*, from the facilities of McCormick & Company, Inc., Baltimore and Cockeysville, MD to points in AL, LA, TN, TX, MO, MS, and (b) *materials, equipment and supplies used in the manufacture, preparation and sale of foodstuffs*, from points in IL, WI, IN and OH TO THE FACILITIES OF McCormick & Company, Inc., Baltimore and Cockeysville, MD, for 180 days. SUPPORTING SHIPPER(S): John W. Highfield, Mgr., Corporate Distribution, McCormick & Company, Inc., 414 Light Street, Baltimore, MD 21202. SEND PROTESTS TO: William L. Hughes, District Supervisor, 1025 Federal Building, Baltimore, MD 21201.

MC 134404 (Sub-40TA), filed October 27, 1978. Applicant: AMERICAN TRANS-FREIGHT, INC., P.O. Box 796, Manville, NJ 08835. Representative: Eugene M. Malkin, Suite 6193, 5 World Trade Center, New York, NY 10048. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fiberglass tubs and shower stalls*, from the facilities of Facetglas, Inc. at or near Martinsburg, WV and Rock Hill, SC to points in MI, OH and PA; and (2) *equipment, materials and supplies* (except in Bulk) used in the manufacture and distribution of fiberglass tubs and shower stalls, between the facilities of Facetglas, Inc. at or near Martinsburg, WV, Rock Hill, SC and Richmond, MI, under a continuing contract or contracts with Facetglas, Inc. for 180 days. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): Facetglas, Inc., 10 Blackwell, Rock Hill, SC 29730. SEND PROTESTS TO: Robert E. Johnston, DS, ICC, 9 Clinton Street, Newark, NJ 07102.

MC 134724 (Sub-6TA), filed October 18, 1978. Applicant: BIG RIG REFRIGERATION, INC., 8998 L Street, Suite 232, Omaha, NE 68127. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Meats and packinghouse products*, from Palamera Beef Corp., at Omaha, NE to points in MA, NJ, NY and PA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Palamera Beef Corp., 25th & Z Streets, Omaha, NE 68107. SEND PROTESTS TO: Carroll Russell, District Supervisor, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 135070 (Sub-16TA), filed October 27, 1978. Applicant: JAY LINES, INC., 720 N. Grand, Amarillo, TX 79120. Representative: Gailyn Larsen, 521 South 14th Street, Lincoln, NE 68501. *Foodstuffs* (except in bulk, in tank vehicles), from the facilities of Sanna Division of Beatrice Foods Co., at or near Menomonie, Careron, Vesper, Wisconsin Rapids and Eau Claire, WI, to points in AR, KS, LA, MO, OK and TX, for 180 days. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): Sanna Division of Beatrice Foods Co., 2801 West Beltline Hwy, Madison, WI 53713. SEND PROTESTS TO: Haskell E. Ballard, DS, Box F-13206 Federal Building, Amarillo, TX 79101.

MC 135197 (Sub-16TA), filed October 19, 1978. Applicant: LEESER TRANSPORTATION, INC., Route 3, Palmyra, MO 63461. Representative: Robert Leeser (same as above). *Animal*

and poultry feed and feed ingredients, except in bulk, from facilities of American Cyanamid Co., in Chattanooga, TN to facilities of American Cyanamid Co., in Rosemont, IL, Kansas City, MO, St. Louis, MO, St. Paul, MN and Cincinnati, OH, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): American Cyanamid Company, P.O. Box 400, Princeton, NJ 08540. SEND PROTESTS TO: Vernon V. Coble, District Supervisor, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 135197 (Sub-18TA), filed October 30, 1978. Applicant: LEESER TRANSPORTATION, INC., Route 3, Palmyra, MO 63461. Representative: Herman W. Huber, 101 East High Street, Jefferson City, MO 65101. *Dry bulk fertilizer,* from the plantsite and storage facilities of Chevron Chemical Co. at or near Ft. Madison, IA, to all points in IL and MO, for 180 days. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): Chevron Chemical Co., P.O. Box 282, Ft. Madison, IA 52627. SEND PROTESTS TO: Vernon V. Coble, DS, ICC, 600 Federal Bldg., 911 Walnut Street, Kansas City, MO 64106.

MC 135281 (Sub-11TA), filed October 18, 1978. Applicant: LANGLEY TRUCKING COMPANY, Route 4, P.O. Box 61, Elizabethtown, KY. 42701. Representative: William L. Willis, 708 McClure Building, Frankfort, KY. 40601. (1) *Stone,* in dump vehicles, form points in Clark, Estill, Fayette, Jessamine, Madison, Rockcastle, and Scott Counties, KY., to points in Butler and Hamilton Counties, OH. (2) *Sand,* in dump vehicles, from points in Butler and Hamilton Counties, OH, to points in Clark, Estill, Fayette, Jessamine, Madison, Rockcastle, and Scott Counties, KY., 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): There are approximately (4) 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: Linda H. Sypher DS, 426 Post Office Bldg., Louisville, KY. 40202.

MC 136384 (Sub-12TA), filed October 30, 1978. Applicant: PALMER MOTOR EXPRESS, INC., P.O. Box 103, Savannah, GA 31402. Representative: W. W. Palmer, Jr. (same as applicant). *Roofing and roofing products* from the facilities of Johns-Manville Corp., Savannah, Chatham County, GA to points in TN and VA, for 180 days. SUPPORTING SHIPPER(S): Johns-Manville Sales Corp., 3300 Holcomb Bridge, RD., Norcross, GA 30092. SEND PROTESTS TO: G. H. Fauss, Jr., ICC, Box 35008, 400 West Bay St., Jacksonville, FL 32202.

MC 136640 (Sub-14TA), filed October 27, 1978. Applicant: ROBERT L. ALLEN D/B/A, R. ALLEN TRANSPORT, P.O. Box 415, Pocomoke City, MD 21851. Representative: S. Michael Richards, 44 North Ave., P.O. Box 225, Webster, NY 14580. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Canned foods,* from Hallwood, VA, to points in IA, KS, MN, NE, ND and SD, under a continuing contract or contracts with John W. Taylor Packing Co., for 180 days. SUPPORTING SHIPPER(S): John W. Taylor Packing Co., Hallwood, VA 23359. SEND PROTESTS TO: T. M. Esposito, Trans. Asst., 600 Arch St., Rm 3238, Philadelphia, PA 19106.

MC 138762 (Sub-28TA), filed October 18, 1978. Applicant: MUNICIPAL TANK LINES LIMITED, P.O. Box 3500, Calgary, AB, Canada T2P 2P9. Representative: Richard Streeter, 1729 H Street, NW, Washington, DC 20006. *Cement,* in bulk and in bags, from the facilities of Aetna Cement Corporation at or near Essexville, MI to ports of entry on the International Boundary line between the U.S. and Canada located in MI; restricted to traffic in foreign commerce for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Lake Ontario Cement Limited, 2 Carlton Street, Toronto, ON, Canada M5B 1J6. SEND PROTESTS TO: District Supervisor Paul J. Labane, 2602 First Avenue North, Billings, MT 59101.

MC 138882 (Sub-170TA), filed October 18, 1978. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Cans, fibreboard set up* from the facilities of Sonoco Products Company located at Hartsville, SC to the facilities and warehouse of Anderson-Clayton, Inc., located at or near Jacksonville, IL, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Sonoco Products Company, P.O. Box 160, Hartsville, SC 29550. SEND PROTESTS TO: Mabel E. Holston, Trans. Assistant, Room 1616—2121 Building, Birmingham, AL 35203.

MC 138882 (Sub-171TA), filed October 25, 1978. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Canned goods,* except frozen and in bulk, from the facilities of the Joan of Arc Co., at or near Turkey, NC to points in ME, VT, NH, MA, CT, RI, NJ, PA, NY, OH, MI, IL and WI; and from St. Francisville and Belledeau, LA to Hoopeston and E. Peoria, IL; Maryville, WI; Foxboro, MA; Fostoria, OH and Mechanicsburg, PA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Joan of Arc Company, Inc., 2231 West Altorfer Drive, Peoria, IL 61614. SEND PROTESTS TO: Mabel E. Holston, Trans. Assistant, Room 1616—2121 Building, Birmingham, AL 35203.

MC 139906 (Sub-19TA), filed October 18, 1978. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, UT 84125. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. *Granular insulating material, in bags,* from Santa Ana, CA and its commercial zone, to points in the United States in and east of ND, SD, NE, KS, OK, and TX, for 180 days. SUPPORTING SHIPPER(S): American Gilsonite Company, 1150 Kennecott Building, Salt Lake City, UT 84133. SEND PROTESTS TO: District Supervisor L. D. Helfer, 5301 Federal Building, Salt Lake City, UT 84138.

MC 140033 (Sub-73TA), filed October 18, 1978. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: Lawrence A. Winkle, Winkle and Wells, 1125 Exchange Park, P.O. Box 45538, Dallas, TX 75245. *Dialysis machines and related medical products,* (1) from McAllen, TX to Toledo, OH and Cinnaminson, NJ and (2) from Cinnaminson, NJ to Toledo, OH, Atlanta, GA, Miami and Tampa, FL, New Orleans, LA, Houston and Dallas, TX, and Costa Mesa, CA, for 180 days. SUPPORTING SHIPPER(S): Erika, Inc., One Erika Place, Rockleigh, NJ 07864. SEND PROTESTS TO: Opal M. Jones, Trans. Assistant, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 140493 (Sub-2TA), filed October 27, 1978. Applicant: R & J INDUSTRIES, INC., 6 Pompton Avenue, Cedar Grove, NJ. 07009. Representative: Lawrence E. Lindeman, Suite 1032 Pa., Bldg., Pa., Avenue & 13th St., N.W., Washington, D.C. 20004. *Scrap metal,* between Elizabeth, NJ, Wilmington, DE, and Baltimore, MD, on the one hand, and, on the other, Fairless Hills, Morrisville, Easton and Conshohocken, PA, Claymont, New Castle, DE, and Pulaski, VA., for 180 days. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): American Can Co., and its subsidiaries, American Lane, Greenwich, CT. 06830. SEND PROTESTS TO: Robert E. Johnston DS, ICC, 9 Clinton Street, Newark, NJ. 07102.

MC 140829 (Sub-146TA), filed October 18, 1978. Applicant: CARGO CON-

TRACT CARRIER CORP., P.O. Box 206, US Hwy 20, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. *Agricultural herbicides, insecticides and fungicides* (except in bulk, in tank vehicles), from St. Gabriel, LA to points in the state of IL, IN, IA, NE, and WI, restricted to traffic originating at the named origin and destined to points in the named destination states, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Robert F. Casper, Manager, Domestic Traffic Operations, Ciba-Geigy Corporation, Ardsley, NY 10502. SEND PROTESTS TO: Carroll Russell, District Supervisor, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 141773 (Sub-8TA), filed October 27, 1978. Applicant: THERMO TRANSPORTI INC., 156 East Market Street, Indianapolis, IN 46204. Representative: Donald W. Smith, Suite 945, 9000 Keystone Crossing, Indianapolis, IN 46240. Authority sought to operate as a *contract carrier*, by; motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from Franklin Park, IL, Indianapolis, IN, Youngstown, OH, Phillipsdale, RI, Aliquippa, Farrell and Sharon, PA, the International Boundary Line at Detroit, MI and Niagra Falls, NY, to the plantsite and warehouse facilities of Omark Industries, Inc. at or near Portland, OR, restricted to service to be performed under a contract or continuing contracts with Omark Industries, Inc. and in vehicles equipped with merchanical temperature control, for 180 days. SUPPORTING SHIPPER(S): Omark Industries, Inc., 9701 McLaughlin Blvd., Portland, OR 97222. SEND PROTESTS TO: Beverly J. Williams, Trans. Asst., ICC, Federal Bldg. & U.S. Courthouse, 46 East Ohio Street, Rm 429, Indianapolis, IN 46204.

MC 142484 (Sub-3TA), filed October 18, 1978. Applicant: STRINGFELLOW TRANSPORTATION COMPANY, INC., 724 3rd Avenue North, Birmingham, AL 35203. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Treated and untreated forest products and lumber mill products and lumber*, between the facilities of Walker Williams Lumber Company, Inc., at Hatchechubbee, AL on the one hand, and, on the other, points in AL, FL, GA, KY, MS and TN, under a continuing contract or contracts with Walker Williams Lumber Company, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Walker Williams Lumber Company, P.O. Box 170, Hatchechubbee, AL 36858. SEND PROTESTS TO: Mabel E. Holston, Trans. Asst., Room 1616-2121 Building, Birmingham, AL 35203.

MC 142672 (Sub-35TA), filed October 18, 1978. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. *Food products*, from the facilities of Campbell Soup Company, at or near Napoleon, OH to Paris, TX, for 180 days. SUPPORTING SHIPPER(S): Campbell Soup Company, East Maumee Avenue, Napoleon, OH 43545. SEND PROTESTS TO: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 142672 (Sub-36TA), filed October 18, 1978. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. *Such commodities* as are dealt in or used by wholesale and retail discount and variety stores, from points in the states of GA, FL, NC, NJ, NY, PA and SC to the facilities of Wal-Mart Stores, Inc., at or near Bentonville and Searcy, AR, for 180 days. SUPPORTING SHIPPER(S): Wal-Mart Stores, Inc., P.O. Box 116, Bentonvile, AR 71712. SEND PROTESTS TO: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 142715 (Sub-18TA), filed October 18, 1978. Applicant: LENERTZ, INC., 411 Northwestern National Bank Building, St. Paul, MN 55101. Representative: Robert S. Lee, 1000 First National Bank Building, Minneapolis, MN 55402. (1) *Paper and paper products, cellulose products, and textile softeners*; and (2) *materials, supplies and equipment used in the manufacture and distribution of the commodities listed in (1) above* between Green Bay, WI, on the one hand, and, on the other, points in ND, SD, NE, KS, OK, TX, MN, IA MO, AR LA, MI, IL, IN, KY, TN, MS, AL, GA, OH and NC, for 180 days. SUPPORTING SHIPPER(S): Proctor & Gamble Paper Products Co., P.O. Box 599, Cincinnati, OH 45201. SEND PROTESTS TO: Delores A. Poe, Trans. Asst., 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 142848 (Sub-7TA), filed October 27, 1978. Applicant: JAMES A. POSHARD & SON, INC., P.O. Box 69, Mt. Vernon, IN 47620. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. *Sand*, in bulk, in dump vehicles, from Ottawa, Rockton, Troy Grove, OR, Utica and Wedron, IL, to Youngstown, Wooster, Newark, Heath, OH, Kalkaska and Mt. Pleasant, MI, Black Lick and Corry, PA, Glenville and Beckley, WV, Prestonsburg, KY, for 180 days. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): Dowell Division of Dow Chemical U.S.A., 6230 Busch Blvd., Suite 204, Columbus, OH 43229. SEND PROTESTS TO: Beverly J. Williams, Trans. Asst., ICC Federal Building and U.S. Courthouse, 46 East Ohio Street, Rm 429, Indianapolis, IN 46204.

MC 143387 (Sub-3TA), filed October 27, 1978. Applicant: ASSOCIATED COURIERS, INC., 3309 Lighfoot, St. Charles, MO 63301. Representative: Warren W. Wallin, 10 S. LaSalle St., Chicago, IL 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting; *Radioactive pharmaceuticals, radioactive isotopes and medical testing kits*, between Maryland Heights, MO, on the one hand, and, on the other, points in AR, IA, MN, ND, SD and Memphis, TN under a continuing contract or contracts with Mallinckrodt, Inc., for 180 days. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): Mallinckrodt, Inc., Box 10172 Lambert Field, St. Louis, MO 63045. SEND PROTESTS TO: P. E. Binder DS, ICC, Rm 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 144827 (Sub-13TA), filed October 27, 1978. Applicant: DELTA MOTOR FREIGHT, INC., 2877 Farrisview, P.O. Box 18423, Memphis, TN 38118. Representative: Billy R. Hallum (same address as applicant). *Such merchandise as is dealt in by department stores and advertising materials* from New York, NY and its commercial zone to Chicago, IL, Indianapolis, IN, Cincinnati, OH, Oklahoma City, OK, and Memphis and Nashville, TN, for 180 days. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): Service Merchandise Company, Inc., 2968 Forster Creighton Drive, Nashville, TN 37204. SEND PROTESTS TO: Floyd A. Johnson, DS, ICC, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 144842 (Sub-2TA), filed October 27, 1978. Applicant: CLIFFORD L. RIGGINS, d.b.a. RIGGINS TRUCKING, 1004 Maple Street, Springdale, AR 72764. Representative: Nancy Pyeatt, 815 15th Street N.W., Washington, DC 20005. *Frozen foods*, from the facilities of Mrs. Paul's Kitchens, Inc., at Philadelphia and Doylestown, PA, Braddock, NJ and Crisfield, MD, to Los Angeles, Anaheim, Vernon, San Francisco, Milpaitas, and Richmond, CA; Chicago, Elk Grove Village, North Lake, and Milan, IL; South Bend, Fort Wayne, Indianapolis and Evansville,

IN; Lexington, Louisville, and Brooks Station, KY; Detroit Lavonia, Warren, Lansing, Grand Rapids, Flint, Saginaw and Bay City, MI; Kansas City, St. Louis, Bridgeton, Hazelwood, and Springfield, MO; Dallas, Irving, Garland Fort Worth, Lufkin, Houston, Lubbock, El Paso and San Antonio, TX, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Mrs. Paul's Kitchens, Inc., 5830 Henry Avenue, Philadelphia, PA 19128. SEND PROTESTS TO: William H. Land, Jr., DS, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 144859 (Sub-2TA), filed October 27, 1978. Applicant: SCOTT PALLETS, INC., Box 341, Amelia, VA 23002. Representative: Calvin F. Major, 200 West Grace Street, Richmond, VA 23220. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wire and nails*, from points in OH and PA to points in MO, under a continuing contract or contracts with American Nail Corporation, for 180 days. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): American Nail Corporation, 13743 Rider Trail, Earth City, MO 63045. SEND PROTESTS TO: Paul D. Collins, DS, Rm 10-502, Federal Bldg., 400 North Eighth Street, Richmond, VA 23240.

MC 145047 (Sub-1TA), filed September 20, 1978. Applicant: VASQUEZ TRANSPORTATION CO., P.O. Box 837, Kearney, NE 68847. Representative: Raul O. Vasquez (same as above). (1) *Aluminum and poly vinyl chloride pipe, and accessories therefor, aeration tubing and accessories*, from Kearney, NE, to points in CO, ND, SD, ID, MO, MS, MT and WY; and (2) *Iron and* steel articles, from Chicago, IL and its commercial zone to Beatrice, Columbus, Fremont, Grand Island, Hastings, Kearney, Lincoln and Omaha, NE, and their commercial zones, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Lloyd A. Wilkie, General Manager, Ace Irrigation and Manufacturing Co., P.O. Box 1887, Kearney, NE 68847. R. B. Smith, Administrative Assistant, Mars Steel Corporation, 15 Spinning Wheel Road, Hinsdale, IL 60521. SEND PROTESTS TO: Max H. Johnston, District Supervisor, 285 Federal Building and Court House, 100 Centennial Mall North, Lincoln, NE 68508.

MC 145152 (Sub-14TA), filed October 25, 1978. Applicant: BIG THREE TRANSPORTATION, INC., P.O. Box 706, Springdale, AR 72764. Representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. *Candy*, from Chicago, IL to Bentonville and Searcy, AR, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Wal-Mart Stores, Inc., P.O. Box 116, Bentonville, AR 72712. SEND PROTESTS TO: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 145152 (Sub-16TA), filed October 30, 1978. Applicant: BIG THREE TRANSPORTATION, INC., P.O. Box 706, Springdale, AR 72764. Representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. *Candy and confectionery*, from the facilities of Queen Anne Candy Company, at or near Hammond, IN, to points in AZ, CA, CO, NM and TX, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Queen Anne Candy Company, P.O. Box 948, Hammond, IN 46325. SEND PROTESTS TO: William H. Land, Jr., DS, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, AR 72201.

MC 145560 (Sub-1TA), filed October 27, 1978. Applicant: NORTH ALABAMA TRANSPORTATION, INC., P.O. Box 38, Ider, AL 35981. Representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. Authority sought to operate as a *contract carrier*, by motor vehicle, irregular routes, transporting: *Bathroom rug sets, bedspreads, drapes and accessories therefor* (except in bulk), from the facilities of Lawtex Industries, Inc., located at or near Dalton and Calhoun, GA, and Piedmont, AL to the facilities of Lawtex Industries, Inc., located at or near Cerritos, CA, under a continuing contract or contracts with Lawtex Industries, Inc., for 180 days. SUPPORTING SHIPPER(S): Lawtex Industries, Inc., P.O. Box 1328, Dalton, GA 30720. SEND PROTESTS TO: Mabel E. Holston, Trans. Asst., ICC, Rm 1616, 2121 Bldg., Birmingham, AL 35203.

MC 145566 (Sub-1TA), filed October 27, 1978. Applicant: B & K ENTERPRISES, 7950 S. 27th St., Oak Creek, WI 53145. Representative: Terry Kultgen, 5605 Brookhaven Dr., Racine, WI 53406. *Shipments of heavy and specialized commodities or articles requiring special equipment or special handling outside the scope of certificate of general commodities motor common carriers* from the facilities of Tait/Bio-Shafts, Inc., Oconomowoc, WI, on the one hand, and, to all points in the state of CA on the other, for 180 days. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): Tait/Bio Shafts, Inc., 5656 N. Frontier Road, Oconomowoc, WI 53066. SEND PROTESTS TO: Gail Daugherty, Trans. Asst., ICC, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Rm. 619, Milwaukee, WI 53202.

MC 145598 (Sub-1TA), filed October 27, 1978. Applicant: QUICK AIR FREIGHT, INC., Cargo Bldg., Port Columbus Airport, Columbus, OH 43219. Representative: E. H. van Deusen, 220 West Bridge Street, Dublin, OH 43017. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commodities mining machinery parts, and equipment and supplies used in the manufacture or repair of mining machinery*, between points in AL, AR, CO, GA, IL, IN, KY, MI, NJ, NC, ND, OH, PA, SC, TN, UT, VA and WV, under a continuing contract or contracts with Jeffrey Mining Machinery Division, Dresser Industries, Inc., for 180 days. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): Jeffrey Mining Machinery Division, Dresser Industries, Inc., P.O. Box 1879, Columbus, OH 43216. SEND PROTESTS TO: Frank L. Calvary, DS, ICC, 220 Federal Bldg. and U.S. Courthouse, 85 Marconi Bldg., Columbus, OH 43215.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-33687 Filed 11-30-78; 8:45 am]

[7035-01-M]

[Notice No. 227]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 24, 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.

NOTE.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

MOTOR CARRIERS OF PROPERTY

MC 1977 (Sub-30TA), filed October 26, 1978. Applicant: NORTHWEST TRANSPORT SERVICE, INC., 5231 Monroe Street, Denver, CO 80216. Representative: Leslie R. Kehl Jones, Meiklejohn, Kehl & Lyons 1660 Lincoln St., Suite 1600 Denver, CO 80264. *General Commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities which, because of size or weight, require special handling or use of special equipment): Between Denver, CO on the one hand, and, on the other, Pocatello, Blackfoot, and Idaho Falls, ID and points in UT within a 50-mile radius of Salt Lake City, UT, for 180 days. An underlying ETA seeking 90 days authority. SUPPORTING SHIPPER(S): Statement of applicant. Tacking and interlining sought at Boise, Pocatello and Idaho Falls, ID, and Denver, CO. SEND PROTESTS TO: Roger Buchanan, District Supervisor, 492 U.S. Customs House, Denver, CO 80202.

MC 24784 (Sub-15TA), filed October 26, 1978. Applicant: BARRY, INC., 463 South Water Olathe, IS 66061. Representative: Arthur J. Cerra 2100 Ten Main Center P.O. Box 19251 Kansas City, MO 64141. (1) *Roofing material*, except commodities in bulk, from the facilities of Owen-Corning Fiberglas Corp., at or near Kansas City, MO to points in the commercial zones of Casper, Cheyenne and Laramie, WY and Colorado Springs, Denver and Pueblo, CO, under continuing contracts with AAA Wholesale, Inc., for 180 dsays. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): AAA Wholesale, Inc., Denver, CO 80216. SEND PROTESTS TO: District Supervisor John V. Barry, RM. 600, 911 Walnut St., Kansas City, MO 64106.

MC 26396 (Sub-207TA), filed October 26, 1978. Applicant: POPELKA TRUCKING CO., d/b/a The Waggoners, P.O. Box 990, Livingston, MT 59047. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. (1) *Brick*, from ports of entry on the International Boundary line between the U.S. and Canada located in MT to points in the State of MT; and (2) stone and stone products from Livingston and Gardiner, MT to ports of entry on the U.S.-Canada International Boundary Line in the State of MT, for 180 days. An underlying ETA seeking 90 days authority. SUPPORTING SHIPPER(S): D. D. Paterson, Regional Sales Mgr., IXL Industries, Box 70, Medicine Hat, AB, Canada. Joe Forzley Sales, Inc., P.O. Box 2870, Great Falls, MT 59403. SEND PROTESTS TO: District Supervisor Paul J. Labane, 2602 First Avenue North, Billings, MT 59101.

MC 40978 (Sub-45TA), filed October 26, 1978. Applicant: CHAIR CITY MOTOR EXPRESS CO., 3321 Business 141 South, Sheboygan, WI 53081. Representative: Wm. C. Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203. *New furniture*, from 1) Sturgis, MI to points in IL; and from 2) Monroe, MI, to points in IL, MN, WI, and the Upper Peninsula of MI, for 180 days. SUPPORTING SHIPPER(S): Glabman Paramount, 303 St. Joseph Street, Sturgis, MI, 49091; Harter Corp., Prairie Ave., Sturgis, MI, 49091; LA-Z-BOY Chair Company, 1284 N. Telegraph Rd., Monroe, MI. SEND PROTESTS TO: Gail Daugherty, Transportation Assistant, 619 U.S. Courthouse & Federal Bldg., 517 E. Wisconsin Ave., Milwaukee, WI, 53202.

MC 40978 (Sub-46TA), filed October 26, 1978. Applicant: CHAIR CITY MOTOR EXPRESS CO., 3321 Business 141 South, Sheboygan, WI 53081. Representative: Wm. C. Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203. *New furniture* and *cabinets* from Archbold, Bedford, Celina, Lancaster, Swanton, and Youngstown, OH, to points in IL, MN, WI and the Upper Peninsula of MI, for 180 days. SUPPORTING SHIPPER(S): Sauder Woodworking Co., 502 Middle St., Archbold, OH 43502; The Taylor Chair Company, 75 Taylor St., Bedford, OH 44146; Mersman Tables, 500 West Wayne St., Celina, OH 45822; Riviera Products, 3200 Old Columbus Road, Lancaster, OH, 43130; The Pilliod Cabinet Co., 105 Woodland Ave., Swanton, OH; G.F. Business Equipment, Inc., 32 E. Dennick Ave., Youngstown, OH 44501. SEND PROTESTS TO: Gail Daugherty, Transportation Assistant, 619 U.S. Courthouse & Federal Bldg., 517 E. Wisconsin Ave., Milwaukee, WI 53202.

MC 43716 (Sub-36TA), filed October 17, 1978. Applicant: BIGGE DRAYAGE CO., 10700 Bigge Street, San Leandro, CA 94577. Representative: Edward Hegarty, LOUGHRAN & HEGARTY, 100 Bush Street, San Francisco, CA 94104. *Plastic pipe, conduit and fittings* (except commodities in bulk), from the facilities of Carlon Division, Indian Head, Inc., at or near Paramount, CA, to points in AZ, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Carlon Division, Indian Head, Inc., 8622 Compton Boulevard, Paramount, CA 90723. SEND PROTESTS TO: District Supervisor A. J. Rodriguez, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 48441 (Sub-27TA), filed October 26, 1978. Applicant: R.M.E., INC., P.O. Box 418, Streator, IL 61364. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, D.C. 20001. *Paper, paper products and plastic articles* from the facilities of Brown Co., at Kalamazoo, and Parchment, MI, and from the facilities of Georgia Pacific Corp. at Kalamazoo, MI to points in IL and points in MO on and east of a line beginning at the MS River near Winfield following State Hwy. M-47 west and south to Jct State Hwy M-32, near Weingarten, MO, then east on State Hwy M-32 to MS River near St. Genevieve, MO for 180 days. An underlying ETA seeking up to 90 days authority. SUPPORTING SHIPPER(S): George N. Weegar, Manager of Freight Rates, Brown Co., 243 E. Paterson, Kalamazoo, MI 49007; James H. Cox, Traffic Manager, Georgia Pacific Corp., 2425 King Hwy, Kalamazoo, MI 49003. SEND PROTESTS TO: Lois M. Stahl, Transportation Assistant, 219 S. Dearborn St., Rm. 1386, Chicago, IL 60604.

MC 52704 (Sub-184TA), filed October 18, 1978. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer "H", Lafayette, AL 36862. Representative: Archie B. Culbreth, Suite 202-2200 Century Parkway, Atlanta, GA 30345. (1) *Containers, container components and ends and container closures*, from the facilities of Sonoco Products Co., at or near Hartsville, SC to points in AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN, TX and VA, and (2) *materials, equipment and supplies used in the manufacture and distribution of the commodities named in (1) above*, to the facilities of Sonoco Products Co., at or near Hartsville, SC, restricted against the handling of commodities in bulk, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Sonoco Products Co., North 2nd Street, Hartsville, SC. SEND PROTESTS TO: Mabel E. Holston, Trans. Asst., Room 1616, 2121 8th Avenue North, Birmingham, AL 35203.

MC 55889 (Sub-50TA), filed October 26, 1978. Applicant: AAA COOPER TRANSPORTATION, P.O. Box 2207, Dothan, AL 36302. Representative:

Kim D. Mann, Suite 1010-7101Wisconsin Avenue, Washington, DC 20014. *General Commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) (1) Between Atlanta, GA and Birmingham, AL; from Atlanta over U.S. Hwy. 78 to Birmingham (also over Interstate Hwy 20) and return over the same routes, serving no intermediate points, but serving points in the commercial zones of Atlanta and Birmingham. (2) Between Atlanta, GA and Montgomery, AL serving Opelika, AL and points in its commercial zone as intermediate points; from Atlanta over U.S. Hwy. 29 to junction with U.S. Hwy. 80, then over U.S. Hwy. 80 to Montgomery (also over Interstate Hwy 85), and return over the same routes, serving no intermediate points except Opelika, AL and points in its commercial zone, and serving points in the commercial zones of Atlanta and Montgomery, for 180 days. Applicant intends to tack the authority here applied for to authority presently held by it. An underlying ETA seeks 90 days authority. There are approximately (123) 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 field office named below. SEND PROTESTS TO: Mabel E. Holston, Transportation Assistant, Rm. 1616-2121 Bldg., Birmingham, AL 35203.

MC 56244 (Sub-66TA), filed October 26, 1978. Applicant: KUHN TRANSPORTATION CO., INC., P.O. Box 98, R.D. #2, Gardners, PA 17108. Representative: John M. Musselman, Rhoads, Sinon & Hendershot, P.O. Box 1146, 410 North Third Street, Harrisburg, PA 17108. (1) *Foodstuffs* (except commodities in bulk and frozen foods) and pet foods, from Jessup, MD to points in OH and points in PA on and west of Interstate Hwy 79 and on and north of Interstate Hwy 76, for 180 days. SUPPORTING SHIPPER(S): Castle & Cooke, Inc., P.O. Box 3928, San Francisco, CA 94119. SEND PROTESTS TO: District Supervisor Charles F. Myers, P.O. Box 869 Federal Square Station, Harrisburg, PA 17108.

MC 59264 (Sub-69TA), filed October 18, 1978. Applicant: SMITH & SOLOMON TRUCKING CO:, How Lane, New Brunswick, NJ 08903. Representative: Herbert Burstein, Esq., 2373, One World Trade Center, New York, NY 10048. *Container, metal cans and ends* from the facilities of Ball Corporation in or near Williamsburg, VA to commercial zone of Philadelphia, PA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Ball Corporation, 345 South High Street, Muncie, IN 47302. SEND PROTESTS TO: Robert E. Johnston, District Supervisor, 9 Clinton Street, Newark, NJ 07102.

MC 60177 (Sub-1TA), filed October 19, 1978. Applicant: POST & DANLEY TRUCK LINE, INC., P.O. Box 646, Fort Scott, KS 66701. Representative: John L. Richeson, P.O. Box 7, Ottawa, KS 66067. *Cereal malt beverages in cans or bottles,* from facilities of Anheuser-Busch, Inc., ST. Louis MO, to points in Bourbon and Linn Counties, KS, for 180 days. An uderlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Fort Scott Beverage, 16 S. Hill, Fort Scott, KS 66701. SEND PROTESTS TO: M. E. Taylor, District Supervisor, 101 Litwin Building, Wichita, KS 67202.

MC 63387 (Sub-7TA), filed October 26, 1978. Applicant: STANLEY STANLEY, d.b.a. ACME EXPRESS, 607 Frelinghuysen Avenue, Newark, NJ 07114. Representative: Thomas F. X. Foley, Esq., State Highway 34, Colts Neck, NJ 07722. (1) *Steel bars,* and *materials and supplies* used in the manufacture of steel bars, between the plantsite of Wycoff Steel Division of Ampco-Pittsburgh, Corp., at Newark. NJ, on the one hand, and, on the other, Baltimore, Elkton, Hampstead, Maryland, Hegins, Hummeltown, Jessup, Lancaster, Pottsville, Throop, West Pittston, Womelsdorf, PA, Binghampton, Elmira, Horscheds, Ilion, Jamestown, Liverpool, Painted Post, Palmyra, Rochester, Syracuse, Utica, Webster, NY, for 180 days. SUPPORTING SHIPPER(S): Wycoff Steel Division, Ampco Pittsburgh Corporation 722 Frelinghuysen Avenue, Newark, NJ 07114. SEND PROTESTS TO: District Supervisor Joel Morrows, 9 Clinton Street, Newark, NJ 07102.

MC 95540 (Sub-1051TA), filed October 26, 1978. Applicant: WATKINS MOTOR LINES, 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. *Frozen foods* (1) From the facilities of Pet, Inc., located at or near Chambersburg, PA to points in FL, GA, MS, NC, SC, and TN; (2) from the facilities of Pet, Inc., at or near Benton Harbor and Hart, MI to points in AL, FL, GA, LA, MS, NC, SC, and TN and (3) from the facilities of Pet, Inc. at or near Frankfort, MI to points in AL, FL, GA, NC, SC, and TN (except Memphis) for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Pet, Inc., Frozen Food Division, 400 South Fourth St., St. Louis, MO 63102. SEND PROTESTS TO: Donna M. Jones, Transportation Assistant, Monterey Bldg., Suite 101, 8410 N.W. 53rd Terrace, Miami, FL 33166.

MC 98952 (Sub-59TA), filed October 26, 1978. Applicant: GENERAL TRANSFER CO., 2880 North Woodford Street, Decatur, IL 62526. Representative: Paul E. Steinhour, 918 E. Capitol Avenue, Springfield, IL 62701. (1) *Foodstuffs, candy or confectionery* in mechanically refrigerated equipment, except in bulk, from Carol Stream, IL and points within the Chicago, IL Commercial Zone to St. Louis, MO. Restricted to the plantsites and storage facilities of E. J. Brach and Sons and Standard Brands, Inc., restricted to traffic originating at named origin and destined to named destinations, for 180 days. An underlying ETA seeking 90 days authority. SUPPORTING SHIPPER(S): Joseph C. Kelly, Asst. Traffic Mgr., E. J. Brach & Sons, Division of American Home Products Corp., 4656 West Kinzie Street, Chicago, IL 60644. Thomas J. Brown, Traffic Mgr., Standard Brands Confectionery, Div. of Standard Brands, Inc., 3401 Mt. Prospect Rd., Franklin Park, IL 60131. SEND PROTESTS TO: Charles D. Little, District Supervisor, 414 Leland Office Bldg., 527 East Capitol Avenue, Springfield, IL 62701.

MC 106401 (Sub-57TA), filed October 26, 1978. Applicant: JOHNSON MOTOR LINES, INC., P.O. Box 31577, Charlotte, NC 28231. Representative: Thomas G. Sloan, P.O. Box 31577, Charlotte, NC 28231. Authority sought to operate as a common carrier, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment serving the facilities of American Paper Tube Co., at or near Port Gibson, MS as an off-route point in connection with applicant's existing regular-route authority between Atlanta, GA and Ft. Worth, TX restricted to traffic moving to, from, or through Atlanta, GA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): American Paper Tube Company, P.O. Box 627, Port Gibson, MS 39150. SEND PROTESTS TO: District Supervisor Terrell Price, 800 Briar Creek Rd., Rm. CC516, Mart Office Bldg., Charlotte, NC 28205.

MC 107295 (Sub-893TA), filed October 26, 1978. Applicant: PRE-FAB TRANSIT CO., P.O. Box 146, Farmer City, IL 61842. Representative: Richard D. Vollmer, P.O. Box 146, Farmer City, IL 61842. (1) *Printed matter,* and *materials, equipment, and supplies* (except commodities in bulk) used in the manufacture and distribution of printed matter, between Indianapolis, IN, and Versailles and Lexington, KY,

for 180 days. An underlying ETA seeking 90 days authority. SUPPORTING SHIPPER(S): Edwin R. Reimer, Jr., General Traffic Mgr., Rand McNally & Company, 8255 N. Central Park Avenue, Skokie, IL 60076. SEND PROTESTS TO: Charles D. Little, District Supervisor, 414 Leland Office Bldg., 527 East Capitol Avenue, Springfield, IL 62701.

MC 114194 (Sub-207TA), filed October 26, 1978. Applicant: KREIDER TRUCK SERVICE, INC., 8003 Collinsville Road, East St. Louis, IL 62201. Representative: Donald D. Metzler, 8003 Collinsville Road, East St. Louis, IL 62201. (1) *Corn Flour and Corn Grits*, in bulk, also *corn meal*, in bulk, from Paris, IL to Boston, MA, Buffalo, NY, Cincinnati, Cleveland, and Toledo, OH, Detroit, MI, Elkhart and Evansville, IN, Jamaica, NY, Louisville, KY, Pittsburgh and Wilkes-Barre, PA, and Totowa, NJ, for 180 days. SUPPORTING SHIPPER(S): Frank B. Tatara, Vice President, Transportation, Illinois Cereal Mills, Inc., 616 S. Jefferson St., Paris, IL 61944.

MC 115322 (Sub-152TA), filed October 26, 1978. Applicant: REDWING REFRIGERATED, INC., 9831 South Orange Avenue, P.O. Box 10177, Taft, FL 32809. Representative: L. W. Fincher, P.O. Box 426, Tampa, FL 33601. (1) *Canned and Preserved Foodstuffs*, from points in Cattaraugus, Wayne, Genesee, Livingston, Ontario Counties, NY, to points in AL, DE, FL, GA, MD, NC, SC, TN, VA, WV, and DC, for 180 days. SUPPORTING SHIPPER(S): Distribution Service Division, Curtis Burns, Inc., Lent Avenue, Leroy, NY 14482. SEND PROTESTS TO: District Supervisor G. H. Fauss, Jr., Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 116763 (Sub-451TA), filed October 26, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: Gary J. Jira, North West Street, Versailles, OH 45380. (1) Transporting *such commodities as are manufactured, processed, distributed, or dealt in by manufacturers or converters of paper and paper products*, except commodities in bulk, from Chillicothe and Schooleys, OH and Kingsport and Gray, TN, to FL, for 180 days. SUPPORTING SHIPPER(S): The Mead Corporation, M. E. Flynn, Traffic Analyst, Motor Courthouse Plaza, N.E., Dayton, OH 45463. SEND PROTESTS TO: District Supervisor Paul J. Lowry, 5514-B Federal Bldg., 550 Main Street, Cincinnati, OH 45202.

MC 117686 (Sub-224TA), filed October 26, 1978. Applicant: HIRSCHBACH MOTOR LINES, INC., P.O. Box 417, Sioux City, IA 51102. Representative: George L. Hirschbach, P.O. Box 417, Sioux City, IA. *Such Commodities* as are dealt in by wholesale, retail and chain grocery and food business houses (except frozen and commodities in bulk), from points in AZ and CA to the facilities of Fairway Foods, Inc., at Fargo, ND, and Northfield, MN, for 180 days. SUPPORTING SHIPPER(S): Edward M. Viska, Vice President—Perishables & Institutional Food Services, Fairway Foods, Inc., 1111 West Fifth Street, Northfield, MN 55057. SEND PROTESTS TO: Carroll Russell, District Supervisor, Suite 620, Union Pacific Plaza, 110 North 14th Street, Omaha, NE 68102.

MC 117730 (Sub-30TA), filed October 26, 1978. Applicant: KOUBENEC MOTOR SERVICE, INC., Route 47, Huntley, IL 60142. Representative: Albert A. Andrin, 180 North LaSalle Street, Chicago, IL 60601. (1) *Meats, meat products, meat by-products and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the Report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), and (2) *Articles* described in Sections B and D of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 when moving in mixed loads with articles listed in (1) above, all moving in mechanically refrigerated equipment, from the facilities of Oscar Mayer & Co., Inc. at Davenport, IA to St. Louis, IL and all points in St. Louis County, MO, Madison and St. Clair Counties, IL, for 180 days. An underlying ETA seeking 90 days authority. SUPPORTING SHIPPER(S): Dale N. Gillings, Traffic Manager, Oscar Mayer & Co., Inc., P.O. Box 7188, Madison, WI 53707. SEND PROTESTS TO: Lois Stahl, Transportation Assistant, 219 S. Dearborn St., Rm. 1386, Chicago, IL 60604.

MC 118127 (Sub-26TA), filed October 26, 1978. Applicant: HALE DISTRIBUTING CO., INC., 914 South Vail Avenue, Montebello, CA 90640. Representative: George Carl Pezold, Esq., Augello, Pezold & Hirschmann, P.C., 120 Main Street, P.O. Box Z, Huntington, NY 11743. (1) *Frozen foods* in temperature controlled trucks (Applicant does not seek to transport commodities in bulk, in tank vehicles), from VA to CA, CO, IL, IN, MO, OH, and TX, for 180 days. An underlying ETA seeks 90 authority. SUPPORTING SHIPPER(S): LeSorbet, In., 428 Hume Avenue, Alexandria, VA 22301. SEND PROTESTS TO: Irene Carlos, Transportation Assistant, Rm. 1321 Federal Bldg., 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 118202 (Sub-96TA), filed October 26, 1978. Applicant: SCHULTZ TRANSIT, INC., P.O. Box 406, 323 Bridge Street, Winona, MN 55987. Representative: Robert S. Lee, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Plastic bottles* and *containers* (1) from Winona, MN to points in IL, IN, IA, MI and WI; and (2) from Steamwood and Yorkville, IL; the Chicago, IL Commercial Zone; Ligonier, IN, Iowa City and Monroe, IA; Kansas City and St. Louis, MO; Bloomfield and Mays Landing, NJ; New York, NY; and New Berlin and Green Bay, WI to Winona, MN, for 180 days. SUPPORTING SHIPPER(S): Technigraph Corporation, 850 West 3rd Street, Winona, MN 55987. SEND PROTESTS TO: Delores A. Poe, Transportation Assistant, 414 Federal Bldg. and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 119439 (Sub-10TA), filed October 26, 1978. Applicant: STARLING TRANSPORT LINES, INC., P.O. Box 1733, 3501 S. Federal Bldg., Fort Pierce, FL 33450. Representative: Harry C. Ames, Jr., 805 McLachlen Bank Bldg., 666 Eleventh St., N.W., Washington, D.C. 20001. (1) *Petroleum and petroleum products*, in containers, from Edison, NJ to points in FL, for 180 days. There is no environmental impact involved in this application. SUPPORTING SHIPPER(S): Burmah Castrol Corporation, 30 Executive Avenue, Edison, NJ 08817. SEND PROTESTS TO: Donna M. Jones, Transportation Assistant, Monterey Bldg., Suite 101, 8410 N.W. 53rd Terrace, Miami, FL 33166.

MC 119656 (Sub-52TA), filed October 26, 1978. Applicant: NORTH EXPRESS, INC., 219 Main Street, Winamac, IN. Representative: Donald W. Smith, Suite 945, 9000 Keystone Crossing, Indianapolis, IN 46240. *Printed matter and materials, equipment and supplies* used in the maufacture, sale and distribution of printed matter (except commodities in bulk) between Indianapolis, IN, on the one hand, and, on the other, Versailles and Lexington, KY, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Edwin R. Riemer, Jr., General Traffic Manager, Rand McNally & Company, 8255 North Central Park Avenue, Skokie, IL 60076. SEND PROTESTS TO: Lois M. Stahl, Transportation Assistant, 219 South Dearborn St., Rm. 1386, Chicago, IL 60604.

MC 121664 (Sub-41TA), filed October 26, 1978. Applicant: HORNADY BROS. TRUCK LINE, P.O. Box 846, Monoreville, AL 36460. Representative: W. E. Grant, 1702 First Avenue South, Birmingham, AL 35233. (1) *Pipe, fittings, valves, hydrants, castings, accessories*, and *parts*, from McWane Pipe Company in Jefferson County, AL and Union Foundry in

Calhoun County, AL to points in AL, AR, FL, GA, IL, IN, KS, KY, LA, MS, MO, NC, OH, OK, SC, TN, TX, VA, WV, for 180 days. SUPPORTING SHIPPER(S): J. C. Harper, Inc., for McWane Cast Iron Pipe Co., Inc., P.O. Box 3332-A, Birmingham, AL 35205. SEND PROTESTS TO: Mabel E. Holston, Transportation Assistant, Room 1616, 2121 Bldg., Birmingham, AL 35203.

MC 124078 (Sub-898TA), filed October 26, 1978. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. (1) *Fertilizer,* from the facilities of Brunswick River Terminal, Inc., at or near Brunswick, MO to points in AR, IL, IA, KS, KY, MO, OK and TN for 180 days. SUPPORTING SHIPPER(S): Brunswick River Terminal, Inc., P.O. Box 235, Brunswick, MO 65236, William P. Jackson. SEND PROTESTS TO: Gail Daugherty, Transportation Assistant, U.S. Federal Bldg. and Courthouse, 517 East Wisconsin Avenue, Rm. 619, Milwaukee, WI 53202.

MC 124774 (Sub-108TA), filed October 26, 1978. Applicant: MIDWEST REFRIGERATED EXPRESS, INC., 4440 Buckingham Avenue, Omaha, NE 68107. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. (1) *Feed supplements,* from Pearl River, NY and its commercial zone to St. Louis, MO and its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): American Cyanamid, Berdan Avenue, Wayne, NJ 07470. SEND PROTESTS TO: Carroll Russell, District Supervisor, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 124947 (Sub-120TA), filed October 26, 1978. Applicant: MACHINERY TRANSPORTS, INC., 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: David J. Lister, 1945 South Redwood Road, Salt Lake City, UT 84104. (1) *Extruded or injection molded rubber and plastic products,* (2) *materials, supplies and equipment* used in the manufacture, sale and distribution of extruded or injection molded rubber and plastic products, (1) from the facilities of the Entek Corporation of America at Irving, TX to points in the United States, excluding AK, and HI; and (2) from points in the United States, excluding AK and HI to Irving, TX, for 180 days. SUPPORTING SHIPPER(S): Entex Corporation of America, 104 County Line Road, Irving, TX 75060. SEND PROTESTS TO: District Supervisor L. D. Helfer, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 127705 (Sub-66TA), filed October 26, 1978. Applicant: KREVDA BROS. EXPRESS, INC., P.O. Box 68, Gas City, IN 46933. Representative: Donald W. Smith, Suite 945, 9000 Keystone Crossing, Indianapolis, IN 46240. (1) *Glass containers, accessories, equipment, materials and supplies* used in the manufacture thereof, from the facilities of Brockway Glass Co., Inc. at Clearfield and Jefferson Counties, PA, to St. Louis, MO, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Brockway Glass Company, Inc., McCullough Avenue, Brockway, PA 15824. SEND PROTESTS TO: J. H. Gray, District Supervisor, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 128652 (Sub-16TA), filed October 26, 1978. Applicant: LARSON TRANSFER & STORAGE CO., INC., 10700 Lyndale Avenue South, Minneapolis, MN 55420. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. (1) *Pre-cut houses,* knocked down, from Minneapolis, MN to points in AR, CO, IA, IL, IN, KS, MI, MO, MT, ND, NE, OK, SD, WI and WY; and (2) *Materials, equipment and supplies* used in the manufacture of pre-cut houses from the above states to Minneapolis, MN, under a continuing contract(s) with Capp Homes Division, Evans Products, for 180 days. SUPPORTING SHIPPER(S): Capp Homes Division, Evan Products, 3355 Hiawatha Avenue, Minneapolis, MN 55406. SEND PROTESTS TO: Delores A. Poe, Transportation Assistant, 414 Federal Bldg. and U.S. Court House, 110 South 4th St., Minneapolis, MN 55401.

MC 133778 (Sub-1TA), filed October 26, 1978. Applicant: ROBERT W. LAUSCH, d.b.a. R. W. LAUSCH, Route 1, Box 25, Chanute, KS 66720. Representative: John L. Richeson, P.O. Box 7, Ottawa, KS 66067. (1) *Dogs and dog racing equipment,* between points in NH, VT, RI, CT, AL & WV, for 180 days. SUPPORTING SHIPPER(S): There are approximately (8) 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. Wade Mayfield, Chanute, KS, Charles Grimm, Seabrook, NH 03874, Marshall Rae, New Mkt., NH. SEND PROTESTS TO: M. E. Taylor, District Supervisor, 101 Litwin Bldg., Wichita, KS 67202.

MC 134183 (Sub-10TA), filed October 26, 1978. Applicant: CHARLES ZUMSTEIN, d.b.a. C. E. ZUMSTEIN CO., P.O. Box 27, Lewisburg, OH 45338. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh Street N.W., Washington, DC 20001. (1) *Pet foods,* (except commodities in bulk, from the facilities of Iams Food Co., at Lewisburg, OH, to points in the US east of the Mississippi River, under continuing contracts with Iams Foods Co., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Iams Food Co., Clayton L. Mathile, Vice President, 3622 Delphos Ave., Dayton, OH 45417. SEND PROTESTS TO: District Supervisor Pual J. Lowry, 5514-B Federal Bldg., 550 Main Street, Cincinnati, OH 45202.

MC 134477 (Sub-283TA), filed October 26, 1978. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. (1) *Candy and confectionery* and *cough drops,* from the facilities of Luden's, Inc., at or near Reading, PA to points in CO, IL, IN, IA, KS, KY, MN, MO, NE, ND, OH, SD, TN, and WI, for 180 days. SUPPORTING SHIPPER(S): Luden's Inc., 200 North 8th Street, Reading, PA. SEND PROTESTS TO: Delores A. Poe, Transportation Assistant, 414 Federal Bldg. and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 135519 (Sub-6TA), filed October 26, 1978. Applicant: ANTHONY G. AYALA, d.b.a. QUEEN CITY TRUCKING, 7808 South 208th, Kent, WA 98031. Representative: Ronald P. Erickson, 2120 Pacific Bldg., Seattle, WA 98104. *Aluminum products,* from Columbia Falls, MT to Seattle, WA, under continuing contract(s) with Teller Metal Company, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Teller Metal Company, 3407 W. 6th St., Suite 801, Los Angeles, CA 90020. SEND PROTESTS TO: Hugh H. Chaffee, District Supervisor, 858 Federal Bldg., Seattle, WA 98174.

MC 135895 (Sub-29TA), filed October 26, 1978. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. (1) *Paper and paper articles,* and *equipment, materials and supplies* used in the manufacture and distribution of paper and paper articles between the facilities of Scott Paper Company at or near Mobile, AL, on the one hand, and, on the other, points in AR, FL, GA, LA, MS, NC, OK, SC, TN and TX, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Scott Paper Company, Scott Plaza 1, Philadelphia, PA 19113. SEND PROTESTS TO: Alan C. Tarrant, District Supervi-

sor, Rm. 212, 145 East Amite Bldg., Jackson, MS 39201.

MC 136605 (Sub-73TA), filed October 11, 1978. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as applicant). *Coal*, in bags (restricted against coal in bulk), from points in the State of Utah to points in the States of WY, and MT, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Wyo-Ben Supply, 3044 Hesper Road, Billings, MT 59104. SEND PROTESTS TO: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 138553 (Sub-2TA), filed October 26, 1978. Applicant: M & N GRAIN COMPANY, Box P, Business 71 South, Nevada, MO 64772. Representative: Donald J. Quinn, Suite 900, 1012 Baltimore, Kansas City, MO 64105. *Hides* and *Pelts* (1) from Belmond and Waterloo, IA, Columbus, OH and Texarkana, TX; to Butler, MO, (2) from Butler, MO, to Hartland, ME and Buffalo, NY, (3) from Columbus, OH to Danversport, MA, Hartland, ME, and Milwaukee, WI, (4) from Great Bend, KS to Manchester, NH, Laredo, TX and Los Angeles, CA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Cox Hide Co., Butler, MO 64730. SEND PROTESTS TO: District Supervisor John V. Barry, Rm. 600, 911 Walnut St., Kansas City, MO 64106.

MC 138627 (Sub-43TA), filed October 26, 1978. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Fort Dodge, IA 50501. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Lumber* and *lumber products*, from Weston and Crook Counties, WY to points in AR, IL, IN, IA, MI, MN, MO, and WI, for 180 days. An underlying ETA seeking 90 days authority. SUPPORTING SHIPPER(S): Timber Wholesalers, Inc., Box D, Clara City, MN 56222. SEND PROTESTS TO: Herbert W. Allen, District Supervisor, 518 Federal Bldg., Des Moines, IA 50309.

MC 142449 (Sub-2TA), filed October 26, 1978. Applicant: SPEEDWAY HAULERS, INC., P.O. Box 1463, South Bend, IN 46624. Representative: James L. Beattey, 130 East Washington Avenue, Indianapolis, IN 46204. (1) *Iron and steel, items of iron and steel manufacture*, and *electric motors* (5 lbs. or more) Between Bluffton, IN, on the one hand, and, on the other, Chicago, IL, and IL points in the Chicago Commercial Zone, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Franklin Electic Company, 400 East Spring Street, Bluffton, IN 46714. SEND PROTESTS TO: J. H. Gray, District Supervisor, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 142888 (Sub-6TA), filed October 26, 1978. Applicant: COX TRANSFER, INC., P.O. Box 168, Eureka, IL 61530. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. (1) *Glass containers* from the facilities of Midland Glass Co., Inc. at Terre Haute, IN to Goodfield and Pekin, IL, restricted to traffic originating at the facilities of Midland Glass Co., Inc., at Terre Haute, IN, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): B. Stein, Director of Transportation, Midland Glass Company, Inc., P.O. Box 557, Cliffwood, NJ 07721. SEND PROTESTS TO: Lois Stahl, Transportation Assistant, 219 S. Dearborn St., Rm. 1386, Chicago, IL 60604.

MC 143031 (Sub-8TA), filed October 26, 1978. Applicant: LLOYD PAUL MURPHY, JAMES EDWARD MURPHY, TIMOTHY PAUL MURPHY, AND EARNEST STEWART MURPHY, d.b.a. MURPHY & SONS, Rt. 2, Box 139, Spring City, TN 37381. Representative: H. Stan Guthrie, Suite 500, Dome Bldg., Chattanooga, TN 37402. (1) *Scrap steel*, from the facilities of Dayton Products at Dayton, TN to the facilities of Nicroloy in Heidelburg, PA. (2) *Raw steel* from the facilities of Washington Steel Corporation, Washington, PA and from the facilities of Allegheny Ludlum Corp., New Castle and West Linchburg, PA to the facilities of Dayton Products, Inc., Dayton, TN, under a continuing contract with Dayton Products, Inc., for 180 days. An underlying ETA seeking 90 authority. SUPPORTING SHIPPER(S): Dayton Products, Inc., 1616 N. Broadway, Dayton, TN 37321. SEND PROTESTS TO: Glenda Kuss, Transportation Asst., Suite A-422—U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 143775 (Sub-26TA), filed October 26, 1978. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale AZ 85301. Representative: Michael R. Burke, 6601 W. Orangewood, Glendale AZ 85301. (1) *Candy and materials, supplies, and equipment* used in the manufacture, sale and distribution thereof, from South Saint Paul, MN, and points within its commercial zone to points in the United States, (except AK, HI, and MN), for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S) Pearson Candy Company, 2140 W. 7th St., South St. Paul, MN 55116. SEND PROTESTS TO: District Supervisor Andrew V. Baylor, Rm. 2020 Federal Bldg., 230 N. First Ave., Phoenix, AZ 85025.

MC 144844 (Sub-1TA), filed October 26, 1978. Applicant: ARTHUR E. JOHNSTON & MICHAEL A. JOHNSTON, d.b.a. Johnston Trucking, P.O. Box 325, Spearfish, SD 57783. Representative: J. Maurice Andren, 1734 Sheridan Lake Road, Rapid City, SD 57701. (1) *Lumber and Lumber Products*, from Spearfish and Whitewood, SD and Huylett, Osage and Newcastle, WY to points in IL, IA, KS, MN, MO, NE, ND, SD, TX and WI, for 180 days. SUPPORTING SHIPPER(S): Timber Wholesalers, Clara City, MN 56222. SEND PROTESTS TO: James Hammond, District Supervisor, Rm. 455 Federal Bldg., Pierre, SD 57501.

MC145106 (Sub-9TA), filed October 26, 1978. Applicant: EDINA CARTAGE CO., 1000 Taylor Ave., Flat River, MO 63601. Representative: E. Stephen Heisley, 666 Eleventh St. N.W., No. 805, Washington, D.C. 20001. (1) *Needles, syringes, blood collection tubes, and materials, equipment and supplies* used in the manufacture and distribution thereof (except commodities in bulk), from the facilities of Monoject, Div. of Sherwood Medical Industries, at or near Norfolk, NE, to Decatur, GA, Lyoth, CA, Mechanicsburg, PA, Memphis, TN, and New Brunswick, NJ, under a continuing contract(s) with Sherwood Medical Industries, for 180 days. An underlying ETA seeking 90 days authority. SUPPORTING SHIPPER(S): Monoject, Division of Sherwood Medical, U.S. Highway 81 South, Norfolk, NE 68701. SEND PROTESTS TO: District Supervisor P. E. Binder, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 145195 (Sub-1TA), filed October 18, 1978. Applicant: DEEJAY TRANSPORTATION, INC., P.O. Box 651, Horace, ND 58407. Representative: Charles E. Johnson, 418 E. Rosser Avenue, P.O. Box 1982, Bismarck, ND 58501. (1) *Dump truck hoists and truck gravel boxes*, from Peoria, IL and Kansas City, MO, and (2) *truck axles and truck suspension systems and iron and steel articles*, from Eaton, CO, Kansas City, MO, and Minneapolis, St. Paul and Willmar, MN, and (3) *truck suspension systems*, from Dearborn, MI, and Orange City, IA, to the facilities of Red River Manufacturing at or near West Fargo, ND, for 180 days. Restriction: Restricted to the transportation of traffic destined to Red River Manufacturing at West Fargo, ND. An underlying ETA seeks 90 days authority. Supporting shipper(s): Red River Manufacturing, Box 732, West Fargo, ND 58078. Send protests to: District Supervisor Ronald R. Mau, Room 268 Federal Building and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 145509 (Sub-1TA), filed October 26, 1978. Applicant: JOHN E. GREEN, d/b/a JOHN E. GREEN TRUCKING,

3401 Eastside Road, Ukiah, CA 95482. Representative: John E. Green, 3401 Eastside Road, Ukiah, CA 95482. (1) *Lumber and Wood Products (including Flakeboard) and Wood Pulp* from the plants and facilities of Louisiana-Pacific Corporation in Humboldt County, CA to the plants and facilities of Louisiana-Pacific Corporation in Mendocino and Sonoma Counties in CA, under continuing contract(s) with Louisiana-Pacific Corporation, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Louisiana-Pacific Corporation, P.O. Box 158, Samoa, CA 95564. Send protests to: District Supervisor A. J. Rodriguez, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 145551 (Sub-1TA), filed October 26, 1978. Applicant: SUNSHINE TRANSPORTATION SYSTEM, INC., 2200 South Avenue, Council Bluffs, IA 51501. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. (1) *Such commodities* as are dealt in or used by compounders and packagers of lubricants, (a) from Council Bluffs, IA and points in NE, to points in SD, MN, WI, IA, IL, MO, KS, CO, KS, CO, WY, NE, IN, GA and ID; and (b) from points in NE, AR, TX, LA, MO, GA, KS, MN, and IL, to Council Bluffs, IA and St. Paul, MN. (2) *Tallow*, from the facilities of Iowa Beef Processors, Inc., at or near West Point and Dakota City, NE; Denison and Fort Dodge, IA; Luverne, MN; and Emporia, KS, to points in TX and LA, for 180 days. RESTRICTION: All service to be furnished under contract with McCollister & Company, Iowa Beef Processors, Inc., and Metalcote Grease & Oil Company. SUPPORTING SHIPPER(S): McCollister & Co., Box 587, 2200 South Avenue, Council Bluffs, IA; Metalcote Grease & Oil Company, P.O. Box 16435, St. Paul, MN 55116; and Iowa Beef Processors, Inc., Dakota City, NE 68731. SEND PROTESTS TO: Caroll Russell, District Supervisor, Suite 620, 110 N. 14th St., Omaha, NE 68102.

MC 145625TA, filed October 26, 1978. Applicant: DUTCHLAND TRUCKING, INC., 1051 Center Avenue, Oostburg, WI 53070. Representative: Nancy J. Johnson, 4506 Regent St., Suite 100, Madison, WI 53705. (1) *Cheese* and *cheese products* from the facilities of Tolibia Cheese, Inc., at or near Fond du Lac and Oostburg, WI and Sebeka, MN to points in Houston, Dallas, Austin and Fort Worth, TX, and points in their respective Commercial Zones as defined by the Commission; and (2) *cheese, cheese products*, and *butter*, when moved in mixed shipments with *cheese* and *cheese products*, from the facilities of Frigo Cheese Corp., located at or near Lena, WI to Arlington, TX, for 180 days. An underlying ETA seeking 90 days authority. SUPPORTING SHIPPER(S): Tolibia Cheese, Inc., 45 E. Scott Street, Fond du Lac, WI 54935, Frigo Cheese Corp., P.O. Box 158, Lena, WI 54139. SEND PROTESTS TO: Gail Daugherty, Transportation Assistant, U.S. Federal Bldg., & Courthouse, 517 East Wisconsin Avenue, RM. 619, Milwaukee, WI 53202.

MC 145655TA, filed October 26, 1978. Applicant: TYSON FOODS, INC., 2210 Oaklawn, P.O. Drawer E, Springdale, AR 72764. Representative: Michael H. Mashburn, 111 Holcomb, P.O. Box 869, Springdale, AR 72764. (1) *General commodities*, except those of unusual value, dangerous explosives, household goods as defined in the Practices of Motor Carriers of Household Goods 17 MCC 467, *commodities in bulk*, commodities requiring special equipment and those injurious to or contaminating to other lading, from points in CA, FL, IL, MA, NC, NJ, NY, OH, PA, SC, TX, and VA to Bentonville and Searcy, AR, under continuing contracts with Wal-Mart Stores, Inc., for 180 days. SUPPORTING SHIPPER(S): Wal-Mart Stores, Inc., P.O. Box 116, Bentonville, AR 72712. SEND PROTESTS TO: District Supervisor William H. Land, Jr., 3108 Federal Office Bldg., 700 West Capitol, Little Rock, AR 72201.

MC 145657TA, filed October 26, 1978. Applicant: H AND W TRANSPORT COMPANY, South Mair Street, Cedartown, GA 30125. Representative: Frank W. Quinn, Trend/Roxbury Carpet, Inc., Redmond Road, P.O. Box 162, Rome, GA 30161. (1) *Carpets, carpeting, carpet remnants or rugs, carpet backing material, carpet yarn, fiber, paper, cores, and other material used in the manufacturing of carpet*, but does not include transport in bulk or tank vehicles, from the Seaboard Coastline Railroad T.O.F.C. ramp facility in Cedartown, GA, on the one hand, to and from the W.W.G. Industries manufacturing facilities in Rome, GA and Plainville, GA, on the other hand, under continuing contracts with Trend/Roxbury Carpet, Inc., Division of W.W.G. Industries, Inc., for 180 days. Supporting shipper(s): Trend/Roxburg Carpet, Inc., Division of W.W.G. Industries, Inc., Redmont, Rd., P.O. Box 162, Rome, GA 30161. SEND PROTESTS TO: Sara K. Davis, Transportation Assistant, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-33688 Filed 11-30-78; 8:45 am]

[7035-01-M]

[Notice No. 223]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

November 21, 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.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 16503 (Sub-10TA), filed October 18, 1978. Applicant: GUEX TRUCKING, P.O. Box 359, Shawano, WI 54166. Representative: Daniel R. Dineen, 710 N. Plankinton Avenue, Milwaukee, WI 53203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from Brillion, Cambria, Cedar Grove, Fond du Lac, Ft. Atkinson, Green Bay, Hortonville, and Waldo, WI to points in AL, FL, GA, KS, MO and NE, under a continuing contract or contracts with The Larsen Company of Green Bay, WI, for 180 days. An underlying ETA seks 90 days authority. SUP-

PORTING SHIPPER(S): The Larsen Company, P.O. Box 1127, Green Bay, WI 54305. SEND PROTESTS TO: Gail Daugherty, Trans. Assistant, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 19311 (Sub-51TA), filed October 24, 1978. Applicant: CENTRAN TRANSPORT, INC., 34300 Mound Road, Sterling Heights, MI 48077. Representative: Walter N. Bieneman, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48033. *General commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment), serving the plantsites of the Ford Motor Company and Hessco Corporation at or near Louisville, KY, as off-route points in connection with otherwise authorized regular route operations, restricted to traffic moving or to Alma, MI, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): C. E. Richards, Supervisor, Trans. Analysis Section, Ford Motor Company, One Parkland Blvd., Parklane Towers-East, Suite 200, Dearborn, MI. 48126. SEND PROTESTS TO: Tim Quinn DS, ICC, 604 Federal Building and U.S. Courthouse, 231 W. Lafayette Blvd. Detroit, MI. 48226.

MC 22509 (Sub-9TA), filed October 19, 1978. Applicant: MISSOURI-NEBRASKA EXPRESS, INC., 5310 St. Joseph Avenue, St. Joseph, MO 64505. Representative: Harry Ross, 58 South Main Street, Winchester, KY 40391. *Metal containers and container ends,* from Chicago, IL and LaPorte, IN to points in KS, NE and OK, for 180 days. SUPPORTING SHIPPER(S): National Can Corporation, 8101 West Higgins Road, Chicago, IL 60631. SEND PROTESTS TO: Vernon V. Coble, District Supervisor, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 25798 (Sub-341TA), filed October 24, 1978. Applicant: CLAY HYDER TRUCKING LINES, INC., P.O. Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell, P.O. Box 1186, Auburndale, FL 33823. *Frozen foods,* from the facilities of Pet, Incorporated, Frozen Food Division, at Allentown, Chambersburg and Waynesboro, PA., and Martinsburg and Ranson, WV., to points in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and TN., for 180 days. There is no environmental impact involved in this application. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Pet, Incorporated, Frozen Foods Divisions, P.O. Box 392, St. Louis, MO. 63166. SEND PROTESTS TO: Donna M. Jones Trans. Asst., ICC, Monterey Building, Suite 101, 8410 N.W., 53rd Terrace, Miami, FL. 33166.

MC 49387 (Sub-54TA), filed October 11, 1978. Applicant: ORSCHELN BROS. TRUCK LINES, INC., Highway 24 East, P.O. Box 658, Moberly, MO 65270. Representative: Herman W. Huber, 101 East High Street, Jefferson City, MO. 65101. *General commodities,* (except those of unusual value, Classes A & B explosives, commodities in bulk, household goods as defined by the Commission, commodities requiring special equipment and those injurious or contaminating to other lading), between Moberly, MO., and points in Randolph, Macon and Chariton Couties, Mo., on shipments having a prior or subsequent interstate movement, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Associated Electric Cooperative, Inc., P.O. Box 1000, Moberly, MO. 64270. SEND PROTESTS TO: Vernon V. Coble DS, ICC, 600 Federal Office Bldg., 911 Walnut Street, Kansas City, MO. 64106.

MC 71902 (Sub-93TA), filed October 11, 1978. Applicant: UNITED TRANSPORTS, INC., 4900 N. Santa Fe Avenue, P.O. Box 18547, Oklahoma City, OK 73154. Representative: Eric L. Spitler, 4900 N. Santa Fe Avenue, Oklahoma City, OK. 73154. *New imported agricultural tractors,* with or without attachments; in secondary truckaway service, each weighing less than 5000 pounds, from the site of the Hinomotor Tractor Sales, U.S.C., Inc., facilities in Grayson County, TX., to points in Arkansas, Louisiana, Mississippi, Oklahoma and TX., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Hinomoto Tractor Sales, U.S.A., Inc., P.O. Box 1341, Denison, TX. 75020. SEND PROTESTS TO: Connie Stanley Trans. Asst., Room 240 Old Post Office & Court House Bldg., 215 N.W., 3rd, Oklahoma City, OK. 73102.

MC 71902 (Sub-95TA), filed October 11, 1978. Applicant: UNITED TRANSPORTS, INC., P.O. Box 18547, 4900 N. Santa Fe Avenue, Oklahoma City, OK. 73154. Representative: Eric L. Spitler, 4900 N. Santa Fe Avenue, Oklahoma City, OK 73154. *New, imported agricultural tractors, with or without attachments,* in secondary truckaway service, each weighing less than 5000 pounds, from Harris County, TX, to points in Oklahoma and TX, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Hinomoto Tractor Sales, U.S.A., Inc., P.O. Box 1341, Denison, TX 75020. SEND PROTESTS TO: Connie Stanley Trans. Asst., Room 240 Old Post Office & Court House Bldg., 215 N.W., 3rd, Oklahoma City, OK 73102.

MC 105375 (Sub-80TA), filed October 5, 1978. Applicant: DAHLEN TRANSPORT, INC., 1680 Fourth Avenue Newport, MN 55055. Representative: Joseph A. Eschenbacher, Jr., 1680 Fourth Avenue Newport, MN 55055. *Such commodities* as are dealt in by retail gasoline/general merchandise stores, (except commodities in bulk), from the facilities of Ashland Oil, Inc., at Bloomington, MN, to points in Illinois, Iowa, Michigan, Minnesota, Missouri, Montana, North Dakota, Ohio, South Dakota and WI; and such commodities as are dealt in by retail gasoline/general merchandise stores, and material, parts and supplies needed for the conduct of such businesses, (except commodities in bulk), from points in Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, South Dakota and WI, to facilities of Ashland Oil, Inc., located in Illinois, Iowa, Minnesota, North Dakota, South Dakota and WI, for 180 days. SUPPORTING SHIPPER(S): Ashland Petroleum Company, P.O. Box 391, Ashland, KY 41101. SEND PROTESTS TO: Delores A. Poe Trans. Asst., ICC, 414 Federal Bldg., & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 106674 (Sub-351TA), filed October 24, 1978. Applicant: SCHILLI MOTOR LINES, INC., U.S. Highway 24 West, P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson, P.O. Box 123, Remington, IN 47977. *Acrylonitrile,* (in bulk, in tank vehicles), from Lima, OH, to Marseilles, IL; Washington, West Virginia, Midland and Wyandotte, Mich., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Vistron Corporation, 313 Midland Building, Cleveland, OH 44115. SEND PROTESTS TO: J. H. Gray DS, ICC, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 107295 (Sub-887TA), filed October 11, 1978. Applicant: PRE-FAB TRANSIT CO., P.O. Box 146, 100 S. Main Street, Farmer City, IL 61842. Representative: Duane Zehr (same address as applicant). *Laundry machine parts,* between Fairfield, IA, and Frankfort, IN, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): J. H. Sellars Materials Manager, The Dexter Company, 501 North 8th, Fairfield, IA 52556. SEND PROTESTS TO: Charles D. Little District Supervisor, ICC, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 108380 (Sub-97TA), filed October 23, 1978. Applicant: JOHNSTON'S

FUEL LINERS, INC., 808 Birch Street, Box 100, Newcastle, WY. 82701. Representative: Truman A. Stockton, Jr., The 1650 Grant St., Bldg., Denver, CO. 80203. *Coal*, from Sheridan County, WY., to Yellowstone County, MT., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): The Great Western Sugar Co., 1500 16th Street, Denver, CO. 80202 SEND PROTESTS TO: Paul A. Naughton DS, ICC, Room 105 Federal Building & Court House, 111 South Wolcott Street, Casper, WY. 82601.

MC 112713 (Sub-221TA), filed October 11, 1978. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7 70, 10990 Rae Avenue, Shawnee Mission, KS. 66207. Representative: John M. Records (same address as applicant). *General commodities*, (except Classes A and B explosives, commodities in bulk, household goods as defined by the Commission, commodities of unusual value and those requiring special equipment), Serving the facilities of Wag-Aero, Inc., at Lyons, WI., as an off-route point in connection with carriers otherwise authorized operations, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Wag-Aero, Inc., Lyons, WI. 53148. SEND PROTESTS TO: John V. Barry DS, ICC, Room 600, 911 Walnut Street, Kansas City, MO. 64106.

MC 114284 (Sub-78TA), filed October 11, 1978. Applicant: FOX-SMYTHE TRANSPORTATION COMPANY, P.O. Box 82307 Stockyard Station, 1700 South Portland Avenue, Oklahoma City, OK. 73108. Representative: John E. Jandera, 641 Harrison Street, Topeka, KS. 66603. *Meats, meat products, meat by-products and articles distributed by meat packinghouses*, as described in Sections A, B and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and skins and commodities in bulk), from the facilities utilized by John Morrell & Co., at or near Sioux Falls, SD., to points in Texas and OK., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): John Morrell & Co., 208 South LaSalle Street, Chicago, IL. 60604. SEND PROTESTS TO: Connie Stanley, Trans. Asst., Room 240 Old Post Office & Court House Bldg., 215 N.W., 3rd, Oklahoma City, OK. 73102.

MC 116763 (Sub-442TA), filed October 11, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH. 45380. Representative: Gary J. Jira (same address as applicant). *Foodstuffs*, (except commodities in bulk, in tank vehicles and frozen foods), from Frederick, Shenandoah and Rockingham Counties, VA., to points in AL, AR, GA, LA, MS, SC, TN, and TX., for 180 days. SUPPORTING SHIPPER(S): (1) National Fruit Products, Co., R. L. Stotler Director of Traffic & Distribution, P.O. Box 2040, Winchester, VA. 22601. (2) Bowman Apple Products Co., Inc., W. P. Mahler Asst., General Manager, P.O. Box 247, Mt. Jackson, VA. 22842. (3) Shenandoah Apple Cooperative, Inc., Robert E. Taylor, Distribution Manager, P.O. Box 435, Winchester, VA. 22601. SEND PROTESTS TO: Paul J. Lowry, DS, ICC, 5514-B Federal Bldg., 550 Main Street, Cincinnati, OH. 45202.

MC 116763 (Sub-443TA), filed October 11, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). *Such commodities* as are used, distributed or dealt in by distributors or supply outlets of brick, masonry and tile (except commodities in bulk, in tank vehicles), from points in the United States, (except Alaska, Hawaii and WI), to WI, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Hockers Brick & Tile Co., Inc., William Martin GM, 2870 South Broadway, Green Bay, WI 54303. SEND PROTESTS TO: Paul J. Lowry DS, ICC, 5514-B Federal Bldg., 550 Main Street, Cincinnati, OH 45202.

MC 117689 (Sub-17TA), filed October 5, 1978. Applicant: LEO H. SEARLES, d/b/a L. H. SEARLES, South Worcester, NY 12197. Representative: Neil D. Breslin, 600 Broadway, Albany, NY 12207. *Ice cream, ice cream products, ice confections, ice mix confections*, (all except in bulk), in vehicles equipped with mechanical refrigeration, (A) From Lancaster, PA; Chicopee, MA; Richmond Hill (Queens County), NY; and Suffield, CT; TO Norfolk, VA; Baltimore and Gaithersburg, MD; New Haven and East Haven, CT; Worcester, Brockton, Charlestown, Lowell and Hyannis, MA; Toledo, OH; Romulus, MI; Lakewood and Mt. Holly, NJ; and Huntingdon Valley, PA; (B) From Philadelphia, PA, to New Haven, CT; Charlestown and Brockton, MA; (C) From Dunkirk, NY; Green Bay, WI; Ocala, FL; Baltimore, MD; Huntingdon Valley, Allentown and Lancaster, PA, to Boston, MA, for 180 days. SUPPORTING SHIPPER(S): International Ice Cream Corp., 492 Rutherford Avenue, Boston, MA 02129. SEND PROTESTS TO: Robert A. Radler DS, P.O. Box 1167, Albany, NY 12201.

MC 118159 (Sub-293TA), filed October 11, 1978. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Expanded cellular foam rubber*, from Baltimore, MD, to Action, Beverly, Boston, Stoughton, Norwood, Peabody, Salem, Haverhill, Newburyport, Lawrence, Lowell, Worcester, and Gilbertville, MA; and Peace Dale, Wakefield, Providence, Johnston and Summerville, RI, for 180 days. SUPPORTING SHIPPER(S): Wm. T. Burnett & Co., Inc., 1500 Bush Street, Baltimore, MD 21230. SEND PROTESTS TO: Connie Stanley, Trans. Asst., Room 240, Old Post Office & Court House Bldg., 215 N.W., 3rd, Oklahoma City, OK 73102.

MC 119793 (Sub-13TA), filed October 16, 1978. Applicant: DEWEY L. WILFONG, dba D & W TRUCK LINES, 200 First Street, P.O. Box 427, Parsons, WV 26287. Representative: E. Stephen Heisley, Suite 805, 666 Eleventh Street, NW, Washington, DC 20001. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fire place logs*, from Fairless Hills, PA and Trenton, NJ to points in the United States in and east of MN, IA, MO, AR and LA, under a continuing contract or contracts with DuraFlame, Inc., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): DuraFlame, Inc., P.O. Box 49, Stockton, CA 95201. SEND PROTESTS TO: J. A. Niggemyer, District Supervisor, 416 Old Post Office Building, Wheeling, WV 26003.

MC 123255 (Sub-178TA), filed October 4, 1978. Applicant: B & L MOTOR FREIGHT, INC., 1984 Coffman Road, Newark, OH 43055. Representative: C. F. Schnee, Jr. (same as above). *Foodstuffs* (except in bulk), (1) from Sturgis, MI, Columbus, OH and Altavista, VA to East Hartford, CT, Windsor Locks, CT, Edison, NJ, Elizabeth, NJ, Jersey City, NJ, Buffalo, NY, New York, NY, Schenectady, NY, Syracuse, NY, Foxboro, MA, Norwood, MA, Pawtucket, RI, Woonsocket, RI, Rutland, VT, and Milwaukee, WI; and (2) from Altavista, VA to Ft. Wayne, IN, Indianapolis, IN, Chicago, IL, Peoria, IL, Baltimore, MD, Halethorpe, MD, Landover, MD, Detroit, MI, Hamtramck, MI, Livonia, MI, Sturgis, MI, Cincinnati, OH, Cleveland, OH, Columbus, OH, King of Prussia, PA, Philadelphia, PA, Pittsburgh, PA, Scranton, PA, Shiremanstown, PA, Somerset, PA, and Milwaukee, WI, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Ross Laboratories/Div. of Abbott Labs, 625 Cleveland Avenue, Columbus, OH 43216. SEND PROTESTS TO: Frank L. Calvary, District Supervisor, 220 Federal Building and U. S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

MC 126118 (Sub-103TA), filed October 19, 1978. Applicant: CRETE CARRIER CORPORATION, P. O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same as above). *Malt beverages,* from Baltimore, MD, Latrobe, PA, and their commercial zones, and Lehigh County, PA to points in GA, for 180 days. NOTE: Common control may be involved. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): W. E. Laite, President, Bill Laite Distributing Co., 1998 Waterville Road, Macon, GA 31206. James L. Tito, Vice President, Latrobe Brewing Co., 119 Jefferson Street, Latrobe, PA 15650. Greg Trauth, Distribution Manager, The F. & M. Schaefer Brewery Co., 3 Park Avenue, New York, NY 10016. SEND PROTESTS TO: Max H. Johnston, District Supervisor, 285 Federal Building & Court House, 100 Centennial Mall North, Lincoln, NE 68508.

MC 127840 (Sub-78TA), filed October 12, 1978. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, Chicago, IL. 60438. Representative: William H. Towle, 180 N. LaSalle Street, Chicago, IL. 60601. *Chemicals,* (in bulk, in tank vehicles), from Wichita, KS., to Danbury, CT., and Deepwater, NJ., for 180 days. SUPPORTING SHIPPER(S): William F. Kelly Senior Traffic Specialist, Abbott Laboratories, 14th Sheridan Road, North Chicago, IL. 60064. SEND PROTESTS TO: Lois Stahl Trans. Asst., 219 South Dearborn Street, Room 1386, Chicago, IL. 60604.

MC 128095 (Sub-21TA), filed October 11, 1978. Applicant: PARKER TRUCK LINE, INC., Westmoreland Drive, P.O. Box 1402, Tupelo, MS 38801. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. *New furniture,* (1) From the facilities of Pilliod of Alabama at or near Selma, AL, to points in FL, GA, KY, LA, MO, MS, TN, and TX; (2) from the facilities of Pilliod Cabinet Co., Inc., at or near Swanton, OH, to points in the states of AL, GA, IL, IN, IA, KY, LA, MO, MS, TN and WV; and (3) from the facilities of Pilliod of Carolina at or near Nichols, SC, to points in AL, GA, LA, MO, MS, TN and TX, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): The Pilliod Cabinet Company, 105 Woodland Avenue, Swanton, OH. 43558. SEND PROTESTS TO: Floyd A. Johnson DS, ICC, 100 North Main Bldg., Suite 2006, 100 North Main Street, Memphis, TN. 38103.

MC 129032 (Sub-58TA), filed October 11, 1978. Applicant: TOM INMAN TRUCKING, INC., 6015 South 40 West Avenue, Tulsa, OK 74107. Representative: Jerry D. Garland, 6015 South 49th West Avenue, Tulsa, OK 74107. *Automotive parts and materials and supplies used in the manufacturing of automotive parts,* between the facilities of Ford Motor Company in the state of Mich., on the one hand, and on the other, St. Louis, MO; Kansas City, MO, and St. Paul, MN, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Ford Motor Company, One Parkland Blvd., Parkland Towers East, Suite 200, Dearborn, MI 48126. SEND PROTESTS TO: Connie Stanley Trans., Asst., Room 240 Old Post Office & Court House Bldg., 215 N.W., 3rd, Oklahoma City, OK 73102.

MC 133689 (Sub-235TA), filed October 19, 1978. Applicant: OVERLAND EXPRESS, INC., 719 First Street SW., New Brighton, MN 55112. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Foodstuffs* (except in bulk) from Minneapolis, MN and points in Minneapolis/St. Paul commercial zone as defined by the Commission to Geneva and Niagara Falls, NY; Columbus, Toledo and Cleveland, OH and points in their commercial zone as defined by the Commission; Mechanicsburg, Pittsburgh, Harrisburg and Philadelphia, PA and points in their commercial zones as defined by the Commission, for 180 days. SUPPORTING SHIPPER(S): Nabisco, Inc., East Hanover, NY 07936. SEND PROTESTS TO: Delores A. Poe, Trans. Assistant, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 134355 (Sub-4TA), filed October 23, 1978. Applicant: THETFORD TRANSPORT LIMITED, 1829 N Smith Boulevard, Thetford Mines, QUE G6G 5T2. Representative: Richard H. Streeter, Wheeler & Wheeler, 1729 H. Street NW, Washington, DC 20006. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Asbestos in bags,* from ports of entry on the International Boundary Line between the United States and Canada located at Derby Line, VT and Champlain and Rouses Point, NY to points in MA, CT, NY, NJ, PA and VA, restricted to transportation originating at Thetford Mines and Black Lake, QUE for Lake Asbestos of Quebec, Ltd., for 180 days under a continuing contract or contracts with Lake Asbestos of Quebec, Ltd. SUPPORTING SHIPPER(S): Lake Asbestos of Quebec, Ltd., Black Lake, QUE. SEND PROTESTS TO: District Supervisor Ross J. Seymour, Room 3, 6 Loudon Road, Concord, NH 03301.

MC 134592 (Sub-15TA), filed October 11, 1978. Applicant: HERB MOORE AND HAZEL MOORE, d.b.a. H & H TRUCKING, 10360 N. Vancouver Way, Portland, Or 97211. Representative: Philip G. Skofstad, P.O. Box 594, Gresham, OR. 97030. *Malt beverages,* from Van Nuys, Los Angeles and Fairfield, CA, to Everett, WA.; and (2) *Wine,* from Rutherford, St. Helena, Sonoma, Union City, Menlo Park, Saratoga, San Jose, Lodi, Livermore and Madera, CA, to Everett, WA., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): (1) Bay Distributing Co., 3302 Smith St., P.O. Box 1025, Everett, WA. (2) Friendly Distributors, Inc., 2202 Wall St., Everett, WA. 98201. (3) Crown Distributing Co., Inc., 3326 Paine St., Everett, WA. 98201. SEND PROTESTS TO: R. V. Dubay DS, ICC, 114 Pioneer Courthouse, Portland, OR. 97204.

MC 135007 (Sub-69TA), filed October 18, 1978. Applicant's: AMERICAN TRANSPORT, INC., 7850 "F" Street, Omaha, NE 68127. Representative: Arthur J. Cerra, P.O. Box 19251, 2100 TenMain Center, Kansas City, MO 64141. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses, as described in Sections A & C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766* (except hides and commodities in bulk) from the facilities of Minden Beef Co., located at or near Minden, NE to New York, NY, under a continuing contract or contracts with Minden Beef Company, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): William E. Mahar, Manager, Minden Beef Company, P.O. Box 70, Minden, NE 68959. SEND PROTESTS TO: Carroll Russell, District Supervisor, Suite 620, 110 No. 14th Street, Omaha, NE 68102.

MC 135797 (Sub-153TA), filed October 24, 1978. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 200, Lowell, AR. 72745. Representative: Paul R. Bergant, P.O. Box 200, Lowell, AR. 72745. *Appliances, and parts, supplies and accessories for appliances,* from the facilities of the Maytag Company at or near Newton, IA, to points in AR, LA, MS, OK AND TX., for 180 days. SUPPORTING SHIPPER(S): Maytag Company, 403 West 4th Street North, Newton, IA. 50208. SEND PROTESTS TO: William H. Land, Jr., DS, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR. 72201.

MC 136220 (Sub-61TA), filed October 11, 1978. Applicant: SULLIVAN'S TRUCKING COMPANY, INC., P.O. Box 2164, Ponca City, Ok. 74601. Representative: G. Timothy Armstrong, 6161 North May Avenue, Oklahoma City, OK. 73112. *Aluminum dross, aluminum scrap and smelting residue,* (in

bulk, in dump vehicles), from points in and east of TX, KS, NE, SD, AND ND, to Sapulpa and Checotah, OK, for 180 days. SUPPORTING SHIPPER(S): Teller Metal Company, 12115 Lackland Road, St. Louis, MO. 63141. SEND PROTESTS TO: Connie Stanley Trans. Assit., Room 240 Old Post Office & Court House Building, 215 N.W., 3rd, Oklahoma City, OK. 73102.

MC 136605 (Sub-74TA) filed October 11, 1978. applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (Same address as applicant). *Metal building covering, parts, components, and accessories used in the installation thereof,* from the facilities of Gifford-Hill and Company located at or near Brooklyn Park, MN and Hopkins, MN, to points in the United States in and west of the states of Wisconsion, Illinois, Missouri, Oklahoma, and TX, (except Alaska and Hawaii), for 180 days. SUPPORTING SHIPPER(S): Gifford-Hill and Company, 7920 Powell Road, Hopkins, MN 55343. SEND PROTESTS TO: Paul J. Labane District Supervisor, ICC, 2602 First Avenue North, Billings, MT. 59101.

MC 136605 (Sub-75TA), filed October 11, 1978. Applicant: DAVIS BROS., DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (Same address as applicant). *Furnaces, house heating hot air parts, components, and accessories used in the installation thereof,* from the facilities of Mammoth Division, Lear Siegler, Inc., at or near Minneapolis, MN, to points in the United States in and west of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and TX, (except Alaska and Hawaii), for 180 days. SUPPORTING SHIPPER(S): Lear Siegler/Mammoth Division, 13120-B County Road 6, Minneapolis, MN 55441. SEND PROTESTS TO: Paul J. Labane District Supervisor, 2602 First Avenue North, Billings, MT 59101.

MC 138198 (Sub-8TA), filed October 4, 1978. Applicant: SPD TRUCK LINE, INC., Opalena at Cottage, Abilene, KS 67410. Representative: William B. Barker, 641 Harrison Street, Topeka, KS 66603. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used by wholesale or retail discount or variety stores, (1) from points in Arkansas, Colorado, Illinois, Iowa, Kansas, Missouri, Nebraska, New Mexico, Oklahoma, South Dakota, Texas and WY, to points in Minn.; and (2) from points in Minnesota, to Colorado, Iowa, Kansas, Nebraska, New Mexico, South Dakota, Texas and Wyo., under a continuing contract or contracts, with Duckwall-Alco Stores, Inc., for 180 days. Applicant states it does not intend to tack or interline. SUPPORTING SHIPPER(S): Duckwall-Alco Stores, Inc., 401 Cottage Street, Abilene, KS 67410. SEND PROTESTS TO: DS Thomas P. O'Hara, ICC, 256 Federal Bldg., & U.S. Courthouse, 4344 S.E., Quincy, Topeka, KS 66683.

MC 139457 (Sub-9TA), filed October 18, 1978. Applicant: G. L. SKIDMORE, dba JELLY SKIDMORE TRUCKING COMPANY, P.O. Box 38, Paris, TX 75460. Representative: Paul D. Angenend, P.O. Box 2207, Austin, TX 78768. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs* from the facilities of Campbell Soup at or near Napoleon, OH to the facilities of Campbell Soup (Texas) Inc., at or near Paris, TX, under a continuing contract or contracts with Campbell Soup (Texas) Inc., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Campbell Soup Company, Paris, TX. SEND PROTESTS TO: Opal M. Jones, Trans. Assistant, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 140024 (Sub-132TA), filed October 11, 1978. Applicant: J. B. MONTGOMERY, INC., 5565 East 52nd Avenue, Commerce City, CO 80022. Representative: John F. DeCock (same address as applicant). *Canned and preserved foodstuffs,* from the facilities of Heinz U.S.A., Division of H. J. Heinz Co., at or near Pittsburgh, PA, to points in CO, KS and NE, for 180 days. SUPPORTING SHIPPER(S): Heinz U.S.A., Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. SEND PROTESTS TO: Roger L. Buchanan, District Supervisor, ICC, 721-19th Street, 492 U.S. Customs House, Denver, CO 80202.

MC 142220 (Sub-3TA), filed October 18, 1978. Applicant: BAKER TRUCKING CORPORATION, INC., 4600 Brazil Street, Los Angeles, CA 90029. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Office furniture and accessories,* from Port Huron, MI to Tustin, CA, under a continuing contract or contracts with Bismac International, Inc., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Bismac International, Inc., 379 Dundas Street, London, Ontario, Canada N6B 1V5. SEND PROTESTS TO: Irene Carlos, Trans. Assistant, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 143236 (Sub-22TA), filed October 11, 1978. Applicant: WHITE TIGER TRANSPORTATION, INC., 40 Hackensack Avenue, Kearny, NJ 07032. Representative: Elizabeth E. Murphy, 40 Hackensack Avenue, Kearny, NJ 07032. *Commodities* as dealt in by retail departments stores and including *materials, supplies and equipment,* (except in bulk), between the facilities and/or vendors of Famous-Barr Company at or near Jersey City, NJ, New York, NY, on the one hand, and on the other hand, facilities of Famous-Barr in or near St. Louis, MO, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Famous-Barr Company, 601 Olive Street, St. Louis, MO 63101. SEND PROTESTS TO: Robert E. Johnston DS, ICC, 9 Clinton Street, Newark, NJ 07102.

MC 143636 (Sub-3TA), filed October 11, 1978. Applicant: RON SMITH TRUCKING, R. R. 3, Arcola, IL 61910. Representative: Douglas G. Brown, INB Center, Suite 555, 1 N. Old State Capitol Plaza, Springfield, IL 62701. *Sand, gravel and aggregates,* from, to and between Parke and Vigo Counties, IN., on the one hand, and, on the other, Douglas County, IL, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): (1) Herman Bade Owner Herman Bade & Sons, Villa Grove, IL 61956. (2) D. Dale Cornwell Plant Manager, Tuscola Builders Supply Co., Tuscola, IL 61953. SEND PROTESTS TO: Charles D. Little, District Supervisor, ICC, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 144239 (Sub-5TA), filed October 4, 1978. Applicant; J. L. T. CORPORATION, 233 Green Village Road, Green Billage, NJ. 07935. Representative: Charles J. Williams, 1815 Front Street, Scotch Plains, NJ. 07076. Authority sought to operate at a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Cheesecake,* in vehicles equipped with mechanical refrigeration, from the facilities of Mother's Kitchen, Inc., at Delran, NJ., to points in the United States, including Alaska, under a continuing contract or contracts with Mother's Kitchen, Inc., located at Delran, NJ., for 180 days. SUPPORTING SHIPPER(S) Mother's Kitchen, Inc., 1829 Underwood Blvd., Unit 5, Delran, NJ. 08075. SEND PROTESTS TO: DS Joel Morrows, ICC. 9 Clinton Street, Newark, NJ. 07102.

MC 144449 (Sub-2TA), filed October 20, 1978. Applicant: A&A MOVING AND STORAGE, dba, A&A CONTRACT CARRIERS, 414 Blue Smoke Court West, Fort Worth, TX 76101. Representative: Stephen B. Jurbala, 2355 Stemmons, Suite 1000, Dallas, TX 75207. Authority sought to operate at a *contract carrier,* by motor vehicle,

over irregular routes, transporting: (1) *Retail store supplies, office equipment and office supplies,* and (2) *equipment, materials, and supplies used in the manufacture of the commodities in (1) above,* except the transportation of such commodities in bulk, between facilities of Pitney Bowes and/or its warehousing contractors in Newtown, Danbury and Stamford, CT, and Pitney Bowes and/or its vendor facilities in the states of New York, Georgia, South Carolina, North Carolina and Texas, under a continuing contract or contracts with Pitney Bowes, for 180 days. NOTE: Applicant holds contract carrier authority in No. MC-144449 and subnumbers thereunder. If a hearing is deemed necessary, applicant requests that it be held at Dallas or Fort Worth, TX. Applicant intends to tack the authority here applied for to another authority held by it. SUPPORTING SHIPPER(S): Louis Szabo, Manager-Domestic Transportation, Pitney Bowes, Walnut and Pacific Streets, Stamford, CT. SEND PROTESTS TO: Trans. Assistant Martha A. Powell, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 144798 (Sub-2TA), filed October 17, 1978. Applicant: JAMES W. BERG AND JOHN W. BERG, dba, DUTCH LINE, 2120 Harbor Street, Pittsburg, CA 94565. Representative: Raymond A. Greene, Jr., of HANDLER, BAKER & GREENE, 100 Pine Street, Suite 2550, San Francisco, CA 94111. Authority sought to operate at a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Liquid paraffin wax,* in bulk, in tank equipment, between Richmond, CA and Scappoose, OR, under a continuing contract or contracts with Neu-Glo Candles, Incorporated, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Neu-Glo Candles, Incorporated, P.O. Box 599, Scappoose, OR 97056. SEND PROTESTS TO: District Supervisor, A. J. Rodriguez, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 145277 (Sub-1TA), filed October 4, 1978. Applicant: P & P TRUCKING COMPANY, INC., 106 Teaneck Road, Ridgefield Park, NJ. 07660. Representative: Arthur Liberstein, Michael Werner, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ. 07006. Authority sought to operate at a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Flavoring syrup compounds and beverage preparations,* (except commodities in bulk), and materials and supplies used in the manufacture thereof, restricted to traffic moving in refrigerated equipment, between Louisville, KY., on the one hand, and, on the other, points in Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia and WI., under a continuing contract, or contracts, with Pepsi Cola Company, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Pepsi Cola Company, Purchase, N.Y. 10577. SEND PROTESTS TO: DS Joel Morrows, ICC, 9 Clinton St., Newark, N.J. 07102.

MC 145384 (Sub-11TA), filed October 11, 1978. Applicant: ROSE-WAY, INC., 1814 E. Euclid, Des Moines, IA 50313. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Lumber, plywood and particleboard,* from Medford, Roseburg and Albany, OR., and Anacortes, Tacoma and Ridgefield, WA, to points in IA, IL, IN, MI, MN, OH and WI., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Greenwood Forest Products, Inc., 8285 SW., Nimbus Avenue, Beaverton, OR. 97005. SEND PROTESTS TO: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 145462 (Sub-1TA), filed October 18, 1978. Applicant: HOLLIS E. LOWE, d.b.a. LOWE TRUCKING COMPANY, 6639 Abington Pike, Richmond, IN 47374. Representative: Russell H. Schussler, 400 First National Bank Building, Richmond, IN 47374. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Castings* from Havana, IL and Sparta, MI to Richmond, IN; and (2) *borings* from Richmond, IN to Havana, IL, under a continuing contract or contracts with Dana Corporation, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Dana Corporation, 1400 Dana Parkway, Richmond, IN 47374. SEND PROTESTS TO: Beverly J. Williams, Trans. Assistant, Federal Building & U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 145502 (Sub-1TA), filed October 11, 1978. Applicant: COYNE MOTOR SERVICE, INC., 9212 South Parkside, Oak Lawn, IL 60453. Representative: James Robert Evans, 145 W. Wisconsin Avenue, Neenah, WI 54956. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Printing inks,* (in bulk, in tank vehicles), from West Chicago, IL, to points in MI, MN, MO, OH, OK, WV, and WI, and (2) *Oils* used in the manufacture of printing inks, (in bulk, in tank vehicles), from Detroit, MI, and its commerical zone, to West Chicago, IL, under a continuing contract or contracts with Central Ink and Chemical Company, West Chicago, IL, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Richard E. Breen, GM, Central Ink and Chemical Co., 1100 N. Harvester Road, West Chicago, IL 60185. SEND PROTESTS TO: Lois M. Stahl, Trans. Asst., ICC, 219 South Dearborn St., Room 1386, Chicago, IL 60604.

MC 145576TA, filed October 20, 1978. Applicant: HAYES REYNOLDS WRECKER SERVICE, INC., Route 7, Box 270, North Wilkesboro, NC 28659. Representative: George W. Clapp, P.O. Box 836, Taylors, SC 29687. (1) *Wrecked and disable tractors, wrecked and disabled trilers (other than those designed to be drawn by passenger vehicles), wrecked and disable trucks, and wrecked and disabled buses,* from points in AR, CT, DE, GA, IL, IN, KS, KY, LA, ME, MD, MA, MI, MN, NE, NH, NJ, NY, OH, PA, RI, SC, TN, TX, VA, WV, WI, and the DC, to points in Forsyth and Wilkes Counties, NC; (2) *Replacement vehicles* for the vehicles named in (1) above, from points in Forsyth and Wilkes Counties, NC, to the origin points as described in (1) above; (3) *Wrecked and disabled tractors, wrecked and disabled trailers* (other than those designed to be drawn by passenger vehicles), *wrecked and disabled trucks, and wrecked and disabled buses,* from points in the United States (except AK, HI and NC), to points in Wilkes County, NC; and (4) *Replacement vehicles* for the vehicles named in (3) above, from points in Wilkes County, NC, to the origin points as described in (3) above, for 180 days. RESTRICTION: Restricted to a transportation service performed by use of wrecker equipment and lowboy semitrailers. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Holly Farms Poultry Industries, Inc., P.O. Box 88, Wilkesboro, NC 28697. McLean Trucking Company, P.O. Box 213, Winston-Salem, NC 27102. G. G. Parsons Trucking Co., P.O. Box 1085, North Wilkesboro, NC 28659. SEND PROTESTS TO: District Supervisor Terrell Price, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlottee, NC 28205.

MC 145582 TA, filed October 19, 1978. Applicant: DENMARK TRUCKING, INC., 730 Main Street, P.O. Box 1274, Greenville, MS 38701. Representative: Harold H. Mitchell, Jr., Wynn & Bogen, Attorneys at Law, 120 South Poplar Street, P.O. Box 1295, Greenville, MS 38701. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Beer and malt beverages and containers* (except com-

modities in bulk) between the facilities of the Anheuser Busch Brewery at or near St. Louis, MO and points in MS, under continuing contracts with Anderson Beverage Co., Riverside Distributors, Inc., and Charley Peyton Distributors, Inc.; and (2) *Metal wire products and hinges; molded rubber and metal products; and kitchen cabinets, laminated products and materials, supplies, and component parts of kitchen cabinets and vanity cabinets* between points in MO, IL, and TN, under continuing contracts with Hager Hinge & Sons Co., Inc., Moeller Manufacturing Co., Inc., and Ampco Division of Chromalloy, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): There are (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: Alan C. Tarrant, District Supervisor, Room 212, 145 East Amite Building, Jackson, MS 39201.

MC 145587 TA, filed October 11, 1978. Applicant: MD TRUCKING CORPORATION, 1221 East Costilla Avenue, Littleton, CO. 80122. Representative: Fred E. Day, Jr., 1221 East Costilla Avenue, Littleton, CO. 80122. *Petroleum products,* (in bulk), *gasoline and diesel fuels,* from Sinclair, Wyo., and Rock Springs, Wyo., to Grand, Moffat and Routt Counties, CO., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): (1) Reynolds Oil Co., P.O. Box 337, Kremmling, CO. 80459. (2) Weston Oil Co., P.O. Box A, Toponas, CO. 80479. SEND PROTESTS TO: Roger L. Buchanan DS, ICC, 492 U.S. Customs House, 721 19th Street, Denver, CO. 80202.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-33689 Filed 11-30-78; 8:45 am]

[7035-01-M]

[Notice No. 224]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 21, 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.

NOTE.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

MOTOR CARRIERS OF PROPERTY

MC 41406 (Sub-96TA), filed October 31, 1978. Applicant: ARTIM TRANSPORTATION SYSTEM, INC., 7105 Kennedy Avenue, Hammona, IN 46323. Representative: Wade H. Bourdon, 7105 Kennedy Avenue, Hammond, IN 46323. *Steel pipe,* from the facilities of Bull Moose Tube Company at Gerald, MO, to points in Arkansas, Illinois, Indiana, Iowa, Nebraska, Kansas, Oklahoma, Michigan and OH, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Charles E. Emmenegger, Jr., Manager-Scheduling & Purchasing, Bull Moose Tube Company, P.O. Box 214, Gerald, MO 63037. SEND PROTESTS TO: Lois M. Stahl Trans. Asst., ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 61825 (Sub-86TA), filed October 24, 1978. Applicant: ROY STONE TRANSFER CORPORATION, V. C. Drive, P.O. Box 385, Collinsville, VA 24078. Representative: John D. Stone, Roy Stone Transfer Corporation, P.O. Box 385, Collinsville, VA 24078. *Glass,* from Ottawa, IL, to points in the states of Alabama, Connecticut, Delaware, Florida, Georgia, Maryland, Massachusetts, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, West Virginia, New Jersey, New York and OH, for 180 days. SUPPORTING SHIPPER(S): Libbey-Owens-Ford Company, 811 Madison Avenue, Toledo, OH 43635. SEND PROTESTS TO: Paul D. Collins DS, Room 10-502 Federal Building, 400 N. 8th Street, Richmond, VA 23240.

MC 78400 (Sub-67TA), filed October 24, 1978. Applicant: BEAUFORT TRANSFER COMPANY, P.O. Box 151, Gerald, MO 63037. Representative: Ernest A. Brooks, II, 1301 Ambassador Building, St. Louis, MO. 63101. *Educational books, pamphlets, and periodicals,* (1) Between the facilities of Scholastic Magazine Company at Englewood Cliffs, NJ., on the one hand, and on the other, Jefferson City and St. Louis, MO.; and (2) from Menasha, WI., Buffalo and New York, N.Y., Dresden, TN; Chicago, IL., and St. Cloud, MN., to the facilities of Scholastic Magazine Company at Englewood Cliffs, NJ., and Jefferson City, MO., for 180 days. SUPPORTING SHIPPER(S): Scholastic Magazine Company, 50 West 44th Street, New York, N.Y. 10036. SEND PROTESTS TO: P. E. Binder District Supervisor, ICC, Room 1465, 210 N. 12th Street, St. Louis, MO. 63101.

MC 93649 (Sub-24TA), filed October 31, 1978. Applicant: GAINES MOTOR LINES, INC., 1816 9th Avenue Drive, N.E., P.O. Box 1549, Hickory, NC 28601. Representative: Edward G Villalon, 1032 Penn., Bldg., PA., Avenue & 13th St., N.W., Washington, D.C. 20004. *Textiles and textile products,* (1) from points in N.C., and S.C., to points in DE and RI; and (2) from points in PA., to points in NC., and SC., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): There are approximately (22) 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: Terrell Price District Supervisor, 800 Briar Creek Road, Room CC516. Mart Office Bldg., Charlotte, NC. 28205.

MC 94350 (Sub-418TA), filed October 24, 1978. Applicant: TRANSIT HOMES, INC., P.O. Box 1638, Greenville, SC 29602. Representative: Mitchell King, Jr., P.O. Box 1628, Greenville, SC 29602. *Cotton module builders,* from points in Hanford, CA., and Big Spring, TX., to points in California, Arizona, New Mexico and TX., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Cotton Machinery Co., Inc., 1870 Catalina Court, Livermore, CA. 94550. SEND PROTESTS TO: E. E. Strotheid DS, ICC, Room 302, 1400 Building, 1400 Pickens St., Columbia, S.C. 29201.

MC 95876 (Sub-256TA), filed October 31, 1978. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, P.O. Box 1377, St. Cloud, MN 56301. Representative: Robert D. Gisvold, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Building board, insulating board and wallboard,* from Florence, KY., to points in Illinois, Iowa, Minnesota and WI., for 180 days. SUPPORTING SHIPPER(S): Grefco, Inc., a wholly owned subsidiary of General Refractories Company, 50 Monument Road, Bala Cynwyd, PA 19004. SEND PROTESTS TO: Delores A. Poe Trans. Asst., ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 105501 (Sub-32TA), filed October 31, 1978.Applicant: TERMINAL WAREHOUSE COMPANY, INC., 1851 Raddison Road, Northeast, Blaine, MN. 55434.Representative: Joseph J. Dudley, W-1260 First National Bank Bldg., St. Paul, MN. 55101.*Sugar,*(except in bulk, in bags), from Drayton, ND, to Minneapolis-St. Paul, NM., and points in its commercial zone,for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): American Crystal Sugar Company, 101 3rd Street North, Moorhead, MN. 56560.SEND PROTESTS TO: Delores A. Poe Trans. Asst., ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN. 55401.

MC 111401 (Sub-532TA), filed October 11, 1978.Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Blvd., P.O. Box 632, Enid, OK. 73701.Representative: Victor R. Comstock, P.O. Box 632, Enid, OK. 73701.*Petroleum naphtha,*(in bulk, in tank vehicles), from Cyril, OK, to points in LA,for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Drake Petroleum Company, 6231 N. Pulaski Road, Chicago, IL. 60646.SEND PROTESTS TO: Connie Stanley Trans. Asst., Room 240 Old Post Office & Court House Bldg., 215 N.W., 3rd, Oklahoma City, OK. 73102.

MC 112016 (Sub-14TA), filed October 11, 1978.Applicant: BENMAR TRANSPORT & LEASING CORP., 405 Third Avenue, Brooklyn, N.Y. 11215.Representative: Eugene M. Malkin, 5 World Trade Center, Suite 6193, New York, N.Y. 10048. Authority sought to operate as a*contract carrier,*by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used by discount department stores and *equipment, materials and supplies* used in the conduct of such business, (except commodities in bulk and foodstuffs), between New York, NY, and Secaucus, NJ, on the one hand, and, on the other, points in MN, under a continuing contract or contracts, with Jubilee Shops, Inc., of Secaucus, NJ, for 90 days.An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): Jubilee Shops, Inc., 80 Enterprise Ave., Secaucus, NJ. 07094.SEND PROTESTS TO: Maria B. Kejss Trans. Asst., ICC, 26 Federal Plaza, New York, NY 10007.

MC 113908 (Sub-452TA), filed October 11, 1978.Applicant: ERICKSON TRANSPORT, INC., 2105 E. Dale Street, P.O. Box 3180 Glenstone Station, Springfield, MO. 65804.Representative: B. B. Whitehead, (same address as applicant).*Flour,*(in bulk, in tank vehicles), from Minneapolis, MN., to Springfield, MO,for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Kraft, Inc., Chicago, IL.SEND PROTESTS TO: John V. Barry DS, Room 600, 911 Walnut Street, Kansas City, MO. 64106.

MC 114301 (Sub-99TA), filed October 31, 1978. Applicant: DELAWARE EXPRESS CO., P.O. Box 97, Elkton, MD. 21921. Representative: Maxwell A. Howell, 1511 K St., N.W., Washington, D.C. 20005. *Solar salt,* (in pneumatic tank vehicles), from Baltimore, MD., to points in the State of DE., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): L. P. Girven GTM, Watkins Salt Company, P.O. Box 150, Watkins Glen, NY. 14891. SEND PROTESTS TO: William L. Hughes District Supervisor, ICC, 1025 Federal Building, Baltimore, MD. 21201.

MC 114301 (Sub-100TA), filed October 31, 1978. Applicant: DELAWARE EXPRESS, CO., P.O. Box 97, Elkton, MD. 21921. Representative: Maxwell A. Howell, 1511 K St., N.W., Washington, D.C. 20005. *Feed ingredients,* (except in bulk), from Baltimore, MD., to Elkton, NC., for 180 days, SUPPORTING SHIPPER(S): Patrick Carr Secretary-President, Getkin Associates, Inc., 1701 Swede Road, Norristown, PA. 19401. SEND PROTESTS TO: William L. Hughes District Supervisor, ICC, 1025 Federal Bldg., Baltimore, MD. 21201.

MC 114457 (Sub-447TA), filed October 24, 1978. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN. 55114. Representative: James H. Wills, 2102 University Avenue, St. Paul, MN. 55114. *Canned and bottled foodstuffs,* from Cade and Lozes, LA., to points in IL, IN, IA, KY, MI, MN, MO, OH and WI., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Bruce Foods Corporation, P.O. Drawer 1030, New Iberia, LA. 70560. SEND PROTESTS TO: Delores A. Poe Trans. Asst., ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN. 55401.

MC 115841 (Sub-650TA), filed October 11, 1978. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN. 37919. Representative: D. R. Beeler (Same address as applicant). *Frozen foods,* from the facilities of Flowers Industries, located at or near Fountain Inn, SC, to points in the states of AL, MI, OH, TX, MI, MO, KS, WI, NE, CO, GA, PA, OK, AR, and AZ, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Flowers Industries, Old Laurens Road, Fountain Inn, SC. 29644. SEND PROTESTS TO: Glenda Kuss Trans. Asst., ICC, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN. 37203.

MC 116763 (Sub-449TA), filed October 24, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). *Such commodities as are dealt in by manufacturers and distributors of plastic products,* (except commodities in bulk, in tank vehicles), from Nicholasville, KY, to points in GA and MO for 180 days. SUPPORTING SHIPPER(S): Plastic Products Division, Hoover Universal, Thomas E. Gould Corporate Traffic Manager, Route 2, Tri Port Road, Georgetown, KY 40324. SEND PROTESTS TO: Paul J. Lowry District Supervisor, ICC, 5514-B Federal Bldg., 550 Main Street, Cincinnati, OH 45202.

MC 118202 (Sub-93TA), filed October 11, 1978. Applicant: SCHULTZ TRANSIT, INC., P.O. Box 406, 323 Bridge Street, Winona, MN 55987. Representative: Eugene A. Schultz, P.O. Box 406, Winona, MN 55987. *Canned and preserved food stuffs,* (except commodities in bulk), from the facilities of Heinz U.S.A., Division of H. J. Heinz Company, at or near Pittsburgh, PA, to points in CO, KS, MN, MO, NE, ND, SD and WI, for 180 days. SUPPORTING SHIPPER(S): Heinz U.S.A., Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230. SEND PROTESTS TO: Delores A. Poe Trans. Asst., ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 118831 (Sub-168TA), filed October 24, 1978. Applicant: CENTRAL TRANSPORT, INC., P.O. Box 7007, High Point, NC 27264. Representative: Ben H. Keller III, P.O. Box 7007, High Point, NC 27264. *Dry terephthalic acid,* (in bulk, in tote bins or hopper type vehicles), from Berkeley County, SC, to points in the US, in and east of

TX, OK, KS, NE, SD and ND, for 180 days. An underlying ETA Seeks 90 days authority. SUPPORTING SHIPPER(S): Amoco Chemicals Corporation, 200 E. Randolph Drive, Chicago, IL 60601. SEND PROTESTS TO: Archie W. Andrews DS, ICC, P.O. Box 26896, 624 Federal Building, 310 New Bern Avenue, Raleigh, NC 27611.

MC 119654 (Sub-62TA), filed October 11, 1978. Applicant: HI-WAY DISPATCH, INC., 1401 West 26th Street, Marion, IN 46952. Representative: Norman R. Garvin, Scopelitis & Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. *Pulpboard and fiberboard,* from the facilities of the Alton Box Board Company at or near Alton, IL, to Aurora, IN, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Alton Box Board Company, 401 Alton St., Alton, IL 62002. SEND PROTESTS TO: J. H. Gray DS, ICC, 343 West Wayne St., Suite 113, Fort Wayne, IN 46802.

MC 119689 (Sub-19TA), filed October 11, 1978. Applicant: PEERLESS TRANSPORT CORP., 2701 Railroad Street, Pittsburgh, PA 15222. Representative: William J. Lavelle, Wick, Vuono & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. *Castor oil,* (in bulk, in tank vehicles), from Baltimore, MD, and New York, NY, and points in their commercial zones, to Dover, OH, for 180 days. SUPPORTING SHIPPER(S): Union Camp Corporation, 1600 Valley Road, Wayne, NJ 07470. SEND PROTESTS TO: John J. England District Supervisor, ICC, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 119726 (Sub-145TA), filed October 24, 1978. Applicant: N.A.B., TRUCKING CO., INC., 1644 W. Edgewood Avenue, Indianapolis, IN 46217. Representative: James L. Beattey, 130 E. Washington St., Suite 1000, Indianapolis, IN 46204. *Plastic articles,* (except in bulk), *and materials, supplies, and equipment* used in the distribution of plastic articles, from the plantsite and warehouse facilities of Amoco Chemical Corporation at or near Monroe, GA, to points in the states of North Carolina, South Carolina, Florida, Alabama, Tennessee, Virginia, and W. Va, and from points in the above named destination states to the plantsite and warehouse facilities of Amoco Chemical Corporation at or near Monroe, GA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Amoco Chemicals Corporation, 200 E. Randolph Drive, Chicago, IL 60601. SEND PROTESTS TO: Beverly J. Williams, Trans. Asst., ICC, Federal Bldg., & U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 123407 (Sub-509TA), filed October 24, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Highway 6, Valparaiso, IN 46383. Representative: H. E. Miller, Jr. (same address as applicant). *Roofing tile,* from Belvidere, IL, to points in Illinois, Indiana, Iowa, Ohio, and WI, for 180 days. SUPPORTING SHIPPER(S): Raleigh Architectural Roof Systems, Inc., 307 S. Oak Street, Forreston, IL 61030. SEND PROTESTS TO: Lois Stahl, Trans. Asst., ICC, Everett McKinley Dirksen Building, 219 S. Dearborn St., Room 1386, Chicago, IL 60604.

MC 123778 (Sub-43TA), filed October 11, 1978. Applicant: JALT CORP., d/b/a UNITED NEWSPAPER DELIVERY SERVICE, 802 Raritan Center, Edison, NJ 08817. Representative: Morton E. Kiel, 5 World Trade Center, Suite 6193, New York, NY 10048. Authority sought to operate as a *contract carrier,* by motor vehicle, irregular routes, transporting: *Magazine parts, sections and inserts,* from East Greenville, PA, to Old Saybrook, CT, Edison, NJ, and Glenn Dale, MD, under a continuing contract or contracts, with Time, Incorporated, Time & Life Bldg., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Time, Incorporated, Time & Life Bldg., Rockefeller Center, Room 3170, New York, NY 10020. SEND PROTESTS TO: Robert E. Johnston, District Supervisor, ICC, 9 Clinton Street, Newark, NJ 07102.

MC 124896 (Sub-73TA), filed October 25, 1978. Applicant: WILLIAMSON TRUCK LINES, INC., Corner Thorne & Ralston Streets, Wilson, NC. 27893. Representative: Jack H. Blanshan, 205 West Touhy Avenue, Suite 200, Park Ridge, IL. 60068. *Foodstuffs,* other than in bulk, from the facilities of Buitoni Food Corporation at S. Hackensack, N.J., to Birmingham and Montgomery, AL; Jacksonville, Miami, Orlando, Pompano Beach, St. Petersburg, and Tampa, FL; Atlanta, GA; Fayetteville, Charlotte, Pineville, and Raleigh, N.C.; Greenville, Charleston, S.C.; Memphis and Nashville, TN., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Buitoni Foods Corporation, 450 Huyler Street, S. Hackensack, N.J. 07606. SEND PROTESTS TO: Archie W. Andrews DS, ICC, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, N.C. 27611.

MC 124896 (Sub-74TA), filed October 31, 1978. Applicant: WILLIAMSON TRUCK LINES, INC., P.O. Box 3485, Corner Thorne & Ralston Streets, Wilson, N.C. 27893. Representative: Jack H. Blanshan, 205 West Touhy Avenue, Suite 200, Park Ridge, IL. 60068. *Meats,* from the facilities of Illini Beef Packers at Joslin, IL., to points in Virginia, North Carolina, South Carolina, Georgia and AL., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Illini Beef Packers, Inc., P.O. Box 245, Joslin, IL. 61254. SEND PROTESTS TO: Archie W. Andrews District Supervisor, ICC, P.O. Box 26896, 624 Federal Building, 310 New Bern Avenue, Raleigh, N.C. 27611.

MC 126899 (Sub-122TA), filed October 11, 1978. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Road, P.O. Box 3156, Paducah, KY. 42001. Representative: William L. Willis, 708 McClure Building, Frankfort, KY. 40601. (1) *Malt beverages and related advertising materials,* from Evansville, IN., and Newport, KY., to St. Louis, MO; and (2) *empty malt beverage containers, pallets and rejected shipments of malt beverages,* from St. Louis, MO., to Evansville, IN., and Newport, Ky., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): G. Heileman Brewing Company, Inc., 925 South Third Street, La Crosse, WI. 54601. SEND PROTESTS TO: Floyd A. Johnson District Supervisor, ICC, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN. 38103.

MC 129410 (Sub-9TA), filed October 24, 1978. Applicant: ROBERT BONCOSKY, INC., 4811 Tile Line Road, Crystal Lake, IL. 60014. Representative: Martin J. Kennedy, Sparks & Gertzman, 180 North LaSalle Street, Chicago, IL. 60601. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Liquid corn products,* (in tank type vehicles), between the plantsites of Clinton Corn Processing Co., at Chicago, IL., and Clinton, IA., on the one hand, and points in the United States, on the other, under a continuing contract or contracts, with Clinton Corn Processing Company, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Allen D. Sloan Traffic Manager, Clinton Corn Processing Company, 1251 Beaver Channel Parkway, P.O. Box 340, Clinton, IA. 52732. SEND PROTESTS TO: Lois Stahl Trans. Asst., ICC, 219 South Dearborn Street, Room 1386, Chicago, IL. 60604.

MC 129410 (Sub-10TA), filed October 24, 1978. Applicant: ROBERT BONCOSKY, INC., 4811 Tile Line Road, Crystal Lake, IL 60014. Representative: Martin J. Kennedy, Sparks & Gertzman, 180 North LaSalle Street, Suite 1916, Chicago, IL 60601. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Liquid sweeteners,* (in bulk, in tank vehicles), between the plantsite and facilities of

Amstar Corporation in Chicago, IL, on the one hand, and points and places in Indiana, Kentucky, Michigan and OH, on the other, under a continuing contract or contracts, with Amstar Corporation, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Edward Zglobicki Dist., Traffic Manager, Amstar Corporation, 2905 South Western Avenue, Chicago, IL 60608. SEND PROTESTS TO: Lois Stahl Trans. Asst., ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 133655 (Sub-126TA), filed October 11, 1978. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Cheese*, from Newman Grove, NE., to to points in Connecticut, Illinois, Kansas, Minnesota, Missouri, New Jersey, New York, Ohio and PA, for 180 days. SUPPORTING SHIPPER(S): Newman Grove Creamery Co., Box 338, Newman Grove, NE 68758. SEND PROTESTS TO: Haskell E. Ballard DS, ICC, Box F-13206 Federal Building, Amerillo, TX 79101.

MC 133966 (Sub-55TA), filed October 24, 1978. Applicant: NORTH EAST EXPRESS, INC., P.O. Box 127, Mountaintop, PA 18707. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. (1) *Metal containers*, with or without lids, from Hanover Township, PA, to Albert Lea, MN, Bowling Green, OH; Chicago, IL; Cincinnati and Columbus, OH; Detroit, MO; Kansas City, MO; Louisville, KY; Milwaukee, WI; Newark, NJ, and New York, NY, and their commercial zones; and (2) *Products* used in the manufacturing, distribution, and sales of metal containers, with or without lids, from Bryan, OH, Chicago, IL, and Elizabeth, NJ, to Hanover Township, PA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Bertels Can Company, Hanover Industrial Estates, Wilkes-Barre, PA 18703. SEND PROTESTS TO: Paul J. Kenworthy District Supervisor, ICC, 314 U.S. Post Office Bldg., Scranton, PA 18503.

MC 135797 (Sub-153TA), filed October 24, 1978. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 200, Lowell, AR 72745. Representative: Paul R. Bergant, P.O. Box 200, Lowell, AR 72745. *Appliances, and parts, supplies and accessories for appliances*, from the facilities of the Maytag Company at or near Newton, IA, to points in Arkansas, Louisiana, Mississippi, Oklahoma and TX, for 180 days. SUPPORTING SHIPPER(S): Maytag Company, 403 West 4th Street North, Newton, IA 50208. SEND PROTESTS TO: William H. Land, Jr., DS, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 134477 (Sub-280TA), filed October 24, 1978. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul MN. 55118. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN. 55118. *General commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring the use of special equipment), which at the time are moving on bills of lading of freight forwarders under Part IV of the Interstate Commerce Act, from the facilities of Acme Fast Freight, Inc., at North Haven, CT; Boston and Springfield, MA; Baltimore, MD; North Bergan, NJ; New York, N.Y.; and Philadelphia, PA., to Chicago, IL; St. Paul, MN; St. Louis, MO; and Milwaukee, WI., for 180 days. SUPPPORTING SHIPPER(S): Acme Fast Freight, Inc., 2335 New Hyde Park Road, New Hyde Park, N.H. 11040. SEND PROTESTS TO: Delores A. Poe Trans. Asst., ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN., 55401.

MC 134531 (Sub-15TA), filed October 24, 1978. Applicant: AGGREGATE HAULERS, INC., Route 2, Box 559-A, West Columbia, S.C. 29169. Representative: Burt W. Lanier, Route 2, Box 559-A, West Columbia, S.C. 29169. *Aggregates, unprocessed sand, processed dry sand, gravel and crushed stone*, from points in S.C., to points in North Carolina, Georgia and TN., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): (1) Pennsylvania Glass Sand, Corp., P.O. Box 84, Cayce, SC. 29033. (2) Columbia Silica Sand, Co., P.O. Box 1519, Columbia, SC. 29202. (3) Becker Sand & Gravel Company, P.O. Box 848, Cheraw, S.C. 29520. SEND PROTESTS TO: E. E. Strotheid DS, ICC, Room 302, 1400 Building, 1400 Pickens Street, Columbia, SC. 29201.

MC 138144 (Sub-38TA), filed October 31, 1978. Applicant: FRED OLSON CO., INC., 6022 W. State Street, Milwaukee, WI. 53213. Representative: Wm. D. Brejcha, 10 S. LaSalle Street, Chicago, IL. 60603. *Precast concrete*, from the facilities of the Marley Cooling Tower Co., at or near Muscatine, IA., to Kenosha, WI., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Marley Cooling Tower, Co., P.O. Box 558, Muscatine, IA. 52761. SEND PROTESTS TO: Gail Daugherty Trans. Asst., ICC, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI. 53202.

MC 138741 (Sub-60TA), filed October 31, 1978. Applicant: AMERICAN CENTRAL TRANSPORT, INC., 2005 North Broadway, Joliet, IL. 60435. Representative: Tom B. Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO. 64068. *Materials* used in the installation of wallboard, from the facilities of Rapid Supply, a division of Grand Rapids Gypsum Co., Inc., at or near Cleveland, OH., to points in Illinois, Indiana, Michigan and WI., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Don Draugelis Traffic Manager, Grand Rapids Gypsum Co., Inc., 201 Monroe Avenue, Grand Rapids, MI. 49502. SEND PROTESTS TO: Lois M. Stahl Trans. Asst., ICC, 219 South Dearborn Street, Room 1386, Chicago, IL. 60604.

MC 138824 (Sub-17TA), filed October 24, 1978. Applicant: REDWAY CARRIERS, INC., 5910 49th Street, Kenosha, WI 53142. Representative: Paul J. Maton, 10 S. LaSalle St., Suite 1620, Chicago, IL 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Automotive parts, supplies and materials*, incidental to the manufacturing of automobiles, from points in AR, IL, IN, IA, KY, GA, MI, MO, OH, PA, TN, and WI, to the facilities of American Motors Corp., in Kenosha and Racine, Co., in WI, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): American Motors Corp., 5626 25th Avenue, Kensoha, WI 53140. (Richard L. Oechler) SEND PROTESTS TO: Gail Daugherty, Trans. Asst., ICC, U.S. Federal Bldg. & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 140024 (Sub-131TA), filed October 11, 1978. Applicant: J. B. MONTGOMERY, INC., 5565 East 52nd Avenue, Commerce City, CO. 80022. Representative: John F. DeCock (same address as applicant). *Plastic trays*, from Downingtown, PA, to Richmond and Logan, UT., including points in the commercial zones of destinations named, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Pepperidge Farm, Incorporated, 595 Westport Avenue, Norwalk, CT. 06856. SEND PROTESTS TO: Roger L. Buchanan, District Supervisor, ICC, 492 U.S. Customs House, 721 19th Street, Denver, CO. 80202.

MC 141921 (Sub-29TA), filed October 24, 1978. Applicant: SAV-ON TRANSPORTATION, INC., 143 Frontage Road, Manchester, N.H. 03108. Representative: John A. Sykas (same address as applicant). *Confectionery*, (except in bulk, in tank vehicles), from the facilities of Schraffts at

Woburn and Charlestown, MA, to points in PA, WV, OH, KY, IN, MI, WI, IL, MI, IA, MN, SD, NE, KS, CO, and UT, for 180 days. SUPPORTING SHIPPER(S): Schraffts, 529 Main Street, Charlestown, MA. 02129. (Attn: Jack Downes Distribution Manager). SEND PROTESTS TO: Ross J. Seymour, District Supervisor, ICC, Room 3, 6 Loudon Road, Concord, NH. 03301.

MC 141921 (Sub-28TA), filed October 24, 1978. Applicant: SAV-ON TRANSPORTATION, INC., 143 Frontage Road, Manchester, N.H. 03108. Representative: John A. Sykas (same address as applicant). *Frozen prepared foodstuffs,* (except in bulk, in tank vehicles), from the facilities of Kitchens of Sara Lee at Deerfield, IL., and New Hampton, IA, to points in NH, MA, NY, NJ, PA, CT, RI, VT, DE, ME, MD, VA, and the DC, for 180 days. SUPPORTING SHIPPER(S): Kitchens of Sara Lee, 500 Waukegan Road, Deerfield, IL 60015. (Attn: Richard Szynal, Traffic Manager). SEND PROTESTS TO: Ross J. Seymour, District Supervisor, ICC, Room 3, 6 Loudon Road, Concord, NH 03301.

MC 142439 (Sub-2TA), filed October 24, 1978. Applicant: TRUCKING SERVICES, INC., 26400 Van Born Road, Dearborn Heights, MI. 48123. Representative: Edwin M. Snyder, 22375 Haggerty Road, Northville, MI. 49167. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Particle board or composition board,* from the International Boundary between Canada and the United States at Detroit, MI., to Indiana, Michigan and OH., restricted to movements for the account of MacMillan Bloedel Building Materials, further restricted to traffic in foreign commerce, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): H. M. Belis Transportation Coordinator, McMillan Bloedel Building Materials, P. O. Box 608, Thunder Bay, Ontario, Canada. SEND PROTESTS TO: Tim Quinn District Supervisor, ICC, 604 Federal Bldg., & U. S. Courthouse, 231 W. Lafayette Blvd., Detroit, MI. 48226.

MC 142559 (Sub-62TA), filed October 11, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH. 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH. 43215. *Buildings K.D., and building materials, parts and supplies,* (except commodities in bulk), between Niles, OH., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), for 180 days. SUPPORTING SHIPPER(S): Robco Products, Inc., 950 Summit Street, Niles, OH. 44446. SEND PROTESTS TO: Mary Wehner DS, ICC, 731 Federal Bldg., 1240 East Ninth Street, Cleveland, OH. 44199.

MC 142715 (Sub-17TA), filed October 11, 1978. Applicant: LENERTZ, INC., 411 Northwestern National Bank Bldg., South St. Paul, MN. 55101. Representative: Andrew R. Clark, 1000 First National Bank Bldg., Minneapolis, MN. 55402. *Meat, meat products, meat by-products and articles distributed by meat packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities utilized by John Morrell & Co., at St. Paul, MN., to points in Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina and TN., for 180 days. SUPPORTING SHIPPER(S): John Morrell & Co., 208 South La Salle St., Chicago, IL. 60604. SEND PROTESTS TO: Delores A. Poe Trans. Asst ICC, 414 Federal Building and U.S. Court House, 110 South 4th St., Minneapolis, MN. 55401.

MC 143436 (Sub-18TA), filed October 24, 1978. Applicant: CONTROLLED TEMPERATURE TRANSIT, INC., 9049 Stonegate Road, Indianapolis, IN. 46227. Representative: Stephen M. Gentry, 1500 Main Street, Speedway, IN. 46224. *Such merchandise* as is dealt in by retail and wholesale grocery houses, retail chain department stores and drug states and advertising and display materials in vehicles equipped with mechanical refrigeration, from the facilities of Warner-Lambert Co., located at or near Elk Grove Village, IL., to points in IN., restricted to shipments originating at the named origin point and destined to the named destination and further restricted against the transportation of commodities in bulk, for 180 days. SUPPORTING SHIPPER(S): Warner-Lambert Company, 201 Tabor Road, Morris Plains, NJ. 07450. SEND PROTESTS TO: Beverly J. Williams Trans. Asst., ICC, Federal Building & U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, IN. 46204.

MC 144819 (Sub-2TA), filed October 31, 1978. Applicant: C & N TRANSPORT, INC., 220 N.E. 46th, P.O. Box 82609, Oklahoma City, OK. 73108. Representative: C. L. Phillips, 1411 N. Classen, Oklahoma City, OK. 73106. *Meat,* from Huron, S. Dak., to points in TX., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Armour Fresh Meat Company, 111 W. Clarendon, Phoenix, AZ. 85077. SEND PROTESTS TO: Connie Stanley Trans. Asst., Room 240, Old Post Office Bldg., 215 N.W., 3rd Street, Oklahoma City, OK. 73102.

MC 144926 (Sub-3TA), filed October 24, 1978. Applicant: E. E. WYLIE CORPORATION, P.O. Box 1188, Fargo, ND. 58701. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, N. Dak. 58108. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Limerock,* from Duluth, MN, to the facilities of Minn-Dak Farmers Cooperative, Inc., at or near Wahpeton, N. Dak., under a continuing contract or contracts, with Minn-Dak Farmers Cooperative, Inc., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Minn-Dak Farmers Cooperative, Inc., Suite 219, 400 S. County Road 18, Minneapolis, MN. 55426. SEND PROTESTS TO: Ronald R. Mau District Supervisor, Room 268 Federal Building & U.S. Post Office, 657 2nd Avenue North, Fargo, N. Dak. 58102.

MC 145267 (Sub-3TA), filed October 11, 1978. Applicant: CAMPBELL TRANSPORT, INC., P.O. Box 386, Vineland, NJ. 08360. Representative: Mark D. Russell 734-15th St., N.W., Suite 406-9 Walker Bldg., Washington, D.C. 20005. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Animal feed, feed ingredients, supplements, additives, materials and supplies* used in the manufacture and promotion of animal feeds, (except in bulk), between the facilities of Kal Kan Foods, Inc., at or near Mattoon, IL., Indianapolis and Terre Haute, IN; Hutchinson, KS; Sherburne, NY and Columbus, OH., on the one hand, and, on the other, points in the United States, (excluding Alaska and Hawaii), under a continuing contract or contracts with Kal Kan Foods, Inc., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Kal Kan Foods, Inc., 3386 E. 44th Street, Vernon, CA. 90058. SEND PROTESTS TO: John P. Lynn Trans. Specialist, ICC, 428 East State Street, Room 204, Trenton, NJ. 08608.

MC 145545 (Sub-1TA), filed October 31, 1978. Applicant: CENTURY REEFER SERVICE, 8 Main Street, Salisbury, MA. 01950. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, D.C. 20005. *Drilling, hoisting, and compressor parts and accessories,* (except commodities which, because of size or weight, require the use of special equipment), from Claremont, NH., to Michigan City, IN., and Elk Grove Village, IL., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Joy Manufacturing, A Division of Joy Machinery Company, River Road, Claremont, NH. 03743. SEND PROTESTS TO:

Max Gorenstein District Supervisor, ICC, 150 Causeway Street, Boston, MA. 02114.

MC145585 (Sub-1TA), filed October 24, 1978. Applicant: S. HOWARD BUS COMPANY, 399 Bank Street, Fall River, MA 02720. Representative: Arthur M. White, 281 Pleasant Street, Framingham, MA 01701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting; *Passengers and their baggage* in the same vehicle, between Fall River, MA., on the one hand, and, on the other, the manufacturing plant of Danal Jewelry Co., Providence, RI., under a continuing contract or contracts, with Danal Jewelry Company, for 180 day. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Danal Jewelry Company, 387 Charles Street, Providence, RI. 02904. SEND PROTESTS TO: Gerald H. Curry District Supervisor, 24 Weybosset Street, Room 102, Providence, RI. 02903.

MC145617TA, filed October 24, 1978. Applicant: MID-NORTHERN TRANSFER CO., Box 141, Grand Ridge, IL 61325. Representative: Robert T. Lawley, 300 Reisch Building, Springfield, IL 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting; *Glass containers*, from Streator, IL., to Chicago, Kankakee and Peoria IL., restricted to traffic orginating at the facilities of Thatcher Glass Mfg., Co., Division of Dart Industries, at Streator, IL., for 180 days. SUPPORTING SHIPPER(S): James F. Rehr, Asst., General Traffic Manager, Thatcher Glass Manufacturing, Co., Division of Dart Industries, P.O. Box 265, Elmira, NY. 14902. SEND PROTESTS TO: Lois Stahl, Trans. Asst., ICC, 219 S. Dearborn Street, Room 1386, Chicago, IL. 60604.

MC145621TA, filed October 24, 1978. Applicant: FLOYD GARRETT, P.O. Box 533, Fernandina Beach, FL 32034. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Wood chips*, from points in GA., on and south of U.S. Highway 80 to Fernandina Beach, FL., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Container Corporation of America, 500 East North Avenue, Carol Stream, IL. 60187. SEND PROTESTS TO: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL. 32202.

MC145626TA, filed October 24, 1978. Applicant: MOUNTAIN MOTORS LIMITED, P.O. Box 159, Bloomington, CA 92316. Representative: Vincent Maniaci, P.O. Box 159, Bloomington, CA 92316. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting; (1) *Bananas*, in boxes, in straight or mixed shipments with exempt agricultural products, and (2) *empty cardboard banana boxes*, from San Francisco, Oakland and Los Angeles Harbors, CA., to all points and places within and including 25 miles of the city limits of Phoenix and Tucson, AZ., under a continuing contract or contracts, with Harbor Banana Distributors, Inc., for 180 days. SUPPORTING SHIPPER(S): Harbor Banana Distributors, Inc., 1420 Panorama Drive, Long Beach, CA. 90802. SEND PROTESTS TO: Irene Carlos Trans. Asst., ICC, Room 1321 Federal Bldg., 300 North Los Angeles St., Los Angeles, CA. 90012.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-33690 Filed 11-30-78; 8:45 am]

[7035-01-M]

[Notice No. 136]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under Section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include request for oral hearing, must be filed with the Commission on or before January 2, 1979. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

MC-FC-77861, filed September 22, 1978. Transferee: GORDON McFADDEN LIMITED, Muirkirk, Ontario, Canada NOL 1XO. Transferor: McFadden Trucking Limited, Box 96, Rodney, Ontario, Canada NOL 2 CO. Representative: John W. Ester, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MD 48013. Authority sought for purchase by transferee of the operating rights set forth in Certificate No. MC-142116 issued April 10, 1978: Fertilizer and fertilizer ingredients (except anhydrous ammonia), in bulk (except in tank vehicles) and bags, between the ports of entry on the United States-Canada Boundary line located on the St. Clair and Detroit Rivers, on the one hand, and, on the other, points in Indiana, Michigan, and Ohio. Transferee holds no Commission authority and does not seek Section 210a(b) temporary authority.

MC-FC-77898, filed October 6, 1978. Transferee: NORMA BJORNSON, BJORNSON TRUCK SERVICE, R.F.D. No. 2, Ellsworth, WI 54011. Transferor: Arthur B. Bjornson, Bjornson Truck Service, R.F.D. No. 2, Ellsworth, WI 54011. Representative: John G. Nestingen, Attorney at Law, Baldwin, WI 54002. By order of November , 1978, the Motor Carrier Board approved the transfer to transferee the operating rights in Certificate No. MC-5019, issued July 18, 1978, to transferor authorizing the transportation of malt beverages, over regular routes, from Duluth, MN to Ellsworth, WI, serving no intermediate points and empty containers on return; agricultural commodities and feed, between points in the villages of Elmwood, Spring Valley, and Ellsworth, WI, on the one hand, and, on the other, Minneapolis, St. Paul, South St. Paul, and Red Wing, MN; livestock, agricultural commodities, farm machinery, lumber, logs, firewood, feed, seed, and groceries, between points in the towns of El Paso, Gilman, Rock Elm, Ellsworth, Martell, and Spring Lake, Pierce County, WI, not including the villages specified above, on the one hand, and, on the other, Minneapolis, St. Paul, South St. Paul, and Red Wing, MN; and livestock, from South St. Paul, MN to Whitehall, WI. Petitions for reconsideration may be filed by any interested person within 20 days. SEND PETITIONS FOR RECONSIDERATION TO: The Secretary, Interstate Commerce Commission, Washington, DC 20423.

MC-FC-77907, filed October 16, 1978. Transferee: GREEN COUNTRY EXPRESS, INC., 16 West Brady, Tulsa, OK 74103. Transferor: C & P Transportration, Inc., 47 North Rockford Avenue, Tulsa, OK 74120. Repre-

sentative: G. Timothy Armstrong, Esquire, 6161 North May Avenue, Oklahoma City, OK 73112. Authority sought for purchase by transferee of that portion of the operating rights of transferor set forth in Certificate of Registration No. MC-121637 (Sub-No. 2), issued April 4, 1978, as follows: General commodities, with exceptions, over specified routes, between Tulsa, OK and the Oklahoma-Kansas State Line, serving the intermediate points of Ponca City, Newkirk, Pawhuska, and Burbank, OK. Transferee presently holds no authority from this Commission. Application for temporary authority under Section 210a(b) has not been filed.

MC-FC-77915, filed October 27, 1978. Transferree: PAUL F. MANNING, d/b/a M. J. Manning, 180 Spring Street, Springfield, MA, 01101. Transferor: Paul F. Manning and Katherine V. Manning (James A. Kronholm-Executor), a partnership, d/b/a M. J. Manning, same address as transferee. Representative: David M. Marshall, Esq., Marshall and Marshall, 101 State Street, Suite 304, Springfield, MA, 01103. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-68455 issued February 24, 1941, as follows: general commodities, with certain exceptions, between Springfield, MA, on the one hand, and, on the other, points in Massachusetts within 15 miles of Springfield; Electrical supplies between Springfield MA, and points within ten miles of Springfield, on the one hand, and, on the other, points in Hartford and Tolland Counties, CT. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

MC-FC-77917, filed October 31, 1978. Transferee: BROWN'S DAY & NIGHT WRECKER SERVICE, INCORPORATED, 2817 N.W. 38th, Oklahoma City, OK 73112. Transferor: Jackie R. Smithson, Sr., Dba Jack's Wrecker Service, 5913 South Broadway, Oklahoma City, OK 73108. Representative: William P. Parker, Esq., 280 National Foundation Life Bldg., 3535 N.W. 58th Street, Oklahoma City, OK 73112. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate No. MC-134390 Sub 1, issued September 13, 1978, as follows: Wrecked or disabled motor vehicles (except trailers designed to be drawn by passenger automobiles) from points AR, CO, KS, LA, MO, NE, NM, and TX to Oklahoma City, OK; and replacement vehicles for wrecked or disable motor vehicles, by use of wrecker equipment only, from Oklahoma City, OK to points in AR, CO, KS, LA, MO, NE, NM, and TX. Transferee presently holds no authority from this Commission. Application for temporary authority under Section 210a(b) has not been filed.

MC-FC-77927 filed November 6, 1978. Transferee: TROWMAR TRANSPORT, INC., 14 Beech Street, Corinth, NY 12822. Transferor: Ashline Trucking, Inc., same address as transferee. Transferee's Representative: Bertrand F. Gould, 8 Elk Street, Albany, NY 12207. Transferor's Representative: W. Norman Charles, P.O. Box 724, Glenn Falls, NY 12801. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate Nos. MC-119407 and MC-119407 (Sub-No. 6), issued May 13, 1960, and April 15, 1974, respectively, as follows: lumber from Poland, NY, and points in Essex, Hamilton, and Warren Counties, NY, to points in CT, MA, NH, NJ, NY, PA, and VT and from South Colton, NY, and points in Fulton and Saratoga Counties, NY, to points in CT, MA, NH, NJ, PA, and VT. Transferee holds no authority from this Commission but is affiliated with W. M. Girvan, Inc., an authorized motor contract carrier holding authority under Permit No. MC-14107. Application has been filed for temporary authority under Section 210a(b).

H. G. Homme, Jr.,
Secretary.

[FR Doc. 78-33691 Filed 11-30-78; 8:45 am]

[7035-01-M]

[No. 36807]

DENVER & RIO GRANDE WESTERN RAILROAD CO.

Abandonment Between Farmington, N.M., and Alamosa and Antonito, Colo.

Decided November 17, 1978.

In a petition filed December 27, 1977, the Denver and Rio Grande Western Railroad Company (D&RGW) requested permission to cancel certain rates on gypsum wallboard, plaster, and related products published as items 520-Series and 650-Series in D&RGW Freight Tariff 7286-G, I.C.C. 1221. These rates affect shipments from Sigurd, UT, and Adobe, Co, to Chama Azotea, Monero, Amargo, Lumberton, Dulce, Navajo, Cedar Hill, Inca, Aztec, Flora Vista and Farmington, NM., and Juanita, Gato, Arboles, Ignacia, Oxford, Florida, Falfa, Durango, Posta and Bondad, CO. All of the above are points served by Rio Grande Motor Way, Incorporated, which is a wholly owned subsidiary of D&RGW. The petition was originally filed under Finance Docket Number 24745, in which the Commission permitted D&RGW to abandon its rail service between Alamosa and Farmington. This petition was separated and renumbered.

D&RGW alleges that since January 1, 1973, it has not moved any shipments of gypsum wallboard and related articles between the aforementioned points. It requests that the rates for the movement of these items be considered obsolete and that permission to cancel be granted. The parties to Finance Docket No. 24745 and the general public will be given an opportunity to show cause why these rates whould not be cancelled.

This decision does not significantly affect the quality of the human environment and is not a major action under the Energy Policy and Conservation Act or 1975.

It is ordered:

A copy of this decision shall be served on the parties to Finance Docket No. 24745 and the Director, Office of the Federal Register, for publication.

Any interested persons who oppose the petitioner's request for permission to cancel the rates in issue are ordered to show cause why such permission to cancel should not be granted by filing within 30 days after publication of this decision in the Federal Register, statements in opposition, in Docket No. 36807, addressed to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

By the Commission, Division 1, Commissioners Brown, Gresham, and Clapp.

H. G. Homme, Jr.,
Secretary

[FR Doc 78-33693 Filed 11-30-78; 8:45 am]

[7035-01-M]

[Ex Parte No. 357]

INCREASED FREIGHT RATES AND CHARGES NATIONWIDE—8 PERCENT

Oral Argument

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Oral Argument.

SUMMARY: The ICC has decided to hold oral argument on the rail general rate increase proposed in Ex Parte No. 357.

TIME AND PLACE: The oral argument will be held at 9:00 a.m., Wednesday, December 6, 1978, in Hearing Room B, Interstate Commerce Commission Building, 12th Street and Constitution Avenue, N.W., Washington, D.C. Parties who plan to participate should inform the ICC by letter (Room 5342, Washington, D.C. 20423)

as soon as possible, but no later than December 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Mrs. Janice M. Rosenak, Interstate Commerce Commission, Washington, D.C. 20423. Phone No.: (202) 275-7693.

SUPPLEMENTARY INFORMATION: By petition and verified statements filed November 1, 1978, United States railroads sought to increase freight rates and charges generally by 8 percent within and between Eastern, Southern, and Western Territories. Exceptions from the general level of 8 percent were proposed on a number of commodities, with the intended result of a revenue yield of 8.3 percent above present levels. The ICC granted the requested authority to file a master tariff in a decision served November 6, 1978.

In the oral argument, one hour will be allocated for the carriers' presentation, any portion of which may be reserved for rebuttal. Protestants and other interested parties will be allocated a total of two hours. Matters already of record in the pleadings shall not be repeated. To the extent possible, the parties are requested to consolidate their positions and fairly apportion the time between various interests. If agreement cannot be reached, the ICC will make such apportionment.

Parties are invited to address all relevant issues in Ex Parte No. 357.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 78-33611 Filed 11-30-78; 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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[6335-01-M]

1

NOVEMBER 28, 1978.

COMMISSION ON CIVIL RIGHTS.

DATE AND TIME: Tuesday, December 12, 1978, 9 a.m. to 5:30 p.m. Wednesday, December 13, 1978, 9 a.m. to 1:15 p.m.

PLACE: Departmental Auditorium, Constitution Avenue, between 12th and 14th Streets NW., Washington, D.C.

STATUS: Open to public.

MATTERS TO BE CONSIDERED: Consultation with police officials, academicians, experts in criminology, representatives of Federal agencies, police unions and civil rights organizations on the current state of police/community relations, the role of the police in society, recruiting and training, firearms policies and the use of deadly force, regulating police discretion, performance evaluation, police discipline and remedies for police misconduct.

CONTACT PERSON FOR MORE INFORMATION:

Barbara Brooks, Public Affairs Unit, 202-254-6697.

[S-2421-78 Filed 11-29-78; 11:24 am]

[6351-01-M]

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., December 5, 1978.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. Report on Interpretative Letters-Policy, Procedures and Priorities; 2. Expedited Adjudicatory Proceedings; and 3. Chicago Board of Trade Petition for removal of Speculative Trading Limits.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2427-78 Filed 11-29-78; 3:27 pm]

[6351-01-M]

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:30 a.m., December 5, 1978.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Commission review of staff decision to deny petition for confidential treatment.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2428-78 Filed 11-29-78; 3:27 pm]

[6351-01-M]

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., December 8, 1978.

PLACE: 2033 K Street NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2429-78 Filed 11-29-78; 3:27 pm]

[6715-01-M]

5

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Wednesday, December 6, 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 Matters, Compliance, Personnel.

DATE AND TIME: Thursday, December 7, 1978 at 10 a.m.

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 dates for future meetings.
Correction and approval of minutes.

Draft regulations for Presidential Primary Matching Fund, Title II, Code of Federal Regulations, Subchapter C.
Earmarked contributions.
Outreach program for Presidential candidates.
Final fiscal year 1978 management report.
First fiscal year 1979 management report.
Audit program for 1978 elections.
Appropriations and budget.
Pending legislation.
Pending litigation.
Liaison with other Federal agencies.
Classification actions.
Routine administrative matters.

Portions of the meeting closed to the public:

Any matters not concluded on December 6, 1978.

PERSONS TO CONTACT FOR INFORMATION:

Ms. Sharon Snyder, Press Office, telephone 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-2433-78 Filed 11-29-78; 3:40 pm]

[6740-02-M]

6

NOVEMBER 27, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 9 a.m., November 29, 1978.

PLACE: 825 North Capitol Street NE., Hearing Room A, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will continue consideration of Docket No. RM79-3; regulations implementing the Natural Gas Policy Act of 1978.

CONTACT PERSON FOR MORE INFORMATION:

Lois D. Cashell, Acting Secretary, telephone 202-275-4166.

[S-2420-78 Filed 11-29-78; 11:24 am]

[6720-01-M]

7

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 43, No. 228, page 55310, November 27, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., November 29, 1978.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION:

Franklin O. Bolling, 202-377-6677.

CHANGES IN THE MEETING: The following item has been added to the agenda for the open meeting: Consideration of Proposed Amendment to Community Reinvestment Act Regulation.

No. 199, November 29, 1978.

RONALD A. SNIDER,
Assistant Secretary.

[S-2430-78 Filed 11-29-78; 3:27 pm]

[6720-01-M]

8

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., December 5, 1978.

PLACE: 1700 G Street NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED:

Branch Office Application—First Federal Savings & Loan Association of Cocoa, Cocoa, Fla.
Branch Office Application—Biscayne Federal Savings & Loan Association, Miami, Fla.
Branch Office Application—Wolverine Federal Savings & Loan Association, Midland, Mich.
Branch Office Application—Provident Federal Savings & Loan Association of Riverside, Riverside, Calif.
Satellite Office Application—Collective Federal Savings & Loan Association, Egg Harbor City, N.J.
Branch Office Application—Uptown Federal Savings & Loan Association, Chicago, Ill.
Consideration of Proposed Merger—Conservative Savings & Loan Co., Cincinnati, Ohio, into Thrift Savings & Loan Co., Norwood, Ohio.
Limited Facility Branch Office Application—Heritage Federal Savings & Loan Association, Daytona Beach, Fla.
Consideration of Amendment of Charter (Change of Name)—First Federal Savings & Loan Association of Cedar Falls, Cedar Falls, Iowa.
Consideration of Designation of Lawrence B. Muldoon as Supervisory Agent-Holding Company Regulations.
Applications for Bank Membership and Insurance of Accounts—Northwest Savings & Loan Association, Redmond, Oreg.
Application for Permission to Organize a New Federal—Harold Fontenot, et al., Opelousas, La.
Consideration of regulations partially implementing the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (FIRICA).
Branch Office Application—Branch Office Application—Home Federal Savings & Loan Association of San Francisco, San Francisco, Calif.

No. 200, November 29, 1978.

Announcement is being made at the earliest practicable time.

RONALD A. SNIDER,
Assistant Secretary.

[S-2431-78 Filed 11-29-78; 3:27 pm]

[6210-01-M]

9

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 55311, November 27, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Following 10 a.m. open portion, Wednesday, November 29, 1978.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item was added:

Federal Reserve Bank and Branch director appointments. (This matter was originally announced for a meeting on November 13, 1978).

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: November 29, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-2423-78 Filed 11-29-78; 3:27 pm]

[6210-01-M]

10

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Wednesday, December 6, 1978.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO CONSIDERED:

SUMMARY AGENDA

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board requests that an item be moved to the discussion agenda.

1. Final action on the proposed simplification of Reports of Condition and Income for small banks. (Proposed earlier for public comment: Docket No. R-0183).
2. Proposed interpretation of Regulation Q (Interest on Deposits) regarding the withdrawal of interest earned on time deposit funds.

DISCUSSION AGENDA

1. Proposed amendment to Regulation Q (Interest on Deposits) modifying the early withdrawal penalty rule primarily as it applies to Individual Retirement and Keogh Accounts. (Proposed earlier for public comment: Docket No. R-0172).
2. Recommendations for changes in Reserve Bank and Treasury operating procedures regarding eligible collateral under the Treasury tax and loan investment program.
3. Any agenda items carried forward from a previously announced meeting.

NOTE.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling 202-452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board 202-452-3204.

Dated: November 29, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-2424-78 Filed 11-29-78; 3:27 pm]

[7905-01-M]

11

RAILROAD RETIREMENT BOARD.

TIME AND DATE: 9:30 a.m., December 8, 1978.

PLACE: Board's meeting room on the 8th floor of its headquarters building at 844 Rush Street, Chicago, Ill. 60611.

STATUS: The entire meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

(1) Appeal from referee's denial of disability annuity application, Thomas J. Zornes.
(2) Appeal from referee's denial of disabled widow's annuity, Ruby Hoskins.
(3) Appeal from referee's denial of disability annuity application, Clarence D. Corrello.
(4) Appeal of Kenneth J. Martin under the Railroad Unemployment Insurance Act.

CONTACT PERSON FOR MORE INFORMATION:

R. F. Butler, Secretary of the Board, COM No. 312-751-4920, FTS No. 387-4920.

[S-2432-78 Filed 11-29-78; 3:27 pm]

[8010-01-M]

12

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 55056, November 24, 1978.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, November 20, 1978.

CHANGES IN MEETING: Deletion/addition of items; new meeting.

The following additional item will be considered at the closed meeting to be held on Tuesday, November 28, 1978 at 10 a.m.:

Regulatory matter regarding financial institutions.

The following items will not be considered at the closed meeting to be held on Tuesday, November 28, 1978 at 10 a.m.:

Institution of injunctive action.
Institution and settlement of injunctive action.

The following additional items will be considered at the closed meeting to be held on Wednesday, November 29, 1978, immediately following the open meeting at 9:30 a.m.:

Access to investigative files by Federal, State or self-regulatory authorities.
Institution of injunctive action.

The following item will be considered at the closed meeting to be held on Friday, December 1, 1978, at 9:30 a.m.:

Institution and settlement of administrative proceeding of an enforcement nature.

Chairman Williams and Commissioners Loomis, Evans, and Karmel determined that Commission business required the above changes and that no earlier notice thereof was possible.

NOVEMBER 29, 1978.

[S-2422-78 Filed 11-29-78; 11:24 am]

[8010-01-M]

13

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 December 4, 1978, in Room 825, 500 North Capitol Street, Washington, D.C.

Open meetings will be held on Tuesday, December 5 at 3:30 p.m. and on Wednesday, December 6, 1978 at 10 a.m. A closed meeting will be held on Wednesday, December 6 immediately following the open meeting 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 Loomis, Evans and Karmel determined to hold the aforesaid meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, December 5, 1978, at 3:30 p.m., will be:

Meeting with officials of the Bank Administration Institute to discuss their current activities. For further information, please contact George A. Fitzsimmons at 202-755-1160.

The subject matter of the open meeting scheduled for Wednesday, December 6, 1978, at 10 a.m., will be:

Consideration of a request for approval of the application of Daniel J. Claridy allowing him to become associated with Rooney, Pace Inc., a registered broker-dealer, in a nonsupervisory capacity with adequate supervision. For further information, please contact David P. Tennant at 202-376-2036.

The subject matter of the closed meeting scheduled for Wednesday, December 6, 1978, immediately following the open meeting at 10 a.m., will be:

Access to investigative files by Federal, State or self-regulatory authorities.
Formal order of investigation.
Freedom of Information Act appeals.
Litigation matter.
Regulatory matters regarding financial institutions.
Settlement of administrative proceeding of an enforcement nature.
Settlement of injunctive actions.
Subpoena enforcement action.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Mark B. Goldfus at 202-755-1129.

NOVEMBER 27, 1978.

[S-2425-78 Filed 11-29-78; 3:27 pm]

[8120-01-M]

14

TENNESSEE VALLEY AUTHORITY.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 55563, November 28, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m. (c.s.t.), Thursday, November 30, 1978.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: Auditorium, TVA's National Fertilizer Development Center, Muscle Shoals, Ala.

STATUS: Open.

CHANGES IN MATTERS TO BE CONSIDERED: The following item is added to the previously announced agenda:

C—PURCHASE AWARDS

7. Rejection of bids received in response to Invitation No. 72-823875 for gas ducts and hoppers for electrostatic precipitators for the Cumberland Steam Plant. Recommends rejection of all bids received and negotiation on an emergency basis of the requirement.

CONTACT PERSON FOR MORE INFORMATION:

John Van Mol, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tenn. Information is also available at TVA's Washington Office, 202-566-1401.

SUPPLEMENTARY INFORMATION:

TVA BOARD ACTION

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting be changed to include the additional item shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below.

Approved:

S. DAVID FREEMAN.

RICHARD M. FREEMAN.

[S-2419-78 Filed 11-29-78; 11:24 am]

[8240-01-M]

15

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: December 7, 1978, 9 a.m.

PLACE: Board Room, Room 2-500, Fifth Floor, 955 L'Enfant Plaza North SW., Washington, D.C. 20595

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: November 29, 1978, 43 FR 55838.

CHANGE IN THE MEETING: Addition of the following item to the open session:

Consideration of D&H request.

[S-2426-78 Filed 11-29-78; 3:27 pm]

federal register

FRIDAY, DECEMBER 1, 1978
PART II



FEDERAL HOME LOAN MORTGAGE CORPORATION

PRESIDENTIAL COMMISSION ON WORLD HUNGER

■

PRIVACY ACT OF 1974

Systems of Records; Annual Publication

[6720-01-M]

FEDERAL HOME LOAN MORTGAGE CORPORATION

(No: MC 78-36)

PRIVACY ACT OF 1974

Systems of Records, Annual Publication

OCTOBER 26, 1978.

AGENCY: Federal Home Loan Mortgage Corporation.

ACTION: System of records—republication.

SUMMARY: This notice complies with the Privacy Act of 1974 (5 U.S.C. sec. 552a).

EFFECTIVE DATE: Effective upon publication.

FOR FURTHER INFORMATION CONTACT: Diana G. Browne, Assistant General Counsel, Federal Home Loan Mortgage Corporation, 1700 G Street, NW, Washington, DC 20552 (202/789-4732).

SUPPLEMENTARY INFORMATION:

The Federal Home Loan Mortgage Corporation is required under Section 552a (e)(4) of the Privacy Act of 1974 to republish annually its systems of records. The notice of the Corporation's record systems was published for effect at 42 Federal Register, p. 64931, et seq. (December 29, 1977).

Two record systems, FHLMC-I and FHLMC-III, containing information on Corporation employees and potential candidates for employment, respectively, have been amended to indicate that such systems are maintained in the Corporation's Regional Offices and Underwriting Offices as well as in the Washington Office. FHLMC-II has been amended to indicate that the routine use of corporate employee salary cards includes the calculation of employee pensions and the furnishing of information to the Corporation's insurance carriers and to the Internal Revenue Service. A new record system, FHMLC-VI, containing information on garnishments of employees' salaries, has been added. Addresses on all record systems have been changed as a result of the move of the Corporation's principal office.

FHLMC—I

System name: Corporate Employee Files.

System location: Office of Personnel, Federal Home Loan Mortgage Corporation, 1700 G Street, NW, Washington, DC 20552; Office of Regional Vice President-Administration, Northeast Regional Office, 2001 Jefferson Davis Highway, Arlington, Virginia 22202; Office of Regional Vice President-Administration, Atlanta Regional Office, Peachtree Center-Cain Tower Building, 229 Peachtree St, NE, Suite 2600, Atlanta, Georgia 30303; Office of Regional Vice President-Administration, Chicago Regional Office, 111 East Wacker Drive, Suite 1515, Chicago, Illinois 60601; Dallas Regional Office, 12700 Park Central Place, Suite 1800, Dallas, Texas 75251; Los Angeles Regional Office, 3435 Wilshire Blvd., Suite 1000, Los Angeles, California 90010; Office of Underwriting Office Manager, Denver Underwriting Office, 8301 East Prentice, Englewood, Colorado 80110; Office of Underwriting Office Manager, Seattle Underwriting Office, 600 Stewart Street, Suite 2000, Seattle, Washington 98101; Office of Underwriting Office Manager, San Francisco Underwriting Office, 600 California Street, San Francisco, California 94108; Office of Underwriting Office Manager, Newport Beach Underwriting Office, 1400 North Bristol Street, Suite 260, Newport Beach, California 92660.

Categories of individuals covered by the system: All present and former employees.

Categories of records in the system: Employment applications and/or resumes, forms recording personnel actions, employee evaluations, memos for the record and other routine personnel information on identified individuals.

Authority for maintenance of the system: 12 U.S.C. sec. 1452(b).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Used to provide data in determining current employment status of employee, history of personnel actions, evaluation of performance and to assist in determining what, when and whether future personnel actions should be taken. Users are the Office of Personnel, the Office of the Regional Vice President-Administration (in the case of Regional Office employees), the Office of the Underwriting Office Manager (in the case of Underwriting Office employees), supervisory personnel at levels above the employee on whom the record is maintained and the employee himself. These records also may be reviewed by the Legal Department in connection with certain personnel actions, and by the Internal Auditor and his staff.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Hard copy records.

Retrievability: By employee name.

Safeguards: Records are stored in locked cabinets and can only be viewed upon request to the Director of Personnel or the Personnel Administrator in the Washington Office, to the Regional Vice President—Administration in the appropriate Regional Office, and to the Underwriting Office Manager in the appropriate Underwriting Office.

Retention and disposal: Records are retained indefinitely.

System manager(s) and address: Director of Personnel, Federal Home Loan Mortgage Corporation, 1700 G Street, NW, Washington, DC 20552; Office of the Regional Vice President—Administration in each FHLMC Regional Office (see addresses above); Office of the Underwriting Office Manager in each FHLMC Underwriting Office (see addresses above).

Record source categories: The individual on whom file is maintained the supervisor, the Director of Personnel, the Regional Vice President—Administration (in the case of Regional Office employees), and the Underwriting Office Manager (in the case of Underwriting Office employees).

FHLMC—II

System name: Corporate Employee Current Salary Cards.

System location: Finance Department, Federal Home Loan Mortgage Corporation, 1700 G Street, N.W., Washington, D.C. 20552.

Categories of individuals covered by the system: All present employees.

Categories of records in the system: Current salary, dependent status, number of tax exemptions, age and date of hire, and information regarding various types of deductions from salaries.

Authority for maintenance of the system: 12 U.S.C. sec. 1452(b).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Used to make salary payments to employees, to calculate employee pensions, to make reports to the Internal Revenue Service and to provide information to the Corporation's insurance carriers in connection with the provision of insurance benefits to employees. Used by the Corporate Treasurer, the Supervisor of Accounts Payable, the Payroll Clerk, the Director of Personnel and the Legal Department. These records also may be reviewed by the Internal Auditor and his staff.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Hard copy records.

Retrievability: By employee name.

Safeguards: Records are stored in locked card file and can be obtained through Accounts Payable Supervisor.

Retention and disposal: Cards are destroyed as they become out of date or upon termination of employment.

System manager(s) and address: Supervisor of Accounts Payable, Federal Home Loan Mortgage Corporation, 1700 G Street, N.W., Washington, D.C. 20552.

Record source categories: Employee files.

FHLMC—III

System name: Potential Candidates for Employment.

System location: Office of Personnel, Federal Home Loan Mortgage Corporation, 1700 G Street, NW, Washington, DC 20552; Office of Regional Vice President—Administration in each FHLMC Regional Office (see addresses above); Office of Underwriting Office Manager in each FHLMC Underwriting Office (see addresses above).

Categories of individuals covered by the system: Potential candidates for employment.

Categories of records in the system: Employment applications, resumes, referral letters and memos.

Authority for maintenance of the system: 12 U.S.C. sec. 1452(b).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Used to evaluate qualifications of potential candidates by the Director of Personnel, the Regional Vice President—Administration (in the case of candidates in a Regional Office), the Underwriting Office Manager (in the case of candidates in an Underwriting Office) and supervisors. These records also may be reviewed by the Internal Auditor and his staff.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Hard copy records are stored in file folders.

Retrievability: By candidate name.

Safeguards: Access is gained through a request to the Director of Personnel or the Personnel Administrator, to the Regional Vice President—Administration in the appropriate Regional Office or to the Underwriting Office Manager in the appropriate Underwriting Office.

Retention and disposal: Files are retained one year and destroyed unless candidate is hired. If candidate is hired, file becomes part of employee records.

System manager(s) and address: Director of Personnel, Federal Home Loan Mortgage Corporation, 1700 G Street, NW, Washington, DC 20552; Office of Regional Vice President—Administration in each FHLMC Regional Office (see addresses above); Office of Underwriting Office Manager in each FHLMC Underwriting Office (see addresses above).

Record source categories: These records are normally submitted by the individual seeking employment. Some records could come from individuals or employment agencies sponsoring the application.

FHLMC—IV

System name: Corporate Employee Conflict of Interest Files.

System location: Office of Personnel, Federal Home Loan Mortgage Corporation, 1700 G Street, N.W., Washington, D.C. 20552.

Categories of individuals covered by the system: All present and former employees.

Categories of records in the system: Annual conflict of interest statements submitted by employees, and memoranda concerning such annual statements.

Authority for maintenance of the system: 12 U.S.C. sec. 1452(b).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Used to provide data to determine if employee has any interest which conflicts with proper performance of duties with the Federal Home Loan Mortgage Corporation. Users are the Legal Department and the Personnel Department. In instances where personnel action may be warranted, users also may include supervisory personnel at levels above the employee on whom the record is maintained. These records also may be reviewed by the Internal Auditor and his staff.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Hard copy records are stored in file folders.

Retrievability: By employee name.

Safeguards: Records can only be viewed upon request to the Director of Personnel.

Retention and disposal: Records are retained indefinitely.

System manager(s) and address: Director of Personnel, Federal Home Loan Mortgage Corporation, 1700 G Street, N.W., Washington, D.C. 20552.

Record source categories: The individual on whom the file is maintained, and in some instances members of the Legal Department and supervisory personnel above the level of the employee on whom the record is maintained.

FHLMC—V

System name: Net Yield Debt Side.

System location: Department of Marketing and Department of Accounting, Federal Home Loan Mortgage Corporation, 1700 G Street, N.W., Washington, D.C. 20552; Department of Systems, Federal Home Loan Mortgage Corporation, 311 First Street, N.W., Washington, D.C. 20001.

Categories of individuals covered by the system: All present and former holders of FHLMC Participation Certificates.

Categories of records in the system: The list of registered holders of Participation Certificates, the monthly payment record, and copies of remittance checks.

Authority for maintenance of the system: 12 U.S.C. sec. 1452(b).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Used to make monthly remittances to investors, to make reports to the Internal Revenue Service, and to derive a Registered Holder Profile which is used for statistical purposes by the Marketing Department and has in the past been provided to the Federal Reserve. (While the list of holders is used to derive the Registered Holder Profile, the profile itself identifies holders by category only, and not by name, and therefore does not constitute a part of a record system.) A copy of the list of holders is provided each month to Loan Accounting, which is responsible for determining the dollar amounts of the checks to the holders, and to Accounts Payable, which is responsible for mailing the checks. Users are the Marketing, Accounting, and Systems Departments. These records may also be reviewed by the Internal Auditor and his staff.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Investor lists and monthly payment records are hard copy. Copies of remittance checks are on microfilm.

Retrievability: By investor name.

Safeguards: Only members of the Loan Accounting and Accounts Payable Departments and those members of the Marketing Department who work in processing have access to the investor lists and monthly payment records. Access to remittance checks records may be obtained through a request to the Director of the Systems Department.

Retention and disposal: Records are retained indefinitely.

System manager(s) and address: Director of Processing, Director of Sales Accounting and Supervisor of Accounts Payable, Federal Home Loan Mortgage Corporation, 1700 G Street, N.W., Washington, D.C. 20552; Director of Systems Development, Federal Home Loan Mortgage Corporation, 311 First Street, N.W., Washington, D.C. 20001.

Record source categories: The individual on whom the information is maintained.

FHLMC—VI

System name: Corporate Employee garnishments.

System location: Legal Department and Department of Accounting, Federal Home Loan Mortgage Corporation, 1700 G Street, N.W., Washington, D.C. 20552.

Categories of individuals covered by the system: Employees and former employees whose salaries are or have been subject to an order of garnishment.

Categories of records in the system: The garnishment order served on the Corporation, internal memoranda indicating the manner in which the deductions from salary are to be made; and the records of deductions which have been made.

Authority for maintenance of the system: 12 U.S.C. sec. 1452(b).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Used by the Legal Department to determine and advise Accounts Payable as to the amount to be deducted from each payroll check. Accounts Payable uses this information in making salary payments to employees. Users are the Legal Department, the Supervisor of Accounts Payable, the Payroll Clerk and the Director of Personnel. These records may also be reviewed by the Internal Auditor and his staff.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Hard copy records are stored in file folders:

Retrievability: By employee name.

Safeguards: Access gained through a request to the General Counsel.

Retention and disposal: Records are stored indefinitely.

System manager(s) and address: General Counsel and Supervisor of Accounts Payable, Federal Home Loan Mortgage Corporation, 1700 G Street, N.W., Washington, D.C. 20552.

Record source categories: Order of garnishment.

By the Board of Directors.

J. J. Finn,
Secretary.

[FR Doc. 78-33386 Filed 11-30-78; 8:45 am]

[6820-97-M]

PRESIDENTIAL COMMISSION ON WORLD HUNGER

Privacy Act of 1974

Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, Public Law 93-479, 4 U.S.C. 552a, the Presidential Commission on World Hunger, hereafter known as the Commission, hereby publishes for comment those systems of records subject to the Privacy Act of 1974 which are maintained by the Commission. Any person interested in commenting on the routine use of the system notices may do so by submitting comments in writing to the Director of Administrative and Fiscal Services, 734 Jackson Place, N.W., Washington, D.C. 20006. Comments should be submitted on or before January 1, 1979. The Commission's procedures for access to records in the systems are contained in 1 CFR Part 475.

Dated at Washington, D.C. on November 21, 1978.

Daniel E. Shaughnessy,
Deputy Executive Director.

PCWH—1

System name: Payroll Records—Presidential Commission on World Hunger.

System location: General Services Administration, Region 3 Office; copies held by the Commission. (GSA holds records for the Presidential Commission on World Hunger under contract.)

Categories of individuals covered by the system: Employees and Members of the Commission.

Categories of records in the system: Varied payroll records, including, among other documents, time and attendance cards; payment vouchers; comprehensive listing of employees; health records; requests for deductions; tax forms, W-2 forms, overtime requests; leave data; retirement records. Records are used by Commission and GSA employees to maintain adequate payroll information for Commission employees, and otherwise by Commission and GSA employees who have a need for the record in the performance of their duties.

Authority for maintenance of the system: 31 U.S.C. "Money and Finance", generally. Also, Executive Order 12078, September 5, 1978.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: See Appendix. Records also are disclosed to GAO for audits; to the Internal Revenue Service for investigation; and to private attorneys, pursuant to a power of attorney.

A copy of an employee's Department of the Treasury Form W-2, Wage and Tax Statement, also is disclosed to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 4416, 5517, or 5520, or, in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Director of Administrative and Fiscal Services, 734 Jackson Place, N.W., Washington, D.C. 20006. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to written request from an appropriate city official to the Director of Administrative and Fiscal Services, 734 Jackson Place, N.W., Washington, D.C. 20006.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper and microfilm.

Retrievability: Social Security Number.

Safeguards: Stored in guarded building; released only to authorized personnel, including among others, GSA liaison staff and finance personnel; and Commission administrative staff.

Retention and disposal: Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition System (OAS P 1820.2).

System manager(s) and address: Director of Administrative and Fiscal Services, 734 Jackson Place, N.W., Washington, D.C. 20006.

Notification procedure: Refer to Commission access regulations contained in 1 CFR Part 475.

Record access procedures: Refer to Commission access regulations contained in 1 CFR Part 475.

Record source categories: The subject individual; the Commission.

PCWH—2

System name: General Financial Records—Presidential Commission on World Hunger.

System location: General Services Administration, Central Office; copies held by the Commission. (GSA holds records for the Presidential Commission on World Hunger under contract).

Categories of individuals covered by the system: Employees and members of the Commission.

Categories of records in the system: SF-1038, Application and account for advance of funds; Vendor register and vendor payment tape. Information is used by accounting technicians to maintain adequate financial information and by other officers and employees of GSA and the Commission who have a need for the record in the performance of their duties.

Authority for maintenance of the system: 31 U.S.C. "Money and Finance", generally; also Executive Order 12078, dated September 5, 1978.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: See appendix. Records also are released to GAO for audits; to the IRS for investigation; and to private attorneys, pursuant to power of attorney.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper and tape.

Retrievability: Manual and automated by name.

Safeguards: Stored in guarded building; released only to authorized personnel including among others, GSA liaison staff and finance personnel; and Commission administrative staff.

Retention and disposal: Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition.

System manager(s) and address: Director of Administrative and Fiscal Services, 734 Jackson Place, N.W., Washington, D.C. 20006.

Notification procedure: Refer to Presidential Commission on World Hunger access regulations contained in 1 CFR Part 475.

Record access procedures: Refer to Presidential Commission on World Hunger in 1 CFR Part 475.

Contesting record procedures: Refer to Presidential Commission on World Hunger access regulations contained in 1 CFR Part 475.

Record source categories: The subject individual; the Commission.

PCWH—3

System name: General Informal Personnel Files—Presidential Commission on World Hunger.

System location: Presidential Commission on World Hunger, 734 Jackson Place, N.W., Washington, D.C. 20006.

Categories of individuals covered by the system: Commission members staff and consultants, past and present.

Categories of records in the system: Copies of: Personnel qualifications statements, personnel action requests and notifications, oaths of office, consultant and/or expert certifications, delegations of authority, background information for security clearances (non-sensitive and critical-sensitive), statements of employment and financial interests, training materials and correspondence with members of the Commission.

Authority for maintenance of the system: Title 5, U.S.C. "Government Organization and Employees", generally. Also Executive Order 12078, September 5, 1978.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper.

Retrievability: Manual.

Safeguards: Stored in lockable file cabinets, released only to authorized personnel, including among others, GSA liaison staff and Commission administrative staff.

Retention and disposal: Retained until no longer needed, then discarded.

System manager(s) and address: Director of Administrative and Fiscal Services, 734 Jackson Place, N.W., Washington, D.C. 20006.

Notification procedure: Refer to Presidential Commission on World Hunger access regulations contained in 1 CFR Part 475.

Contesting record procedures: Refer to Presidential Commission on World Hunger access regulations contained in 1 CFR Part 475.

Record source categories: The subject individual; the Commission.

Appendix—Presidential Commission On World Hunger

In the event that a system of records maintained by this Commission 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, or 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 this 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 this 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 or 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 this system of records may be disclosed to officers and employees of a federal agency for purposes of audit.

The information contained in this 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 this system of records may be disclosed as a routine use to a Member of Congress or to a Congressional 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 this system of records may be disclosed to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

[FR Doc. 78-33405 Filed 11-30-78; 8:45 am]

federal register

FRIDAY, DECEMBER 1, 1978
PART III



DEPARTMENT OF LABOR

Employment Standards Administration

■

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

[4510-27-M]

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLLY 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 determination 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 deteminations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Detemination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wage 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 rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

NEW GENERAL WAGE DETERMINATION DECISION

New Hampshire.—NH78-2164.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Arizona:	
AZ78-5114	Aug. 11, 1978.
AZ78-5115; AZ78-5116	July 28, 1978.
Georgia:	
GA78-1077	Sept. 8, 1978.
GA78-1088; GA78-1089	Oct. 13, 1978.
Idaho:	
ID78-5120	Sept. 8, 1978.
Illinois:	
IL 78-2106	Oct. 20, 1978.
IL78-2113	Oct. 10, 1978.
IL78-2123; IL78-2128; IL78-2138	Oct 27. 1978.
Massachusett:	
MA78-2079	Sept. 22, 1978.
New Jersey:	
NJ78-3009	Apr. 21, 1978.
Pennsylvania:	
PA78-3017	May 5, 1978.
PA78-3044; PA78-3045	May 12, 1978.
PA78-3090	Oct. 27, 1978.
PA78-3126	Sept. 9, 1978.
PA78-3129	Sept. 16, 1978.
Tennessee:	
TN78-1049	May 19, 1978.
TN78-1058; TN78-1060	July 7, 1978.
TN78-1090; TN78-1091	Oct. 20, 1978.
Texas:	
TX78-4082; TX78-4084; TX78-4085; TX78-4087	Aug. 25, 1978.
TX78-4096	Sept. 22, 1978.
TX78-4114	Oct. 20, 1978.
Utah:	
UT78-5128	Oct. 6, 1978.

SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being superseded and their dates of publication in the FEDERAL REGISTER are listed with each State. Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Alabama:	
AL78-1031 (AL78-1095)	Apr. 7, 1978.
Connecticut:	
CT78-3055 (CT78-2160); CT78-3056 (CT78-2161)	July 28, 1978.
CT78-3135 (NY78-3097)	Oct. 14, 1978.
Delaware:	
CT77-3135 (CT78-3097)	Do.
Illinois:	
IL78-2050 (IL78-2144)	Mar. 24, 1978.
Indiana:	
IN78-2030 (IN78-2163)	Mar. 10, 1978.
Kentucky:	
KY77-1122 (KY78-1099); KY77-1124 (KY78-1098); KY77-1125 (KY78-1101)	Sept. 30, 1977.
KY77-1134 (KY78-1100)	Nov. 11, 1978.

Maine:	
CT77-3135 (NY78-3097)	Oct. 14, 1977.
Maryland:	
CT77-3135 (NY78-3097)	Do.
Massachusetts:	
CT77-3135 (NY78-3097)	Do.
New Hampshire:	
CT77-3135 (NY78-3097)	Do.
New Jersey:	
CT77-3135 (NY78-3097)	Do.
New York:	
CT77-3135 (NY78-3097)	Do.
NY78-3034 (NY78-3095)	Apr. 14, 1978.
Pennsylvania:	
CT77-3135 (NY78-3097)	Oct. 14, 1977.
Rhode Island:	
CT77-3135 (NY78-3097)	Do.
Texas:	
TX78-4078 (TX78-4115)	Aug. 11, 1978.

Cancellation of General Wage Determination Decisions

NONE

Signed at Washington, D.C., this 24th day of November 1978.

Dorothy P. Come,
Assistant Administrator,
Wage and Hour Division.

[FR Doc. 78-33426 Filed 11-30-78; 8:45 am]

NEW DECISION

STATE: New Hampshire COUNTIES: Statewide
DECISION NO.: NH78-2164 DATE: Date of Publication
DESCRIPTION OF WORK: Highway Construction (and airport runway and taxiway construction, but does not include bridges over navigable water; tunnels; buildings in highway rest areas; and railroad construction).

Belknap County, New Hampshire

Highway Construction:

1-NH-3-B

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$ 7.09	.45	.30		.01
Cement Masons	8.49	.75	.50		.01
Laborers	6.16	.60	.70		.10
Truck Drivers	5.50				
Power Equipment Operators:					
Asphalt Paver	9.20	1.10	1.00	a	.03
Backhoe	7.18				
Bulldozer	6.50				
Front End Loader	7.66				
Mechanic	7.39				
Roller	8.85				

Carroll County, N.H.

Highway Construction

2-NH-3-B

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$ 7.09	.45	.30		.01
Laborers	6.76	.60	.75		.10
Truck Drivers:					
2 axle	4.71	.55	.25		
3 axle	4.94	.55	.25		
Power Equipment Operators:					
Asphalt Paver	9.20	1.10	1.00	a	.03
Asphalt Roller	9.20	1.10	1.00	a	.03
Backhoe	9.32	1.10	1.00	a	.03
Bulldozer	8.865				
Front End Loader	9.32	1.10	1.00	a	.03
Grader	8.865				
Mechanic	8.53	.75	.60	a	
Roller, Self-Powered	8.865	1.10	1.00	a	.03

CHESHIRE CO., N.H.:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$ 7.09	.45	.30		.01
Ironworkers	9.20	.70	1.00		.02
Laborers:					
Laborer	5.25	.50	.45		.10
Air Tool Operator	5.75	.50	.45		.10
Truck Drivers:					
3 axle	5.44	.55	.40		
Power Equipment Operators:					
Asphalt Paver	6.85				
Asphalt Roller	6.78				
Bulldozer	7.90	.45	.60	a	.05
McCarthy Drill Operator	7.35	.45	.60	a	.05
Front End Loader, up to 3/4 yd.	7.35	.45	.60	a	.05
Front End Loader, 3/4-4 yds	8.10	.45	.60	a	.05
Grader	8.10	.45	.60	a	.05
Mechanic	7.90	.45	.60	a	.05
Roller, Self-Powered	6.78				

Coos County, New Hampshire

Highway Construction:

4-NH-3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$ 7.45	.55	.50		.01
Ironworkers	9.20	.70	1.00		.02
Laborers	5.91	.50	.45		.10
Truck Drivers:					
3 axle	4.94	.45	.25		
Earth Moving Equipment	5.17	.45	.25		
Power Equipment Operators:					
Asphalt Paver	8.85				
Backhoe	8.93	1.10	.80	a	.02
Bulldozer	8.53	.75	.60	a	
Front End Loader	8.93	1.10	.80	a	.02
Grader	8.67				
Mechanic	8.81	1.10	.80	a	.02
Roller, Self-Powered	8.53	.75	.60	a	
Shovel	8.65	.75	.60	a	

GRAFTON COUNTY:

6-NH-3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$ 7.95	.65	.50		.01
Ironworkers	9.20	.70	1.00		.02
Laborers	5.91	.50	.45		.10
Truck Drivers:					
3 axle	4.94	.45	.25		
Earth Moving Equipment	5.17	.45	.25		
Power Equipment Operators:					
Asphalt Paver	8.85				
Backhoe	8.93	1.10	.80	a	.02
Bulldozer	8.53	.75	.60	a	
Front End Loader	8.93	1.10	.80	a	.02
Grader	8.67				
Mechanic	8.81	1.10	.80	a	.02
Roller, Self-Powered	8.53	.75	.60	a	
Shovel	8.65	.75	.60	a	

Hillsboro County, New Hampshire

Highway Construction:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$ 7.09	.45	.30		.01
Cement Masons	8.31				
Ironworkers	9.20	.70	1.00		.02
Laborers:					
Laborer	5.91	.50	.45		.10
Driller	7.06	.50	.45		.10
Pipelayer	6.56	.50	.45		.10
Pneumatic Tool Operator	5.00	.40	.40		.05
Truck Drivers:					
2 axle	5.21	.55	.40		
3 axle	5.53				
Dump, Trailer Truck	5.67	.55	.40		
Earth Moving Equipment	5.67	.55	.40		
Power Equipment Operators:					
Asphalt Paver	8.30	.80	.75	a	.05
Asphalt Roller	7.82				
Backhoe	9.60				
Crane	9.90				
McCarthy Drill	7.60	.55	.70	a	.05
Front End Loader (3/4 - 4 yds.)	7.91				
Front End Loader (over 4 yds)	9.80				
Gradall	8.75	.80	.75	a	.05
Grader	8.50	.80	.75	a	.05
Mechanic	8.33				
Oiler	6.90	.80	.75	a	.05
Roller, Self-Powered	7.63				
Scraper	8.50	.80	.75	a	.05
Shovel	9.15	.85	.75	a	.05

Rockingham Co.

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
Carpenters	6.78					
Cement Masons	8.19	.55	.40		.01	
Ironworkers	9.70	.70	1.00		.02	
Laborer	6.23					
Truck Driver, 3 axle	4.80					
Power Equipment Operators:						
Backhoe	8.30	.55	.60		.03	
Bulldozer	9.20	1.10	1.00		.03	
Crane	9.32	1.10	1.00		.03	
Front End Loader	8.93	1.10	1.00		.03	
Gradall	9.32	1.10	1.00		.03	
Grader	9.20	1.10	1.00		.03	
Mechanic	8.95					
Paver	7.00					
Rollers	8.49					

Merrimack Co.

7-NH-3-B

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$ 7.45	.55	.50		.01
Ironworkers	9.70	.70	1.00		.02
Laborers	5.91	.50	.45		.10
Piledrivermen	8.80	.65	.50		.01
Truck Drivers:					
3 axle	4.94	.45	.25		
Special Earth Moving Equipment	5.67	.55	.40		
Power Equipment Operators:					
Asphalt Paver	8.15	.45	.60	a	.05
Asphalt Roller	8.15	.45	.60	a	.05
Backhoe	9.60				
Bulldozer	10.05				
Crane	8.75	.80	.75	a	.05
McCarthy Drill	8.15	.85	.75	a	.05
Front End Loader (3/4 - 4 yd)	8.30	.80	.75	a	.05
Front End Loader (over 4 yd)	10.25				
Grader	8.50	.80	.75	a	.05
Mechanic	8.30	.80	.75	a	.05
Roller, Self-Powered	8.30	.80	.75	a	.05

Strafford Co., N.H.

Highway Construction

9-NH-3-B

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$ 7.09	.45	.30		.01
Cement Masons	7.92				
Laborers:					
Laborer	5.91	.50	.45		.10
Pipelayer	6.41	.60	.70		.10
Truck Drivers:					
2 axle	4.71	.55	.25		
3 axle	4.94	.55	.25		
Earth Moving Equipment	5.17	.55	.25		
Power Equipment Operators:					
Asphalt Paver	8.53	.75	.60	a	
Asphalt Roller	8.81	1.10	.80	a	.02
Backhoe	8.93	1.10	.80	a	.02
Bulldozer	8.81	1.10	.80	a	.02
Front End Loader	8.93	1.10	.80	a	.02
Gradall	8.93	1.10	.80	a	.02
Roller, Self-Powered	8.81	1.10	.80	a	.02

SULLIVAN COUNTY

10-NH-3-B

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$ 7.09	.45	.30		.01
Cement Masons	7.65	.45	.40		.01
Electricians	9.00				
Ironworkers	8.65	.55	.90		.01
Laborers:					
Laborer	5.91	.50	.45		.10
Air Tool Operator	6.31	.50	.45		.10
Blaster	6.41	.50	.45		.10
Truck Drivers:					
2 axle	4.71	.55	.25		
3 axle	4.94	.55	.25		
Earth Moving Equipment	5.17	.55	.25		
Power Equipment Operators:					
Asphalt Paver	7.90	.45	.60	a	.05
Asphalt Roller	7.025	.45	.60	a	.05
Backhoe	8.35	.45	.60	a	.05
Bulldozer	7.90	.45	.60	a	.05
Front End Loader (under 3/4 yd)	7.35	.45	.60	a	.05
Front End Loader (over 4 yd)	8.10	.45	.60	a	.05
Gradall	8.35	.45	.60	a	.05
Grader	8.35	.45	.60	a	.05
Mechanic	6.43				
Roller, Self-Powered	7.35	.45	.60	a	.05

FOOTNOTES:

a New Year's Day; Washington's Birthday; Memorial Day; Fourth of July; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; Christmas Day.

DECISION #AZ78-5114 - Mod. #5
(43 FR 35828 - August 11, 1978)
Statewide Arizona

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Electricians:					
Gallup Area - Apache County north of Hwy. #66:					
Electricians	$14.10	.60	3% + .70		1/2%
Cable Splicers	14.69	.60	3% + .70		1/2%
Add:					
Marble Workers - Phoenix Area	10.99	.65	.70		.19
Change:					
Sheet Metal Workers:					
Zone Bases: From the Administration Building or City Hall in Douglas and Tucson:					
Zone A (0-22 miles)	10.30	3% +1.14	1.91		.04
Zone B (22-45 miles)	11.25	3% +1.14	1.91		.04
Zone C (Over 45 miles)	12.80	3% +1.14	1.91		.04
Terrazzo Workers; Tile Setters:					
Phoenix Area	10.79	.65	.90		.16

MODIFICATIONS P. 2

DECISION #AZ78-5115 - Mod. #5 (43 FR 33018 - July 28, 1978) Maricopa County, Arizona	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Add:					
Marble Workers	$10.99	.65	.70		.19
Change:					
Painters:					
Zone A: 0-40 miles from Court House in Phoenix, Mesa and including Luke and Williams Air Force Bases:					
Brush; Roller; Tapers; Sandblaster (Nozzleman); Sandblaster (Pot tender)	10.19	.60	.40		.08
Spray; Paperhangers	10.44	.60	.40		.08
Creosote Applier	10.52	.60	.40		.08
Swing Stage:					
Brush, Sandblaster	10.59	.60	.40		.08
Spray	10.84	.60	.40		.08
Zone B: 41-60 miles from Court House in Phoenix:					
Brush; Roller; Tapers; Sandblaster (Nozzleman); Sandblaster (Pot tender)	11.19	.60	.40		.08
Spray; Paperhangers	11.44	.60	.40		.08
Creosote Applier	11.52	.60	.40		.08
Swing Stage:					
Brush, sandblaster	11.59	.60	.40		.08
Spray	11.84	.60	.40		.08
Zone C: 61 miles and over from Court House in Phoenix:					
Brush; Roller; Tapers; Sandblaster (Nozzlemen); Sandblaster (Pot tender)	12.44	.60	.40		.08
Spray; Paperhangers	12.69	.60	.40		.08
Creosote Applier	12.77	.60	.40		.08
Swing Stage:					
Brush, sandblaster	12.84	.60	.40		.08
Spray	13.09	.60	.40		.08
Add:					
Terrazzo Workers; Tile Setters	10.79	.65	.90		.16
DECISION #AZ78-5116 - Mod. #5 (43 FR 33014 - July 28, 1978) Pima County, Arizona					
Change:					
Sheet Metal Workers:					
Zone A (0-22 miles from Tucson)	$10.30	3%+$1.14	$1.91		.04
Zone B (22-45 miles from Tucson)	11.25	3%+ 1.14	1.91		.04
Zone C (Over 45 miles from Tucson)	12.80	3%+ 1.14	1.91		.04

MODIFICATIONS P. 3

DECISION #GA78-1077 - Mod. #3 (43 FR 40174 - September 8, 1978) Clayton, DeKalb, & Fulton Counties, Georgia	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Boilermakers	$10.70	1.05	1.10		.02
Lathers	9.35	.40	.35		.05
DECISION #GA78-1088 - Mod. #1 (43 FR 47426 - October 13, 1978) Chatham County, Georgia					
CHANGE:					
Boilermakers	$10.70	1.05	1.10		.02
Plasterers	7.25				
DECISION #GA78-1089 - Mod. #1 (43 FR 47427 - October 13, 1978) Richmond County, Georgia					
CHANGE:					
Boilermakers	$10.70	1.05	1.10		.02
Laborers:					
Building & Construction laborers	5.10	.20			.10
Power & air tool operators, concrete or clay pipe layers, & wipers, mortar makers, & power buggy operators	5.25	.20			.10
Powderman, wagon drill operators, tool room tenders, tunnel laborers, shaft laborers, burners, acetylene (demolition work), slip form workers (steel or wood, screw or jack type), potman, creosote materials handler, steel form setter (on grade), chimney or stack workers	5.30	.20			.10

DECISION #ID78-5120 - Mod. #3
(43 FR 40176 - September 8, 1978)
Statewide Idaho

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers:					
Remaining Counties and Idaho County (south half)	$12.11	.77	$1.37		
Plumbers:					
Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Nez Perce, Shoshone Counties	13.94	.85	1.26	1.25	.12
Roofers:					
Ada, Adams, Boise, Camas, Canyon, Custer, Elmore, Gem, Idaho County (south of the 46th Parallel), Lemhi, Owyhee, Payette, Valley, Washington Counties:					
Roofers; Kettlemen	$9.95	.65	.30	.50	
Roofers working with coal tar and pitch products	11.95	.65	.30	.50	
Sheet Metal Workers:					
Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Custer, Franklin, Fremont, Jefferson, Lemhi, Madison, Oneida, Power, Teton Counties	11.77	.87	.57		.09

DECISION #IL78-2106-Mod. #1
43 FR 49167 - October 20, 1978
Fulton, Hancock, McDonough & Schuyler Counties, Illinois

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:					
Remainder of Counties					
Group 5	10.76	.45	.80		.05

DECISION #IL78-2113 - Mod #1
43 FR 50303 - October 10, 1978
Christian, Dewit, Macon, Moultrie, Piatt, and Shelby Counties, Illinois

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers & Stonemasons:					
Macon, Moultrie, Piatt and Shelby Counties.	11.55	.60	1.00		.005
Laborers:					
Staunton & Vicinity					
Common	11.20		.60		.035
All Brick and Plaster Mason Tender	11.70		.60		.035
Workmen Cuting and Burning w/a Torch; Men working on the Bottom of Sewer Trenches, etc.	11.45		.60		.035
Dynamite Men	12.80		.60		.035
TILE - TERRAZZO - MARBLE WORKERS:					
Macon and Shelby Counties	11.25	.60	1.00		.005
Piatt County	11.25	.60	1.00		.005

DECISION #IL78-2123- Mod. #1
43 FR 50308 - October 27, 1978
Henderson, Henry, Knox, Mercer, Rock Island, Stark & Warren Counties, Illinois

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers:					
Rock Island and Mercer Co.	11.40	.55	1.00		.04

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #IL78-2128 -Mod. #1					
43 Fr 50323 - October 27, 1978					
Clark, Clay, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Jasper, Lawrence, Richland, Wabash & Wayne Counties, IL.					
Change:					
Bricklayers:					
Remainder of Counties:					
Bricklayers, Stonemasons, Bricklayers, Pointer-caulker-Cleaners, Marble - Tile - Terrazzo workers	11.20		.75		
Glaziers:					
Clark & Edgar Counties	13.29				
IRONWORKERS:					
Coles, Cumberland, Douglas & Edgar Counties	11.55	.65	1.00		.08
DECISION No. IL78-2138-MOD#1					
43 FR 50328 - October 27, 1978					
Boone, Dekalb, Dupage, Kane, Kendall, Lake, McHenry, and Will Counties, Illinois					
Change:					
Cement Masons:					
Kane, Kendall, McHenry and Dekalb, Counties.	12.10	.75	.80		
DECISION NO. MA78-2079- Mod #2					
(43 FR 43155- Sept. 22, 1978)					
Barnstable County, Massachusetts					
Change:					
Description of Work to include Residential construction					

DECISION #NJ78-3009 - Mod. #6
(42 FR 17223 - April 21, 1978)
Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Area covered by Bricklayers, Stonemasons, Cement Masons, & Plasterers:					
Zone 2: Bergen (Remainder of County) County					
Zone 3: Bergen (Wallington, part of East Patterson, Garfield, Lodi, North Arlington, and part of Lyndhurst,) Morris (Pompton Plains, Pequannock, Lincoln Park, Kinnelon, Butler, & Riverdale), Passaic, and Sussex (that portion north of a line along Route #521 from Dingmans Ferry to Tuttles Corner, then along Route #206 to Lafayette, then along North Church Rd. to Route #23, then along Route #23 to Passaic County line) Counties					
Change:					
Bricklayers, Stone Masons, Cement Masons, & Plasterers:					
Zone 4:					
Cement Masons	11.70	.75	1.00		
Plasterers	11.70	.75	1.00		.05
Electricians & Cable Splicers:					
Zone 2	13.40	7%	6%+.75		.02
Laborers, Building Construction:					
Zone 4	8.50	.80	.40		.07
Zone 12	8.40	.70	.60		.07
Zone 14	8.25	.70	.60		.07
Line Construction:					
Zone 12					
Linemen, cable splicers, hole digging equipment, trucks with winch or pole or steel handling trucks without winch	13.37	13%	7%		3/4%
Groundman winch operator	12.47	13%	7%		3/4%
Pipefitters:					
Bergen & Hudson Counties and the city of Passaic in Passaic County	11.80	1.00	1.50	1.00	.25
Soft Floor Layers	10.74	6%	5%+.50		.02

DECISION #PA78-3017 - Mod. #6
(43 FR - May 5, 1978)
Carbon, Monroe County, including Tobyhanna Army Depot, and Pile County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Elevator Contractors	$11.27	.895	.89	c+d	.03
Elevator Constructors Helpers	7.89	.895	.89	c+d	.03
Elevator Constructors helpers Probationary	5.635				
Boilermakers	13.775	1.075	1.00		.02
Power Equipment Operators: Monroe County including Tobyhanna Army Depot, and Pile County:					
Group 1	12.39	7%	10.3%	a	1.8%
Group 2	12.10	7%	10.3%	a	1.8%
Group 3	11.22	7%	10.3%	a	1.8%
Group 4	10.45	7%	10.3%	a	1.8%
Group 5	9.97	7%	10.3%	a	1.8%
Group 6	9.05	7%	10.3%	a	1.8%
Group 7	12.64	7%	10.3%	a	1.8%
Group 7-A	12.89	7%	10.3%	a	1.8%
Group 7-B	13.14	7%	10.3%	a	1.8%

DECISION #PA78-3044 - Mod. #4
(43 FR 20711 - May 12, 1978)
Luzerne County, Pennsylvania

Change:					
Marble Setters Remainder of County	$10.25		.75		
Elevator Constructors	11.27	.895	.89	c+d	.03
Elevator Constructors Helpers	7.89	.895	.89	c+d	.03
Elevator Constructors Helpers Probationary	5.635				
Boilermakers	13.775	1.075	1.00		.02
POWER EQUIPMENT OPERATORS:					
Group 1	12.39	7%	10.3%	k	1.8%
Group 2	12.10	7%	10.3%	k	1.8%
Group 3	11.22	7%	10.3%	k	1.8%
Group 4	10.45	7%	10.3%	k	1.8%
Group 5	9.97	7%	10.3%	k	1.8%
Group 6	9.05	7%	10.3%	k	1.8%
Group 7	12.64	7%	10.3%	k	1.8%
Group 7-A	12.89	7%	10.3%	k	1.8%
Group 7-B	13.14	7%	10.3%	k	1.8%

DECISION #PA78-3045 - Mod. #6
(43 FR 20714 - May 12, 1978)
Lackawanna, Susquehanna, Wayne, and Wyoming Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$13,775	1.075	1.00		.02
Elevator Constructors	11.27	.895	.89	a+b	.03
Elevator COnstructors Helpers	7.89	.895	.89	a+b	.03
Elevator Constructors Helpers Probationary	5.635				
POWER EQUIPMENT OPERATORS:					
Group 1	12.39	7%	10.3%	a	1.8%
Group 2	12.10	7%	10.3%	a	1.8%
Group 3	11.22	7%	10.3%	a	1.8%
Group 4	10.45	7%	10.3%	a	1.8%
Group 5	9.97	7%	10.3%	a	1.8%
Group 6	9.05	7%	10.3%	a	1.8%
Group 7	12.64	7%	10.3%	a	1.8%
Group 7-A	12.89	7%	10.3%	a	1.8%
Group 7-B	13.14	7%	10.3%	a	1.8%

DECISION #PA78-3090 - Mod. #2
(43 FR 50357 October 27, 1978)
Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming & York Counties, Pennsylvania

Change:					
POWER EQUIPMENT OPERATORS: HEAVY CONSTRUCTION Lackawanna, Susquehanna, Wyoming Pike, Wayne, Monroe, and Luzerne Counties:					
Group 1	$12.39	7%	10.3%	a	1.8%
Group 2	12.10	7%	10.3%	a	1.8%
Group 3	11.22	7%	10.3%	a	1.8%
Group 4	10.45	7%	10.3%	a	1.8%
Group 5	9.97	7%	10.3%	a	1.8%
Group 6	9.05	7%	10.3%	a	1.8%
Group 7	12.64	7%	10.3%	a	1.8%
Group 7-A	12.89	7%	10.3%	a	1.8%
Group 7-B	13.14	7%	10.3%	a	1.8%

DECISION #PA77-3126 - Mod. #6
(42 FR 45622 - September 9,1977)
Lycoming County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Ironworkers	$12.105	1.14	1.36		.03

DECISION #PA77-3129 - Mod #7
(42 FR 46903 - September 16, 1977)
Northumberland County, Pennsylvania

Change:					
Ironworkers	$12.105	1.14	1.36		.03

DECISION #TN78-1049 - Mod. #2
(43 FR 21829 - May 19, 1978)
Statewide, Tennessee

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electricians:					
Shelby County	$10.78	.90	3% + .50		½ of 1%
All Remaining Counties	7.26				

DECISION #TN78-1058 - Mod. #4
(43 FR 29464 - July 7, 1978)
Hamilton, Marion, Polk, and Rhea Counties, Tennessee

CHANGE:

Boilermakers	$10.70	1.05	1.10		.02
Bricklayers, Stone masons, Marble masons, Tile setters, & Terrazzo workers:					
All Counties except Polk County	10.85	.55	.30		
Electricians:					
Wiremen	10.40	.70	9%		1%
Cable splicers	10.65	.70	9%		1%
Laborers:					
Group A	6.80	.25	.30		
Group B	6.90	.25	.30		
Group C	7.00	.25	.30		
Group D	7.10	.25	.30		
Group E	7.15	.25	.30		
Group F	7.45	.25	.30		
Group G	7.50	.25	.30		
Free Air Shafts & Tunnels -					
Group H	7.20	.25	.30		
Group I	7.35	.25	.30		
Group J	7.60	.25	.30		
Lathers	9.95				
Line construction:					
Linemen, operators of hole digging equipment tractor with winch	10.40	.70	9%		½ of 1%
Cable splicers	10.65	.70	9%		½ of 1%
Truck without winch	9.19	.70	9%		½ of 1%
Groundmen	7.65	.70	9%		½ of 1%
Power Equipment Operators:					
Group A	9.40	.35	.35		.10
Group B	8.60	.35	.35		.10
Group C	8.00	.35	.35		.10
Group D	7.70	.35	.35		.10
Plumbers & Pipefitters	11.00	.45	.50	c	.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TN78-1060 - Mod. #2 (43 FR 29467 - July 7, 1978) Davidson County, Tennessee					
CHANGE:					
Boilermakers	$10.70	1.05	1.10		.02
DECISION #TN78-1090 - Mod. #1 (43 FR 49205 - October 20, 1978) All of Knox & Monroe Counties, and that portion of Anderson & Roane Counties which comprise the Oak Ridge Energy Research & Development Administration site, Tennessee					
CHANGE:					
Boilermakers	$10.70	1.05	1.10		.02
Laborers:					
Construction laborers	6.02	.20	.20		.01
Form setter & stripper, pipe layer, asphalt raker, jackhammer op., air tool op., vibrator op., chain saw op., barco tamp op., mortar mixer, plasterer tender, all power driven tool op., hod carrier, power buggy, yarner, potman, snakeman, grademan, & flagman	6.17	.20	.20		.01
Acetylene burner	6.20	.20	.20		.01
Wagon drill operator	6.32	.20	.20		.01
Powderman	6.52	.20	.20		.01
Caisson hole man	6.82	.20	.20		.01
Concrete gun op., nozzleman	6.72	.20	.20		.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TN78-1091 - Mod. #1 (43 FR 49207 - October 20, 1978) Shelby County, Tennessee					
CHANGE:					
Boilermakers	$10.70	1.05	1.10		.02
Electricians:					
Wiremen & electronic technicians	11.08	.90	3% + .50		½ of 1%
Cable splicers	11.18	.90	3% + .50		½ of 1%
Line Construction:					
Linemen	10.78	.90	3% + .50		½ of 1%
Cable splicers	10.88	.90	3% + .50		½ of 1%
Special equipment operators	8.09	.90	3% + .50		½ of 1%
Groundmen	5.39	.90	3% + .50		½ of 1%
Painters:					
Commercial	9.70	.50	.50		.075
Industrial, spray, & sandblast	9.95	.50	.50		.075
Plasterers	10.65				.01

MODIFICATIONS P. 14

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX78-4082 - Mod. #5 (43 FR 38278 - August 25, 1978) Brazos County, Texas					
Change:					
Electricians	$12.25	.55	10%		.06
DECISION #TX78-4084 - Mod. #5 (43 FR 38281 - August 25, 1978) Galveston & Harris Cos., Texas					
Change:					
Electricians - Harris Co.	12.25	.55	10%		.06
DECISION #TX78-4085 - Mod. #3 (43 FR 38283 - August 25, 1978) Travis County, Texas					
Change:					
Electricians & cable splicers	11.50		8%		.8%
Line Construction:					
Linemen	11.56	.60	3%		1/2%
Groundmen	6.36	.60	3%		1/2%
Groundmen (1st year)	5.78	.60	3%		1/2%
DECISION #TX78-4087 - Mod. #4 (43 FR 38285 - August 25, 1978) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas					
Change:					
Electricians:					
Zone 1 - Electricians	11.08	.60	3%+.25		1/2%
Cable splicers	12.19	.60	3%+.25		1/2%
Line Construction - Zone 2:					
Lineman	11.08	.60	3%+.25		1/2%
Cable splicers	12.19	.60	3%+.25		1/2%
Groundman:					
More than 1 year experience	7.29	.60	3%+.25		1/2%
Less than 1 year experience	6.39	.60	3%+.25		1/2%
Op.-hole digger, line truck	8.48	.60	3%+.25		1/2%
Flat bed truck driver	6.39	.60	3%+.25		1/25

MODIFICATIONS P. 15

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX78-4096 - Mod. #6 (43 FR 43242 - September 22, 1978) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas					
Change:					
Building Construction:					
Electricians - Zone 1	$10.00	.60	3%		1/4%
Zone 2	11.50		8%		.8%
DECISION #TX78-4114 - Mod. #2 (43 FR 49208 - October 20, 1978) Lubbock County, Texas					
Change:					
Cement masons	8.15				
Electricians - Electricians	10.70	.60	3%		1/10%
Cable splicers	10.95	.60	3%		1/10%
Line construction:					
Linemen	10.70	.60	3%		1/10%
Plumbers & steamfitters	10.30	.50	.45		.04
DECISION #UT78-5128 - Mod. #2 (43 FR 46480 - October 6, 1978) Statewide Utah					
Change:					
Asbestos Workers	$12.11	.77	$1.37		
Ironworkers:					
Fence Erectors; Ornamental; Reinforcing; Structural	11.35	.70	1.25		.05
Painters:					
Remaining part of State:					
Brush; Roller	10.20	.51	.30		.02
Brush (swing stage); Brush (steel and bridge); Spray, Sandblaster; Steeplejack	10.50	.51	.30		.02
Spray (swing stage); Spray (steel and bridge); Sandblaster (swing stage)	10.75	.51	.30		.02
Wallcovering Hanger	10.45	.51	.30		.02
Refrigeration and Air Conditioning	11.50	.66	1.00		.06

SUPERSEDEAS DECISION

STATE: Alabama COUNTIES: *See below
DECISION NO.: AL78-1095 DATE: Date of Publication
Supersedes Decision No.: AL78-1031 dated April 7, 1978, in 43 FR-14840
DESCRIPTION OF WORK: Building construction (does not include single family homes and garden type apartments up to and including 4 stories)

*Counties: Lawrence, Limestone, Morgan

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers	10.86	.45	.60		.05
Bricklayers:					
Bricklayers, Marble masons, Stonemasons, Pointers, Cleaners, Caulkers	10.10				
Carpenters:					
Carpenters, & Soft floor layers	8.10	.40	.30		.03
Millwrights	8.74	.40	.30		.03
Piledrivermen	8.50	.40	.30		.03
Cement masons	9.35				
Electricians:					
Electricians, linemen	10.60	.50	3%+.45		1%
Cable splicers	10.85	.50	3%+.45		1%
Groundmen	8.55	.50	3%+.45		1%
Elevator Constructors	9.14	.445	.29	4%+a+b	.02
Ironworkers:					
Ornamental, reinforcing, structural	9.305	.60	.60		.08
Laborers (Lawrence County):					
Laborers, mason tenders, plasterers' tenders	5.90	.30	.45		
Air tool operators (jackhammer, vibrator, mortar mixers, pipelayers	6.10	.30	.45		
Laborers (Limestone & Morgan Counties):					
Laborers, mason tenders	5.21	.31	.45		
Air tool operator (jackhammer, vibrator), mortar mixer	5.46	31	.45		
Plasterers & Troweling machine operator	9.60				
Plumbers, pipefitters, steamfitters:					
Lawrence Co. (Eastern portion of Co., north from intersection of State Rt. 33 Rt. 20 to Wheeler Lake including Moulton & Wren, excluding Bankhead National Park), Limestone Co. & Morgan Co	10.80	.55	.55		.15

AL78-1095 - (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Plumbers, steamfitters:					
Lawrence Co., (Remaing portion)	10.70	.50	.60		.08
Roofers	8.35		.20		.10
Sheet metal workers	10.05	.69	.82		.09
Terrazzo workers & tile setters	9.85				

PAID HOLIDAYS:
A-New Year's Day, B-Memorial Day, C-Independence Day, D-Labor Day, E-Thanksgiving Day, F-Christmas Day

FOOTNOTES:
a. 6 paid holidays: A through F.

b. Employer contributes 4% of regular hourly rate to Vacation Pay Credit for employee who has worked in the business more than 5 years. Employer contributes 2% of regular hourly rate to Vacation Pay Credit for employee who has worked in the business less than 5 years.

AL78-1095 (Cont'd)

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	9.98	.40	.40		
GROUP B	8.64	.40	.40		
GROUP C	7.92	.40	.40		

GROUP A - Backhoe, bulldozer, crane, crane car, central mixing plant, concrete pump, derrick, dragline, dredge, drill, elevating grader, finishing machine (concrete), forklift, front end loader, gradall, grout pump, helicopter pilot, hoist, locomotive engineer, mechanic, motor patrol, mucking machine, piledriver, post hole digger, scraper (pull type & self prop.) shovel, sweeper, tractor (spec. equip.), trenching machine, well point & winch truck operators

GROUP B - Bituminous dist., central air comp., concrete mixer (port.) fireman floating equip., front end loader, rubber tire, ½ cu. yd. & under, locomotive brakeman, locomotive flagman, locomotive switchman, oiler-driver (35 ton crane & over outboard motor boat (when need for towing), paving machine, portable hoist "Buck hoist type", post hole digger mounted on farm type tractor & walk behind type trenching machine operators

GROUP C - Air compressor (port.) conveyor, fireman stationary equip., oiler, outboard motor boat & pump operators

Oiler driver - additional $.10 per hour

All cranes, derricks & gantry operators operating such equipment with an overall height of 150', including jibs; all scraper operators - additional $.25 per hour.

STATE: COUNNECTICUT COUNTIES: *SEE BELOW
DECISION NUMBER: CT78-2160 DATE: DATE OF PUBLICATION
Supersedes Decision No.: CT78-3055 dated, July 28, 1978 in 43 FR 33023
DESCRIPTION OF WORK: Building Construction (including residential), heavy (excluding tunnel construction) and highway construction

*Fairfield, Litchfield and Windham Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Fairfield Co.; Litchfield Co. Barkhamsted, Bethlehem, Bridgewater, Cornwall, Goshen, Harwinton, Kent, Litchfield, Morris New Hartford, New Milford, Plymouth, Roxbury, Sharon, Torrington, Warren, Washington, Watertown, Winchester, Woodbury & Thomaston; Windham Co.: Ashford, Chaplin, Eastford, Hampton, Scotland & Windham	$11.84	.75	1.16		
Lithcfield Co.: Canaan, Colbrook Norfolk, N. Canaan & Salisbury; Windham Co.: Woodstock	10.65	.94	1.25		.01
Windham Co.: Brooklyn, Canterbruy, Killingly, Plainfield, Pomfret, Putnam, Sterling & Thompson	10.63	1.25	1.33		
BOILERMAKERS	10.00	.60	10%		.01
BRICKLAYERS: Cement Masons; Finishers; Marble Masons; Plasterers, Stonemasons; Terrazzo Workers; Tile Setters (Building Construction):					
Fairfield Co.: Shelton	10.30	.75	.75		
Fairfield Co.: Bridgeport, Easton, Fairfield, Monroe, Startford & Trumbull	10.15	.75	.75		
Fairfield Co.: New Canaan, Norwalk, Ridgefield, Weston, Westport & Wilton	10.30	.75	.75		
Fairfield Co.: Darien & Stamford	10.72	.83	.25		
Fairfield Co.: Greenwich	10.75	.55	.55		.02
Fairfield Co.: Bethel, Brookfield Danbury, New Fairfield, Newtown Redding & Sherman; Litchfield Co.: Bridgewater, Kent, New Milford & Roxbury	10.10	.75	.75		.02

DECISION NO. CT78-2160

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS (CONT'D):					
Litchfield Co.: Barkhamsted, Bethlehem, Canaan, Colebrook, Cornwall, Goshen, Harwinton, Litchfield, Morris, New Hartford, Norfolk, N. Canaan, Salisbury, Sharon, Torrington, Warren, Washington, Winchester	9.80	.75	.75		
Windham Co.	10.30	.75	.75		.03
Litchfield Co.: Plymouth, Thomaston, Watertown, & Woodbury	10.05	.75	.75		.03
BRICKLAYERS (Heavy & Highway Construction):					
Except Towns of Darien, Greenwich & Stamford	9.60	.75	.75		b
Darien & Stamford	9.93	.83	.25		b
Greenwich	10.00	.55	.55		b
CARPENTERS; Millwrights; Pile-drivermen & Soft floor layers (Building Construction):					
Fairfield Co.: Greenwich	10.10	.85	.65		.05
Fairfield Co.: Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull, Weston, & Westport	10.25	.90	.65	c	a
Fairfield Co.: Bethel, Brookfield, Danbury, Darien, New Canaan, New Fairfield, Newtown, Norwalk, Redding, Ridgefield, Sherman, Stamford & Wilton; Litchfield Co.: Barkhamsted, Bethlehem, Bridgewater, Canaan, Colebrook Cornwall, Goshen, Kent, Litchfield, Morris, New Hartford, New Milford, Norfolk, North Canaan, Roxbury, Salisbury, Sharon, Torrington, Warren, Washington, Winchester & Woodbury					
Commercial	10.10	.90	.65		.10
Residential	6.90	.90	.65		.10

DECISION NO. CT78-2160

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Litchfield Co.: Harwinton, Plymouth, Thomaston & Watertown	10.20	.90	.65		.05
Windham Co.	10.25	.90	.65		.03
CARPENTERS (Heavy & Highway Construction):					
Fairfield Co.: Bridgeport, Easton, Fairfield, Monroe, Shelton Stratford, Trumbull, Weston & Westport	10.05	.90	.65	f	e
Fairfield Co.: Bethel, Brookfield, Danbury, Darien, New Canaan, New Fairfield, Newtown, Norwalk, Wilton, Redding, Ridgefield, Sherman, Stamford & Litchfield Co.: Remainder of Co.	10.05	.90	.65	f	.10
Fairfield Co.: Greenwich	10.05	.90	.65	f	.10
Litchfield Co.: Harwinton, Plymouth, Thomaston & Watertown	10.05	.90	.65		.05
Windham Co.:	10.05	.90	.65	f	.03
ELECTRICIANS:					
Fairfield Co.: Norwalk (E. of Five Mile River), Weston, Westport & Weston Building Construction	10.85	.68	3%+.30	6%	½%
Fairfield Co.: Bethel, Bridgeport, Brookfield, Danbury, Easton, Fairfield, Monroe, New Fairfield, Newton, Redding Ridgefield, Shelton, Sherman, Stratford & Trumbull; Litchfield Co.: Bridgewater & New Milford					
Building construction	11.05	1.10	3%+.30		½%
Residential construction	5.65	1.10	3%+.20		½%
Fairfield Co.: Darien, Greenwich, New Canaan & Stamford	12.00	6%+e	9½%	10%	.06
Litchfield Co.: Plymouth Building Construction	10.91	1.00	3%+.40		½% ½%
Windham Co.: Building construction	11.30	1.50	3%+1.10		½
Litchfield Co.: Rem. of Co.	10.70	1.22	3%+.60	g	1/8%

DECISION NO. CT78-2160

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS	10.35	.545	.35	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS	7.245	.545	.35	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	5.175				
GLAZIERS:					
Fairfield Co.: Greenwich	11.20	.66	1.66	.67	.01
Fairfield Co.: Rem of Co.; & Litchfield Co.	9.83	.95	.47	j	.01
Windham Co.	11.81	.84	.55	k	
IRONWORKERS:					
Ornamental; Reinforcing; Structural; and Precast concrete erection	12.25	.75	1.45	l	.08
LATHERS:					
Fairfield Co.: Bridgeport, Easton, Fairfield, Monroe, Redding, Ridgefield, Shelton, Stratford, Trumbull, Weston, Westport & Wilton	10.00	.50	.40		.01
Fairfield Co.: Greenwich, New Canaan, Norwalk & Stamford	9.26	.50	.20	.75	.01
Fairfield Co.: Bethel, Brookfield, Danbury, New Fairfield Newton & Shetman; Litchfield Co.: Bethlehem, Bridgewater, Cornwall, Goshen, Harwinton, Litchfield, Morris, New Milford N. Canaan, Plymouth, Roxbury, Thomaston, Torrington Warren, Washington, Watertown & Woodbury	9.90	.50	.30		.01
Litchfield Co.: Barkhamsted, Colebrook, New Hartford, Norfolk & Winchester; Windham Co.: Chaplin, Hampton, Scotland & Windham	9.90	.50	.30		.01
Windham Co.: Danielson	9.99	.65	.75		.01
LINE CONSTRUCTION:					
Fairfield Co.: Darien, Greenwich, New Canaan, Stamford & that portion of Norwalk, w. of Five Mile River					

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Railroad Construction					
Lineman	$10.71	6%	9½%	10%	.02+½%
Dynamite Man	9.53	6%	9½%	10%	.02+½%
Boring Machine Operator	9.32	6%	9½%	10%	.02+½%
Compressor Operator	8.67	6%	9½%	10%	.02+½%
Driver Groundman	8.14	6%	9½%	10%	.02+½%
Groundman	7.28	6%	9½%	10%	.02+½%
Underground Railroad Construction					
Lineman	13.26	6%	9½%	10%	.02+½%
Equipment Operator	12.20	6%	9½%	10%	.02+½%
Dynamite Man & Transitman	11.80	6%	9½%	10%	.02+½%
Mechanic	11.54	6%	9½%	10%	.02+½%
Heavy Driver Groundman	10.87	6%	9½%	10%	.02+½%
Driver Groundman	10.21	6%	9½%	10%	.02+½%
Groundman	9.68	6%	9½%	10%	.02+½%
Fairfield Co.: Rem. of Co.; Litchfield Co.; & Windham Co.					
Cross County Transmission Lines and Railroads					
Linemen, Cable Spilcer & Dynamite Man	9.98	.70	3%+.50	p	
Heavy Equipment Operator	9.02	.70	3%+.50	p	
Equipment Operator, Tractor Trailer Driver, Field Mechanic	8.46	.70	3%+.50	p	
Material Man	8.37	.70	3%+.50	p	
Groundman Truck Driver	7.53	.70	3%+.50	p	
Groundman, Experienced	6.70	.70	3%+.50	p	
Groundman, Inexperienced	5.91	.70	3%+.50	p	

DECISION NO. CT78-2160	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE SETTERS' HELPERS:					
Fairfield Co.: Darien, Greenwich, Norfolk, Stamford & Westport	8.45	1.26	1.54	1.00	
MARBLE SETTERS' HELPERS; Terrazzo workers' helpers; & Tile setters' helpers:					
Fairfield Co.: Rem. of Co.; Litchfield Co.; & Windham Co.	8.75	.50	.65		
PAINTERS:					
Bridge:					
Structural steel	13.00				
Spray	16.50				
Sandblasting or power tools	14.00				
Fairfield Co.: Greenwich					
Brush; Structural steel; paperhangers; Tapers	9.25	.20	.75	.30	
Spray	13.88	.20	.75	.30	
Fairfield Co.: Bridgeport, Easton, Fairfield, Southport, Stratford and Trumbull					
Brush	9.15	.50	.65	r	
Spray	11.65	.50	.65	r	
Taper	9.54	.50	.65	r	
Fairfield Co.: Darien, Stamford, New Canaan, Norwalk, Weston, Westport & Wilton					
Brush	9.25	.50	.75		.01
Roller, paperhangers, tapers epoxy	9.75	.50	.75		.01
Fairfield Co.: Bethel, Brookfield, Danbury, New Fairfield, Newton, Redding, Ridgefield, Sandy Hook & Sherman; Litchfield Co.: New Milford					

DECISION NO. CT78-2160	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Brush, Roller	10.85	.50	.50	r	
Steel	11.95	.50	.50	r	
Paperhangers; Tapers	10.85	.50	.50	r	
Epoxy	12.35	.50	.50	r	
Residential	9.10	.50	.50	r	
Fairfield Co.: Byram					
Brush	9.15	.60	1.30	.40	
Spray	10.15	.60	1.30	.40	
Steel & Swing stage & boatswain Chair	10.45	.60	1.30	.40	
Drywall taper	9.95	.60	1.30	.40	
Fairfield Co.: Monroe & Shelton					
Brush	10.75	.50	.80	s	.01
Hand roller; Paperhangers	11.25	.50	.80	s	.01
Structural steel, epoxy, polyester	11.75	.50	.80	s	.01
Spray	14.75	.50	.80	s	.01
Windham Co.: Willimantic & Windham					
Brush; Tapers	10.30	.60	.70		.01
Paperhangers	11.25	.60	.70		.01
Riding steel; steamcleaning; sandblasting; tanks; towers; & Hazardous work	11.10	.60	.70		.01
Spray	13.45	.60	.70		.01
Litchfield Co.: Bantam, Barkhamsted, Canaan, Colebrook, Cornwall, Goshen, Harwinton, Kent, Litchfield, New Hartford, New field, N. Canaan, Plymouth, Salisbury, Sharon, Terryville, Torrington, Warren, Winchester & Winsted					
Brush; Roller; Taping	9.95	.80	.45		
Spray; High	12.40	.80	.45		
Epoxy	10.20	.80	.45		
Paperhanging	10.45	.80	.45		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Windham Co., except Willimantic & Windham					
Brush	10.30	.50	.70		.01
Paperhangers	11.25	.50	.70		.01
Sign	11.25	.50	.70		.01
Taping	11.25	.50	.70		.01
Roller	10.80	.50	.70		.01
Structural Steel	11.10	.50	.70		.01
Spraying oil paint	13.45	.50	.70		.01
Spraying epoxy	15.98	.50	.70		.01
PLUMBERS:					
Windham Co.: Windham	10.31	1.10	1.09+.30		.10
PLUMBERS: Steamfitters:					
Fairfield Co.: Greenwich	10.50	.60	.70		.02
Fairfield Co.: Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford & Trumbull	11.09	.75	.70	4%	.01
Fairfield Co.: Georgetown, Norwalk, S. Norwalk, Weston, Westport & Wilton	9.50	.75	.50	.36	.02
Fairfield Co.: Bethel, Brookfield, Danbury, New Fairfield, Newton, Redding, Ridgefield & Sherman; Litchfield Co.: Bridgewater & New Milford	11.20	.75	.70	.50	.02
Fairfield Co.: Darien, New Canaan & Stamford	10.55	.75	.70	4%	.02
Litchfield Co.: Bantam, Barkhamsted, Canaan, Colebrook, Cornwall, Falls Village, Goshen, Harwinton, Kent, Lakeville, Litchfield, Morris, New Hartford, Norfolk, N. Canaan, Salisbury, Sharon, Torrington, Warren, Winchester & Winstead	10.70	.75+.13	.70	t	.05
Litchfield Co.: Bethlehem, New Preston Plymouth (incl. Terryville), Roxbury, Thomaston, Washington, Watertown & Woodsbury	10.70	.75+.13	.70	t	.05
Windham Co., except Windham	12.62	.60	.70	u	.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Fairfield Co., except that portion of Fairfield Co. bounded on the e. by the eastern boundary of Greenwich; Litchfield Co.: Bethlehem, Bridgewater, Kent New Milford, Roxbury, Washington & Woodbury	10.15	1.05	.45		
Litchfield Co.: Bantam, Canaan, Colebrook, Cornwall, Cornwall Bridge, E. Canaan, Falls Village, Gaylordsville, Goshen Lakeside, Litchfield, Marbledale, Morris, New Hartford, New Preston, Norfolk, Northfield, Oakville, Prequabuck, Pine Meadow Pleasant Valley, Plymouth, Riverton, Salisbury, Sharon, S. Kent, Taconic, Terryville, Thomaston, Torrington, Washington Depot, Watertown, W. Cornwall, W. Goshen, Winchester Center & Winsted; Windham Co.					
Composition	9.30	.525	.70	.55	
Slate & tile	9.80	.525	.70	.55	
Fairfield Co.: that portion of Fairfield Co. bounded on the e. by the eastern boundary of Greenwich					
Slate & Tile	9.65	1.79	2.65	.65	
SHEET METAL WORKER:					
Fairfield Co.; Litchfield Co.	11.50	1.28	1.04		.02
Windham Co.	11.30	.70	.86		.05
SPRINKLER FITTERS	11.75	.75	1.05		.08
STEAMFITTERS:					
Windham Co.: Windham	10.77	1.36	1.31		.13
TILE SETTERS' HELPERS:					
Fairfield Co.: Darien, Greenwich, Stamford, Norfolk & Westport	7.90	.50	1.27		

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PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas.

FOOTNOTES:

a. 7 paid holidays: A, C, D, E, F, Decoration Day & Good Friday.
b. 1 paid holiday: Good Friday. Employee must work 3 days during the work week in which the holiday falls, if scheduled, and if scheduled, the working day before and the working day after the holiday.
c. 4 paid holiday: B, C. D, and Good Friday. Employee must be employed 14 consecutive days immediately, prior to the holiday.
d. 3 paid holidays: C, D and E.
e. $7.00 per day
f. 3 paid holidays: B, C, and D.
g. The last 4 regular working hours prior to Christmas shall be paid half day.
h. 6 paid holidays: A through F
i. Employer contributes 4% of basic hourly rate for 5 years or more of service or 2% basic hourly rate for 6 months to 5 years of service as vacation pay credit.
j. 9 paid holidays: A through F, Washington's Birthday, Good Friday and Columbus Day.
k. 9 paid holidays: A through F, Washington's Birthday, Good Friday and Columbus Day.
l. The last 4 hours on Christmas Eve is a pid half day if employee has worked 5 consecutive days prior to Christmas Eve.
m. 9 paid holidays: A through F, Washington's Birthday, Good Friday, and Christmas Eve provided the employee has worked 45 full days for the employer during the 120 days prior to the holiday and is availabel for work the day preceding and following the holiday.
n. 1% of the gross electrical labor payroll.
o. Employer contributes $1.50 per day to a supplemental unemployment fund.
p. 9 paid holidays: A through F, Washington's Birthday, Good Friday, and a floating holiday per year provided the employee has been employed for a period of 5 working days prior to the holidays and works the scheduled work days immediately preceding and following the holidays.
q. 1 paid holiday: ½ day pay on Labor Day.
r. 2 paid holidays: C and D providing the employee works the day before and the day after the holiday.
s. 4 paid holidays: B, C, D and E providing the employee works the day before and the after the holiday.
t. 2 paid holidays: B and D and half day paid holiday the Friday after Thanksgiving and the last working day before Christmas and Good Friday paid half day.
u. 1 paid holiday: D
y. 3% of gross earnings to SASM1

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS (Building Construction)					
Derrick; Hoisting engineer 2 drums and over; Hoisting structural steel; Pile driver & Setting Stone	11.77	.90	.85	a	.10
Dragline; Forklift - over 5' lift; Front end loader - 7cy. or over; Gradall; Hoisting engineer (all types of equipment where a drum and cable are used to hoist, pull, motive power or operation); Koehring scooper loader and/or hoe; master mechanic; shovel; & tower crane	11.65	.90	.85	a	.10
Maintenance engineer	11.55	.90	.85	a	.10
Central mix operator; Coleman loader and screeing plant or similar equipment; combination hoe and loader over ½ yd; Conveyors - regardless of motive power; Front end loader 3cy. up to 7 cy.; Joy drill limited to joy heavy weight champion or equivalent; Mucking machine; Post hole digger; pumpcrete machine; rock boring machine; vibratory hammer; welder & well digger	11.28	.90	.85	a	.10
Compressor battery operator	10.45	.90	.85	a	.10
Asphalt spreader	11.05	.90	.85	a	.10
Bulldozer; Carry-all operators; Grader; & Scraper pan	10.99	.90	.85	a	.10
Combination hoe and loader machine; concrete mixer - 5 bags over; Front end loader under 3 cy.; power-stone spreader	10.94	.90	.85	a	.10

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air and steam valve	10.17	.90	.85	a	.10
Compressor; generator; pump and well point; welding machine	10.06	.90	.85	a	.10
Fork lift not over 4'; & Steam Jenny	10.83	.90	.85	a	.10
Mechanical heater	9.89	.90	.85	a	.10
Roller	10.72	.90	.85	a	.10
Dinky machine; power pavement breaker	10.55	.90	.85	a	.10
Fireman (High pressure	9.67	.90	.85	a	.10
Oiler	9.18	.90	.85	a	.10
Crane with boom, excluding jib, over 150' - $.25 extra					
Crane with boom, excluding jib, over 200' - $.50 extra					
LABORERS (Heavy and Highway Construction):					
Laborers	7.95	.60	.75		.10
Acetylene burners; Asphalt raker; Chain saw operator; Concrete & power buggy operators; Concrete saw operator; fence & guard rail erectors; form setters; hand operated concrete vibrator operators; hand operated vibratory compactor operators; Mason tenders; pipelayers; pneumatic drill operators; pneumatic gas & electric drill operators; powdermen & wagon drill operators	8.20	.60	.75		.10
Air track operators; block paver; curb setters	8.45	.60	.75		.10
Blasters	8.70	.60	.75		.10

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (Building Construction)					
Laborer	$7.95	.60	.75		.10
Asphalt rakers, concrete & power buggy ops, concrete saw ops, chain saw ops, fence & guard rail erectors, form setters, pipelayers, dry stone wall builders, mason tenders, pneumatic drill ops, pneumatic gas & electric drill ops, powdermen & wagon drill operators and Precast Erectors	8.20	.60	.75		.10
Air track ops, block pavers; and curb setters	8.45	.60	.75		.10
Blasters	8.70	.60	.75		.10
Open air caisson, cylindrical work and boring crew:					
Top man	7.95	.60	.75		.10
Bottom man	9.45	.60	.75		.10

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
CLASS 1	11.80	.90	.85	a	.10
CLASS 2	11.64	.90	.85	a	.10
CLASS 3	11.29	.90	.85	a	.10
CLASS 4	11.09	.90	.85	a	.10
CLASS 5	10.93	.90	.85	a	.10
CLASS 6	10.73	.90	.85	a	.10
CLASS 7	10.51	.90	.85	a	.10
CLASS 8	9.58	.90	.85	a	.10
CLASS 9	9.69	.90	.85	a	.10
CLASS 10	10.07	.90	.85	a	.10
CLASS 11	10.43	.90	.85	a	.10
CLASS 12	9.21	.90	.85	a	.10
CLASS 13	10.00	.90	.85	a	.10
Crane with 150' boom - $.25 extra					
Crane with 200' boom - $.50 extra					

CLASSIFFICATIONS: POWER EQUIPMENT OPERATORS

CLASS 1: Erecting and handling structural steel; front end loader (7cy. or over)
CLASS 2: Piledriver; Power shovel and crane; Dragline; Gradall; Trenching machine; lighter derrick; paver (concrete); derrick (stiff leg and guy); steel pile sheeting; koehring loader (skooper) master mechanic
CLASS 3: Drill (joy heavy weight champion or equivalent); side boom; loader (euclid); mucking machine; pumpcrete; rock and earth boring machine; Post hole digger; well digger; & hammer (vibratory); central mix; combination hoe & loader (over ½ yd)
CLASS 4: Asphalt spreader
CLASS 5: Front end loader (3yds. or over); Grader; power stone spreader; combination hoe and loader
CLASS 6: Asphalt roller; bulldozer; carryall; maintenance engineer; concrete mixer (5 bags and over); Welder
CLASS 7: Front end loader (under 3yds.); roller; power chipper; fork lift; finishing machine; asphalt plant; power pavement breaker; dinky machine
CLASS 8: Compressor; pump
CLASS 9: Fireman (high pressure)
CLASS 10: Well point system
CLASS 11: Compressor battery
CLASS 12: Oiler
CLASS 13: Batch plant; bulk cement plant

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Survey Crew					
Chief of Party	$10.06	.90	.85	a	.10
Ass't Chief of Party	9.34	.90	.85	a	.10
Instrument Man	8.63	.90	.85	a	.10
Rodman & Chainman	6.46	.90	.85	a	.10
TRUCK DRIVERS (Building, Heavy and Highway Construction)					
CLASS 1	7.91	.74	.725	a	
CLASS 2	8.01	.74	.725	a	
CLASS 3	8.11	.74	.725	a	
CLASS 4	8.06	.74	.725	a	
CLASS 5	8.16	.74	.725	a	
CLASS 6	8.21	.74	.725	a	

CLASSIFICATIONS: TRUCK DRIVERS

CLASS 1: Two axle trucks; helpers
CLASS 2: Three axle trucks; two axle ready mix
CLASS 3: Four axle trucks; heavy duty trailer-up to 40 tons
CLASS 4: Three axle ready-mix
CLASS 5: Four axle ready-mix; specialized earth moving equipment other than conventional type on-the-road trucks and simi-trailer (including Euclids)
CLASS 6: Heavy duty trailer-40 tons and over

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day & F-Christmas Day

FOOTNOTE:
a. 7 paid holidays: A through F and Good Friday

SUPERSEDEAS DECISION

STATE: CONNECTICUT COUNTIES: *SEE BELOW
DECISION NUMBER: CT78-2161 DATE: DATE OF PUBLICATION
Supersedes Decision No. CT78-3056, dated July 28, 1978 in 43 FR 33033
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories), heavy (excluding tunnel construction) and highway construction:

*Hartford, Middlesex, New Haven *New London, and Tolland Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Hartford Co.: Avon, Berlin, Bloomfield, Bristol, Burlington, Canton, E. Hartford, E. Windsor, Farmington, Glastonbury, Hartford, Manchester, Marlborough, New Britain, Newington, Plainville, Rocky Hill, Simsbury, Southington, S. Windsor, W. Hartford, Wethersfield & Windsor; Middlesex Co.; New Haven Co.: New London Co.: Bozrah, Colchester, E. Lyme, Franklin, Groton, Lebanon, Lyme, Montville, New London, Norwich, Old Lyme, Salem, Sprague & Waterford; & Tolland Co.: Andover, Bolton, Columbia, Conventry, Ellington, Hebron, Mansfield, Tolland, Vernon & Willington	$11.84	.75	1.16		
Hartford Co.: E. Granby, Enfield, Granby, Hartland, Suffield & Windsor Locks; Tolland Co.: Somers, Stafford & Union	10.65	.94	1.25		.01
New London Co.: Griswold, Ledyard, Lisbon, N. Stonington, Preston, Stonington & Voluntown	10.63	1.25	1.33		
BOILERMAKERS	11.30	.95	10%		.02
BRICKLAYERS:; Cement masons; Finishers; Marble masons; Plasterers; Stonemasons; Terrazzo workers & Tile setters (Building Construction): Hartford Co.: Avon, Bloomfield, Burlington, Enfield, E. Granby, E. Hartford, Farmington, Glastonbury, Granby, Hartford, Hartland, Manchester, Marlborough, Rocky Hill, Simsbury					

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS (CONT'D): S. Windsor, Suffield, Thompsonville, W. Hartford, Wethersfield, Windsor, Windsor Locks; Tolland Co.: Andover, Bolton, Columbia Coventry, Ellington, Hebron, Mansfield, Somers, Stafford, Storrs, Tolland, Union, Vernon & Willington	$10.30	.75	.75		
Hartford Co.: Berlin, New Britain, Newington, & Southington; New Haven Co.: Meriden, Wallingford, Cheshire (North of Route 68)	10.15	.75	.75		.03
Hartford Co.: Canton	9.80	.75	.75		
Middlesex Co.: & New London Co.	10.30	.75	.75		.03
New Haven Co.: Bethany, Branford, E. Haven, Guilford, Hamden, Madison, New Haven, N. Brandford, N. Haven, Orange, W. Haven, Woodbridge, Rem. of Milford & Chesire	10.30	.75	.75		
New Haven Co.: Ansonia, Derby, Oxford, Seymour & Southbury	9.80	.75	.75		.03
Hartford Co.: Bristol,& Plainville; New Haven Co.: Beacon Falls, Middlebury, Mixville, Naugatuck, Prospect, Waterbury & Wolcott	10.05	.75	.75		.03
New Haven Co.: Milford (West of Indian River to the Orange Town line)	10.15	.75	.75		.03
BRICKLAYERS (Heavy & Highway Construction)	9.60	.75	.75	b	
CARPENTERS: MILLWRIGHTS; PILEDRIVERMEN: RESILIENT FLOOR LAYERS (Building Construction) Hartford Co.: Hartford, West Hartford, Avon, Farmington, Simsbury, Bloomfield, Windsor, East Granby, Granby, Windsor Locks, Suffield, Enfield, East Windsor, South Windsor, East Hartford, Man-					

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
chester, Glastonbury, Rocky Hill, Wethersfield, Hartland; Tolland Co.: Stafford, Somers, Tolland, Ellington, Bolton Vernon	10.35	.90	.65		.05
Hartford Co.: New Britain, Newington, Berlin, Southington Plainville, Burlington, Canton, Bristol; New Haven Co.: Meriden, Wallingford, New Haven, East Haven, Brandord, Guilford, Madison, North Branford, North Haven, Hamden, West Haven, Orange (east of Orange Center Road and North of Route 1; also north of Route 1 and east of the Oyster River), Cheshire, Waterbury, Wolcott, Middlebury, Southbury, Naugatuck, Prospect, Bethany Beacon Falls, Woodbridge; Middlesex Co.	10.20	.90	.65		.05
New Haven Co.: Milford, Oxford, Derby, Seymour, Ansonia, Orange (that part west of Orange Center Rd. and south of Route 1, and that part south of Route 1 and West of the Oyster River	10.25	.90	.65	c	e
New London Co.: Tolland Co.: Mansfield, Union, Willington, Coventry, Hebron, Columbia, Andover	10.25	.90	.65		.03
CARPENTERS (Heavy & Highway Construction): New Haven Co.: Ansonia, Derby, Milford, Orange (W. of Orange Center Road & S. of Rte #1 & W. of the Oyster River), Oxford & Seymour	10.05	.90	.65	f	e
Hartford Co.; Middlesex Co.; & New Haven Co.: Remainder of Co.; Tolland Co.: Bolton, Ellington, Somers, Stafford, Tolland & Vernon	10.05	.90	.65	f	.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS CONT'D): New London Co.; Tolland Co.: Andover, Columbia, Conventry, Hebron, Mansfield, Union & Willington	10.05	.90	.65	f	.03
ELECTRICIANS: New Haven Co.: Milford	11.05	1.10	3%+.30		¼%
Hartford Co.: Berlin, Bristol, New Britain, Newington, Plainville & Southington	10.91	1.00	3%+.40		¼%
Hartford Co.: Suffield & Enfield (portion of Thompsonville West of George Washington Road and North of Hazard Ave)	10.45	.75	3%+.30		.03
Hartford Co.: Hartland; New Haven Co.: Beacon Falls, Middlebury, Naugatuck, Oxford, Prospect, Seymour, Southbury, Waterbury & Wolcott	10.70	1.22	3%+.60	h	1/8%
Hartford Co.: Rem. of Co.; Middlesex Co.: Cromwell, Middlefield, Middletown & Portland; New London Co.: Bozrah Colchester, Franklin, Lisbon, Montville, N. Stonington, Norwich, Griswold, Lebanon, Ledyard, (except Submarine Base) Preston, Salem, Sprague, Stonington & Voluntown & Tolland Co.	11.30	1.50	3%+1.10		¼%
Middlesex Co.: Remainder of County New Haven Co.: Reaminder of Co.; ford; New London Co.: E. Lyme, New London, Fishers Island Sound Old Lyme, Groton, Waterford & Ledyard (Submarine Base Only	10.91	1.00	3%+.40		¼%
ELEVATOR CONSTRUCTORS	10.35	.545	.35	4%+i+j	.02
ELEVATOR CONSTRUCTORS' HELPERS	7.245	.545	.35	4%+i+j	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	5.175				

DECISION No. CT78-2161	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GLAZIERS:					
New Haven Co., except Wallingford	9.83	.95	.47	k	.01
Hartford Co.; Middlesex Co.; New Haven Co.; Wallingford; New London Co.; & Tolland Co.	11.81	.84	.55	l	
IRONWORKERS:					
Ornamental; Reinforcing; Structural and Precast concrete erection	12.25	.75	1.45	m	.08
LATHERS:					
Hartford Co.: Bristol, Southington; New Haven Co.: Beacon Falls, Bethany, Cheshire, Meriden, Middlebury, Naugatuck, Oxford, Prospect, Southbury, Waterbury & Wolcott	9.90	.35	.50		.01
Hartford Co.: Avon, Berlin, Bloomfield, Burlington, Canton, E. Granby, E. Hartford, Farmington, Glastonbury, Granby, Hartford, Manchester, Marlborough, New Britain, Newington, Plainville, Rocky Hill, Simsbury, S. Windsor, W. Hartford, Windsor & Windsor Locks; Middlesex Co.: Cromwell, E. Haddam, E. Hampton, Middlefield, Middletown & Portland; New London Co.: Bozrah, Colchester, E. Lyme, Franklin, Grofton, Lebanon, Lisbon, Lyme, Salem, Sprague & Waterford; Tolland Co.: Andover, Bolton, Columbia, Coventry, Hebron, Mansfield & Vernon	9.90	.50	.30		.01
Hartford Co.: Broad Brook, Enfield, Hazardville, Melrose, Suffield, Thompsonville & Warehouse Point; Tolland Co.: Crystal Lake, N. Somers, Somers, Straffold, Stafford Springs, Straffordville & Union	9.40	.45	.25		.01

DECISION NO. CT78-2161	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS (CONT'D):					
Middlesex Co.: Chester, Clinton, Deep River, Durham, Essex, Haddam, Killingworth, Old Saybrook & Westbrook; New Haven Co.: Ansonia, Branford, Derby, E. Haven, Guilford, Hamden, Madison, Milford, New Haven, N. Branford, N. Haven, Orange, Seymour, Wallingford, W. Haven & Woodbridge	10.00	.75	.50		.01
LEADBURNERS	9.25	.35		n	.01
LINE CONSTRUCTION:					
Linemen	11.42	.70	3%+.50	o	
Equipment operators	10.69	.70	3%+.50	o	
Driver groundmen	8.37	.70	3%+.50	o	
MARBLE SETTERS' HELPERS; Terrazzo workers' helpers; & Tile setters' helpers	8.75	.50	.65		
PAINTERS:					
Bridge and Highway	13.00				
Structural steel	13.00				
Sandblastings or power tools	14.00				
Spray	16.50				
New Haven Co.: Milford (up to Gulf Street)					
Brush	9.15	.50	.65	p	
Taping	9.54	.50	.65	p	
Spray	11.65	.50	.65	p	
Hartford Co.: Avon, Bloomfield, Broad Brook, Canton, E. Granby, E. Hartford, E. Windsor, Enfield, Farmington, Glastonbury, Granby, Hartford, Manchester, Marlborough, Rocky Hill, Poquonock, Simsbury, S. Windsor, Suffield, S. Manchester, W. Hartford, W. Simsbury, Wethersfield, Windsor, & Windsor Locks; Tolland Co.: Andover, Ashford, Bolton, Columbia, Coventry, Ellington, Herbron, Mansfield, Rockville, Strafford, Somers, Tolland,					

DECISION NO. CT78-2161

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D):					
Union, Vernon, & Willington					
Brush; Tapers	10.20	.95	.70		
Paperhangers	10.70	.95	.70		
Riding steel; steamcleaning; Sandblasting; Tank; Towers, & Hazardous work	10.78	.95	.70		
Spray	13.70	.95	.70		
Hartford Co.: Berlin, Bristol, Burlington, E. Berlin, Forestville, Hartland, Kensington, Milldale, New Britain, Newington, Plainville, Plantsville, Southington, & Unionville; New Haven Co.: Cheshire, Guildord Madison, Meriden, & Wallingford; Middlesex Co.: Chester, Clinton, Cromwell, Deep River, Durham, E. Haddam, E. Hampton, Essex, Haddam, Higganum, Ivoryton, Killingworth, Middlefield, Middletown, Moodus, Norfolk, Portland, Saybrook, & Westbrook					
Brush; Roller; Taping	9.95	.80	.45		
Spray	12.40	.80	.45		
Epoxy	10.20	.80	.45		
Paperhanging	10.45	.80	.45		
Work over 60' & Boatswain chair; Open Steel	14.43	.80	.45		
Swing stage 40 - 60'	10.95	.80	.45		
New Haven Co.: Ansbnia, Beacon, Falls, Derby, Oxford, & Seymour					
Brush	10.75	.50	.80	q	.01
Hand roller; Paperhangers	11.25	.50	.80	q	.01
Structural steel, epoxy polyester	11.75	.50	.80	q	.01
Spray	14.75	.50	.80	q	.01
New Haven Co.: Bethany, Branford, E. Haven Hamden, Milford, (s. on Gulf Street & n. on North Street, New Haven, N. Bradford, N. Haven, Orange, W. Haven, Woodbridge, & Woodmont					

DECISION NO. CT78-2161

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D)					
Brush; Sandblasting	9.45	.50	.60		.02
Tapers	9.80	.50	.60		.02
Paperhangers	9.95	.50	.60		.02
Spray	12.10	.50	.60		.02
Structural steel	9.70	.50	.60		.02
New Haven Co.: Middlebury, Naugatuck, Prospect, Roxbury, Southbury, Thomaston, Washington, Waterbury, Watertown, Wolcott, & Woodbury					
Brush	9.20	.50	.70		
Paperhanger & Tapers	9.45	.50	.70		
Spray	14.18	.50	.70		
New London Co.: Norwich					
Brush	10.30	.60	.70		.01
Paperhangers	11.25	.60	.70		.01
Sign	11.25	.60	.70		.01
Taping	11.25	.60	.70		.01
Roller	10.80	.60	.70		.01
Structural steel	11.10	.60	.70		.01
Spraying oil paint	13.45	.60	.70		.01
Spraying epoxy	15.98	.60	.70		.01
PLUMBERS:					
Hartford Co.: Avon, Bloomfield, Burlington, Canton, E. Granby, E. Hartford, E. Windsor, Enfield, Farmington, Glastonbury, Granby, Hartford, Manchester, Marlborough, Newington, Rocky Hill, Simsbury, S. Windsor, Suffield, W. Hartford, Wethersfield, Windsor, Windsor, Locks Middlesex Co.: Chester, Cromwell, Deep River, E. Haddam, E. Hampton, Haddam, Maromas (Atomic River Project) Middlefield, Middletown & Portland; Tolland Co.: Andover, Bolton, Columbia, Coventry, Ellington, Hebron, Mansfield, Somers, Stafford, Storrs, Tolland, Union, Vernon, &					

DECISION NO. CT78-2161

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Willington	10.31	1.10	1.39		.10
PLUMBERS: Steamfitters:					
New Haven Co.: Milford	11.09	.75	.70	.44	.01
Hartford Co.: Southington; Middlesex Co.: Durham; New Haven Co.: Cheshire, Meriden & Wallingford	10.35	.75	.70	r	.03
Hartford Co.: Berlin, Bristol, E. Berlin, Kensington, New Britain, & Plainville	11.00	.75	.70	s	.03
Middlesex Co.: Clinton, Killingworth, S Westbrook; New Haven Co.: Branford, Derby, E. Haven, Orange, W. Haven, & Woodbridge	11.18	.75	.70	t	.02
Middlesex Co.: Essex, Ivoryton,, Old Saybrook, & Saybrook; New London Co.: Bozrah, Colchester, E. Lyme, Montville, New London, N. Stonington, Norwich, Old Lyme, Preston, Salem, Sprague, Stonington, Voluntown, & Waterford	12.62	.60	.70	u	.05
New Haven Co.: Ansonia, Beacon, Falls, Bethany, Naugatuck, Oxford, Prospect, & Seymour					
New Haven Co.: Middlebury, Southbury, S. Britain, Waterbury & Wolcott	10.70	.88	.70	v	.05
Hartford Co.: Hartland	10.70	.88	.70	v	.05
ROOFERS:					
New Haven Co.: Ansonia, Beacon Falls, Bethany, Branford, Derby E. Haven, Guilford, Hamden, Madison, Milford, Middlebury, Naugatuck, New Haven, N. Branford, N. Haven, Orange, Oxford, Seymour, Union City, W. Haven, & Woodbridge	10.15	1.05	.45		
Hartford Co.; Middlesex Co.; New Haven Co.: Cheshire, Meriden, Prospect, Wallingford, & Wolcott; New London Co.; & Tolland Co.					
Composition	9.30	.525	.70	.55	
Slate, Tile	9.80	.525	.70	.55	

DECISION NO. CT78-2161

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS	11.30	.70	.86		.05
SPRINKLER FITTERS	11.75	.75	1.05		.08
STEAMFITTERS:					
Hartford Co.: Avon, Bloomfield, Burlington, Canton, E. Granby, E. Hartford, E. Windsor, Enfield, Farmington, Glastonbury, Granby, Hartford, Manchester, Marlborough, Newington, Rocky Hill, Simsbury, S. Windsor, Suffield, W. Hartford, Wethersfield, Windsor, & Windsor Locks; Middlesex Co.: Chester, Cromwell, Deep River, E. Haddam, E. Hampton, Haddam, Maromas (Atomic River Project), Middlefield, Middletown, & Portland; Tolland Co.: Andover, Bolton, Columbia, Conventry, Ellington, Hebron, Mansfield, Somers, Stafford, Storrs, Tolland, Union, Vernon, & Willington	10.79	1.36	1.31		.13

DECISION NO. CT78-2161

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. 7 paid holidays: A through F, and Good Friday.
b. 1 paid holiday: Good Friday. Employee must work 3 days during the work week in which the holiday falls, if scheduled, and if scheduled, the working day before and the working day after the holiday.
c. 4 paid holidays: B, C. D, and Good Friday. Employee must be employed 14 consecutive days immediately prior to the holiday.
d. 3 paid holidays: C, D, and E
e. $.50 per worker per year
f. 3 paid holidays: B, C, and D
h. The last 4 regular working hours prior to Christmas Day shall be paid half day.
i. 6 paid holidays: A through F
j. Employer contributes 4% of basic hourly rate for 5 years or more of service or 2% basic hourly rate for 6 months to 5 years of service as vacation pay credit.
k. 9 paid holidays: A through F, Washington's Birthday, Good Friday, and Columbus Day
l. 9 paid holidays: A through F, Washington's Birthday, Good Friday and Columbus Day
m. The last 4 hours on CHristmas Eve is a paid half day if employee has worked 5 consecutive days prior to CHristmas Eve
n. 9 paid holidays: A through F, Washington's Birthday, Good Friday and Xmas Eve provided the employee has worked 45 full days for the employer during the 120 days prior to the holidays and works the scheduled work days immediately preceding and following the holidays
o. 9 paid holidays: A through F Washington's Birthday, Good Friday and a floating holiday pre year provided the employee has been employed for a period of 5 working days prior to the holidays and works the scheduled work days immediately preceding and following the holidays
p. 2 paid holidays: C and D providing the employee works the day before and the day after the holiday
q. 4 paid holidays: B, C, D, and E providing the employee works the day before and the dat after the holiday
r. 1 paid holiday: D
s. Paid holidays: D, and the Friday after Thanksgiving is a paid half day, and December 24, provided it falls on a working day, is a paid half day
t. 3½ paid holidays: C, D, E, and the half day Friday after Thanksgiving
u. 1 paid holidays: D
v. 2 paid holidays: B, D & half day paid holiday the Friday after Thanksgiving and the last working day before CHristmas, & Good Friday paid half day

DECISION NO. CT78-2161

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: (BUILDING CONSTRUCTION)					
Derrick; Hoisting engineer 2 drums and over; Hoisting structural steel; Pile driver; & Setting stone	11.77	.90	.85	a	.10
Dragline; Fork lift - over 4' lift; Front end loader - 7 cy. or over; Gradall; Hoisting engineer (all types of equipment where a drum and cable are used to hoist, pull, or drag material regardless of motive power or operation); Koehring scooper loader and/or hoe; master mechanic; shovel; & tower crane	11.65	.90	.85	a	.10
Maintenance engineer	11.55	.90	.85	a	.10
Central mix operator; Coleman loader and screening plant or similar equipment; combination hoe and loader over ½ yd.; Conveyors - regardless of motive power; Front end loader - 3 cy. up to 7 cy.; High pressure portable boiler; Joy drill - limited to joy heavy weight champion or equivalent; mucking machines; post hoe digger; pumpcrete machine; rock boring machine; vibratory hammer; welder; & Well digger	11.28	.90	.85	a	.10
Compressor battery operator	10.45	.90	.85	a	.10
Asphalt spreader	11.05	.90	.85	a	.10
Bulldozer; Carry-all operators; Grader; & Scraper pan	10.99	.90	.85	a	.10
Combinationhoe and loader machine; concrete mixer - 5 bags or over; front end loader under 3 cy.; powerstone spreader	10.94	.90	.85	a	.10

DECISION NO. CT78-2161

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS (CONT'D)					
Air and steam valve	10.17	.90	.85	a	.10
Compressor; generator; pump and well point; welding machine	10.06	.90	.85	a	.10
Fork lift not over 4'; & Steam Jenny	10.83	.90	.85	a	.10
Mechanical heater	9.89	.90	.85	a	.10
Roller	10.72	.90	.85	a	.10
Dinky machine; Power pavement breaker	10.55	.90	.85	a	.10
Fireman (High pressure)	9.67	.90	.85	a	.10
Oiler	9.18	.90	.85	a	.10
Crane with boom, excluding jib, over 150' - $.25 extra					
Crane with boom, excluding jib, over 200' - $.50 extra					
LABORERS(Heavy and Highway Construction):					
Laborers	7.95	.60	.75		.10
Acetylene burners; Asphalt raker; chain saw operator; concrete & power buggy operators; Concrete saw operator; fence & guard rail erectors; Form setters; Hand operated vibratory compactor operators; Mason tenders; pipelayers; pneumatic gas & electric drill operators; powdermen & wagon drill operators	8.20	.60	.75		.10
Air track operator; block pavers; curb setters	8.45	.60	.75		.10
Blasters	8.70	.60	.75		.10

DECISION NO. CT78-2161

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (Building Construction)					
Laborer	$7.95	.60	.75		.10
Asphalt rakers, concrete & power buggy ops, concrete saw ops, chain saw ops, fence & guard rail erectors, form setters, pipelayers, dry stone wall builders, mason tenders, pneumatic drill ops, pneumatic gas & electric drill ops, powdermen & wagon drill operators and Precast Erectors	8.20'	.60	.75		.10
Air track ops, block pavers; and curb setters	8.45	.60	.75		.10
Blasters	8.70	.60	.75		.10
Open air caisson, cylindrical work and boring crew:					
Top man	7.95	.60	.75		.10
Bottom man	9.45	.60	.75		.10

DECISION NO. CT78-2161

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: (HEAVY & HIGHWAY CONSTRUCTION)					
Class 1	11.80	.90	.85	a	.10
Class 2	11.64	.90	.85	a	.10
Class 3	11.29	.90	.85	a	.10
Class 4	11.09	.90	.85	a	.10
Class 5	10.93	.90	.85	a	.10
Class 6	10.73	.90	.85	a	.10
Class 7	10.51	.90	.85	a	.10
Class 8	9.58	.90	.85	a	.10
Class 9	9.69	.90	.85	a	.10
Class 10	10.07	.90	.85	a	.10
Class 11	10.43	.90	.85	a	.10
Class 12	9.21	.90	.85	a	.10
Class 13	10.00	.90	.85	a	.10
Crane with 150' boom - $.25 extra					
Crane with 200' boom - $.50 extra					

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

Class 1: Erecting and handling structural steel; front end loader (7 cy. or over)
Class 2: Piledriver; Power shovel and crane; dragline; gradline; gradall; trenching machine; lighter derrick; paver (concrete); derrick (stiff leg and guy); Steel pile sheeting; koehring loader (skooper); master mechanic
Class 3: Drill (Joy heavy weight champion or equivalent); Side boom; loader (Euclid); Mucking machine; Pumpcrete; ROck and earth boring machine; post hole digger; well digger; & hammer (vibratory); central mix; combination hole & loader (over ½ yd)
Class 4: Asphalt
Class 5: Front end loader (3 yds. or over); grader; power stone spreader; combination hoe and loader
Class 6: Asphalt roller; bulldozer; carryall; maintenance engineer; concrete mixer (5 bags and over); welder
Class 7: Front end loader (under 3 yds.); roller; power chipper; fork lift; finishing machine; asphalt plant; power pavement breaker; dinky machine
Class 8: Compressor; pump
Class 9: Fireman (high pressure)
Class 10: WEll point system
Class 11: Compressor battery
Class 12: Oiler
Class 13: Batch plant; Bulk cement plant

SUPERSEDEAS DECISION

STATE: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania and Rhode Island
DECISION NUMBER: NY78-3097 DATE: Date of Publication
Supersedes Decision No. CT77-3135 dated October 14, 1977, in 42 FR 55410
DESCRIPTION OF WORK: All dredging on the Atlantic Coast from the Canadian Border to the southerly border of the State of Maryland and tributary waters emptying into the Atlantic Ocean, the Chesapeake and Delaware Canal, Baltimore City and Baltimore County, Maryland.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Dipper and Clamshell Dredges:					
Operator	10.60	.73	.60	7%+a	
Engineer	10.51	.73	.60	7%+a	
Craneman	10.28	.73	.60	7%+a	
Maintenance engineer	10.11	.73	.60	7%+a	
Welder	9.95	.73	.60	7%+a	
Mate	9.40	.73	.60	7%+a	
Fireman and oiler	8.57	.73	.60	7%+a	
Deckhand, handyman and tug deckhand	8.33	.73	.60	7%+a	
Scowman	8.22	.73	.60	7%+a	
Hydraulic Dredges:					
Leverman	10.40	.73	.60	7%+a	
Engineer and derrick operator	10.28	.73	.60	7%+a	
Maintenance engineer	10.11	.73	.60	7%+a	
Boilerman; dredge carpenter; dredge blacksmith; electricians and welders	9.95	.73	.60	7%+a	
Spider barge operator	9.84	.73	.60	7%+a	
Mate	9.40	.73	.60	7%+a	
Fireman and oiler	8.57	.73	.60	7%+a	
Tug deckhand	8.33	.73	.60	7%+a	
Deckhand; handyman and shoreman	8.22	.73	.60	7%+a	
Tug Boats over 400 H. P: (with master or captain having license endorsed for 200 miles off shore)					
Tug engineer	9.90	.73	.60	7%+a	
Tug Deckhand	8.38	.73	.60	7%+a	
Tug Boats over 400 H. P. (without master or captain having license endorsed for 200 miles off shore)					
Tug engineer	9.47	.73	.60	7%+a	
Tug deckhand	8.33	.73	.60	7%+a	
Drill Boats:					
Engineers	11.37	.73	.60	b	
Blasters	11.51	.73	.60	b	
Fireman	10.97	.73	.60	b	
Driller, welders or machinists	11.38	.73	.60	b	
Oilers	10.76	.73	.60	b	

DECISION NO. CT78-2161

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Survey Crew					
Chief of Party	10.06	.90	.85	a	.10
Ass't Chief of Party	9.34	.90	.85	a	.10
Instrument Man	8.63	.90	.85	a	.10
Rodman & Chainman	6.46	.90	.85	a	.10
TRUCK DRIVERS (Building, Heavy & Highway Construction)					
CLASS 1	7.91	.74	.725	a	
CLASS 2	8.01	.74	.725	a	
CLASS 3	8.11	.74	.725	a	
CLASS 4	8.06	.74	.725	a	
CLASS 5	8.16	.74	.725	a	
CLASS 6	8.21	.74	.725	a	

CLASSIFICATION : TRUCK DRIVERS

CLASS 1: Two axle trucks; helpers
CLASS 2: Three axle trucks; two axle ready mix
CLASS 3: Four axle trucks; heavy duty trailer-up to 40 tons
CLASS 4: Three axle ready-mix
CLASS 5: Four axle ready-mix; specialized earth moving equipment other than conventional type on-the-road trucks and simi-trailer (including Euclids)
CLASS 6: Heavy duty trailer-40 tons and over

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day & F-Christmas Day

FOOTNOTE:
a. 7 paid holidays: A through F and Good Friday

DECISION NO. NY78-3097

FOOTNOTES:

a. Holidays: A through F, Plus Washington's Birthday and Veterans' Day.

b. Holidays: A through F, plus Washington's Birthday and Veterans' Day; 6½ days vacation with pay for 84 days of service, one additional day of vacation with pay for each additional 21 2/3 days of service, all in one calendar year. Employees not qualifying for vacation as set forth above will receive one day's vacation with pay for each full 20 days of service in one calendar year.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day and F-Christmas Day.

SUPERSEDEAS DECISION

STATE: Illinois
DECISION NO: IL78-2144
COUNTIES: See Below
DATE: Date of Publication
Supersedes Decision No. IL78-2050, dated March 24, 1978 in 43 FR 12578
DESCRIPTION OF WORK: Heavy and Highway Construction

ILL-HH-9

COUNTIES: Alexander, Franklin, Gallatin, Hardin, Jackson, Johnson, Massac, Perry, Pope, Pulaski, Randolph, Saline, Union and Williamson	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS & PILEDRIVERMEN:					
Randolph County	$11.11	.60	.90		.06
Remainder of District #9	10.25	.50	.50		.05
CEMENT MASONS:					
Alexander, Jackson, Perry, Pulaski, Randolph & Union Counties	10.35	.30			
Remainder of Counties	10.65				
ELECTRICIANS:					
Red Bud Township in Randolph County	12.73	4%	3%+.65	6%	½ of 1%
Remainder of Randolph Co. & District #9	12.50	.40	13%		1%
IRONWORKERS:					
Alexander, Franklin, Gallatin, Hardin, Jackson, Johnson, Massac, Pope, Pulaski, Union, Williamson, Saline (SW of Eldorado)	10.75	.55	.75		.05
Perry & Randolph Counties	12.10	.55	1.05		
LABORERS:					
Randolph County:					
Heavy	10.20	.60	1.00		.035
Highway	10.30	.60	1.00		.035
Remainder of District #9	8.70	.40	.30		.035
LINEMEN:					
Red Bud Twps. in Randolph Co:					
Linemen	13.35	4%	3%		.25%
Groundmen Equipment Operator	11.60	4%	3%		.25%
Groundmen-Truck Drivers with & Without Winch	9.43	4%	3%		.25%
Pick-Up-Jeeps	8.79	4%	3%		.25%
Groundmen	8.73	4%	3%		.25%
Remainder of Randolph County & District #9:					
Linemen & Digging Machine Opr.	12.29	.45	9%		.25%
Groundman Equipment Operator					
Class 1	10.50	.45	9%		.25%
Class 2	9.40	.45	9%		.25%
Groundman:					
Class "A"	7.83	.45	9%		.25%
1st 6 Months	7.49	.45	9%		.25%

DECISION NO. IL78-2144

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Franklin County: Williamson Co. (Marion & Vicinity):					
Brush	9.45				
Industrial	10.20				
Alexander, Johnson & Pulaski Cos:					
Industrial	9.74				
Bridges	11.76				
Spray	10.36				
Saline, Gallatin, Hardin & Pope Counties:					
Brush	6.90				
Structural Steel	7.15				
Spray	7.25				
Jackson, Perry & Randolph Cos:					
Brush	9.00				
Industrial	10.90				
Union County:					
Brush	8.75				
Industrial	9.25				
Massac County:					
Brush & Roller	7.60	.40			
Bridges; Brush & Spray	10.45	.40			

DECISION NO. IL78-2144

ILL-2-PEO-1-2-3

POWER EQUIPMENT OPERATORS: PERRY & RANDOLPH COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	10.52	.87	1.51		.05
GROUP II	10.19	.87	1.51		.05
GROUP III	9.54	.87	1.51		.05
GROUP IV	9.44	.87	1.51		.05
GROUP V	9.19	.87	1.51		.05
GROUP VI					
a.	13.67	.87	1.51		.05
b.	13.97	.87	1.51		.05
c.	11.29	.87	1.51		.05
d.	11.79	.87	1.51		.05

POWER EQUIPMENT OPERATORS:

GROUP I Cranes, draglines, shovels, skimmer scoops, clamshells or derrick boats, pile drivers, crane-type backhoes, asphalt plant opers. plant opers., ditching machines or backfillers (requiring oilers), dredges, asphalt spreading machines, heavy duty mechanic, ass't. master mechanic, all locomotives, cableways or tower machines, hoists 2 drum or more (where oiler or fireman is required), hoists-2 drum or more (where oiler or firemen is not required) Hydrualic backhies, ditching machines or backfiller (not requiring oilers) Cherry pickers, overhead cranes, roller (Steam or gas) concrete pavers, excavators, concrete breakers. concrete pumps, bulk cement plants, cement pumps, derrick-type drills, mixers (over 3 bags) and boad oprs., (25' & over), Motor graders or pushcats, scoops or tournapulls, Bulldozers, endloaders or fork-lifts, power blade or elevating graders, winch cats, boom tractors, and pipe wrapping or painting machines, Drills (other than derrick type) 1-dum-hoists, mud jacks, mixers (2 or 3 bags), conveyors (2), air compressors (2), water pumps regardless of size (2), welding machines (2) siphons or jets (2), winch heads or apparatuses (2) and light plants (2), Mixers (under 2 bags), all tractors regardless of size (Stright tractor only), firemen on stationary boilers, automatic elevators, form grading machines, finishing machines, power-sub-grader or ribbon machine, longitudinal floats, boats oprs., (under 25', conveyors) (1), distribution pors., on trucks, siphones or jets (1) winch heads or apparatuses (1), light plant (1) mixers (under 2 bags)

GROUP II Air Compressor (1), water pumps regardless of size (1) welding machines (1)

GROUP III Firemen and asphalt spreader oilers

GROUP IV Heavy equipment oilers (truck cranes, dredges, monigans, large cranes, etc.

GROUP V Oilers

GROUP VI
a. Engineers operating under air pressure
b. Engineers operating in air over 10 lbs pressure
c. Oilers operating under air pressure
d. Oilers operating in air over 10 lbs pressure

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POWER EQUIPMENT OPERATORS REMAINDER OF COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Class 1	$11.30	.40	.60		.035
Class 2	10.35	.40	.60		.035
Class 3	10.10	.40	.60		.035
Class 4	9.80	.40	.60		.035
Class 5	9.10	.40	.60		.035
Class 6	10.35	.40	.60		.035
Class 7	10.10	.40	.60		.035
Class 8	9.60	.40	.60		.035
Class 9	9.00	.40	.60		.035
Class 10	9.00	.40	.60		.035
RIVER WORK and LEVEE WORK ON MISSISSIPPI and OHIO RIVERS					
Class 11	11.40	.40	.60		.035
Class 12	9.50	.40	.60		.035

POWER EQUIPMENT OPERATORS:

Class 1: Apsco or equal spreading machine; Backhoe; Backfiller; Boom or which cat; Bituminous mixplace machine; Backsmith; Bituminous surfacing machine; Bulldozer; Crane; Shovel; Dragline; Truck crane; Piledriver; Concrete finishing machine or spreader machine; Concrete breaker; Concrete or pumpcrete pumps; Dinky or standard locomotive; Drill well; Elevating grader; Forklifts; Rubber-tired; Flex-plane; Gradall; Hi-lift, handblade, power; Hoists, tugger type; Hoist, (2 drums) or over one; Guy-derrick; Hyster mechanic; Motor patrol; Mixer 21 cu. ft. or over; Push cat; Pulls and scrapers; Pumps; 2 well points; P&H pulverizer or pulverizer equal to pugmill; Rubber-tired farm type tractor with bull-dozer or hi-lift (over 1/2 yd.), Rubber-tired tractor w/auger; Skimmer scoops; Seaman tiller; Spreader, Jersey; Tract-air used w/drill or Hi-lift; Trenching machine, or ditching machine; Wood chipper with tractor; Self-propelled roller w/10 ft. blade; Concrete pumps; Equipment greader

Class 2: Roller, self-propelled, Power subgrader; Elevator operator

Class 3: Rubber-tired farm type tractor w/bull dozer or hi-lift (1/2 yd. or less)

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POWER EQUIPMENT OPERATORS (Cont'd)

Class 4: Pump, one well point; All tract type tractors, pulling any type roller or disc.

Class 5: Oiler; All wheel type tractors, Oiler on 30 Hp ditches and over; Oiler, Hydra-crane with 15 ton lifting capacity or more and cranes similar to Hydra-crane w/15 ton capacity and more

Class 6: Air compressor w/valve driving piling air compressors, two (220 cu. ft. capacity or over); Air track drills, air track drill w/compressor; Automatic bins scales w/compressor or generator; Pipeline boring machine; Bulk cement plant w/separate compressor bulk float power operator; Concrete saws, (two); Hydra-lift (single motor); Straw mulcher blower w/spout

Class 7: Backend man on bituminous surfacing machine; Boom or winch truck; Cat wagon w/or without dump; Conveyors, two; Chip spreader, self-propelled concrete saw, on self-propelled; Form grader; Heaters, (motor driven); Hoist, 1 drum; Truck crane oiler; Vibrator, self-propelled.

Class 8: Air track drill (one); Belt drag machine, Power boom, Mechanical; Plasterer applicator; Tract-air

Class 9: Air compressor (220 cu. ft. capacity or over), one; Air compressor under (220 cu. ft.) two; Automatic bins, bulk cement plant w/built in compressor, running of same motor or electric motor; Firemen or switchmen; Form tamper, self-propelled; Light plants (two); Welding machine (two); Pumps (two); or combination or 2 pumps, Light plants, welding machines, air compressor (under 200 cu. ft.); Mud jacks or wood chipper; Mixers, less than 21 cu. ft., Motor mixer w/skip or pump; Pipeline track jack

Class 10: Air compressor, under 220 cu. ft. capacity (one); Conveyor (one); Conveyor operator on self-propelled chip spreader; Heater (one); Motor driven; Light plant (one) pump (one); Welding machine (one) Ulmac or equal spreader

RIVER WORK and LEVEE WORK on MISSISSIPPI and OHIO RIVERS

Class 11: Crane, shovel, dragline 4 yards or more, scraper, 18 yards, struck or over, dredge, derrick and piledriver, push boat operator, mechanic or 4 yards machine or over, Engine man on dredge, Levee man on dredge

Class 12: Oiler on crane, dragline, shovel, 4 yard machine or over; Oiler on dredge

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ILL-82-TD-1-2-3

TRUCK DRIVERS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$10.125	.65	a31.00		
GROUP II	10.525	.65	a31.00		
GROUP III	10.725	.65	a31.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II: - 2 or 3 axle trucks hauling more than 9 tons, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III: - 2, 3 or 4 axle trucks hauling 16 tons or more, drivers on oil distributores, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: Indiana COUNTIES: *See Below
DECISION NUMBER: IN78-2163 DATE: Date of Publication
Supersedes Decision No. IN78-2030 March 10, 1978 in 43 FR 10169
DESCRIPTION OF WORK: Heavy and Highway Construction

*Statewide, except Lake, LaPorte, Porter, and St. Joseph Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS:					
Jasper, Newton, and Starke Counties	$12.78	.65	.67		.05
Elkhart County	10.38	.70	.70		.05
Bartholomew (Camp Atterbury), Boone, Fountain, Hamilton, Hancock, Hendricks, Johnson (except Edinburg), Marion, Montgomery, Morgan (except Washington), Parke (except portion lying west of a line south and north running through Jessup, Rosedale, Carbondale, and Poland), Putnam, Vermillion (north of the south city limits of Summit Grove), and Warren Counties	11.15	.70	.50		.08
Remainder of State of Indiana	10.23	.60	.60		.05
CEMENT MASONS:					
Adams, Allen, Dekalb, Noble, Steuben, and Whitley Counties	10.50	.75			.01

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS: (CONT'D)					
Benton (Eastern 2/3), Carroll, Cass, Clinton, Fountain (Eastern ½), Howard, Jasper (Southern 2/3), Miami, Montgomery, Newton (Southeastern 2/3), Tippecanoe, Warren (Eastern 2/3), & White Cos.	$10.00	.60	.75		
Jasper (Northeastern portion of Co. west to, but not incl. Wheatfield), Pulaski (Northern 2/3 of Co.), & Starke Cos.	10.72	.80	1.00		.03
Marshall, Fulton, Pulaski (S 1/3)	9.66	.60	.80		.04
Blackford, Delaware, Grant, Huntington, Jay, Randolph, Wabash, & Wells Cos.	9.95	.60	.80		
Elkhart, Kosciusko, & LaGrange Cos.	11.38		.30		.02
Boone, Hamilton (Southern ½ of Co., north to the new Rte. Indiana Hwy #32 incl. Noblesville), Hancock (southern & western part, north to but not incl. Wilkinson & east to, but not incl. Fortville), Hendricks, Johnson, Marion & Morgan (northern ½ of Co.) Cos.	10.36	.70	.75		.04
Crawford, Dubois, Perry, Posey, Spencer, Vanderburgh, & Warrick Cos.	10.60	.65	.55		
Greene & Sullivan Cos.	11.05	.50	.90		.01
Newton (Northern 1/3)	11.43	.85	.55		.03

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS (Cont'd)					
Daviess, Gibson, Knox, Martin & Pike Cos.	$ 9.35	.70	.80		
Dearborn, Ohio, Ripley, & Switzerland Cos.	7.50				
Jackson, Jefferson, Jennings, Lawrence, Orange, Scott, & Washington Cos.	10.00				
Clay, Owen (extreme western part of Co.), Parke, Putnam, Vermillion, & Vigo Cos.	10.20	.60	.25		
IRONWORKERS:					
Adams, Allen, Blackford, Dekalb, Delaware (northeastern 1/3 of Co.), Grant (excluding s/w portion), Huntington, LaGrange (eastern ½ of Co.), Noble, Steuben, Wabash, Wells, & Whitley Cos.	11.80	.90	1.45		.02
Elkhart, Fulton, Kosciusko, LaGrange (western ½ of Co.), Marshall, Pulaski, & Starke Cos.	11.45	.90	1.33		.03
Jasper (Northern ½ of Co.), & Newton Cos.	12.72	.90	1.66		.09
Clark, Crawford, Floyd, Harrison Jackson (southern ½ of Co.), Jefferson, Jennings (southern ½ of Co.), Lawrence (southern 2/3 of Co.), Martin (eastern ½ of Co.), Orange, Scott, & Washington Cos.	11.75	.90	1.15		.06
Marion Co.	11.40	.90	1.70		.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS (Cont'd):					
Bartholomew, Boone (southeastern ½ of Co.), Brown, Clinton (eastern 1/3 of Co.), Decatur (western ½ of Co.), Delaware (southern 2/3 of Co.) Grant (S/W Portion), Hamilton, Hancock, Hendricks, Henry, Howard, Jackson (northern ½ of Co.), Jennings (northern ½ of Co.), Johnson, Lawrence (northeastern 1/6 of Co.), Madison, Monroe, Morgan, Owen, Putnam (eastern ½ of Co. excluding Greencastle), Rush, Shelby, & Tipton Cos.	11.55	.90	1.70		.05
Benton, Boone (northwestern ½ of Co.), Carroll, Cass, Clinton (western 2/3 of Co.), Fountain, Jasper (southern ½ of Co.), Miami, Montgomery, Tippecanoe, Warren, & White Cos.	11.54	.90	1.25		.02
Fayette, Jay, Randolph, Union, & Wayne Cos.	10.96	.90	1.25		.04
Clay, Daviess, Greene, Knox, Lawrence (northwestern 1/6 of Co.), Parke, Putnam (western ½ of Co. incl. Greencastle), Sullivan, Vermillion, & Vigo Cos.	11.30	.90	2.05		.10
Dearborn, Decatur (eastern ½ of Co.), Franklin, Ohio, Ripley & Switzerland Cos.	12.33	.90	1.20		.03
PAINTERS:					
Adams, Allen, Dekalb, Grant, Huntington, LaGrange, Noble, Steuben, Wabash, Whitley, & Wells (northern ½ of Co. to & incl. Bluffton):					
Brush; Paperhangers; Rollers; & Tapers	9.25	.50	.65		.12
Sandblasters; Spray	10.25	.50	.65		.12

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PAINTERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Bartholomew, Decatur, Jackson & Jennings Cos.:					
Brush; Roller; & Steel	$ 9.45		.50		
Spray	10.45		.50		
Benton, Clinton, Fountain, Montgomery, Putnam, Tippecanoe, & Warren Cos.:					
Brush; Roller	10.75				
Structural Steel	11.00				
Sandblasting	11.75				
Spray	14.02				
Blackford, Cass, Delaware, Fulton, Howard, Jay, Madison, Miami, Tipton, & Wells (to the south city limits of Bluffton) Cos.:					
Brush	9.10		.60		
Spray	9.85		.60		
Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan (north ½ of Co.) & Shelby Cos.:					
Brush	10.43	.78	.34		
Spray	11.43	.78	.34		
Brown, Monroe, Morgan (excluding north ½ of Co.) & Owen Cos.:					
Brush	8.90			.30	
Structural Steel	9.65			.30	
Spray	9.90			.30	
Carroll, Jasper, Newton, & White Cos.:					
Brush	11.55	.64	.50		.05
Sandblasting; Sign; & Spray	12.30	.64	.50		.05
Clark, Crawford, Floyd, Harrison, Jefferson, Scott, & Washington Cos.:					
Brush	9.02	.35	.20		.03
Spray	9.47	.35	.20		.03

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PAINTERS (Cont'd):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Daviess, Gibson, & Knox Cos.:					
Brush up to 30'	9.80	.45			
Brush over 30'	10.60	.45			
Spray up to 30'	10.80	.45			
Spray over 30'	11.60	.45			
Dearborn, Ohio, Ripley & Switzerland Cos.:					
Brush; roller; wallwashing; Drywall taping & finish; paperhanging & vinyl; seamless floors & finishing floors; sanding	10.50				
Sandblasting & Steam clean	11.25				
Spray; Epoxy	11.00				
Tanks, elevators, bridges, Steeples over 40 ft.	11.60				
Dubois, Perry, Pike, Posey, Spencer, Vanderburgh, & Warrick Cos.:					
Brush	10.80	.65	.30		
Spray	11.80	.65	.30		
Elkhart, Kosciusko, Marshall, Pulaski & Starke Cos.:					
Brush	9.59		.40		$15.00p/yr
Drywall taping & finish; Paperhangers; Spray & Vinyl	9.59		.40		15.00p/yr
Fayette, Franklin, Henry, Randolph, Rush, Union, & Wayne Cos.:					
Brush	8.85				
Sandblasting; Spray	9.85				
Structural Steel; Scaffold over 30 ft.	9.10				
Lawrence, Martin, & Orange Cos.:					
Brush; & Structural Steel	8.50				
Parke, & Vermillion Cos.:					
Brush	10.15			.25	
Spray	11.65			.25	
Sullivan, & Vigo Cos.:					
Brush	10.00			.25	
Spray	11.00			.25	

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (Cont'd)					
Sullivan, & Vigo Cos.: (Cont'd)					
Structural steel up to 30'	$10.25			.25	
Structural steel 30' to 100'	11.00			.25	
Structural steel over 100'	12.00			.25	

LABORERS: HEAVY & HIGHWAY CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$ 7.60	.70	.50		.09
GROUP 2	7.75	.70	.50		.09
GROUP 3	7.80	.70	.50		.09
GROUP 4	7.90	.70	.50		.09
GROUP 5	8.45	.70	.50		.09

LABORERS

GROUP 1: Chainman; Construction laborer; Continuous steel rod or mat installer; Fence erector; Grade checker; Guard rail erector; Joint man (mortar, mastic & all other types); Lighting installer (permanent & temporary); Lineman for automatic grade maker or paving machine; Manhole erector; Mortar man; Multi-plate erector; Rip-rap laborer, incl. all materials; Road marking & delineation laborer; Rodman; Sandblaster man; Setting & placing of all pre-stressed & precast concrete products; Spraying of epoxy, curing compound or like material; Survey crew helper; Temporary waterline installer; Top laborer; Wire mesh layer

GROUP 2: Air tool, power tool, & power equipment operator; Asphalt lute man; Asphalt raker man; Batch truck dumper; Cement handler (bulk or bag cement); Chain saw man; Concrete conveyor assembly man; Concrete puddler; Concrete rubber; Concrete saw operator - non riding type; Core drill operator; Hand blade operator; Hydro seeder man; Motor driven Georgia buggy operator; Power driven compactor or tamper operator; Power saw operator; Pumpcrete assembly man; Sealer applicator for asphalt, toxic; Side rail setter - for sidewalks, side ditches, radii & pavements, etc.; Sign installation, including supporting structures; Spreader box tender; Straw blower man; Subsurface drain & culvert pipe layer; Transverse & longitudinal hand bull float man

GROUP 3: Horizontal boring & jacking man; Jackman & sheetman; Pipe grade man; Wench & windlass operator

GROUP 4: Conduit installer; Cutting torch burner; Lazer beam aligner; Manual operated welder; Sewer pipe layer; Water line installer

GROUP 5: Air track & wagon drillman; Concrete finisher; Dynamite & powder man

1 of 3

DECISION NO. IN78-2163
POWER EQUIPMENT OPERATORS
(Heavy & Highway Construction)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Adams, Allen, Benton, Blackford, Carroll, Cass, Clinton, Dekalb, Delaware, Fayette, Grant, Hamilton, Hancock, Henry, Howard, Huntington, Jay, Johnson, Madison, Marion, Miami, Randolph, Rush, Shelby, Steuben, Tippecanoe, Tipton, Union, Wabash, Wayne, Wells, White, & Whitley Counties:					
GROUP I	$10.87	.55	.65		.08
GROUP II	9.60	.55	.65		.08
GROUP III	9.10	.55	.65		.08
GROUP IV	8.16	.55	.65		.08
Elkhart, Fulton, Jasper, Kosciusko, LaGrange, Marshall, Newton, Noble, Pulaski, & Starke Counties:					
GROUP I	10.27	.95	.85		.08
GROUP II	9.00	.95	.85		.08
GROUP III	8.50	.95	.85		.08
GROUP IV	7.56	.95	.85		.08
Bartholomew, Brown, Clark, Crawford, Dearborn, Decatur, Dubois, Floyd, Franklin, Gibson, Harrison, Jackson, Jefferson, Jennings, Lawrence, Martin, Ohio, Orange, Perry, Pike, Posey, Ripley, Scott, Spencer, Switzerland, Vanderburgh, Warrick, & Washington Counties:					
GROUP I	10.97	.50	.60		.08
GROUP II	9.70	.50	.60		.08
GROUP III	9.20	.50	.60		.08
GROUP IV	8.26	.50	.60		.08
Boone, Clay, Daviess, Fountain, Greene, Hendricks, Knox, Monroe, Montgomery, Morgan, Owen, Parke, Putnam, Sullivan, Vermillion, Vigo, & Warren Counties:					
GROUP I	10.77	.55	.75		.08
GROUP II	9.50	.55	.75		.08
GROUP III	9.00	.55	.75		.08
GROUP IV	8.06	.55	.75		.08

POWER EQUIPMENT OPERATORS 2 of 3

Group 1: Air Compressors in Manifold with throttle valve; Asphalt Plant Engineer; Auto Grade or similar type machine; Auto Patrol; Backhoe on Farm type Tractor, 45 H.P. and over; Ballast Regulator (R. R.); Bituminous Mixer; Bituminous Paver; Bituminous Plant Engineer; Bull Dozer; Caisson Drilling Machine; Cherry Picker - 15 ton or over; Chip Spreader; Concrete Mixer 21 cu. ft. or over; Core Drilling Machine; Crane or Derrick with any attachment including clamshell, dragline, shovel, backhoe, etc.; Dredge Engineer; Dredge Operator; Drilling Machine on which the drill is an integral part; Earth Mover - rubber tired (paddle wheel, 619, 631, TS-24 or similar type); Earth Mover, rubber tired - tandem (50 cents per hour additional for each bowl); Elevating Grader; Fork Lift (10 ton or over); P.C.C. Formless Paver; Gradall; Gravel Processing Plant (Portable); Operator of Guard Rail Post Driver; Highlift Shovel - 1-1/2 cu. yd. or over; Hoist (2 drums and over); Helicopter - Crew; Hydraulic Boom Truck; Keystone (Skimmer Scoop); Loader - self-propelled (Belt-chain Wheel); Locomotive Operator; Mucking Machine; Panel Board Concrete Plant (Central Mix type); Paver-Hetherington; Pile Driver - Skid or Crawler; Road Paving Mixer; Rock Breaking Plant; Rock Crushing Plant (portable); Roller - Asphalt, Waterbound Macadam; Bituminous Macadam, Brick Surface; Roller with Dozer Blade; Root Rake, Tractor Mounted; Self-propelled Widener; Stump Remover, Tractor Mounted; Surface Heater and Planer; Tandem Push Tractor (50 cents per hour additional); Tractor - Boom, Winch or Hoe Head; Tractor - Push; Tractor Mounted Spreader; Tree Mover; Trench Machine (over 24"); Tug Boat Operator; Well Drilling Machine; Winch Truck with A-Frame; Tractor with scoop

Group 2: Air Compressor with throttle valve or Clever Brooks type combination; Backfiller; Back Hoe on Farm type Tractor, under 45 H.P.; Bull Float; Cherry Picker under 15 ton; Chip Spreader (self-propelled); Concrete Pump; Concrete Mesh Depressor - independently operated; Concrete Spreader - power driven; End Loader under 1-1/2 cu. yd.; Excavating Loader - portable; Finishing Machine and Bull Float; Gunite Machine; Head Greaser; Mechanic; Mesh or Steel Placer; Multiple Tamping Machine (R.R.); P.C.C. Concrete Belt Placer; Pull Grader - power control; Refrigerating Machine - freezing operation; Ross Carrier; Sheepfoot Roller (self-propelled); Tamper - Multiple Vibrating - Asphalt, Waterbound Macadam, Bituminous Macadam, Brick Surface; Trench Machine 24" and under; Tube Float; Welder

POWER EQUIPMENT OPERATORS (Cont'd) 3 of 3

Group 3: Assistant Plant Engineer; Base Paver (Jersey or similar type machine); Concrete Finishing Machine; Concrete Mixer - less than 21 cu. ft.; Curb Machine; Farm Tractor - including farm tractor with all attachments except backhoe and including high lift end loaders of 1 cu. yd. capacity or less; Fireman (on boiler); Hoist (one drum); Operator, 5 pieces of minor equipment; Paving Breaker; Power Broom, self-propelled; Roller (Earth and Sub-base material); Slurry Seal Machine; Spike Machine (R.R.); Tamper - Multiple Vibrating - Earth and Sub-base material); Throttle Valve; Throttle Valve and Fireman combination on horizontal or upright boiler; Tractaire with Drill; Tractor - 50 H.P. or over; Well Point System; Widener (Apsco or similar type)

Group 4: Air Compressor; Assistant to Engineer - Oiler; Automatic Dry Batch Plant; Bituminous Distributor; Bituminous Patching Tamper; Belt Spreader; Broom and Belt Machine; Chair Cart (self-propelled); Coleman Type Screen; Conveyor (portable); Deck Hand; Digger Post Hole (power-driven); Fork Lift - under 10 ton; Form Grader; Form Tamper (motor driven); Generator; Greaser Helper; Hetherington Driver; Hetherington Helper; Hydra Seeder; Mechanics Helper; Mechanical Heater; Operator 1 thru 4 pcs. of minor equipment; Outboard or Inboard Motor Boat; Power Curing Spraying Machine; Power Saw - Concrete (power driven); Pug Mill; Pull Broom (power type); Seaman Tiller; Straw Blower or Brush Mulcher; Striping Machine, Paint (motor driven); Sub-grader; Tractaire; Tractor (below 50 H.P.); Truck Crane Oiler - Driver; Spreader; Water Pump; Welding Machine - 2 of 300 amps or over

LABORERS: SEWER, TUNNEL, & WATER CONSTRUCTION 1 of 2

	ZONE 2	ZONE 2A	ZONE 3	ZONE 4	ZONE 5
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
GROUP 1	$7.80	$7.60	$7.60	$7.60	$7.80
GROUP 2	7.95	7.75	7.75	7.75	7.95
GROUP 3	8.00	7.80	7.80	7.80	8.00
GROUP 4	8.10	7.90	7.90	7.95	8.10
GROUP 5	8.20	8.00	8.00	8.00	8.20
GROUP 6:					
A.	8.00	7.80	7.80	7.80	8.00
B.	8.15	7.95	7.95	7.95	8.15
C.	8.60	8.40	8.40	8.40	8.60
D.	8.10	7.90	7.90	7.90	8.10

Fringe Benefits Payments				
H & W	Pensions	Vacation	Education and/or Appr. Tr.
$.70	.50		.09

ZONES

ZONE 1: Jasper, Lake, LaPorte, Newton, Porter, & Starke Counties (Excluded from this schedule)

ZONE 2: Elkhart & St. Joseph Counties

ZONE 2A: Kosciusko, LaGrange, & Marshall Counties

ZONE 3: Adams, Allen, Benton, Blackford, Boone, Carroll, Cass, Clinton, DeKalb, Delaware, Fayette, Fulton, Grant, Hamilton, Hancock, Henry, Howard, Huntington, Jay, Madison, Miami, Montgomery, Noble, Pulaski, Randolph, Rush, Steuben, Tippecanoe, Tipton, Union, Wabash, Wayne, Wells, White, & Whitley Counties

ZONE 4: Marion & Shelby Counties

ZONE 5: Bartholomew, Brown, Clark, Clay, Crawford, Daviess, Dearborn, Decatur, DuBois, Floyd, Fountain, Franklin, Gibson, Greene, Harrison, Hendricks, Jackson, Jefferson, Jennings, Johnson, Knox, Lawrence, Martin, Monroe, Morgan, Ohio, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Ripley, Scott, Spencer, Sullivan, Switzerland, Vanderburgh, Vermillion, Vigo, Warren, Warrick, & Washington Counties

LABORERS

GROUP 1: Chainman; Construction laborer; Continuous steel rod or mat installer; Fence erector; Grade checker; Guard rail erector; Joint man (mortar, mastic & all other types); Lighting installer (permanent & temporary); Lineman for automatic grade maker or paving machine; Manhole erector; Mortar man; Multi-plate erector; Rip-rap laborer, incl. all materials; Road marking & delineation laborer; Rodman; Sandblaster man; Setting & placing of all pre-stressed & precast concrete products; Spraying of epoxy, curing compound or like material; Survey crew helper; Temporary waterline installer; Top laborer; Wire mesh layer

GROUP 2: Air tool, power tool, & power equipment operator; Asphalt lute man; Asphalt raker man; Batch truck dumper; Cement handler (bulk or bag cement); Chain saw man; Concrete conveyor assembly man; Concrete puddler; Concrete rubber; Concrete saw operator - non riding type; Core drill operator; Hand blade operator; Hydro seeder man; Motor driven Georgia buggy operator; Power driven compactor or tamper operator; Power saw operator; Pumpcrete assembly man; Sealer applicator for asphalt, toxic; Side rail setter - for sidewalks, side ditches, radii & pavements, etc.; Sign installation, including supporting structures; Spreader box tender; Straw blower man; Subsurface drain & culvert pipe layer; Transverse & longitudinal hand bull float man

GROUP 3: Horizontal boring & jacking man; Jackman & sheetman; Pipe grade man; Wench & windlass operator

GROUP 4: Conduit installer; Cutting torch burner; Lazer beam aligner; Manual operated welder; Sewer pipe layer; Water line installer

GROUP 5: Air track & wagon drillman; Concrete finisher; Dynamite & powder man

GROUP 6:
A. Bottom man; Concrete man
B. Concrete headman
C. Miner or header man
D. Mucker & Tunnel laborer

Adams, Allen, Blackford, DeKalb, Huntington, Jay, Steuben, Wells, & Whitley Counties

POWER EQUIPMENT OPERATORS: TUNNEL AND SEWER CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$10.30	.40	.40		.05
GROUP II	9.20	.40	.40		.05
GROUP III	8.80	.40	.40		.05
GROUP IV	8.00	.40	.40		.05

CLASSIFICATIONS

GROUP I
Air compressor (pressurizing shafts, tunnels & divers); Air tugger; Auto patrol; Back filler; Backhoe; Boom cat; Boring machine; Bull dozer; Caisson drilling machine; Cherry picker; Compactor (with dozer blade); Concrete mixer (dual drum); Concrete plant; Concrete pump; Crane with all attachments; Crane - electric overhead; Derrick; Dual purpose truck (pitman type); Ditching machine (18" and over); Dredge; Elevators (when hoisting material or tools); Fork lift; Formless paver; Generator (power for welders or compressors); Gradall; Helicoptor; Helicoptor winch operator; High lift - front end loader; Hoist; Locomotive and/or dinky engine; Mechanic on job site; Mucking machine; Panel board concrete plant; Pile driver; Push cat; Scoop & tractor; Scraper - rubber tired; Spreader - tractor mounted; Straddle carrier - ross type; Sub base finish machine (C.M.I. or similar); Tower crane; Tractor with backhoe (1/2 yard and over); Trench box - power driven; Tunnel shield; Welder (craft)

GROUP II
A frame truck; Batcher plant (automatic dry batch); Bending machine - Power driven; Bituminous mixer; Bituminous paver; Bituminous plant engineer; Boatman; Bull float; Compactor or tamper - self-propelled; Concrete mixer (21 cu. ft. or over); Concrete spreader - power driven; Ditching machine (less than 18"); Drilling machine; Finish machine & bull float; Finishing machine; Fireman - Pile driving and boilers; Gunite machine; Head greaser; Mechanic in shop; Mesh depresser - mesh placer; P.C.C. concrete belt placer; Roller - asphalt, Stone & sub base; Rotary drill; Sheepsfoot roller - self-propelled; Shop mule; Spreader or base paver-self-propelled; Sub grader; Throttle valve with air compressor or boiler; Tractor with backhoe (under 1/2 yard); Tractor - high lift - farm type; Tractor - industrial type; Tractor with winch; Well points; Winch truck

GROUP III
Air compressor (210 cu. ft. & over); Bituminous distributor; Chair cart; Concrete curing machine; Concrete saw; Dope pot - power agitated; Flex plane; Form grader; Hydrohammer; Jacks - hydraulic - power driven; Minor equipment operator 2,3,4, or 5; Paving joint machine; Post hole digger; Roller - earth; Throttle valve; Track jack - power driven; Tractor - farm type; Truck crane driver

GROUP IV
Air compressor (less than 210 cu. ft.); Concrete mixer (under 21 cu. ft.); Conveyor; Generator; Mechanical heater; Oiler; Power broom; Pump; Welding machine; Helpers

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Boone, Clay, Daviess, Fountain, Greene, Hendricks, Knox, Monroe, Montgomery, Morgan, Owen, Parke, Putnam, Sullivan, Vermillion, Vigo, & Warren Counties

POWER EQUIPMENT OPERATORS 1 of 2

Tunnel & Sewer Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$11.65	.55	.75		.08
GROUP II	11.55	.55	.75		.08
GROUP III	11.35	.55	.75		.08
GROUP IV	8.00	.55	.75		.08

CLASSIFICATIONS

GROUP I Master Mechanics

GROUP II Utility Operator

GROUP III Power Cranes; Draglines; Derricks; Electric Overhead Cranes; Shovels; Gradall; Mechanics; Repair and Maintenance of all Equipment; Tractor Highlift; Fork lifts; Tournadozer; Mixer over 14S Capacity; Tournamixer; Two Drum Machine or Two Cage Hoists; Cableways; Tower Machines; Motor Patrol; Boom Tractor; Boom or Winch Truck; Truck Crane; Tournapull; Tractor operating Scoops; Bulldozer; Push Tractor; Finishing Machine on Asphalt; Large Rollers & Rollers on Asphalt; Gravel; Macadam and Brick Surface; Ross Carrier or similar Machine; Gravel Processing Machine; Asphalt Plant Engineer or Pug Mill; Two Air Compressors; Hetherington Paver Operator; Farm Tractor with half Yard bucket and/or Back Hoe Attachment; Trench Machines cutting over 24"; Dredging Equipment; Central Mix Plant Engineer; CMI or similar type Machine; Concrete Spreader; Cherry Picker; Standard or Dinkey Locomotives; Scoopmobiles; Euclid Loader; Soil Cement Machines; Back Filler; Elevating Machine; Power Blade; Asphalt Plant Engineer; Well Drilling Machines; Paint Machine; Pipe Cleaning Machines; Pipe Wrapping Machine; Pipe Bending Machine; Apsco Paver; Boring Machine; Tractor Without Winch; Head Equipment Greasers; Barber Green Loaders; Formless Paver; Well Point System Hydra Ax; Resco Concrete Saw; Marine Scoops; Brush Mulcher; Brush Burner; Mesh Placer; Tree Mover; Helicopter Crew (3); Pile Driver Skid or Crawler; Stump Remover; Root Rake; Tug Boat Operator; Refrigerating Machine Freezing Operator; Chair Cart - Self Propelled; Hydra Seeder; Straw Blower; Concrete Mixers with Skip; all one Drum Hoists with Tower or Boom; Dredge Engineer; Dredge Operator; Rock Spreader; Truck or Skid Mounted Tower Crane; Engine or Rock Crusher Plant; Boiler Operator; Concrete Plant Engineer; Loaders; Hydra Crane Caissons; Shaft or any similar type Drilling Machine; Concrete Curb Machine - Self Propelled; Winch or Hydraulic Boom Truck

POWER EQUIPMENT OPERATORS 2 of 2

GROUP IV Mixers 14S capacity or less; Trench Machine cutting 24" and under; Farm Tractor with less than half yard bucket and other Attachments except Back Hoe; Truck Crane Oiler; Power Subgrader; Bull Float; Form Grader; Finishing Machine; Pavement Breaker; Rock Crushers; One Drum Machine; One Air Compressor; Concrete Pump; Gunite Machine; Air Taggers; Truck Crane Drivers; House Elevators when used for hoisting Material; Two to Four Generators or Welding Machine; Mechanized Heaters irrespective of Motor Power when used for temporary heat; Small Rollers on Earth; Engine Tenders; Firemen; Wagon Drill; Flexplane; Conveyor; Two to Four Water Pumps; Siphon and Pulsometer; Switchman on Paint Pots; Fireman on Asphalt Plants; Distributor Operator on Trucks; Tampers; Power Broom; Post Hole Digger; Self-propelled Concrete Saw; Striping Machine (Motor Driven); Form Tamper; Seaman Tiller; Bulk Cement Plant Equipment Greaser; Track Jack; Mud Jack; Operator to do Winter Repair Work in Shop between November 1st and March 1st; Concrete Buggies motor driven; Oilers; Barrel Type Mixer; One Welding Machine or One Water Pump; Air Valves or Steam Valves from Plant; Concrete Mixers without Skip; Curing Machine; Concrete & Blacktop Curb Machine; Deck Hands

Cranes with booms from 149 ft. to 199 ft. including jib, receive additional $.75 per hour
Cranes with boom over 199 ft. including job receive additional $1.25 per hour.

Bartholomew, Brown, Clark, Crawford, Dearborn, Decatur, Dubois, Floyd, Franklin, Gibson, Harrison, Jackson, Jefferson, Jennings, Lawrence, Martin, Ohio, Orange, Perry, Pike, Posey, Ripley, Scott, Spencer, Switzerland, Vanderburgh, Warrick, & Washington Counties

POWER EQUIPMENT OPERATORS Sewer, Tunnel, & Water Construction	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	10.25	.40	.45		.08
GROUP B	9.15	.40	.45		.08
GROUP C	7.91	.40	.45		.08

CLASSIFICATIONS

GROUP A: A-Frame winch truck; air compressor 900 cu. ft. and over; air tugger; auto-grade (CMI); auto patrol; backhoe; ballast regulator (RR); batcher plant (electric control concrete); bending machine (pipe); bituminous plant; bituminous mixer travel plant, bituminous paver, roller; bulldozer; cable way; Chicago boom; clamshell; concrete mixer (21 cu. ft. or over); concrete paver; concrete pump (crete); crane; craneman; crusher plant; derrick; derrick boat; dinkey; dope pots (pipeline); Dragline; dredge operator; dredge engineer; drill operator; elevating grader; elevator; Ford hoe, (or similar type equipment); forklift; formless paver; gantry crane; gradeall; grademan; grout pump; helicopter crew; Hetherington paver; highlift; hoist; hopto; hough loader (or similar type); hydro crane; hydro hammer; locomotive crane; locomotive; mechanic; mobile mixer; motor crane; mucking machine; multiple tamping machine (RR); overhead crane; pile driver; pulls; push dozer; push boats; roller (sheepfoot); Ross carrier; scoop; shovel; side boom; swing crane; tail boom; tar machine (pipeline); throttle valve; tower crane; trench machine, welder heavy duty; truck mounted concrete pump and drill; well point; whirleys

GROUP B: Air compressor (up to 900 cu. ft.); brakeman; bull float; concrete mixer (over 10S and under 21S); concrete spreader or puddler; deck engine; electric vibrator Kompactor (earth or rock); finishing machine; fireman; greaser (on grease facilities servicing heavy equipment); material pump; motor boats; portable loader; post hole digger; power broom; rock roller; roller-wobble wheel (earth and rock); spike machine (RR); seaman tiller; spreader rock; sub-grader; tamping machine; welding machine; widener (Apsco or similar type)

GROUP C: Bituminous distributor; cement gun; concrete saw; conveyor; deck hand oiler; drill helpers; earth roller; form grader; generator; guard rail driver; heater; oiler; paving joint machine; steam Jenny; Truck crane oiler; vibrator; water pump

Jasper, Newton, Pulaski, & Starke Counties

POWER EQUIPMENT OPERATORS Tunnel & Sewer Construction	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Class I	$12.40	1.00	1.00		.05
Class II	11.90	1.00	1.00		.05
Class III	10.35	1.00	1.00		.05
Class IV	9.35	1.00	1.00		.05

CLASS I Mechanic; asphalt plant; autograde; batch plant; benoto (requires two engineers); boiler & throttle valve; boring machine (mining machine); caisson rigs; central redimix plant; combination backhoe, front end loader with backhoe bucket over ½ cu. yd.; combination tugger boist & air compressor; compressor and throttle; concrete breaker (truck mounted); concrete conveyor; concrete paver over 27E cu. ft.; concrete paver 27E cu. ft. and under; concrete pump w/boom (truck mounted); concrete tower; cranes, all; cranes, hammerhead tower; creter crane; derricks, all; derricks, traveling; forklift-lull type; forklift - 10 ton and over; hoists, one, two, and three drum; hoist, two tugger one floor; hydraulic boom truck; locomotive, all; motor patrol; mucking machine; pile drivers and skid rig; pit machines; pre-stress machine; pump cretes and similar types; rock drill (self-propelled); rock drill (truck mounted); slipform paver; straddle buggies; tractor with boom & side boom; trenching machine; winch tractors

CLASS II Asphalt spreader; boiler; bulldozers; combination backhoe, front-end loader with backhoe bucket, ½ cu. yd. and under; grader, elevating; greaser engineer; grouting machines; highlift shovels or front endloader; hoist, automatic; cowboy drilling machines; hoists all elevators; hoists, tugger single drum; post hole digger; rollers, all; scoops - tractor drawn; stone crushers; tournapull; winch trucks

CLASS III Concrete mixer (2 bag & over); conveyor, portable; steam generators; tractors, farm & similar type; air compressor small 150 & under (1 to 5 not to exceed a total of 300 ft.); air compressor - large over 150; combination - small equipment operator; forklift - under 10 tons; generators; pumps (1 to 3 not to exceed a total of 300 ft.); pumps, well points; welding machines (2 through 5); winches 4 electric drill winches

CLASS IV Heaters, mechanical (1 to 5); oilers & switchmen

Benton, Carroll, Cass, Clinton, Delaware, Fayette, Fulton, Grant, Hamilton, Hancock, Henry, Howard, Johnson, Madison, Marion, Miami, Randolph, Rush, Shelby, Tippecanoe, Tipton, Union, Wabash, Wayne, & White Counties

POWER EQUIPMENT OPERATORS: TUNNEL AND SEWER CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
GROUP I	$11.70	.55	.65		.09
GROUP II	10.75	.55	.65		.09
GROUP III	9.05	.55	.65		.09
GROUP IV	8.05	.55	.65		.09

CLASSIFICATIONS

GROUP I

Air compressor (pressurizing shafts, tunnels & divers); Air tugger; Auto patrol; Back filler; Backhoe; Boom cat; Boring machine; Bull dozer; Caisson drilling machine; Cherry picker; Compactor (with dozer blade); Concrete mixer (dual drum); Concrete plant; Concrete pump; Crane with all attachments; Crane - electric overhead; Derrick; Dual purpose truck (pitman type); Ditching machine (18" and over); Dredge; Elevators (when hoisting material or tools); Fork lift; Formless paver; Generator (power for welders or compressors); Gradall; Helicoptor; Helicoptor winch operator; High lift - front end loader; Hoist; Locomotive and/or dinky engine; Mechanic on job site; Mucking machine; Panel board concrete plant; Pile driver; Push cat; Scoop & tractor; Scraper - rubber tired; Spreader - tractor mounted; Straddle carrier - ross type; Sub base finish machine (C.M.I. or similar); Tower crane; Tractor with backhoe (1/2 yard and over); Trench box - power driven; Tunnel shield; Welder (craft)

GROUP II

A frame truck; Batcher plant (automatic dry batch); Bending machine - Power driven; Bituminous mixer; Bituminous paver; Bituminous plant engineer; Boatman; Bull float; Compactor or tamper - self-propelled; Concrete mixer (21 cu. ft. or over); Concrete spreader - power driven; Ditching machine (less than 18"); Drilling machine; Finish machine & bull float; Finishing machine; Fireman - Pile driving and boilers; Gunite machine; Head greaser; Mechanic; Mesh depresser - mesh placer; P.C.C. concrete belt placer; Roller - asphalt, Stone & sub base; Rotary drill; Sheepsfoot roller - self-propelled; Spreader or base paver-self-propelled; Sub grader; Throttle valve with air compressor or boiler; Tractor with backhoe (under 1/2 yard); Tractor - high lift - farm type; Tractor - industrial type; Tractor with winch; Well points; Winch truck

GROUP III

Air compressor (210 cu. ft. & over); Bituminous distributor; Chair cart; Concrete curing machine; Concrete saw; Dope pot - power agitated; Flex plane; Form grader; Hydrohammer; Jacks - hydraulic - power driven; Minor equipment operator 2,3,4, or 5; Paving joint machine; Post hole digger; Roller - earth; Throttle valve; Track jack - power driven; Tractor - farm type; Truck crane driver

GROUP IV

Air compressor (less than 210 cu. ft.); Concrete mixer (under 21 cu. ft.); Conveyor; Generator; Mechanical heater; Oiler; Power broom; Pump; Welding machine; Helpers

Statewide, except Clark, Crawford, Dearborn, DuBois, Floyd, Fountain, Gibson, Harrison, Jackson, Jefferson, Miami (Peru & Grissom AFB), Perry, Pike, Posey, Scott, Spencer, Switzerland, Vanderburgh, Vermillion, Warren, Warrick, Washington, & Clinton (Frankfort) Counties

LINE CONSTRUCTION EXCLUSIVE OF CALUMET AREA	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Linemen; Technicians	$10.57	.45	3%		.5%
Equipment Operators 1	8.26	.45	3%		.5%
Equipment Operators 2	9.56	.45	3%		.5%
Equipment Operators 3	10.04	.45	3%		.5%
Equipment Operators 4	10.57	.45	3%		.5%
Powderman and Equipment Mechanic	8.07	.45	3%		.5%
Senior Groundman Truck Driver w/w	6.90	.45	3%		.5%
Groundman Truck Driver with winch	6.63	.45	3%		.5%
Groundman Truck Driver w/o winch	5.81	.45	3%		.5%
Senior Groundman after 5 years	6.62	.45	3%		.5%
Senior Groundman after 12 months	6.44	.45	3%		.5%
Groundman 0-12 months	5.45	.45	3%		.5%
CALUMET AREA					
Linemen; Technicians	10.90	.45	3%		.5%
Equipment Operators 1	8.34	.45	3%		.5%
Equipment Operators 2	9.63	.45	3%		.5%
Equipment Operators 3	10.11	.45	3%		.5%
Equipment Operators 4	10.90	.45	3%		.5%
Powderman and Equipment Mechanic	8.14	.45	3%		.5%
Senior Groundman Truck Driver w/w	7.02	.45	3%		.5%
Groundman Truck Driver with winch	6.71	.45	3%		.5%
Groundman Truck Driver w/o winch	5.89	.45	3%		.5%
Senior Groundman after 5 years	6.75	.45	3%		.5%
Senior Groundman after 12 months	6.56	.45	3%		.5%
Groundman 0-12 months	5.55	.45	3%		.5%

Clark, Floyd, Harrison, Jackson, Jefferson, Scott, & Washington Cos. LINE CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Linemen; Line truck driver; Mechanized equipment operators	$13.30	.50	3%+.60		

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LINE CONSTRUCTION

Crawford, DuBois, Gibson, Perry, Pike, Posey, Spencer, Vanderburgh, & Warrick Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINEMEN; Line truck operators; Hole digger; Stool handling cable splicer	$13.05	.50	3%+.60		½%
GROUNDMAN	11.69	.50	3%+.60		½%
TRUCK DRIVER	12.00	.50	3%+.60		½%
Fountain, Vermillion, & Warren Counties					
LINEMEN; Groundman equipment operator	12.12	.50	3%+.50		½%
GROUNDMAN TRUCK DRIVER W/WINCH	9.86	.50	3%+.50		½%
GROUNDMAN TRUCK DRIVER WO/WINCH	9.22	.50	3%+.50		½%
GROUNDMAN	8.73	.50	3%+.50		½%

LINE CONSTRUCTION Clinton (Frankfort only) & Miami (Peru & Grissom AFB) Cos.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINEMEN; Heavy equipment operators "A"	$11.53	.45	3%		½%
CABLE SPLICERS	12.52	.45	3%		½%
HEAVY EQUIPMENT OPERATORS "B"	9.28	.45	3%		½%
POWDERMAN; Equipment mechanic	9.07	.45	3%		½%
SENIOR GROUNDMAN - truck driver with winch	7.60	.45	3%		½%
GROUNDMAN - truck driver with winch	7.27	.45	3%		½%
SENIOR GROUNDMAN AFTER 5 YEARS	7.25	.45	3%		½%
SENIOR GROUNDMAN AFTER 12 MONTHS	7.03	.45	3%		½%
GROUNDMAN - truck driver without winch	7.27	.45	3%		½%
GROUNDMAN 0 to 12 MONTHS	6.02	.45	3%		½%

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Dearborn & Switzerland Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION					
Up to & including 18 mi. radius of Hamilton Co., Court House, Cincinnati, Ohio					
Linemen; Operator all mechanized equipment operators	$12.90	.70	3%+.60		.5%
Groundmen	9.68	.70	3%+.60		.5%
Over 18 up to & including 21 mi. radius of Hamilton Co., Court House, Cincinnati, Ohio					
Linemen; Operators all mechanized equipment operators	13.20	.70	3%+.60		.5%
Groundmen	9.90	.70	3%+.60		.5%
Over 21 up to & including 25 mi. radius of Hamilton Co., Court House, Cincinnati, Ohio					
Linemen; Operators all mechanized equipment operators	13.30	.70	3%+.60		.5%
Groundmen	9.98	.70	3%+.60		.5%
Over 25 mi radius of Hamilton Co., Court House, Cincinnati, Ohio					
Linemen; Operators all mechanized equipment operators	13.45	.70	3%+.60		.5%
Groundmen	10.09	.70	3%+.60		.5%

SUPERSEDEAS DECISION

STATE: KENTUCKY DECISION NO.: KY78-1098
COUNTIES: ANDERSON, BATH, BOURBON, BOYD, BOYLE, BRACKEN, BRECKINRIDGE, BULLITT, CARROLL, CARTER, CLARK, ELLIOTT, FAYETTE, FLEMING, FRANKLIN, GALLATIN, GRAYSON, GRANT, GREENUP, HARDIN, HARRISON, HENRY, JEFFERSON, JESSAMINE, LARUE, LEWIS, MADISON, MARION, MASON, MEADE, MERCER, MONTGOMERY, NELSON, NICHOLAS, OLDHAM, OWEN, ROBERTSON, ROWAN, SCOTT, SHELBY, SPENCER, TRIMBLE, WASHINGTON, & WOODFORD
Supersedeas Decision No. KY77-1124, dated September 30, 1977, in 42 FR 53044.

DATE: DATE OF PUBLICATION
DESCRIPTION OF WORK:

HEAVY & HIGHWAY CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$10.94	.50	.40		.01
CARPENTERS	10.23	.60	.60		.05
CEMENT MASONS	9.48	.90	.60		.04
ELECTRICIANS (OUTSIDE):					
Linemen & Cable splicers	12.40	.50	3% + .40		½ of 1%
Groundmen	7.69	.50	3% + .40		½ of 1%
IRONWORKERS	11.45	.90	1.45		.06
MILLWRIGHTS	11.75	.50	.65		.05
PAINTERS:					
Brush & Roller	9.02	.35	.20		.03
Sandblasting	9.37	.35	.20		.03
Spray	9.47	.35	.20		.03
Bridge Work - work on bridges over navigable water shall carry a premium of $2.00 added to the base rate.					
PILEDRIVERMEN	9.66	.30	.30		
PIPEFITTERS	12.69	.64	1.15		.09
PLUMBERS	12.78	.65	1.04		.10
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.					

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LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$ 8.07	.35	.47		
GROUP 2	8.32	.35	.47		
GROUP 3	8.37	.35	.47		
GROUP 4	8.97	.35	.47		

LABORERS' CLASSIFICATIONS DEFINITIONS

GROUP 1 - Asphalt plant laborers, concrete laborers, asphalt laborers, storm & sanitary sewer laborers, carpenter tenders, cement mason tenders, mesh handlers & placers, landscaping and seeding, planters & tree-trimmers, sign guard rail & fence installers, grade checkers, aging & curing of concrete, truck spotters & dumpers, batch truck dumpers, flagmen, rip-rap & grouters, dredging laborers, right of way laborers, wrecking & demolition laborers, drill helper, & all hand digging and hand back filling.

GROUP 2 - Wagon drills, jack hammers, paving breakers, chain saw, concrete saw, paving joint machine, vibrator operator, power driven Georgia buggy or wheel barrow, sand blaster & concrete chippers, green concrete cutting, brickmason tenders & mortar mixers, pipe layers, joint maker, batter board man (sanitary & storm sewer), dry cement handlers, concrete rubbers, walk-behind tamper machine, walk-behind trenching machine, surface grinderman, hand operated grouter & grinder machine, operator & deckhand scow man, burner & welder.

GROUP 3 - Powderman and blasters, side rail setters - including rail paved ditches tunnel laborers (free air), gunnite operators & mixer man, gunnite nozzleman, asphalt luteman & rakeman, air tact driller (all types), grout pump operator.

GROUP 4 - Tunnel blasters, tunnel muckers (free air), miners & drillers (free air) Caisson workers (free air).

DECISION NO. KY78-1098

POWER EQUIPMENT OPERATORS HEAVY CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$10.80	.50	.60		.05
CLASS B	8.33	.50	.60		.05
CLASS C	7.63	.50	.60		.05
CLASS D	11.05	.50	.60		.05

NOTE: Railroad and Highway bridges across commercially navigable rivers; i.e. navigable to loaded barge tow, (including setting of super structure steel on bridges) shall receive the HEAVY rate of pay.

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching and trenching machine, dragline, dredge engineer, elevator (used for hoisting building materials), elevating grader and all types of loaders, hoe-type machine, hoisting engine, locomotive, LeTourneau or carry-all scoop, bulldozer, mechanic, mechanic welder, Orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-frame winch truck, concrete paver, grade all, hoist (two or more drums), hyster, pumpcrete, Ross carrier, side boom, tail boom, Rotary drill, mucking machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German & other types), hydrocrane, backfiller, gurries, subgrader.

CLASS B - All air compressors (over 900 cu. ft. per min. or greater capacity), bituminous mixer, concrete mixer (under 21 cu. ft.), welding machine, form grader, roller (rock), tugger, tractor (50 H.P. and over), bull float, finish machine, outboard motor boat, well points, flexplane, fireman, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or brakeman, joint sealing machine, mechanic helper, Whirley oiler, tract-air and road-widening trencher, grout pump, electric vibrator compactor/self-propelled compactor, throttle valve, elevator (one drum or buck hoist), power sweeper (riding type), core drill and caisson drill helper (truck mounted).

CLASS C - Bituminous distributor, cement gun coveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 H.P.), vibrator, oiler, concrete saw, burlap and curing machine, hydro-seeder, power form handling equipment, deckhand, steerman, hydraulic post driver, core drill and caisson drill helper (track or skid mounted).

CLASS D - Operators on cranes with booms one hundred fifty feet (150') and over (including jib).

DECISION NO. KY78-1098

POWER EQUIPMENT OPERATORS HIGHWAY CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$ 9.50	.50	.60		.05
CLASS B	7.55	.50	.60		.05
CLASS C	7.80	.50	.60		.05
CLASS D	7.16	.50	.60		.05

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick boat, ditching and trenching machine, dragline, elevator (when used for hoisting any building material), elevating grader and all types of loaders, hoe-type machine, hoisting engine (two or more drums), locomotive, motor scraper, bulldozer, mechanic, orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-frame winch truck, concrete paver, grade-all, hoist (two or more drums), hyster, pumpcrete, Ross carrier, side boom, rotary drill (5" and over), muching machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German and other types), hydrocrane, backfiller, gurries, subgrader, tailboom and dredge engineer.

CLASS B - All air compressors (over 900 cu. ft. per min.), bituminous mixer, concrete mixer (under 21 cu. ft.), elevator (one drum or buck hoist), welding machine, form grader, grout pump, roller (rock), tractor (50 HP or over), bull float, finish machine, outboard motor boat, electric vibrator compactor/self-propelled compactor, boom type tamping machine, truck crane oiler, switchman or brakeman, mechanic helper, whirley oiler, tractair and road widening trencher, joint sealing machine, rotary drill (under 5"), throttle valve man, tugger, well points, flexplane, fireman, and hoist (one drum).

CLASS C - Greaser on grease facilities servicing heavy equipment.

CLASS D - Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 HP), vibrator, oiler, concrete saw, burlap and curing machine, hydro seeder, power form handling equipment, deckhand oiler, and hydraulic post driver.

DECISION NO. KY78-1098

TRUCK DRIVERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Truck helper & warehousemen, & mobile batch truck helper	$ 8.10	a	b		
Driver - 3 tons and under, greaser, tire changer, & mechanic helper	8.21	a	b		
Driver - over 3 tons, semi-trailer or pole-trailer (when used to pull building materials and equipment), dump truck tandem axle, truck mechanic, & distributor	8.39	a	b		
Driver - mixer trucks (ALL TYPES)	8.42	a	b		
Driver - Euclid & other heavy earth moving equipment & low boy, winch truck & A-frame truck (when used to transport materials), fork lift (when used to transport building materials), and pavement breakers	8.49	a	b		

FOOTNOTES:

a. Employer contribution of $21.00 per week per employee who has been employed a minimum of 20 work days within any 90 consecutive day period for that employer.

b. Employer contribution of $20.00 per week per employee who has been employed a minimum of 20 work days within any 90 consecutive day period for that employer.

SUPERSEDEAS DECISION

STATE: KENTUCKY
COUNTIES: ALLEN, BALLARD, BUTLER, CALDWELL, CALLOWAY, CARLISLE, CHRISTIAN, CRITTENDEN, DAVIESS, EDMONSON, FULTON, GRAVES, HANCOCK, HENDERSON, HICKMAN, HOPKINS, LIVINGSTON, LOGAN, LYON, McCRACKEN, McLEAN, MARSHALL, MUHLENBERG, OHIO, SIMPSON, TODD, TRIGG, UNION, WARREN, AND WEBSTER.
DECISION NO.: KY78-1099 DATE: DATE OF PUBLICATION
Supersedes Decision No. KY77-1122, dated September 30, 1977, in 42 FR 53040.
DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS	$ 9.15	.45	.30		
CEMENT MASONS	*8.40	.85	.35		.05
*Cement mason working on a swinging scaffold shall receive an additional 25¢ per hour when working up to 50ft. and an additional 25¢ per hour for each additional 50ft. or a portion thereof.					
ELECTRICIANS (OUTSIDE):					
Linemen	12.10	.50	3%		½ of 1%
Cable splicers	12.35	.50	3%		½ of 1%
Groundmen	8.87	.50	3%		½ of 1%
IRONWORKERS	12.30	.55	1.05		.045
MILLWRIGHTS	9.90	.45	.30		
PAINTERS:					
Brush & Roller	9.45	.45			
Sandblast & Power tools	10.00	.45			
BRIDGE WORK - Brush, Roller, Spray, & Sandblast	10.45	.45			
When there is a FREE FALL beginning at the point of:					
40' to 80' + 50¢ per hour over the base rate of work classification;					
80' to 120' + 75¢ per hour over the base rate of work classification;					
Over 120' + $1.00 per hour over the base rate of work classification.					
PILEDRIVERMEN	9.40	.45	.30		
PLUMBERS & PIPEFITTERS	11.90	.60	.65		.08
WELDERS: Reveive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. KY78-1099

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$ 8.07	.35	.47		
GROUP 2	8.32	.35	.47		
Group 3	8.37	.35	.47		
GROUP 4	8.97	.35	.47		

LABORERS' CLASSIFICATIONS DEFINITIONS

GROUP 1 - Asphalt plant laborers, concrete laborers, asphalt laborers, storm & sanitary sewer laborers, carpenter tenders, cement mason tenders, mesh handlers & placers, landscaping and seeding, planters & tree-trimmers, sign guard rail & fence installers, grade checkers, aging & curing of concrete, truck spotters & dumpers, batch truck dumpers, flagmen, rip-rap & grouters, dredging laborers, right of way laborers, wrecking & demolition laborers, drill helper, & all hand digging and hand back filling.

GROUP 2 - Wagon drills, jack hammers, paving breakers, chain saw, concrete saw, paving joint machine, vibrator operator, power driven Georgia buggy or wheel barrow, sand blaster & concrete chippers, green concrete cutting, brickmason tenders & mortar mixers, pipe layers, joint maker, batter board man (sanitary & storm sewer), dry cement handlers, concrete rubbers, walk-behind tamper machine, walk-behind trenching machine, surface grinderman, hand operated grouter & grinder machine, operator & deckhand scow man, burner & welder.

GROUP 3 - Powderman and blasters, side rail setters - including rail paved ditches, tunnel laborers (free air), gunnite operators & mixer man, gunnite nozzleman, asphalt luteman & rakeman, air tact driller (all types), grout pump operator.

GROUP 4 - Tunnel blasters, tunnel muckers (free air), miners & drillers (free air), Caisson workers (free air).

DECISION NO. KY78-1099

POWER EQUIPMENT OPERATORS HEAVY CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$10.80	.50	.60		.05
CLASS B	8.33	.50	.60		.05
CLASS C	7.63	.50	.60		.05
CLASS D	11.05	.50	.60		.05

NOTE: Railroad and Highway bridges across commercially navigable rivers; i.e. navigable to loaded barge tow, (including setting of super structure steel on bridges) shall receive the HEAVY rate of pay.

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching and trenching machine, dragline, dredge engineer, elevator (used for hoisting building materials), elevating grader and all types of loaders, hoe-type machine, hoisting engine, locomotive, LeTourneau or carry-all scoop, bulldozer, mechanic, mechanic welder, Orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-frame winch truck, concrete paver, grade all, hoist (two or more drums), hyster, pumpcrete, Ross carrier, side boom, tail boom, Rotary drill, mucking machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German & other types), hydrocrane, backfiller, gurries, subgrader.

CLASS B - All air compressors (over 900 cu. ft. per min. or greater capacity), bituminous mixer, concrete mixer (under 21 cu. ft.), welding machine, form grader, roller (rock), tugger, tractor (50 H.P. and over), bull float, finish machine, outboard motor boat, well points, flexplane, fireman, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or brakeman, joint sealing machine, mechanic helper, Whirley oiler, tract-air and road-widening trencher, grout pump, electric vibrator compactor/self-propelled compactor, throttle valve, elevator (one drum or buck hoist), power sweeper (riding type), core drill and caisson drill helper (truck mounted).

CLASS C - Bituminous distributor, cement gun coveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 H.P.), vibrator, oiler, concrete saw, burlap and curing machine, hydro-seeder, power form handling equipment, deckhand, steerman, hydraulic post driver, core drill and caisson drill helper (track or skid mounted).

CLASS D - Operators on cranes with booms one hundred fifty feet (150') and over (including jib).

DECISION NO. KY78-1099

POWER EQUIPMENT OPERATORS HIGHWAY CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$ 9.50	.50	.60		.05
CLASS B	7.55	.50	.60		.05
CLASS C	7.80	.50	.60		.05
CLASS D	7.16	.50	.60		.05

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick boat, ditching and trenching machine, dragline, elevator (when used for hoisting any building material), elevating grader and all types of loaders, hoe-type machine, hoisting engine (two or more drums), locomotive, motor scraper, bulldozer, mechanic, orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-frame winch truck, concrete paver, grade-all, hoist (two or more drums), hyster, pumporete, Ross carrier, side boom, rotary drill (5" and over), muching machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German and other types), hydrocrane, backfiller, gurries, subgrader, tailboom and dredge engineer.

CLASS B - All air compressors (over 900 cu. ft. per min.), bituminous mixer, concrete mixer (under 21 cu. ft.), elevator (one drum or buck hoist), welding machine, form grader, grout pump, roller (rock), tractor (50 HP or over), bull float, finish machine, outboard motor boat, electric vibrator compactor/self-propelled compactor, boom type tamping machine, truck crane oiler, switchman or brakeman, mechanic helper, whirley oiler, tractair and road widening trencher, joint sealing machine, rotary drill (under 5"), throttle valve man, tugger, well points, flexplane, fireman, and hoist (one drum).

CLASS C - Greaser on grease facilities servicing heavy equipment.

CLASS D - Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 HP), vibrator, oiler, concrete saw, burlap and curing machine, hydro seeder, power form handling equipment, deckhand oiler, and hydraulic post driver.

DECISION NO. KY78-1099

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Truck helper & warehousemen, & mobile batch truck helper	$ 8.37		a		
Driver - 3 tons & over, greaser, tire changer & mechanic helper	8.42		a		
Truck mechanics	8.65		a		
Driver - over 3 tons, semi-trailer (when used to pull building materials or equipment), dump truck, tandem axle, distributor, & mixer trucks (ALL TYPES)	8.72		a		
Driver - Euclid & other heavy earth moving equipment and low boy, winch truck & A-frame truck (when used in transporting materials), fork lift (when used to transport building materials), & pavement breakers	8.73		a		

FOOTNOTE:

a. Employer contribution of $31.00 per week per employee who has been employed a minimum of 20 work days within any 90 consecutive day period for that employer.

SUPERSEDEAS DECISION

STATE: KENTUCKY DECISION NO.: KY78-1100

COUNTIES: ADAIR, BARREN, BELL, BREATHITT, CASEY, CLAY, CLINTON, CUMBERLAND, ESTILL, FLOYD, GARRARD, GREEN, HARLAN, HART, JACKSON, JOHNSON, KNOTT, KNOX, LAUREL, LAWRENCE, LEE, LESLIE, LETCHER, LINCOLN, McCREARY, MAGOFFIN, MARTIN, MENIFEE, METCALFE, MONROE, MORGAN, OWSLEY, PERRY, PIKE, POWELL, PULASKI, ROCKCASTLE, RUSSELL, TAYLOR, WAYNE, WHITLEY, WOLFE.

DATE: DATE OF PUBLICATION

Supersedes Decision No. KY77-1134, dated November 11, 1978, in 42 FR 58926.

DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$10.10	.35	.35	.25	
CARPENTERS	8.60	.35	.35	.25	
CEMENT MASONS	8.45	.35	.35	.25	
ELECTRICIANS (OUTSIDE):					
Linemen & cable splicers	12.65	.50	3%		½ of 1%
Groundmen	9.49	.50	3%		½ of 1%
IRONWORKERS:					
Reinforcing	8.50	.35	.35	.25	
Structural	8.70	.35	.35	.25	
MILLWRIGHTS	9.11	.50	.30		
PAINTERS:					
Brush, roller, & spray	10.30	.35	.35	.25	
PILEDRIVERMEN	8.25	.35	.35	.25	
PLUMBERS	12.27	.35	.35	.25	
SHEET METAL WORKERS	10.15	.35	.35	.25	
TRUCK DRIVERS:					
Truck helper & warehousemen	6.90	.35	.35	.25	
Driver, winch truck & A-frame truck (when used in transporting materials)	7.00	.35	.35	.25	
Driver, distributor, dump truck tandem axle, & semi-trailer or pole-trailer	7.10	.35	.35	.25	
Driver, mixer truck (ALL TYPES)	7.15	.35	.35	.25	
Truck mechanic	7.20	.35	.35	.25	
Driver, 3 tons & under, & tire changer	7.23	.35	.35	.25	
Driver, pavement breaker	7.25	.35	.35	.25	
Driver, over 3 tons	7.44	.35	.35	.25	
Driver, Euclid and other heavy earth moving equipment and low boy	8.01	.35	.35	.25	
Greaser on grease facilities	8.05	.35	.35	.25	
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. KY78-1100

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers, flagmen	$ 6.65	.35	.35	.25	
Hand blade operator & batch truck dumper, deck hand or scow man	6.90	.35	.35	.25	
Power Driven Tool Operator of the following: wagon drill, chain saw, jack hammer, concrete saw, sand blaster, concrete chipper, pavement breaker, vibrator, power wheelbarrow, power buggy, sewer pipe layer, bottom men, dry cement handler, concrete rubber, mason tender	7.00	.35	.35	.25	
Asphalt lute & rakermen, side rail setter	7.05	.35	.35	.25	
Gunnite nozzleman; gunnite operator	7.15	.35	.35	.25	
Tunnel laborers (free air)	7.20	.35	.35	.25	
Tunnel mucker (free air)	7.25	.35	.35	.25	
Tunnel miner, blaster & driller (free air)	7.60	.35	.35	.25	
Drill operator of percussion type drills which are both powered and propelled by an independent air supply	7.95	.35	.35	.25	
Powdermen	8.15	.35	.35	.25	
Caisson workers	8.15	.35	.35	.25	

DECISION NO. KY78-1100

POWER EQUIPMENT OPERATORS HEAVY CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$10.80	.50	.60		.05
CLASS B	8.33	.50	.60		.05
CLASS C	7.63	.50	.60		.05
CLASS D	11.05	.50	.60		.05

NOTE: Railroad and Highway bridges across commercially navigable rivers; i.e. navigable to loaded barge tow, (including setting of super structure steel on bridges) shall receive the HEAVY rate of pay.

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching and trenching machine, dragline, dredge engineer, elevator (used for hoisting building materials), elevating grader and all types of loaders, hoe-type machine, hoisting engine, locomotive, LeTourneau or carry-all scoop, bulldozer, mechanic, mechanic welder, Orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-frame winch truck, concrete paver, grade all, hoist (two or more drums), hyster, pumpcrete, Ross carrier, side boom, tail boom, Rotary drill, mucking machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German & other types), hydrocrane, backfiller, gurries, subgrader.

CLASS B - All air compressors (over 900 cu. ft. per min. or greater capacity), bituminous mixer, concrete mixer (under 21 cu. ft.), welding machine, form grader, roller (rock), tugger, tractor (50 H.P. and over), bull float, finish machine, outboard motor boat, well points, flexplane, fireman, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or brakeman, joint sealing machine, mechanic helper, Whirley oiler, tract-air and road-widening trencher, grout pump, electric vibrator compactor/self-propelled compactor, throttle valve, elevator (one drum or buck hoist), power sweeper (riding type), core drill and caisson drill helper (truck mounted).

CLASS C - Bituminous distributor, cement gun coveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 H.P.), vibrator, oiler, concrete saw, burlap and curing machine, hydro-sceder, power form handling equipment, deckhand, steerman, hydraulic post driver, core drill and caisson drill helper (track or skid mounted).

CLASS D - Operators on cranes with booms one hundred fifty feet (150') and over (including jib).

DECISION NO. KY78-1100

POWER EQUIPMENT OPERATORS HIGHWAY CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$ 9.50	.50	.60		.05
CLASS B	7.55	.50	.60		.05
CLASS C	7.80	.50	.60		.05
CLASS D	7.16	.50	.60		.05

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick boat, ditching and trenching machine, dragline, elevator (when used for hoisting any building material), elevating grader and all types of loaders, hoe-type machine, hoisting engine (two or more drums), locomotive, motor scraper, bulldozer, mechanic, orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-frame winch truck, concrete paver, grade-all, hoist (two or more drums), hyster, pumpcrete, Ross carrier, side boom, rotary drill (5" and over), muching machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German and other types), hydrocrane, backfiller, gurries, subgrader, tailboom and dredge engineer.

CLASS B - All air compressors (over 900 cu. ft. per min.), bituminous mixer, concrete mixer (under 21 cu. ft.), elevator (one drum or buck hoist), welding machine, form grader, grout pump, roller (rock), tractor (50 HP or over), bull float, finish machine, outboard motor boat, electric vibrator compactor/self-propelled compactor, boom type tamping machine, truck crane oiler, switchman or brakeman, mechanic helper, whirley oiler, tractair and road widening trencher, joint sealing machine, rotary drill (under 5"), throttle valve man, tugger, well points, flexplane, fireman, and hoist (one drum).

CLASS C - Greaser on grease facilities servicing heavy equipment.

CLASS D - Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 HP), vibrator, oiler, concrete saw, burlap and curing machine, hydro seeder, power form handling equipment, deckhand oiler, and hydraulic post driver.

SUPERSEDEAS DECISION

STATE: KENTUCKY

COUNTIES: BOONE, CAMPBELL, KENTON, & PENDLETON

DECISION NUMBER: KY78-1101

DATE: DATE OF PUBLICATION

Supersedes Decision No. KY77-1125, dated September 30, 1977, in 42 FR 53046.

DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS	$12.20	.60	.65		.075
CEMENT MASONS	11.38	.60	.30		.02
ELECTRICIANS (OUTSIDE):					
Linemen	12.50	.70	3% + .60		½ of 1%
Groundmen	9.375	.70	3% + .60		½ of 1%
IRONWORKERS:					
Reinforcing	11.53	1.70	1.20		.02
Structural	12.33	.90	1.20		.03
PAINTERS:					
Brush & roller	12.25		.25		
Spray	12.65		.25		
Sandblasting, hoppertender, & waterblasting	12.90		.25		
BRIDGE WORK: (when highest point of clearance is 60 ft. or more)					
Brush, roller, & spray	13.24		.25		
Sandblasting, hoppertender, & waterblasting	13.90		.25		
PILEDRIVERMEN	12.20	.60	.65		.075
PLUMBERS	12.82	1.05	1.20		.07
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. KY78-1101

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$ 8.77	.70	.70		.10
GROUP 2	8.895	.70	.70		.10
GROUP 3	8.97	.70	.70		.10
GROUP 4	9.12	.70	.70		.10
GROUP 5	9.42	.70	.70		.10

GROUP 1 - Laborers (construction), plant laborers or yardmen, right-of-way laborers, landscape laborers, utility men or handymen, joint setter, flagmen, carpenter helper, waterproofing laborers, slurry seal, seal coating, surface treatment or road mix laborers, riprap laborers or grouter, asphalt laborers, dump man (batch trucks), guardrail and fence installer, mesh handler and placers, concrete curing applicator, scaffold erector.

GROUP 2 - Asphalt raker, concrete puddler, kettleman (pipeline), all machine driven tools (gas, electric, air), mason tenders, mortar mixer, sheeting and shoring man, surface grinder man, power buggy and wheelbarrow (power).

GROUP 3 - Form setter, bottom man, welder helper (pipeline), concrete saw man, cutting with burning torch, pipe layer, hand spiker (railroad), car pusher (without air), underground man (working in sewer and waterline, cleaning and repairing and reconditioning), tunnel laborer (without air), and caisson, cofferdam (below 25 ft. deep), air track and wagon drill.

GROUP 4 - Blaster and powder man, muckers, wrencher (mechanical joint and utility pipeline), yarner, top lander.

GROUP 5 - Curb setter, and cutter, miner (without air), concrete crew in tunnels, utility pipeline tapper, gunnite nozzleman, waterline caulker.

DECISION NO. KY78-1101

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MASTER MECHANICS	$12.04	.66	1.00		.11
CLASS A	11.79	.66	1.00		.11
CLASS B	11.67	.66	1.00		.11
CLASS C	10.63	.66	1.00		.11
CLASS D	10.20	.66	1.00		.11
CLASS E	8.14	.66	1.00		.11

CLASS A - Air compressor on steel erection, boiler operator on compressor or generator when mounted on a rig, cableways, combination concrete mixer & tower, concrete plants (over 4 yds. capacity), concrete pumps, cranes (all types, including A-frame, boom truck, cherry picker), derricks, draglines, dredge (dipper, clam or suction), elevating grader or euclid loader, floating equipment (all types), helicopter crew (operator hoist or winch), hoes (all types), hoisting engines or shaft or tunnel work, hoisting engines, industrial type tractor, jet engine dryer (D8 or D9) diesel tractor, locomotives (standard gauge), maintenance operator class A mixer, paving (single or double drum), mucking machines, multiple scraper, piledriving machines (all types), power shovels, Quad 9 (double pusher), refrigerating machine (freezer operation), Rotary drill on caisson work, slip-form paver, survey crew party chief, tower derricks, tree shedder, trench machines (over 24" wide), truck mounted concrete pumps tug boat, tunnel machine, wheel excavator.

CLASS B - Asphalt paver, automatic subgrader machine, self-propelled (CMI type), bulldozers, endloader, kolman loader (production type - Dirt), lead grease man, maintenance operators Class B, power grader, power scoops & scrapers, push cat, trench machines (24" wide & under).

CLASS C - Air compressors on tunnel work (low pressure), asphalt plant, locomotive (narrow gauge), mixers, concrete (more than 1 bag capacity), mixers, side loader (1 bag capacity), power boilers over 15 lbs. pressure, pump operator installing and operating well points, pumps (4" and over discharge), rollers (asphalt, utility operator - small equipment), welding machines & generators.

CLASS D - Backfillers, bar, joint & mesh installing machines, batch plant, bull floats, burlap & curing machines, compressors (portable - sewer, heavy & highway), concrete plant (capacity 4 yds. & under), concrete saw (multiple), conveyors (highway), crushers, deckhand, drill (highway with integral power), farm type tractors with attachments (highway), finishing machines, fireman, floating equipment (all types), fork lift (highway), form trenches, hydro seeders, plant mixers, post driver, post hole digger (power auger), power brush burner, power form handling equipment, road widening trencher, rollers (brick, grade, macadam), self-propelled power spreaders, self-propelled subgraders, steam fireman, survey instrument man, tractor (pulling sheepfoot roller or grader), vibratory compactors (with integral power), Boring machine operators (48" or less), hydro hammer, pavement breaker.

CLASS E - Drum fireman (asphalt plant, helpers, inboard-outboard motor boat-launch, oil heaters (asphalt plants), oilers, power driven heaters, pumps (under 4" discharge), signalmen, survey rodmen or chainmen, tire repairmen.

DECISION NO. KY78-1101

TRUCK DRIVERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Truck helper & warehousemen, & mobile batch truck helper	$ 8.28	a	b		
Driver - 3 tons and under, greaser, tire changer, & mechanic helper	8.39	a	b		
Driver - over 3 tons, semi-trailer or pole trailer (when used to pull building materials & equipment), dump truck tandem axle, truck mechanic, & distributor	8.57	a	b		
Driver - mixer trucks (all types)	8.60	a	b		
Driver - Euclid & other heavy moving equipment & low boy, winch truck & A-frame truck (when used in transporting materials), fork lift truck (when used to transport building materials), & pavement breakers.	8.67	a	b		

FOOTNOTES:

a. Employer contribution of $25.00 per week per employee who has been employed a minimum of 20 work days within any 90 consecutive day period for that employer.

b. Employer contribution of $9.00 per week per employee who has been employed a minimum of 20 work days within any 90 consecutive day period for that employer.

SUPERSEDEAS DECISION

STATE: NEW YORK COUNTY: ONEIDA
DECISION NO.: NY78-3095 DATE: DATE OF PUBLICATION
Supersedes Decision No. NY78-3034 dated April 14, 1978 in 43 FR 16077
DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories), heavy and highway construction.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	$12.78	.90	.43		.06
Boilermakers	11.80	1.05	10%		.02
Bricklayers, Cement Masons, Pointers, Caulkers, Cleaners, Plasterers and Stone Masons, Building:	10.35	.50	.90		
Cement Masons, (Heavy & Highway)	9.60	.50	.90		
Carpenters, (Building):					
Carpenters & Soft Floor Layers	9.45	.60	.55	a	.03
Piledrivermen & Millwrights	9.70	.60	.55	a	.03
Carpenters, (Heavy and Highway)	10.065	.50	.50	a	.03
Electricians:					
Verona and Vienna Twps. west of State Highway 13:					
Electricians	12.70	.77	3%+.95		.05
Cable Splicers	13.55	.77	3%+.95		.05
Remainder of County:					
Electricians	11.65	.80	3%+.60		.07
Cable Splicers	12.75	.80	3%+.60		.07
Elevator Constructors	11.18	.745	.56	b+c	.025
Elevator Constructors' Helper	7.83	.745	.56	b+c	.025
Elevator Constructors' Helpers (Prob)	5.59				
Glaziers:					
Twps. of Florence, Camden, Vienna, Annsville, Verona, Vernon, Augusta, Lee, Rome City, Ava, Western, Floyd, Boonville and Steuben	10.00	.80			.01
Remainder of County	8.435	.175	.30		
Ironworkers:					
Structural, Ornamental, Reinforcing, Machinery Mover, Rigger, Rodmen, Fence Erector and Stone Derrickman	10.27	1.11	1.02		.04
Sheeters	10.52	1.11	1.02		.04
Sheeters, Bucker-up	10.395	1.11	1.02		.04

DECISION NO. NY78-3095

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers, (Building):					
Twps. of Forestport, Remsen, Trenton, Marcy, Deerfield, Whitestown, New Hartford, Kirkland, Marshall, Paris, Sangerfield, Bridgewater and the City of Utica:					
Laborers	7.50	1.15	.90	d	
Pipelayers, mortar mixers (hand or machine), motor buggy operator, (walk behind), power high lift	7.65	1.15	.90	d	
Blasters, form setters and motor buggy rider type	8.00	1.15	.90	d	
Wagon drill operator	7.90	1.15	.90	d	
Remainder of County:					
Laborers, Common	7.825	.60	.65	e	
All rock drilling equipment	8.225	.60	.65	e	
Blasters	8.425	.60	.65	e	
Vibrator op., chain saw op., air or electric tool op., gas buggy op., acetylene torch op. on demolition work, pipelayers, scaffold builders; mortar mixer, pavement breaker op.	8.025	.60	.65	e	
Lathers	8.93	.65	.40		.01
Lead Burners	10.75	.40	.25	f	.01
Marble Setters, Terrazzo Workers & Tile Setters	9.07	.50	.90		
Marble, Tile, Terrazzo Finishers	8.30	.50			

DECISION NO. NY78-3095

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters:					
Twps. of Florence, Camden, Vienna, Annsville, Verona, Vernon, Augusta, Rome City, Ava, Western, Floyd, Boonville and Steuben:					
New Construction:					
Brush and Roller	11.62	.80	.50	g	
Paperhangers, Vinyl Hangers and Tapers	12.20	.80	.50	g	
Metalizing	13.77	.80	.50	g	
Steel, Working with picks, Bosun Chair, Window Jacks, Swing Stage, Safety Belts, Steeple Jack, Spray, Sandblasting, Steamcleaning, Epoxy, Bridge and Hydroblasting	12.31	.80	.50	g	
Repaint Work:					
Brush and Roll	9.84	.80	.50	g	
Paperhangers, Vinyl Hangers and Tapers	10.43	.80	.50	g	
Metalizing	12.01	.80	.50	g	
Steel, working with picks, Bosun Chair, Window Jacks, Swing Stage, Safety Belts, Steeple Jack, Spray, Sandblasting, Steamcleaning, Epoxy, Bridge and Hydroblasting	10.54	.80	.50	g	
Remainder of County:					
Brush	8.70	.175	.30		
Spray	9.30	.175	.30		
Sandblasting	9.70	.175	.30		
Paper and Vinyl Hangers, Epoxy, Steel, Taping, Swing Stage, Bosun Chair and Monkey Suit	8.95	.175	.30		
Plumbers and Steamfitters	11.26	.89	1.36		.05
Roofers	11.60	1.00	1.35		
Sheet Metal WOrkers	10.655	.60	.80		.07
Sprinkler Fitters	12.31	.75	1.05		.08

DECISION NO. NY78-3095

Welders - receive rate prescribed for craft performing operation to which welding is incidental

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. Holidays: B and D provided the employee is on the payroll the week before and the week after the holiday.

b. 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.

c. Holidays: A through F, Day after Thanksgiving.

d. Holidays: B and D provided the employee works the day immediately before and the work day immediately following the holiday.

e. Holidays: A through E, plus 2 hours off with pay on Election Day for the purpose of voting, provided the employee works the day before the holiday and the day after the holiday.

f. Holidays: A through F; Washington's Birthday and Good Friday, X-mas Eve, providing employee has worked 30 full days the 90 calendar days prior to the holiday, and the regularly scheduled work days immediately preceding and following the holiday.

g. Holidays: C, D, and E.

Twps of Florence, Camden, Annsville, Lee, Ava, Boonville, Western, Steuben, Vienna, Rome, Floyd, Westmoreland, Vernon, Augusts and Verona

LABORERS: HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$ 8.54	.60	.65	a	
CLASS B	8.74	.60	.65	a	
CLASS C	8.94	.60	.65	a	
CLASS D	9.14	.60	.65	a	

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE:
a. Paid Holidays: A through F, provided the employee has worked the day before and after the holiday.

LABORERS: HEAVY AND HIGHWAY CONSTRUCTION:

CLASS A
Laborers, drill helpers, flagmen, outboard and hand boats.

CLASS B
Bull float, chain saw, concrete aggregate, bin, concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small generators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or screw op. on asphalt paver, water pump op. (1½" and single diaphram), nozzle (asphalt, gunnite, seeding and sand blasting), laborers on chain link fence erection, rock splitter and power unit, pusher type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborer.

CLASS C
All rock or drill machine operators (except quarry master and similar type), acetylene torch op., asphalt raker, powderman.

CLASS D
Blasters, form setter, stone or granite curb setters.

LABORERS: HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Remainder of County:					
CLASS A	$ 7.49	1.30	.90	a	
CLASS B	7.69	1.30	.90	a	
CLASS C	7.89	1.30	.90	a	
CLASS D	8.09	1.30	.90	a	

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE:
a. Paid Holidays: A through F, provided the employee has worked the day before and after the holiday.

LABORERS: HEAVY AND HIGHWAY CONSTRUCTION:

CLASS A
Laborers, drill helpers, flagmen, outboard and hand boats.

CLASS B
Bull float, chain saw, concrete aggregate, bin, concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small generators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or screw op. on asphalt paver, water pump op. (1½" and single diaphram), nozzle (asphalt, gunnite, seeding and sand blasting), laborers on chain link fence erection, rock splitter and power unit, pusher type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborer.

CLASS C
All rock or drill machine operators (except quarry master and similar type), acetylene torch op., asphalt raker, powderman.

CLASS D
Blasters, form setter, stone or granite curb setters.

DECISION NO. NY78-3095

Line Construction	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electricial Overhead and Underground Distribution Work:					
Lineman and Technicians	$10.50	1.00	3%+.75	a	3½%
Cable Splicers	13.70	1.00	3%+.75	a	3½%
Groundman Digging Machine Operator and Groundman Dynamiteman	9.45	1.00	3%+.75	a	3½%
Groundman Mobile Equipment Operator, Mechanic 1st Class, Groundman Truck Driver (tractor trailer units)	8.40	1.00	3%+.75	a	3½%
Groundman Truck Driver, Driver-Mechanic, Groundman (experienced)	7.825	1.00	3%+.75	a	3½%
All Overhead Transmission Line Work and Lighting For Athletic Fields:					
Lineman and Technicians	11.85	1.00	3%+.75	a	3½%
Groundman Digging Machine Operator, Groundman Dynamiteman	10.665	1.00	3%+.75	a	3½%
Groundman Mobile Equipment Operator, Mechanic 1st Class, Groundman Truck Driver (tractor trailer unit)	9.48	1.00	3%+.75	a	3½%
Groundman Truck Driver, Driver-Mechanic, Groundman (experienced)	8.8875	1.00	3%+.75	a	3½%
All Pipe Type Cable Installations:					
Lineman and Groundman Equipment Operator	12.45	1.00	3%+.75	a	3½%
Cable Splicer	13.695	1.00	3%+.75	a	3½%
Groundman Truck Driver, Groundman (experienced)	9.3375	1.00	3%+.75	a	3½%

DECISION NO. NY78-3095

LINE CONSTRUCTION (CONT'D):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sub-station, Switching Structures (when not part of the line), Traffic Signals, Street Lighting and Electrical, Telephone or CATV Commercial Work:					
Linemen and Technicians	12.45	1.00	3%+.75	a	3½%
Cable Splicers	13.695	1.00	3%+.75	a	3½%
Groundman Mobile Equipment Operator, Mechanic 1st Class, Groundman Truck Driver (tractor-trailer unit)	9.96	1.00	3%+.75	a	3½%
Groundman Truck Driver, Driver-Mechanic, Groundman (experienced	9.3375	1.00	3%+.75	a	3½%
Groundman Dynamiteman, Groundman Digging Machine Operator	11.205	1.00	3%+.75	a	3½%
Telephone and other Communication Systems, both overhead and underground:					
Linemen and Installer Repairmen	8.34	.40	3%+.25	a	1%
Splicers	8.89	.40	3%+.25	a	1%
Groundman Digging Machine Operator	7.73	.40	3%+.25	a	1%
Groundman	5.72	.40	3%+.25	a	1%
Groundman Truck Driver	6.82	.40	3%+.25	a	1%
Groundman Dynamiteman	6.60	.40	3%+.25	a	1%

Paid Holidays: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day F-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Paid Holidays: A through F, Washington's Birthday, Good Friday, and Election Day for President of the United States and Governor of New York State, provided the employee works the day before and after the holiday.

POWER EQUIPMENT OPERATORS: HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
GROUP I	$10.73	1.05	1.05	a	.15
GROUP II	10.37	1.05	1.05	a	.15
GROUP III	9.36	1.05	1.05	a	.15
GROUP IV	8.46	1.05	1.05	a	.15

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Paid Holidays: A through F, providing the employee works the day before and the dat after the holiday.

POWER EQUIPMENT OPERATORS: HEAVY AND HIGHWAY CONSTRUCTION

Group I - Automated concrete spreader (CMI), automatic fine grader, backhoe (except tractor mounted, rubber tired), belt placer (CMI type), blacktop plant (automated), cableway, caisson auger, central mix concrete plant (automated), cherry picker (over 5 tons capacity), concrete pump (8" or over), crane, cranes & derricks (steel erection), dragline, dredge, dual drum paver, excavator (all purpose-hydraulically operated, (gradall or similar), fork lift (factor rated 15 ft. and over), front end loader 4 c.y. and over), head tower (sauerman or equal) hoist (2 or 3 drum), mine hoist, mucking machine or mole, over head crane (gantry or straddle type), piledriver, power grader, quarry master (or equivalent), scraper, shovel, sideboom, slip form paver (if second man is needed, he shall be an oiler), tractor drawn belt type loader, truck crane, tunnel shovel.

Group II - Backhoe (tractor mounted, rubber tired), bituminous spreader and mixer, blacktop plant (non-automated), blast or rotary drill truck or tractor mounted), boring machine, cage-hoist, central mix plant (non-automated and all concrete batching plants), cherry picker (5 tons capacity and under), compressors (4 or less) exceeding 2000 C.F.M. combined capacity concrete paver (over 16S), concrete pump (under 8"), crusher, diesel power unit, drill rigs (tractor mounted), front end loader (under 4 c.y.), hi-pressure - boiler (15 lobs. and over), hoist (one drum) Kolman plant loader and similar type loaders (if another man is required to clean screen or to maintain the equipment, he shall be an oiler), locomotive maintenance/engineer/greaseman/welder, mixer (for stablized base self-propelled), monorail machine, plant engineer, pump crete, ready mix concrete plant, refrigeration equipment (for soil stabilization), road widener, roller (all above subgrade), tractor with dozer and/or pusher, trencher, tugger-hoist, winch, winch cat.

POWER EQUIPMENT OPERATORS: HEAVY AND HIGHWAY CONSTRUCTION CONT'D.

Group III - A-frame truck, compressors (4 not to exceed 2000 C.F.M. combined capacity or 3 or less with more than 1200 C.F.M. but not to exceed 2000 C.F.M.), compressors (any size but subject to other provisions for compressors), dust collectors, generators, pumps, welding machines (4 of any type of combination), concrete pavement spreaders and finishers, conveyor, drill-core, drill-well, electric pumps used in conjunction with well point system, farm tractor with accessories, fine grade machine, fork lift (under 15 ft.), gunite machine, hammers (hydraulic-self-propelled), post hole digger and post driver, power sweeper, roller (grade and fill), submersible electric pump (when used in lieu of well point system), tractor with towed accessories, vibratory compactor, vibro tamp, well point.

Group IV - Aggregate plant, boiler (used in conjunction with production), cement and bin operator, compressors (3 or less not to exceed 1200 C.F.M. combined capacity), compressor (any size, but subject to other provisions for compressors) dust collectors, generator pumps, welding machines (3 or less of any type or combination), concrete paver or mixer (16S and under), concrete saw (self-propelled), fireman, form tamper, hydraulic pump (jacking system), lighting plants, mulching machine, oiler parapet- (concrete or pavement grinder), power broom (towed), power heaterman, revinius widener, shell winder, steam cleaner, tractor.

DECISION NO. NY78-3095

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Class 1	$11.78	1.05	.75	a	.15
Class 2	11.18	1.05	.75	a	.15
Class 3	11.18	1.05	.75	a	.15
Class 4	12.47	1.05	.75	a	.15
Class 5	12.28	1.05	.75	a	.15
Class 6	13.78	1.05	.75	a	.15
Class 7	12.78	1.05	.75	a	.15
Class 8	12.28	1.05	.75	a	.15

FOOTNOTE:

a. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Christmas Day, providing employee has worked 5 consecutive working days before and the working day after the holiday.

POWER EQUIPMENT OPERATORS: Building Construction

Class 1: Asphalt and blacktop roller; Automated concrete spreader (CMI or equivalent); Automated fine grade machine (CMI); Backhoe; Belt placer; Blacktop spreader (such as Barber Greene and BlawKnox); Blacktop Plant (automated); Blast or rotary drill (truck or cat mounted); Boom truck; Cableway; Caisson auger; Carry-all-scraper-self loading; Central Mix plant (automated); Cherry picker over five (5) ton capacity; Compressors; Pump; Generator or welding machine (when used in a battery of not more than four (4); Crane, Crusher-Rock; Derrick; Diesel power unit; Dragline; Dredge; Dual drum paver; Elevating grader (self-propelled or towed); Elevator hoist - two cage; Excavator - all purpose - hydraulically operated; Fork lift (factory rating 15 ft. or more); Front end loader (4 c.y. and over); Gradall; Grader (power); Head tower (Saur man or equal); Hoist (2 or 3 drums); Locomotive; Maintenance engineer; Maintenance welder; Mine hoist; Mucking machine or mole; Overhead crane fixed permanent; Pile driver; Quarry Master or equivalent; Refrigeration equipment - for soil stabilization; Shovel; Side boom; Slip form paver; Straddle buggy (Ross carrier, Lumber carrier) Tractor drawn belt type loader (Euclid loader); Trenching machine (digging capacity of over 4 ft. depth); Truck crane operator; Tunnel shovel; Vibro or sonic hammer controls (when not mounted in proximity to the rig operator)

POWER EQUIPMENT OPERATORS (Cont'd)
Building Construction

Class 2: "A" Frame truck; Blacktop plant (non-automatic); Boring machine; Bulldozer; Cage hoist; Carry-all scraper; Central mix plant (non-automated); Cherry picker five (5) tons and under; Compressor (315 c.f. and over); Concrete paver (single drum over 16S); Concrete pump; Core boring machine; Drill rigs-tractor mounted; Elevator - as a material hoist; Fork lift (factory rating less than 15 ft.); Front end loader (under 4 cu. yds.); Gunnite machine; High pressure boiler (15 lbs. and over); Hoist (one drum); Hydraulic breaking hammer (Drop hammer); Kolman plant loader (screening gravel); Maintenance grease man; Mixer for stabilized base - self-propelled (seaman mixer); Monorail machine; Parapet concrete or pavement grinder; post hole digger (truck or tractor mounted); Power sweeper (Wayne or similar); Pump 4" and over; Pump-crete or squeeze-crete; Road widener (front end of grader or self-propelled); Shell winder (motorized); Snorkel (overhead arms); Roller; Trenching machine (digging capacity of 4 ft. or less); Tugger hoist; vibro tamp; Well drill; Well point system (submersible pumps when used in lieu of well-point system); Winch (motor driven); Winch cat; Winch truck

Class 3: Compressor (under 315 cu. ft.); Concrete paver or mixer (under 16S); Concrete pavement spreaders and finishers (not automated); Conveyor (over 12 ft.); Electric submersible pump (4" and over); Farm tractor with or without accessories; Fine grade machine (not automated); Fireman; Form tamper; Genorator (2,500 watts and over); Hydraulic pump; Mechanical heaters - more than two (2) mechanical heaters or any mechanical heater or heaters whose combined output exceeds 640,000 BTU per hour (manufacture's rating); Mulching machine; Oiler; Power driven welding machine - 300 amp. and over (other than all electric); One welding machine under 300 amp. will not require an engineer unless in a battery); Power heaterman (hay drier) Pump (under 4"); Revinius widner (road widener); Steam cleaner or Jenny; Tractor with or without towed accessories, post driver (truck or tractor mounted)

Class 4: Master Mechanic

Class 5: Tower Crane

Class 6: Crane or Derrick with a boom length over 300 ft. including jib

Class 7: Crane or Derrick with a boom length over 150 ft. including jib, and on a piledriver with leads or boom length of over 100 ft.

Class 8: Quad 9 bulldozer or multibowl scraper

DECISION NO. NY78-3095

TRUCK DRIVERS: HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$8.51	.83	.75	a	
CLASS 2	8.56	.83	.75	a	
CLASS 3	8.61	.83	.75	a	
CLASS 4	8.76	.83	.75	a	
CLASS 5	8.91	.83	.75	a	
PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.					

FOOTNOTE:

a. Paid Holidays: A through f, provided the employee has worked the working day before and after the holiday.

TRUCK DRIVERS: HEAVY AND HIGHWAY CONSTRUCTION:

CLASS 1

Warehouseman, yardmen, truck helpers, pickups, panel trucks, flatboy material trucks (straight jobs), single axle dump trucks, dumpsters, material checkers and receivers, greasers, truck tiremen, mechanic helpers and parts chaser.

CLASS 2

Tandems, batch trucks, mechanics and dispatcher.

CLASS 3

Semi-trailers, low-boy trucks, asphalt distributors trucks, agitator, mixer trucks and dumpcrete type vehicles, truck mechanic.

CLASS 4

Specialized earth moving equipment - euclid type or similar off-highway equipment, where not self loaded, and straddle (ross) carrier.

CLASS 5

Off- highway tandem back-dump, twin engine equipment and double hitched equipment where not self loaded.

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos.

DECISION NO.: TX78-4115

DATE: Date of Publication

Supersedes Decision No. TX78-4078, dated August 11, 1978, in 43 FR 35881.

DESCRIPTION OF WORK: Building Construction (does not include single family houses and garden type apartments up to and including 4 stories) and also does not include Dallas-Fort Worth Regional Airport. (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.83	.50	.76		.03
BOILERMAKERS	10.55	.80	1.00		.02
BRICKLAYERS & STONEMASONS:					
ZONE 1 - Grayson County	9.60				
ZONE 2 - Collin, Dallas, Ellis, Hunt, Kaufman & Rockwall Cos.	10.20	.45	.50		.04
ZONE 3 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Cos.	9.35	.45	.50		.04
CARPENTERS:					
ZONE 1 - Grayson County:					
Carpenters	10.23	.50	.40		.005
Millwrights	10.63	.50	.40		.005
Piledrivermen	10.73	.50	.40		.005
ZONE 2 - Collin, Dallas, Denton, Ellis, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties:					
Carpenters	10.40	.55	.40		.04
Millwrights	10.64	.50			.04
CEMENT MASONS:					
ZONE 1 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Cos.	9.645	.40	.60		
ZONE 2 - Collin, Dallas, Ellis, Hunt, Kaufman & Rockwall Cos.	9.485	.55	.60		.01
ELECTRICIANS:					
ZONE 1 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Cos.:					
Electricians	11.13	.60	7%		7/10%
Cable splicers	11.38	.60	7%		7/10%
ZONE 2 - Collin, Dallas, Ellis, Grayson, Hunt, Kaufman & Rockwall Cos.:					
Electricians	11.03	6%	7%		1%
Cable splicers	12.13	6%	7%		1%
ELEVATOR CONSTRUCTORS:					
Mechanics	9.91	.745	.35		.02
Helpers	70%JR	.745	.35		.02
Helpers (Probationary)	50%JR				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GLAZIERS:					
Collin, Dallas, Denton, Ellis, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties	$ 9.34	.40	.55		.025
IRONWORKERS:					
ZONE 1 - Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto (excluding northwest corner), Rockwall, Tarrant & Wise (excluding northwest 1/2) Cos.	9.65	.55	1.15		.07
ZONE 2 - Palo Pinto (northwest corner) & Wise (northwest 1/2)	9.255	.55	1.00		.10
LABORERS:					
ZONE 1 - Grayson County:					
GROUP 1 - Unskilled laborers	6.42	.275	.30		
GROUP 2 - Air tool operator (jackhammer, vibrator), mason tenders & mortar mixers, pipelayers	6.67	.275	.30		
ZONE 2 - Collin, Dallas, Denton, Ellis, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos.:					
GROUP 1	6.32	.275	.40		.02
GROUP 2	6.47	.275	.40		.02
GROUP 3	6.57	.275	.40		.02
GROUP 4	6.72	.275	.40		.02

LABORERS CLASSIFICATION DEFINITIONS

GROUP 1 - All hand digging dirt work and backfilling; firing of salamanders, loading and unloading of materials to and from hoist or cages; loading and unloading of tools and equipment; wheeling, placing and pouring of concrete; all excavation; handling of lumber, steel, cement; distribution of all materials; flagging trucks; miscellaneous job clean-up; wrecking and razing of buildings and all structures; cleaning and clearing of all debris; handling of broken concrete or other damaged or undamaged materials; removing, moving, handling and greasing of forms, wrecking forms; storing materials to storage place; slip form jacks, scaffold buildiers, checking materials and tools in and out of receiving lots and sheds; tool house men; landscaper; asphalt ironer and raker; waterproofing tender; dumper; spotter; concrete pumpcrete pipe (handling and laying); carpenter tender

GROUP 2 - All power tool and equipment operators (gas, electric or air); cutting torch man; concrete grademan; power buggy operator; wagon drill operator, well driller, drilling rig tender; cement finisher tender; metal pan and steel form men; handling creosoted materials; liquid acids or like materials when injurious to health, eyes, skin or clothes; all newly developed equipment which replaces wheelbarrows or buggies previously used by laborers, scale men on batch plants; concrete flagman

GROUP 3 - Concrete & clay pipe (handling & laying); mason handler; scaffold builder; mason tender; hod carriers mortar mixers; lather tenders, plaster tenders; water pump operators up to 4 inches; cement mason tenders; mortar mixers; hod carriers; dry mixers; tank cleaning; all pipe doping, treating & wrapping, including all men working with dope, mortar & plaster mixing machines, grout machines; pump crete machines, gunite mixing machines, including placing & cleaning of pipe & conduits used in placing of concrete, handling & placing of gunite materials from stockpiles, screening sand, running sand dryer & loading & operating sand blaster, except nozzle, conveying, stocking & handling of all materials for brick masons, lathers, cement finishers, plasterers; ditch work over 6 ft. & cleaning out drill piers

GROUP 4 - Sand blaster, blaster powderman; Gunite worker; gunite worker; gunite nozzleman & terrazzo grinder

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	$10.98				.04
LINE CONSTRUCTION:					
Linemen; Linemen operators	12.15		3%		1/2%
Cable splicers	13.37		3%		1/2%
Groundman, 1st 6 months	7.29		3%		1/2%
Groundman, 2nd 6 months	7.90		3%		1/2%
Groundman, 1 year & over	8.51		3%		1/2%
MARBLE, TILE & TERRAZZO WORKERS:					
Collin, Dallas, Denton, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties	9.70		.30		
MARBLE & TILE FINISHERS:					
Collin, Dallas, Denton, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties	7.40				
PAINTERS:					
ZONE 1 - Collin, Dallas, Denton, Ellis, Grayson, Hunt, Kaufman & Rockwall Counties:					
GROUP 1 - Brush	9.525	.45	.50		.04
GROUP 2 - All wall covering work: Paper, fabric, sheeting, flexwood, etc.	9.775	.45	.50		.04
GROUP 3 - Ames tools operator	9.65	.45	.50		.04
GROUP 4 - Structural steel, stage work, bosun chair, spray gun, sandblasting & window jacks, fire escapes	9.90	.45	.50		.04
ZONE 2 - Hood, Johnson, Palo Pinto, Tarrant & Wise Counties:					
GROUP 1	10.545		.20		.12
GROUP 2	10.795		.20		.12
GROUP 3	11.795		.20		.12

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GROUP 1 - Brush
GROUP 2 - Spray, Wallcovering; Pressure roller; Sandblasting; Structural steel; Bosun Chair, Window jack & window sill; stage; fire escape; steel storage tanks; stilts; mittens; ames tools, drywall finishing
GROUP 3 - Steeple jack (radio and TV towers, smoke stacks, chimneys and water towers, and similar facilities and flag poles atop buildings located closer to the edge of the building than the height of the pole); Toxic material rate (creosote, coal tar products or similar materials injurious to the skin)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS:					
ZONE 1 - Collin, Dallas, Ellis, Hunt, Kaufman & Rockwall Cos.	$ 9.44	.45		.50	.03
ZONE 2 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Cos.	10.41				.01
PLUMBERS & STEAMFITTERS	10.23	.43	1.00		.10
ROOFERS:					
ZONE 1 - Collin, Dallas, Ellis, Grayson, Hunt, Kaufman & Rockwall Counties:					
GROUP 1 - Slate & tile	9.215				
GROUP 2 - Composition and built-up roofing, damproofing & bituminous waterproofing	9.065				
ZONE 2 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Cos.:					
GROUP 1 - Slate, tile, asbestos roofing & siding	9.165				.05
GROUP 2 - Composition, built-up, damp & water proofing, kettlemen	9.015				.05
SHEET METAL WORKERS:					
ZONE 1 - Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Rockwall, Tarrant & Wise Cos.	10.425	.50	.66		.105
ZONE 2 - Palo Pinto Co.	10.58				.07
SOFT FLOOR LAYERS	9.58	.40	.40		.03
SPRINKLER FITTERS	11.60	.75	1.05		.08
TRUCK DRIVERS:					
ZONE 1 - Collin, Dallas, Ellis, Hunt, Kaufman & Rockwall Cos.	4.25				
ZONE 2 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Cos.	4.00				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTES FOR ELEVATOR CONSTRUCTORS:
a - 1st 6 months - none; 6 months to 5 years - 2%; over 5 years - 4% of basic hourly rate
b - Paid Holidays A thru G

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS:
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.
ZONE 1 - Dallas County:					
GROUP 1	$ 8.265	.40	.90		
GROUP 2	9.60	.40	.90		
GROUP 3	10.00	.40	.90		

POWER EQUIPMENT OPERATORS (ZONE 1) CLASSIFICATION DEFINITIONS

GROUP 1 - Oilers
GROUP 2 - Air compressor, water pumps, welding machines (2 to 6 machines) & generators; Blade grader, towed; Flex plane; Form grader; Concrete mixer, less than 14 cu. ft.; Pulsometer; Wagon drill operator; Conveyor; Hoist, single drum; Scraper, 3 cu. yd. or less; Bob cat with loader; All other equipment of similar nature coming under the light equipment class, when power operated
GROUP 3 - Heavy duty mechanic; Asphalt mixer operator on job; Blade grader, self-propelled; Bull clam; Backfiller; Bulldozer & all cat type tractors; Backhoe; Concrete mixers, over 14 cu. ft.; Crusher operator on job; Concrete batch plant operator; Clam shell; Cranes (all types); Truck mounted or crawler requires oiler including groves (hydraulic) or similar type over 12½ ton capacity; Escalated rate on crane and derricks booms: .01c per hour, per foot over 90' including jib; draglines; derricks, power operated (all types); DW-10 caterpillar, S-8 Euclid and similar tractors; Elevating grader, self-propelled; Foundation drilling machines (all); Forklifts, used in handling machinery on construction; Gradeall; Hoist, motor driven, 2 drums or more; Locomotive crane; Mixmobile; Paving mixers (all types); Pile drivers; Pumocrete machines; Pneumatic rollers, self-propelled; Shovels, power operated; Scrapers, over 3 cu. yds.; Scoopmobile; Trenching machine, all types; Winch trucks, when pole and winch is used; Water well drilling machines, used on construction; Well point pump; Welding machines (7 to 13 machines); All other equipment of similar nature coming under heavy equipment class, when power operated

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS (CONT'D):					
ZONE 2 - Collin, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties:					
GROUP 1	$ 8.065	.40	1.00		.10
GROUP 2	9.40	.40	1.00		.10
GROUP 3	9.80	.40	1.00		.10

POWER EQUIPMENT OPERATORS (ZONE 2) CLASSIFICATION DEFINITIONS

GROUP 1 - Oiler-Fireman

GROUP 2 - Air Compressors, Pumps, Welding Machines, Throttle Valves, Light Plants; Conveyor; Wagon Drill; Elevators Building; Form Graders; Hoist, Single Drum; Ford Tractor including blade and mower on rear; Mixers less than 14 cubic feet; Screening Plants; Crushing Plants; Fork Lifts (short, under 25 feet); Concrete Pumps (all types); Bobcat type equipment; All other equipment of similar nature coming under the Light Equipment Classification, when power operated

GROUP 3 - Ford Tractor or like with any attachments (except blade and mower on rear); Drilling Machines (all types); Scoopmobiles; Hoists, two drums or more; Forklifts (over 25 ft.); Winch Truck; Six Wheel Truck, when used continuously for 5 days; Mixermobile; Locomotives; Mixers, 14 cubic ft. or over; Blade Graders, self-propelled; Cableways; Cranes-power operated to 100 ft.; Derricks, power operated (all types); Gradall; Hy-Ho; Hop-To; Paving Mixers (all types); Pile Drivers; Mobile Concrete Mixers over 14 cu. ft.; Bulldozers, Loaders, Tractovators; Scrapers and Pulls; Welders; Trenching Machines; Roller, ten tons or over; Air Compressor & Air Tugger; Boilers, two or more fired by one man; Heavy Duty Mechanic; All other equipment of similar nature coming under the Heavy Equipment Classification, when power operated



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[A Cumulative checklist of CFR issuances for 1978 appears in the first issue of the Federal Register each month under Title 1. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected)]

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federal register

BOOK 2 OF 2 BOOKS

FRIDAY, DECEMBER 1, 1978
PART IV



DEPARTMENT OF STATE

Office of the Secretary

■

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Applications for Permits to Fish Off the Coasts of the United States

[4710-09-M]

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 641]

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Applications for Permits to Fish Off the Coasts of the United States

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) as amended (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to Section 204 of the Act.

The Act also requires that a notice of receipt of all applications for such permits, a summary of the contents of such applications, and the names of the Regional Fishery Management Councils that receive copies of these applications, be published in the FEDERAL REGISTER.

Applications have been received from the Governments of Mexico, Korea and the Polish People's Republic for fishing during 1979 and are reproduced herewith. Individual vessel applications for fishing during 1978 and 1979 have been received from foreign nations and are summarized herein.

If additional information regarding any application is desired, it may be obtained from: Permits and Regulations Division (F37), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, (Telephone: 202-634-7265).

Dated: November 22, 1978.

JAMES A. STORER,
Director, Office of Fisheries Affairs.

Nation/vessel name/vessel type	Application No.	Fishery	Activity
South Korea:			
*Book Neung, factory ship	KS-79-0079	GOA	2
Ill Woo No. 58, cargo/transport vessel	KS-79-0091	GOA	3
Mexico:			
Cieisa XI, medium stern trawler	MX-79—0012	NWA	1
Cieisa XII, medium stern trawler	MX-79—0013	NWA	1
Diamante, medium stern trawler	MX-79—0014	NWA	1
Quemado, medium stern trawler	MX-79—0018	NWA	1
Ria De Pontevedra, medium stern trawler	MX-79—0020	NWA	1
Teucro, medium stern trawler	MX-79—0025	NWA	1
Campa De Torres, medium stern trawler	MX-79—0032	NWA	1
Costa De Normandia, medium stern trawler	MX-79—0033	NWA	1
Conchita Pelayo, medium stern trawler	MX-79—0034	NWA	1
Santa Mar, medium stern trawler	MX-79—0037	GOA	1
Clara Mar, medium stern trawler	MX-79—0038	GOA	1
Albarino, medium stern trawler	MX-79—0039	GOA	1
Albero, small stern trawler	MX-79—0040	GOA	1
Mar Del Cabo, large stern trawler	MX-79—0045	WOC	1
Cieisa XIII, medium stern trawler	MX-79—0047	NWA	1
Cieisa XIV, medium stern trawler	MX-79—0048	NWA	1
Cieisa XV, medium stern trawler	MX-79—0049	NWA	1
Kormex 1, medium stern trawler	MX-79—0052	GOA, WOC	1
Kormex 2, medium stern trawler	MX-79—0053	GOA, WOC	1
Kormex 3, medium stern trawler	MX-79—0054	GOA, WOC	1
Kormex 5, large stern trawler	MX-79—0055	GOA, WOC	1
Kormex 6, medium stern trawler	MX-79—0056	GOA, WOC	1
Alpes, medium stern trawler	MX-79—0057	NWA	1
Mar Del Coral, medium stern trawler	MX-79—0058	GOA	1
Mar De Galicia, medium stern trawler	MX-79—0059	GOA	1
Poland:			
Zulawy, cargo transport	PL-78-0041	GOA	3
Saturn, large stern trawler	PL-79-0056	GOA, WOC, BSA	1

Fishery codes and designation of regional councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional council
ABS	Atlantic billfishes and sharks	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, and Caribbean.
BSA	Bering Sea and Aleutian Islands trawl, longline and herring gillnet	North Pacific.
CRB	Crab (Bering Sea)	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic	New England and Mid-Atlantic.
SMT	Seamount groundfish (Pacific Ocean)	Western Pacific.
SNL	Snails (Bering Sea)	North Pacific.
WOC	Washington, Oregon, California trawl	Pacific.

Activity codes specify categories of fishing operations applied for as follows:

Activity code and fishing operations

1—Catching, processing, and other support.
2—Processing and other support only.
3—Other support only.

[FR Doc. 78-33577 Filed 11-30-78; 8:45 am]

federal register

FRIDAY, DECEMBER 1, 1978
PART V



CIVIL SERVICE COMMISSION

■

REGULATIONS SCHEDULED FOR REVIEW OR DEVELOPMENT, JANUARY 1, 1979 THROUGH JUNE 30, 1979

[6325-01-M]

CIVIL SERVICE COMMISSION

CIVIL SERVICE COMMISSION REGULATIONS

Scheduled for Review or Development, January 1, 1979, Through June 30, 1979

The following Civil Service Commission regulations are scheduled for review or development during the six month period from January 1, 1979, through June 30, 1979. The majority of the changes will result from enactment of the Civil Service Reform Act of 1978 (CSRA). Revisions which involve only the adoption of conforming language, e.g., the title Civil Service Commission to Merit System Protection Board or Office of Personnel Management, are not listed.

Comments or inquiries on this schedule should be referred to Beverly M. Jones, Issuance System Manager, Bureau of Policies and Standards, 202-632-6593.

JAMES C. SPRY,
Executive Assistant
to the Commissioners.

[6325-01-C]

CFR or Other Authority	Title	Brief Description	Knowledgable Official
5 CFR 1 through 9	Civil Service Rules	Coverage and Definitions; Appointment through the Competitive System, Noncompetitive Aquisition of Status, Prohibited Practices, Regulations, Investigation, and Enforcement, Exceptions from the Competitive Service, General Prohibitions, Appointments to Overseas Positions, Executive Assignment System for Positions in Grades GS-16, 17, 18, of the General Schedule. Will be revised to reflect CSRA.	Cynthia Field 202/632-5623
5 CFR 151	Political Activity of State or Local Officers or Employees	Under CSRA, some of the political activity functions will be transferred to the Special Counsel of MSPB. The corresponding regulations will be transferred and incorporated into new Special Counsel regulations being drafted. In view of time constraints resulting from prescribed activation date for Reform legislation as January 11, 1979, it appears that a 30-day notice and comment period will be followed (E.O. 12044 section 6(b)(6)).	Mr. Lynn R. Collins 202/632-7600
5 CFR 213	Excepted Service	General provisions and identification of positions in Schedules A, B, and C. Will be revised to conform with new requirements in CSRA.	Tracy Spencer 202/632-4533
5 CFR 293	Personnel Records and Files	Extensive revisions to implement internal reorganization (establishment of MSPB, OPM) and CSRA.	Len Kilkelley 202/632-4467 Bill Lynch 202/254-9778
5 CFR 294	Availability of Official Information	Will be revised to reflect current judicial interpretations of the provisions of the Freedom of Information Act (5 U.S.C. 55).	Donald J. Biglin 202/632-6161
5 CFR 297	Protection of Privacy in Personnel Records	Extensive revisions to implement internal reorganization, the CSRA, and changes necessitated by two years experience with the Privacy Act.	Len Kilkelley 202/632-4467 Bill Lynch 202/254-9778
5 CFR 300	Employment (General)	Employment practices, Commission approval in filling positions in GS-16 and above, obligated positions, time-in-grade restrictions. Will be revised to conform to new requirements in CSRA.	Morton I. Horvitz 202/632-6817
5 CFR 300.103(c)	Employment practices; basic requirements; equal employment opportunity.	Clarification of the non-applicability of the technical validation standards of the Uniform Guidelines on Employee Selection Procedures in appeals that are not discrimination cases.	Hugh E. Wallace 202/632-6251 Ken Brown 202/632-5442
5 CFR 302	Employment in the Excepted Service	Eligibility standards processing applications, and selection in accepted service. To be revised to conform with new requirements in CSRA.	Tracy Spencer 202/632-4533
5 CFR 315	Career and Career-Conditional Employment	Requirements for overall career and career-conditional appointment, transfer, and conversion system, and probationary period. To be revised to conform with CSRA requirements.	Morton I. Horvitz 202/632-6817
5 CFR 315, Subpart G	Conversion to Career or Career-Conditional Employment From Other Types of Employment	Will be revised to include regulations on the conversion of Presidential Management Interns into the career service.	Morton I. Horvitz 202/632-6817
5 CFR 316	Temporary and Term Employment	Purpose, authorizes for TAPER temporary and term (one to four years) employment. Retention and separation of employees. To be revised to conform with CSRA requirements.	Morton I. Horvitz 202/632-6817
5 CFR 330	Recruitment, Selection and Placement (General)	Reemployment priority lists, Displaced Employee Program, positions restricted to preference eligibles, restrictions to protect competitive principles, prohibited practices. To be revised to conform with CSRA requirements.	Morton I. Horvitz 202/632-6817
5 CFR 332	Recruitment and Selection Through Competitive Examination	General provisions, period of competition and eligibility, consideration for appointment. Will be revised to conform to CSRA. Specific changes not yet identified.	Morton I. Horvitz 202/632-6817
5 CFR 334	Temporary Assignments of Employees Between Executive Agencies and States, Local Governments and Institutions of Higher Education	These mobility regulations were revised for other reasons and published in the Federal Register on November 14, 1978. We plan to incorporate the comments that we receive from the November 14 publication of the mobility regulations along with the changes necessitated by Section 602 of the CSRA. Regulations will be published early in 1979. Those regulations will probably be made effective upon publication pending comment.	Miriam Ershkowitz 202/632-5373

CFR or Other Authority	Title	Brief Description	Knowledgable Official
5 CFR 337	Examining System	General provisions, including weight assigned to given subjects, addition of preference eligible points, credit for military service and credit for voluntary service. Will be revised to conform to CSRA requirements.	Morton I. Horvitz 202/632-6817
5 CFR 338	Qualification Requirements (General)	Citizens and members-of-family requirement. Will be revised to conform to CSRA requirements.	Morton I. Horvitz 202/632-6817
5 CFR 339	Qualification Requirements (Medical)	Clarification of authority to regulate fitness for duty examinations in the Federal service.	Craig Pettibone 202/632-4682
5 CFR 351.501	Reduction-in-Force	Tenure groups and subgroups, competitive service. Will be revised to conform with new requirements in CSRA.	Ted Dow Tom Glennon 202/632-5623
5 CFR 410.502	Acquisition of training from non-Government facilities	Under 5 U.S.C. 4118(b)(1), OPM must prescribe general policies governing the acquisition of training from non-Government facilities. We are redrafting them to (1) ready them for publication in the Federal Acquisition Regulation of OFPP as well as in title 5 of the Code of Federal Regulations, (2) allow employees a role in selecting training facilities if they pay part of the costs of the training, (3) establish a simpler and less costly procedure for acquiring short-term training than is available under general procurement regulations, and (4) ensure that contracting officers observe the special statutory restrictions of chapter 41 of title 5, United States Code on the acquisition of training and regulations issued thereunder.	Michael Miller 202/632-5684
5 CFR 410.503	General restrictions, training through non-Government facilities	Pursuant to an explicit directive in the Government employees training law (5 U.S.C. 4118(b)), this regulation prohibits the use of non-Government training for promotion if there exists an already qualified person. We would provide an exemption from this prohibition if the employee is being trained in a program covered by 5 U.S.C. 5364. The new section 5364 of the code provides for remedial actions for employees who have suffered a no-fault loss of grade. One of the actions is to allow priority placement. Removing the restriction on the use of non-Government facilities for promotion for this group of employees will facilitate priority placement. The Office of Personnel Management has the authority to exempt a class of employees from a prohibition of the training law if it is in the public interest.	Constance Guitian 202/632-7647
5 CFR 430	Performance Evaluation and Rating	General provisions, performance ratings, and performance rating appeals. Will be revised to conform with requirements in CSRA. (See also 5 CFR 432, Reductions in Grade and Removals Based on Unacceptable Performance.)	Mary Sugar 202/632-5623
5 CFR 432	Reductions in Grade and Removals Based on Unacceptable Performance	New regulations to conform to requirements established by CSRA.	Wilma Lehman 202/632-5623
5 CFR 531, Subpart B and 5 CFR 539	Determining Rate of Basic Pay Conversions Between Pay Systems	Changes in pay setting when employees change pay systems, regulated pursuant to 5 U.S.C. 5334.	James N. Woodruff 202/632-6553
5 CFR 531, Subpart C	Pay Adjustments for Supervisors	Revised regulations on pay adjustments for GS supervisors of wage employees, pursuant to 5 U.S.C. 5333.	James N. Woodruff 202/632-6553
5 CFR 531, Subpart D	Within-Grade Increases	Simplify and clarify procedures and standards for granting quality increases and withholding within-grade increases, pursuant to 5 U.S.C. 5335-5336.	James N. Woodruff 202/632-6553
5 CFR 532	Pay Under Prevailing Rate Systems	Develop comprehensive new regulations for Federal Wage System, pursuant to 5 U.S.C. 5343.	James N. Woodruff 202/632-6553
5 CFR 536	Grade and Pay Retention	Regulations to implement Title VIII of the Civil Service Reform Act of 1978. Because of a statutory deadline, it is anticipated that a period for public comment will not be feasible in this case.	James N. Woodruff 202/632-6553
5 CFR 540	Merit Pay	New regulations to implement Title V of the Civil Service Reform Act of 1978.	James N. Woodruff 202/632-6553
5 CFR 550, Subpart B	Pay From More Than One Position	Revised regulations on dual compensation.	Morton I. Horvitz 202/632-6817
5 CFR 550, Subpart C	Allotments and Assignments for Federal Employees	Changes to increase delegation of appropriate flexibility to agencies, pursuant to 5 U.S.C. 5525 and 5527.	James N. Woodruff 202/632-6553
5 CFR 550, Subpart H	Back Pay	Regulations to implement section 702 of the Civil Service Reform Act of 1978.	James N. Woodruff 202/632-6553

CFR or Other Authority	Title	Brief Description	Knowledgable Official
5 CFR 550, Subpart J	Adjustment of Work Schedules for Religious Observances	New regulations. Consider final regulations to implement Title IV of the Federal Employees Flexible and Compressed Work Schedules Act of 1978. (Interim regulations already issued.)	James N. Woodruff 202/632-6553
5 CFR 550, Subpart K	Installment Deductions for Indebtedness Because of Erroneous Payment	New regulations to revise former OMB regulations on installment deductions, pursuant to 5 U.S.C. 5514.	James N. Woodruff 202/632-6553
5 CFR 551	Pay Administration Under the Fair Labor Standards Act	New regulations to implement the Fair Labor Standards Act in the Federal Government. (Existing Subpart B will not be revised as part of this action.)	James N. Woodruff 202/632-6553
5 CFR 591, Subpart A	Uniforms and Uniform Allowances	Revise former OMB regulations on uniforms and uniform allowances for Federal employees, pursuant to 5 U.S.C. 5901-5903.	James N. Woodruff 202/632-6553
5 CFC 591, Subpart D	Allowances for Physicians	New regulations to implement Federal Physicians Comparability Allowance Act of 1978.	James N. Woodruff 202/632-6553
5 CFR 620, Subpart D	Flexitime	New regulations to implement the Federal Employees Flexible and Compressed Work Schedules Act of 1978.	James N. Woodruff 202/632-6553
5 CFR 713	Equal Opportunity	On implementation of Reorganization Plan No. 1 of 1978, the Equal Employment Opportunity Commission (EEOC) will assume responsibility for most of the areas now covered by 5 CFR 713. We have been informed that EEOC does not plan immediate changes in the system for processing discrimination complaints as regulated in 5 CFR 713. There are other elements of existing 5 CFR 713 regulations covering the organization and administration of agency EEO programs in which both OPM and EEOC have legitimate interests and for which both agencies have some responsibility. We will consult with EEOC to determine how revision of the regulations should be handled or alternatively to draft new language and submit it to EEOC for concurrence.	Jim Scott 202/632-6889
5 CFR 733	Political Activity of Federal Employees	Under CSRA, some of the political activity functions will be transferred to the Special Counsel of MSPB. The corresponding regulations will be transferred and incorporated into new Special Counsel regulations. In view of time constraints resulting from prescribed activation date for Reform legislation as January 11, 1979, it appears that a 30-day notice and comment period will be followed (E.O. 12044 section 6(b)(6)).	Mr. Lynn R. Collins 202/632-7600
5 CFR 735	Employee Responsibilities and Conduct	Requires revision to conform with the Ethics in Government Act of 1978, some of whose provisions become effective January 1, 1979. We are preparing draft regulations. In view of the short-term statutory deadline, the exception in E.O. 12044 section 6(b)(6), shortening the public comment process, will have to be invoked. Prior to the establishment of the Office of Government Ethics in OPM and the selection of the Director, determinations will be made by the General Counsel.	David Reich 202/632-5421
5 CFR 754	Adverse Actions by the Commission	Scope, notice of proposed action, answer, decision, and appeal rights. Will be revised to conform with new CSRA requirements.	Wilma Lehman 202/632-5623
5 CFR 772	Appeals to the Commission	Will be revised to reflect changes resulting from enactment of CSRA. (Primary responsibility for regulations will transfer from CSC to Merit System Protection Board, January 11, 1979.)	Jim Sugiyama 202/254-6234
5 CFR 831.107 Subpart A	Retirement; Administration and General Provisions	The reorganization of the CSC will require revision of all retirement and insurance regulations having to do with appeals, with basic appeals procedures going to MSPB. Provisions defining appealable decisions, reconsideration of decisions, and permitting correction of errors - which are now intertwined with appeals procedures - will remain the responsibility of OPM. (Includes regulations listed from 5 CFR 831.107 through 5 CFR 891.105).	Craig Pettibone 202/632-4682
5 CFR 831, Subpart K	Prohibition on Payments of Annuities		
5 CFR 831 Subpart L	Disability Retirement on Application of an Agency and Disability Retirement Appeals		
5 CFR 831, Subpart M	Collection and Claims Against Annuity		
5 CFR 870.205	Regular life insurance; coverage; appeals		
5 CFR 871.206	Optional life insurance; coverage; appeals		
5 CFR 890.103	Federal Employees Health Benefits Program; Employee appeals, corrections, and adjustments		

CFR or Other Authority	Title	Brief Description	Knowledgable Official
5 CFR 890.104	FEHBP; Legal actions		
5 CFR 891.105	Retired Federal employees health benefits; appeals		
5 CFR 831, Subpart B	Retirement; coverage	Major review of all retirement and insurance regulations governing exclusion of less than full-time employees from coverage under the benefits programs. (Includes 5 CFR 831 Subpart B; 5 CFR 870.201; and 5 CFR 890.102.)	Craig Pettibone 202/632-4682
5 CFR 870.201	Regular life insurance; coverage		
5 CFR 890.102	Federal Employees Health Benefits Program; coverage		
P.L. 95-256	Elimination of Age 70 Mandatory Retirement	New revised regulations to implement recent amendments to the retirement law.	Craig Pettibone 202/632-4682
P.L. 95-366	Former Spouse--Recognition of Community Property Court Order	New revised regulations to implement recent amendments to the retirement law.	Craig Pettibone 202/632-4682
P.L. 95-437	Part-time career Employment proration of health benefits contributions	New revised regulations to implement recent amendments to the retirement law.	Craig Pettibone 202/632-4682
5 CFR 930, Subpart B	Appointment, Pay, and Removal of Administrative Law Judges	Revisions to indicate that removal of ALJs (Section 930.221 to Section 930.234) will be shared between OPM and MSPB. The law has also expanded the types of adverse actions (see Section 7521 of the reform package). Appropriate revisions will be made to 930.214, 930.202(b) along with 930.221 and 930.227.	Joseph A. Norris 202/632-4638
5 CFR 1001	Regulations Governing Employees of the Civil Service Commission	Will require revision to conform with the Ethics in Government Act of 1978. (See 5 CFR 735 for details.)	David Reich 202/632-5421
ADDITIONAL NEW REGULATIONS			
P.L. 95-454, Civil Service Reform Act, Title IV	New regulations to implement Title IV of the Reform Act, which establishes the Senior Executive Service	A variety of sections in 5 CFR will be amended to include appropriate references to the Senior Executive Service (SES). The new regulations will (a) cover the full range of operations under the SES, and (b) effect the conversion of positions and incumbents to SES. Specific areas which will be regulated: position management, appointment and placement systems, pay systems, performance evaluation, executive development, removal from SES for other than disciplinary reasons, leave accrual, and discontinued service retirement.	Sally Greenberg Jack Vincent 202/632-4648
P.L. 95-454 (CSRA) Section 310	Minority Recruitment Progam	New regulations. (To be developed after consultations with EEOC.)	Jim Scott 202/632-6889

[FR Doc 78-33721 Filed 11-30-78; 8:45 am]

federal register

FRIDAY, DECEMBER 1, 1978
PART VI



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

■

SUPPLEMENTAL MINE MAP REQUIRED FOR SMALL OPERATORS

Proposed Rulemaking

[4310-05-M]

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Part 715]

SUPPLEMENTAL MINE MAP REQUIRED FOR SMALL OPERATORS

Proposed Rulemaking

AGENCY: Office of Surface Mining and Enforcement, United States Department of the Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement is seeking comments on the following proposed rule amending 30 CFR 715.11(c) to require additional information in mine maps submitted by small operators. The proposed amendment requires small operators to submit mine maps showing the furthest extent of areas mined as of the termination date of small operator exemptions, which will occur on or before January 1, 1979. This regulation is necessary both to protect the small operators and to enforce the Act. The added mine map feature is necessary to avoid penalizing small operators for noncompliance with the full interim regulatory program on those areas mined during the period of the exemption. Secondly, effective enforcement of the Act requires the regulatory authority to know exactly which mining operations are not covered by the small operator's exemption. The present mine map required in § 715.11(c) does not provide the needed delineation of areas mined during the period of a small operator's exemption.

DATES: Written comments must be received on or before January 2, 1979, 5:00 p.m. A public hearing will be held at 9:00 a.m. on December 20, 1978, if requested in writing.

ADDRESSES: Written comments or requests for a hearing must be mailed or hand delivered to: Mine Map Comments, Administrative Record Room 120, Office of Surface Mining, U.S. Department of the Interior, South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240, where they will be available for public inspection. The public hearing, if properly requested, will be held in Room 7229, U.S. Department of the Interior, 18th & C Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Byron Swift, Division of Surface Mining, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240; 202-343-4671.

GAO Review

As this regulation imposes reporting requirements, it must be submitted to GAO for their clearance before it becomes final.

4 CFR Part 10. Specific comments concerning the reporting obligations imposed are welcomed, and would greatly assist the Office in determining whether the requirement should be modified. Particularly useful information would be estimates of costs and of time spent in compliance, as well as whether other Federal agency reporting requirements are being duplicated. It is therefore proposed to amend 30 CFR 715.11(c) in the manner set forth below.

Dated: November 28, 1978.

JOAN M. DAVENPORT,
Assistant Secretary,
Energy and Minerals.

In § 715.11(c), the existing paragraph is redesignated (1), and a new paragraph (2) is added. As revised, § 715.11(c) reads as follows:

§ 715.11 General obligations.

* * * * *

(c) *Mine maps.* * * *

(2) In addition to the requirements of paragraph (c)(1) of this section, any person conducting surface coal mining and reclamation operations pursuant to a small operator's exemption shall submit before March 1, 1979 or within two months after the expiration of the exemption, whichever is earlier, two copies of an accurate map of each mine showing the permit area at a scale of 1:6000 or larger. The map shall show, as of January 1, 1979 or the expiration date of the exemption, whichever is earlier, the lands from which coal has not yet been removed, the lands and structures which have been used or disturbed to facilitate mining, and the lands which have not been disturbed; these areas may be shown in a revision of the mine map submitted under paragraph (c)(1) of this section. One copy shall be submitted to the State Regulatory Authority and one copy to the appropriate Regional Director, OSM.

(The rule is promulgated under the authority of the Surface Mining Control and Reclamation Act of 1977, (the "Act"), §§ 201, 501 30 U.S.C. §§ 1211, 1251.)

[FR Doc. 78-33727 Filed 11-30-78; 8:45 am]

federal register

FRIDAY, DECEMBER 1, 1978
PART VII



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

■

AGE DISCRIMINATION

Regulations, Public Hearings

[4110-12-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[45 CFR Part 90]

AGE DISCRIMINATION REGULATIONS

AGENCY: Office of the Secretary, HEW.

ACTION: Proposed rules.

SUMMARY: The Department of Health, Education, and Welfare proposes *general regulations* to carry out the provisions of the Age Discrimination Act of 1975, as amended (Act). After the Secretary issues final general regulations, each federal agency which provides federal financial assistance must publish proposed and then final *specific regulations.* Therefore, the *general regulations* are designed to guide the development of *specific regulations* by each appropriate agency.

The Age Discrimination Act of 1975 applies to *persons of all ages* and to all programs and activities receiving federal funds, not just to the elderly or solely to HEW programs. While the Act prohibits discrimination on the basis of age in programs or activities receiving federal funds, it permits some distinctions based on age.

DATES: Comments must be received on or before February 28, 1979. [For list of public hearings on this proposed rule, see FR Doc. 78-33743 in this part of this FEDERAL REGISTER.]

ADDRESS: Send comments to: Ms. Bayla F. White, Director, Age Discrimination Task Force, Office of the General Counsel, HEW, Room 716-E, 200 Independence Avenue, S.W., Washington, D.C., 20201, (202) 245-6284.

FOR FURTHER INFORMATION CONTACT:

Ms. Bayla White (202) 245-6284.

SUPPLEMENTARY INFORMATION:

GENERAL INFORMATION

BACKGROUND

In November 1975 Congress enacted the Age Discrimination Act (42 U.S.C. 6101, *et seq.*) as part of the Amendments to the Older Americans Act (Pub. L. 94-135). At that time, the express purpose of the Act was to prohibit unreasonable discrimination based on age in programs and activities receiving federal financial assistance, including revenue sharing funds under the State and Local Fiscal Assistance Act of 1972. However, the Act was also designed to permit federally assisted programs and activities, and recipients of federal funds, to continue to use: (1) some age distinctions, and (2) "reasonable factors other than age." The Act applies to persons of all ages.

Prior to the enactment of any regulations, the Act required the Commission on Civil Rights to conduct a study of age discrimination in federally funded programs and activities. The Commission transmitted its study to the President and the Congress on January 10, 1978. (Copies of the study are available from the Commission.) The Act also required each affected federal agency to respond to the Commission's findings or recommendations. (The response of each agency is available directly from that federal agency.)

After the receipt of the report of the Commission on Civil Rights and the federal agency responses to that report, the Congress considered amendments to the Age Discrimination Act of 1975. In October 1978, Congress amended the Act (Pub. L. 95-478). Among other things, Congress struck the word "unreasonable" from the statement of purpose clause. Therefore, the purpose of the Act now is to prohibit discrimination based on age in programs and activities receiving federal financial assistance, not unreasonable age discrimination. However, the Congress retained the exceptions to the prohibition against age discrimination. Thus, the Act still permits the use of: (1) some age distinctions, and (2) "reasonable factors other than age." The Act continues to apply to persons of all ages.

Under the 1975 version of the Act, no regulations could become effective before January 1, 1979. Moreover, the Secretary of HEW was required to publish proposed and then final *general regulations,* and thereafter the head of each agency which provides federal financial assistance was required to publish proposed and then final *specific regulations.* While the 1978 amendments changed the effective date of regulations from January 1, 1979 to July 1, 1979, they retained the provision for the publication of general regulations by HEW, and specific regulations by each agency which provides federal financial assistance, including HEW.

As the first step of its obligation to issue general regulations, on March 2, 1978, the Department published a Notice of Intent to Issue Age Discrimination Regulations (43 FR 8756). As the second step, the Department is issuing this notice of proposed rulemaking.

ORGANIZATION OF THE PROPOSED GOVERNMENT-WIDE REGULATIONS

These proposed regulations are divided into five subparts. Subpart A contains general provisions. Subpart B covers the basic question of what is age discrimination under the Act, and sets forth the prohibitions against age discrimination and the exceptions to those prohibitions. Subpart C describes the responsibilities of the federal agencies. Subpart D describes the responsibilities of recipients, and contains the minimum requirements for the establishment of compliance, investigation, conciliation and enforcement procedures by federal agencies. Subpart E provides for a comprehensive review of the general regulations and the specific regulations issued under the Act. The results of these reviews will be published in the FEDERAL REGISTER 30 months after the effective date of the regulations.

DISCUSSION OF MAJOR ISSUE: DISCRIMINATION ON THE BASIS OF AGE

In enacting the Age Discrimination Act, Congress expressed concern that some programs and activities receiving federal financial assistance may be discriminating against persons on the basis of age. For example, denying reimbursement for dental services to persons over a certain age, or restricting access to training opportunities solely because of age may constitute age discrimination. Moreover, some age distinctions may be based on nothing more than stereotypes and misconceptions about the abilities and needs of persons of different ages.

On the other hand, Congress did not prohibit the use of all age distinctions. Undoubtedly, this is a recognition of the fact that many age distinctions are rational and necessary in our society. For example, age based State compulsory school attendance requirements, or requiring that children under the age of 6 be accompanied by adults when entering a museum, or special housing arrangements for the elderly, or reduced bus fare for school children or the elderly, all may be permissable age distinctions which reflect efforts to meet the needs of particular age groups.

The passage of the Age Discrimination Act provides an opportunity to reexamine the use of age distinctions in federal programs and to eliminate those which result in discrimination against particular age groups. Because age distinctions in federally assisted programs are numerous and reflect many policy considerations, the task of prescribing general regulations on age discrimination is a difficult one. Moreover, other than the specific statutory exceptions to the prohibition against age discrimination, the Act and its legislative history provide little guidance concerning congressional intent regarding which age distinctions are permissible.

Despite the complexity and difficulty of the issues involved, and the lack of clear congressional guidance, the Department has proceeded, as re-

quired by the Act, to develop proposed general regulations. However, in publishing these regulations, we are asking everyone with an interest in the matter to let us know which age distinctions seem rational and necessary and which are based on nothing more than stereotypes and misconceptions about the abilities and needs of persons of different ages. The Department specifically requests the public to identify uses of age which might not be prohibited by these regulations, but should be prohibited. The public is also requested to identify practices which may be prohibited by these regulations, but should not be prohibited.

SECTION ANALYSIS

Each section of the proposed rules is set out below, followed in some instances by a brief discussion and specific questions to which the public is encouraged to respond. The public is requested to specify the number of the section in the proposed regulations to which their comments refer. It should be noted that the examples used in the section analysis do not reflect the final legal opinions of the Department. They are designed to obtain public comment on the Department's proposed interpretations of the Age Discrimination Act.

Subpart A—General

§ 90.1 *What is the purpose of the Age Discrimination Act of 1975?*

Text of the proposed rule:

The Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance. The Act is also designed to permit federally assisted programs and activities, and recipients of federal funds, to continue to use age distinctions and factors other than age which are reasonable in light of the purposes of the Act.

This paragraph states the purpose of the Age Discrimination Act. The Act applies to persons of all ages. It is designed to prohibit age discrimination and to permit the use of: (1) some age distinctions, and (2) "reasonable factors other than age." In this regard, it is unlike Title VI of the Civil Rights Act of 1964 which contains no qualifications on its prohibition against discrimination on the basis of race, color, or national origin.

§ 90.2 *What is the purpose of these regulations?*

Text of the proposed rule:

(a) The purpose of these regulations is to state general, government-wide rules for the implementation of the Age Discrimination Act of 1975, as amended, and to guide each agency in the preparation of agency-specific age discrimination regulations.

(b) These regulations apply to each federal agency which provides federal financial assistance to any program or activity.

These rules are *general regulations* designed to implement the Age Discrimination Act of 1975, as amended. They will guide the preparation of *specific regulations* by each agency which provides federal financial assistance to programs or activities.

§ 90.3 *What programs and activities does the Age Discrimination Act of 1975 cover?*

Text of the proposed rule:

(a) The Age Discrimination Act of 1975 applies to any program or activity receiving federal financial assistance, including programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 *et seq.*).

(b) The Age Discrimination Act of 1975 does not apply to:

(1) An age distinction contained in that part of a *Option #1* Federal statute, State statute, or local statute or ordinance; or federal, State, or local regulation which: or *Option #2* Federal statute, State statute, or local statue or ordinance which: or *Option #3* Federal statute or State statute which: or *Option #4* Federal statute which:

(i) Provides any benefits or assistance to persons based on age; *or*

(ii) Establishes criteria for participation in age-related terms; *or*

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA), as amended.

The Age Discrimination Act of 1975, as amended covers some programs but excludes others from its coverage. For example, the Act covers any program or activity receiving federal financial assistance, including the State and Local Fiscal Assistance Act of 1972, the so-called Revenue Sharing Act. However, the Act does not cover programs or activities "established under authority of any law" which provide benefits on the basis of age or in age-related terms. Nor does it generally cover employment practices or labor-management joint apprenticeship training programs.

PROGRAMS OR ACTIVITIES "ESTABLISHED UNDER AUTHORITY OF ANY LAW"

The Act does not cover programs or activities "established under authority of any law" which provide benefits on the basis of age or in age-related terms. Thus, age distinctions which are "established under authority of any law * * *" are not prohibited by the Act.

The Department is faced with the difficult task of interpreting the phrase "established under authority of any law." Congress did not provide guidance on the meaning of this phrase; neither the reports of the House and Senate committees nor the record of floor debate contain any discussion of this statutory language.

Under the rules of statutory construction, it is possible to interpret the phrase "established under authority of any law" in many ways. Four alternative versions are included for comment in this proposed rule. There are two overriding issues in the interpretation of this phrase: (a) whether to include age distinctions contained in regulations; and (b) whether to include age distinctions enacted by State and local legislative bodies.

Before we discuss the four alternative interpretations of the phrase "established under authority of any law," we should mention some examples of age distinctions contained in statutes and regulations. Examples include:

(1) Federal laws establishing age criteria for eligibility for services in various programs such as section 706(a)(2) of the Older Americans Act which authorized nutrition projects for individuals 60 or older.

(2) State laws imposing age limitations regarding who may qualify for a driver's license.

(3) State statutes which allow the State, in the administration of its criminal justice system, to provide for different treatment of juveniles in terms of procedures, confinement, and other punishments.

(4) City or county ordinances which grant favorable property tax or utility rate treatment to the elderly.

(5) A local transit authority regulation which provides reduced bus fares for school children.

The way in which we interpret the phrase "established under authority of any law" will determine which of these examples will be covered by the Act. The options concerning the interpretation of the phrase present progressively narrower interpretations. An age distinction which falls within any one of the options discussed below will not be prohibited by the Act.

Under the first option, "established under authority of any law" is interpreted in a very broad manner to include Federal, State, and local statutes and ordinances and Federal, State, and local regulations. Although the line between local statutes and ordinances on the one hand and local regulations on the other is often difficult to draw, this first option is intended to afford equal deference to all officially-established age distinctions. Under

this option, age distinctions which condition eligibility for participation in federally assisted programs and are contained in either a law enacted by a general purpose legislative department of government or in a regulations established under the basic minimum procedureal requirements for public notice and comment would not be covered by the Act. Thus, this option would grant an automatic exemption to age distinctions in *all* federal, State, and local statutes and regulations.

Under the second option, "any law" refers to federal, State, and local statutes and ordinances. Therefore, an age distinction contained in a regulation would not automatically be granted an exemption from the Act. Rather, to be exempted, it would have to be explicitly based on age distinctions contained in a statute or ordinance, or it would have to fall within one of the exceptions to the Act set forth in § 90.14.

The third option presented would exempt those age distinctions contained in federal or State statutes, but would not grant an automatic exemption to age distinctions found in local statutes or ordinances, or in federal, State, or local regulations. This option recognizes that there may be important differences between federal and State legislative bodies on the one hand, and local legislative councils on the other, which justify different treatment under these regulations. Moreover, local units of government are creatures of the State. Under this option, an age distinction which is contained in local statutes or ordinances, or federal, State or local regulations would be exempt from the coverage of the Act only if it is explicitly based on an age distinction contained in a federal or State statute, or is exempted by one of the exceptions in section 90.14.

The fourth option presented would exempt only those age distinctions in federal statutes. This is the most restrictive interpretation of the options. Again, under this interpretation, age distinctions contained in State or local statutes or ordinances or in federal regulations would not be granted an automatic exemption, but would be exempt from the coverage of the Act only if the age distinction is explicitly based on a federal statute or is exempted by one of the exceptions in section 90.14.

As we said at the outset of this discussion of options for the interpretation of the phrase "established under authority of any law," there are two overriding issues which must be confronted: a) whether to include age distinctions contained in regulations; and b) whether to include age distinctions enacted by State and local legislative bodies. The Department seeks the broadest possible comment on the four options set forth and on the issues which must guide the interpretation of the phrase "established under authority of any law." With respect to the inclusion of regulations within the phrase, some argue that federal, State, or local administrators of federally funded programs should not be permitted to impose age distinctions which are not authorized by a legislative body. Yet, we know very little about age distinctions imposed by regulations. Some may be very reasonable and beneficial. The public is asked to comment on specific examples of age distinctions imposed by regulations and not authorized by statute or ordinance which should be protected in the interpretation of "any law," and thus exempted from coverage under the Act.

With respect to State and local statutes or ordinances, some argue that limitations on the use of federal funds which are based on age should only be authorized by Congress. They contend that federal administrators and State and local governments should not deny access to federally aided services on the basis of age unless Congress has authorized the limitation or restriction. But, we know only a little about age distinctions used in federally supported programs which are imposed by State or local legislatures, and many of these appear to be reasonable. These include compulsory school attendance requirements, driver's license limitations, juvenile court systems, etc. Should federal funds to education, driver safety programs, or State law enforcement be put in doubt until a decision is made whether these age distinctions fall within one of the statutory exceptions in § 90.14?

The Department has also considered other options in addition to the four set forth in the text of the proposed rule—for example, exempting federal, State, and local statutes, and federal regulations. The Department is leaning toward Option #3 which would interpret the phrase "established under authority of any law" to mean federal statutes or State statutes. Comments are invited not only on the various interpretations described but also on other reasonable interpretations. Which interpretation would be the most effective in preventing age discrimination, but still preserve some flexibility for State and local governmental units, consistent with the intent and purpose of the Act?

EMPLOYMENT DISCRIMINATION

Generally, the Age Discrimination Act of 1975 does not cover employment discrimination. The Age Discrimination in Employment Act of 1967, which is administered by the Department of Labor, will continue to be the principal tool for addressing age discrimination in employment practices for persons between the ages of 40 and 70. Included under the coverage of the Age Discrimination Act, however, are public service employment programs funded under the Comprehensive Employment and Training Act.

The Department wishes to avoid overlapping jurisdiction between the Age Discrimination Act of 1975 and the Age Discrimination in Employment Act of 1967. However, we also want to make certain that all employment related programs and activities receiving federal financial assistance are covered by *either* the Age Discrimination Act or the Age Discrimination in Employment Act. We therefore propose that these regulations cover any program or activity, such as the College Work Study Program (42 U.S.C. 2751, *et seq.*) and the Work Incentive Program (42 U.S.C. 630, *et seq.*) which could be characterized as either the provision of federal financial assistance or an employment practice, unless that practice is clearly covered by the Age Discrimination in Employment Act. For example, the employment of staff such as doctors, nurses, administrators, by a large private hospital is clearly covered by the Age Discrimination in Employment Act and would not be covered by the Age Discrimination Act.

We solicit comments identifying specific areas of overlap and also specific problems, if any, which might be created by our interpretation of this exemption.

§ 90.4 *How are the terms in these regulations defined?*

Text of the proposed rule:

As used in these regulations, the term:

"Act" means the Age Discrimination Act of 1975, as amended, (Title III of Public Law 94-135).

"Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

"Age" means how old a person is, or the number of elapsed years from the date of a person's birth.

"Age distinction" means any action using an age or age-related term.

"Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons").

"Agency" means a federal department or agency that is empowered to extend financial assistance.

"Federal financial assistance" means any grant, entitlement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(a) funds;

(b) services of federal personnel; or

(c) real and personal property or any interest in or use of property, including:

(1) transfers or leases of property for less than fair market value or for reduced consideration; and

(2) proceeds from a subsequent transfer or lease of property if the federal share of its fair market value is not returned to the Federal Government.

"Recipient" means any State or its political subdivision, any instrumentality of a State or its political sub-division, any public or private agency, institution, organization, or other entity, or any person to which federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee but excludes the ultimate beneficiary of the assistance.

"Secretary" means the Secretary of Health, Education, and Welfare.

The above definition section warrants no discussion here. However, public comments or suggested additions to the list are welcome and will be considered.

Subpart B—What is Age Discrimination?

§ 90.11 *Purpose of this subpart.*

Text of the proposed rule:

The purpose of this subpart is to set forth the prohibitions against age discrimination and the exceptions to those prohibitions.

No discussion is necessary on this section, but public comments are welcome and will be considered.

§ 90.12 *Rules against age discrimination.*

Text of the proposed rule:

The rules stated in this section are limited by the exceptions contained in sections 90.13, 90.14, and 90.15 of these regulations.

(a) *General rule:*

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

(b) *Specific rules:*

A recipient may not, in any program or activity receiving federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program of activity receiving federal financial assistance, or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving federal financial assistance.

(c) *Reservation:*

The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

The Age Discrimination Act of 1975, as amended, contains a prohibition against age discrimination. However, this prohibition is limited by the exceptions discussed below in §§ 90.13, 90.14, and 90.15. It should be remembered that this prohibition is also limited in another way. That is, age distinctions which are "established under authority of any law" are not covered by the Act and hence do not fall within the prohibtion against age discrimination. [See discussion of § 90.3]

Section 90.12 sets forth the prohibition against age discrimination. The *general rule* containing the prohibition on age discrimination is based directly on section 303 of the Age Discrimination Act. The *specific rule* which interpret the prohibition depart from the list of express prohibitions of discrimination found in regulations for Title VI of the Civil Rights Act of 1964 (45 CFR Part 80) in that they do not include an absolute prohibition on separate or different treatment on the baisis of age. As a general rule, separate or different treatment which denies or limits services from, or participation in, a program receiving federal financial assistance would be prohibited by these regulations. On the other hand, if a program or activity qualifies for an exception, the fact that it limits service through separate of different treatment on the basis of age would not invalidate it. Similarly, separate or different treatment designed to meet the special needs of persons in a particular age group may qualify for an exception under these regulations.

§ 90.13 *Definition of "normal operation" and "statutory objective."*

Text of the proposed rule:

The terms "normal operation" and "statutory objective" are important to an understanding of the statutory exceptions to the prohibition against age discrimination. Therefore, for purposes of §§ 90.14 and 90.15, the terms "normal operation" and "statutory objective" shall have the following meaning:

(a) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(b) "Statutory objective" means any purpose of a program or activity expressly stated in a statute [or reasonably inferred from its provisions or legislative history.]

These definitions are intended to further define the meaning of some of the key terms in §§ 90.14 and 90.15.

"Normal operation" is defined in a way that does not require a program to make significant changes in its operation that would impair achievement of its objectives. At the same time, a change that merely disturbs administrative routine or convenience would be required.

We have set forth alternative interpretations of "statutory objective." In one alternative, "statutory objective" is defined to include any purpose either expressly stated in the statute or reasonably inferred from its provisions or legislative history. This is the Department's preferred interpretation. The other alternative definition limits "statutory objective" to any purpose expressly stated in the statute. The mere fact that an administrative action has a worthy program purpose would not by itself bring it within either definition.

§ 90.14 *Exceptions to the rules against age discrimination. Normal operation or statutory objective of any program or activity.*

Text of the proposed rule:

A recipient is permitted to take an action, otherwise prohibited by § 90.12, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics (e.g., maturity);

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are difficult, costly, or otherwise impractical to measure directly.

Section 90.14 implements two statutory exceptions to the general prohibition on age discrimination contained in § 90.12 of the regulations. According to § 304(b)(1)(A) of the Act, use of an age distinction is permitted if it is necessary to the normal operation of a program or activity, or if it is necessary to achieve any statutory objective of a program or activity. Paragraphs (a) thru (d) of § 90.14 set forth rules for determining whether the use of an age distinction is necessary to the normal operation or the achievement

of any statutory objective of a program or activity.

To qualify for an exception within this section: (a) an age distinction must be used as a proxy for, or as a measure of, some other (non-age) characteristic (such as phyiscal maturity or susceptibility to certain kinds of diseases); (b) the *other* characteristic must be necessary for "normal operation" or for the achievement of a "statutory objective;" (c) the other characteristic can be reasonably approximated by age; and (d) it is impractical to use the other characteristic directly (because, for example, it would be too difficult to determine physical maturity on an individual basis).

The Department has had difficulty identifying any age distinction which is not being used as an approximation for or a measure of some other characteristic. The Department requests the public to identify instances where age is not used as a proxy, directly or indirectly, for another characteristic.

In determining whether an age distinction qualifies for one of the exceptions, it may be relevant that as a matter of policy the age distinction is not rigidly applied but permits a person, upon a proper showing of the necessary characteristic to participate in the activity or program even though he or she would otherwise be barred by the age distinction. Thus, *other things being equal*, an age distinction is more likely to qualify under one of the statutory exceptions if it provides for flexibility rather than automatically barring all those who do not meet the age requirement.

The following examples illustrate how the exceptions contained in § 90.14 of the regulations might be applied.

AGE AS A FACTOR NECESSARY TO THE NORMAL OPERATION OF A PROGRAM OR ACTIVITY

(1) The Head Start Program, 42 U.S.C. 2928, provides comprehensive health, nutritional, educational, social and other services for children who have not reached compulsory school age, but does not specify a lower age limit for participation. The nature of this preparation requires that children who participate have attained a certain level of phyiscal, emotional, and mental maturity. While it is difficult and expensive to measure emotional, intellectual and physical maturity, age 3 appears to be reasonably related to this level of maturity. Therefore, the policy of generally limiting Head Start participants to children who have attained age 3 would appear to be allowed under this exception. By limiting participation in Head Start to those children who have reached age 3, a recipient of federal funds may be reasonably taking age into account as a factor necessary to the normal operation of the Head Start program. Unless significant program changes are made, enrollment of children who are younger than 3 years of age may impair a recipient's ability to provide Head Start preparation for those children who have reached a required level of maturity.

(2) Many recreation programs use age distinctions in establishing different sports leagues. For example, football and soccer leagues often involve three or more groupings for children of different ages. The purpose of these distinctions is to equalize competition (and sometimes to promote safety) by grouping children of like coordination, size, strength, social maturity, and experience. Age is an indicator of physical maturation of children. By placing a child or adult in his or her appropriate age group in a sports league, a recipient of federal funds may be reasonably taking age into account as a factor necessary to the normal operation of a sports league. Unless significant program changes are made, admission of a 10 year old child into a football grouping of 18 year old teenagers may impair a recipient's ability to meet its objectives of equalizing competition and promoting safety. The Department invites comments on this issue.

AGE AS A FACTOR NECESSARY TO ACHIEVE A STATUTORY OBJECTIVE OF A PROGRAM OR ACTIVITY

(1) Title XIX of the Social Security Act authorizes an Early and Periodic Screening, Diagnosis and Treatment program (EPSDT) for the detection and prevention of disease in children. The use of a "periodicity" schedule under this program which provides for a higher frequency of examinations for younger than for older children would be permissible if it could be shown that the schedule served to achieve the statutory objectives of detecting and preventing disease and of serving the best medical interests of Title XIX beneficiaries.

(2) A breast cancer screening program funded under section 409 of the Public Health Service Act could limit its services by age to women over 50 years old. This would appear to be permissible because age is a proven indicator of the risk of breast cancer, and the objective of the program is the prevention, diagnosis and treatment of cancer.

(3) Section 222(d)(1) of the Social Security Act requires that payment from the Trust Fund for the cost of vocational rehabilitation services for disabled individuals receiving benefits from the Disability Insurance Trust Fund be "based upon the effect that the provision of such services would have upon the Trust Fund." Disabled individuals are by law taken off the Disability Insurance Trust Fund rolls at age 65. To achieve the statutory objective of savings to the Trust Fund, individuals who are selected should have the potential to work long enough after the completion of their rehabilitation to create a savings to the Trust Fund. It is difficult to predict this potential on an individual basis and there is evidence that age is related to this potential. The Department solicits comments on whether a policy of generally limiting payments for most types of vocational rehabilitation services to individuals who have not yet reached a certain age [e.g. 62] would appear to be allowed under this exception.

One last question needs to be addressed with respect to the exceptions contained in § 90.14. Under what circumstances can organizations which are designed to serve particular age groups, and which are often recipients or used by recipients to administer or conduct some federally assisted programs, continue to use age distinctions? Some of the organizations, for example, Junior Chambers of Commerce, or senior citizen's clubs may restrict membership or service by age. Under these proposed regulations, if these organizations receive federal financial assistance, they can continue to impose age restrictions if they are able to quality for an exception as defined in section 90.14. The Department invites comments on whether the regulations should contain additional clarification or alternative tests for this type of organization.

§ 90.15 *Exceptions to the rules against age discrimination. Reasonable factors other than age.*

A recipient is permitted to take an action otherwise prohibited by § 90.12 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. However, the factor must bear a [rational/direct/substantial/necessary] relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

This exception refers to a situation in which a distinction is based on some factor other than age (such as poverty, physical strength or health status) and produces participation rates or other effects which differ among particular age groups. Under this exception, differential age *effects* standing alone do not constitute discrimination. Even in the complete absence of age discrimination, colleges, day care centers, parks, and virtually all institutions may exhibit wide variations in the proportions served of each age. However, variations in the proportions

of persons served of each age, standing alone, do not constitute age discrimination.

The Department has set forth alternative interpretations of this exception. However, we believe that Congress intended this exception to be a less rigorous one, particularly because the statute does not require that factors other than age be "necessary" to anything, but only that they be "reasonable." Therefore, the Department's preferred interpretation is: "bears a rational relationship" to statutory objectives or normal program operations. This interpretation would employ a test similar to the "rational relationship" test applied by the courts to many classifications challenged under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Use of the word "direct" or "substantial" or "necessary" would result in a stricter reading of this exception. Hence, many "factors other than age" having a differential impact on persons of particular ages might not be permitted to continue under a stricter interpretation of the exception.

The Department requests comment on which interpretation of this exception should be adopted?

The following examples illustrate this exception:

(1) Some training programs may use standard physical fitness tests as a factor for selecting participants in certain public service employment jobs which require physical stamina. Although use of such a test may have a disproportionate adverse effect on the basis of age, the physical fitness test if rationally (or substantially or directly) related (or if necessary) to the individual's ability to participate in the particular jobs involved, would appear to be allowed under this exception.

(2) Colleges often use test scores to determine eligibility for admission. Use of test scores may favor younger applicants over older applicants because, on the average, younger people are more used to being tested. However, since test scores may predict academic success, test scores may bear a "rational," "substantial," or "direct" relationship to the selection of qualified students. On the other hand, their use may not be strictly "necessary" to the selection of qualified students.

THE EXCEPTIONS AND COST-BENEFIT CONSIDERATIONS

One of the critical questions which must be addressed with respect to the interpretation of the statutory exceptions to the general prohibition against age discrimination is whether cost-benefit considerations can justify age distinctions or "reasonable factors other than age." A cost-benefit consideration is one which reflects a balancing of the costs associated with any particular action and the benefits to society which may result from the action. In its study of age discrimination in federally funded programs and activities, the Civil Rights Commission reported that some program administrators justify imposing age restrictions simply because funds are limited and not all eligible persons can be served. For example, a program administrator might contend that it is appropriate to use the limited funds available in an adult literacy program for persons under 25 years of age because they will live longer and thus will be better able to repay society for the cost of the literacy program.

A cost-benefit consideration would not by itself either disqualify or justify the use of an age distinction, for the age distinction would have to be justified as necessary to the normal operation or achievement of a statutory objective of the program. To be valid, the distinction would have to come within one of the specific exceptions contained in §§ 90.14 and 90.15. Use of a factor other than age would be evaluated based on its relationship to these operations and objectives, and would not be allowed or disallowed simply because it reflects cost-benefit considerations.

Several examples will illustrate these principles. The use of a periodicity schedule in the EPSDT program (see example under "age as a factor necessary to achieve a statutory objective of a program or activity") reflects an age-sensitive cost-benefit consideration, but would appear to be justified because it can be shown that such a schedule enhances the attainment of the statutory objective of prevention of disease.

A more difficult example is that of a medical school which does not accept applicants over a certain age because of the high cost of medical education and the more limited period of active medical service that can be expected from an older medical school graduate. This age limitation, however, would appear to violate the Act, since the age distinction is probably not necessary to the school's normal operation or to a statutory objective. Denial of research awards to persons over age 70 would likewise appear to be prohibited, since it is not necessary to the normal operation of a research program. If the desired aim of the program is to prevent project disruption through retirement, that aim can be achieved without resort to an age limitation by simply requiring the investigator to remain for the duration of the project as a condition of the award.

While cost-benefit considerations may be reflected in "reasonable factors other than age" (§ 90.15), those factors would not be allowed or disallowed simply because they reflect cost-benefit considerations. For example, the Vocational Rehabilitation program might take into account the likelihood of physical therapy succeeding with stroke victims in determining the future employment potential of applicants for services. However, the program probably could not deny services on the grounds that employers are likely to discriminate. Similarly, a decision to limit a new vaccine in short supply to those most physically vulnerable and hence most likely to develop the disease would probably be justified even though it tends to favor aged persons and infants over teenagers and adults.

The Department invites comments on these principles and the specific situations to which they might apply, including the examples cited above and other examples. It particularly seeks any alternative formulations which might better specify the appropriate role of cost-benefit considerations in justifying age distinctions or actions based upon reasonable factors other than age.

SERVICES RENDERED UNDER AGE-TARGETED PROGRAMS

Federal funds sometimes support similar programs for the general population and for a specific age group. One of the more difficult questions posed by the presence of age-specific programs *and* general programs is how or whether the presence of the age-specific program affects the obligation of the general program to seek out and serve those eligible for the special program. For example, to what extent (if any) does the existence of a federally funded senior citizens legal aid program relieve the neighborhood legal services program of the obligation to serve the elderly? May a general hospital receiving federal funds curtail its services to children on the grounds that a federally-funded pediatric program exists at a nearby neighborhood health center? Or, if there is a nutrition program under Title VI of The Older Americans Act in an area, what is the obligation of a nutrition program under Title XX of the Social Security Act which serves the same area? Can the program refuse to serve those eligible for the Title VII program (i.e. those over 60)? Does a general program fulfill its obligation by referring applicants to the age-specific program? Can the general program launch outreach efforts targeted on those not eligible for the age-specific program? As the regulations are currently drafted, these practices are sanctioned only if, and to the extent, they meet one of the exceptions in

§ 90.14. Public comments are solicited on this issue.

§ 90.16 *Burden of proof.*

Text of proposed rule:

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 90.14 and 90.15 is on the recipient of federal financial assistance.

This rule is proposed in the belief that the recipient (rather than the complainant) is the party most knowledgeable about its program or activity, the normal operation of the program or activity, and any statutory objective by which it might be governed. The recipient is best able to demonstrate that an age distinction or factor other than age is entitled to an exception under §§ 90.14 or 90.15.

Subpart C—What Are the Responsibilities of the Federal Agencies?

§ 90.31 *Issuance of regulations.*

Text of the proposed rule:

(a) The head of each agency which extends Federal financial assistance to any program or activity shall publish proposed and final age discrimination regulations in the FEDERAL REGISTER to:

(1) Carry out the provisions of Section 303 of the Age Discrimination Act of 1975; *and*

(2) Provide for appropriate investigative, conciliation, and enforcement procedures.

(b) Each agency shall publish its proposed agency age discrimination regulations no later than 90 days after the publication date of the final general, government-wide age discrimination regulations.

(c) Each agency shall publish final agency regulations no later than 120 days after publication of proposed agency age discrimination regulations.

(d) Agency age discrimination regulations shall be consistent with these general, government-wide age discrimination regulations and shall not become effective until they meet all requirements of the Act.

(e) Each agency shall include in its regulations a provision governing the operation of an alternate funds disbursal procedure as described in § 90.47 of these regulations.

(f) Each agency shall publish an appendix to its final age discrimination regulations containing a list of each age distinction provided in a federal statute or regulation which affects the agency's programs of federal financial assistance.

Subpart C describes the responsibilities of federal agencies. Section 90.31 concerns responsibilities for the issuance of agency-specific age discrimination regulations. Among other provisions, these agency regulations must contain appropriate investigative, conciliation and enforcement procedures. They must also include a provision allowing for the distribution of federal agency funds to another entity in the event that a recipient is found to have violated the Act. According to the 1978 amendments to the Act, the head of each agency has discretion to award funds to another organization after an administrative law judge or a hearing examiner or a court has found a recipient to be in violation of the Act.

Moreover, in order that recipients of federal financial assistance and the public might learn which age distinctions are authorized by federal statutes or regulations, each agency is required to append to its final age discrimination regulations a list of all age distinctions contained in statutes or regulations which govern the agency's programs of federal financial assistance. The purpose of the appendix is to let the public know what age distinctions exist in statutes and regulations. This appendix will not constitute agency approval or disapproval of the age distinctions contained in its regulations.

The Age Discrimination Act requires that the proposed regulations of each agency must be published 90 days after the publication date of the general regulations. The final specific regulations of each agency must be published no later than 120 days after the publication of the proposed agency age discrimination regulations. In light of the fact that all agencies granting financial assistance have been represented on the Federal Interagency Task Force on Age Discrimination, and have been consulted regularly on the drafting of these proposed general regulations, these time frames appear reasonable. They are designed both to ensure ample opportunity for public participation in the agency regulations drafting process and to ensure that the age discrimination regulations are issued promptly. Under the terms of the statute, the Act becomes effective only upon issuance of these specific agency regulations. These agency regulations must be consistent with the general regulations.

The 1978 amendments to the Act require HEW to approve the regulations of other agencies before they become effective. The Department is concerned that it may not have the necessary knowledge of other agency program to carry out this approval provision effectively. We are also concerned over the fact that HEW is placed in the position of evaluating the efforts of other co-equal departments of government. Therefore the Department is considering proposing legislation to modify this requirement. Comment is invited on the advisability of proposing such legislation and what substitute provisions, if any, should be proposed.

§ 90.32 *Review of agency policies and administrative practices.*

Text of the proposed rule:

(a) Each agency shall conduct a review of age distinctions it imposes on its recipients by regulations, policies, and administrative practices. The purpose of this review is to identify how age distinctions are used by each federal agency and whether those age distinctions are permissible under the Act and implementing regulations. Age distinctions used by a federal agency in its regulations, policies, or administrative practices are permissible if they are based on an explicit age distinction in a federal statute or are covered by at least one of the exceptions to the rules against age discrimination in section 90.14.

(b) No later than 12 months from the date the agency publishes its final regulations, the agency shall publish, for public comment, a report in the FEDERAL REGISTER containing for its programs:

(1) The results of the review conducted under paragraph (a) of this section;

(2) A list of the age distinctions contained in regulations which are to be continued;

(3) A list of the age distinctions not contained in regulations but which will be adopted by regulation in order to remain in use;

(4) The justification for each age distinction to be continued; and

(5) A list of the age distinctions to be eliminated.

(c) An agency may not continue an existing age distinction, nor impose a new age distinction, 12 months after the publication of its age discrimination regulations, unless the age distinction is adopted by regulation under the Administrative Procedure Act.

This section of the proposed regulations requires each agency to review its regulations, policies, and administrative practices which govern the programs to which it provides assistance. Each agency shall identify age or age-related terms used in its programs which are permissible under the Act and under the agency's own age discrimination regulations. The results of the review must be reported in the FEDERAL REGISTER for public comment no later than 12 months from the date the agency publishes its final regulations. However, the agencies are encouraged to complete this report as soon as possible after the issuance of their final regulations. The report must contain the results of the review, and a list of the age distinctions to be continued and those to be eliminated. All age distinctions to be continued

thereafter must be imposed by regulation and must be authorized either by a federal statute or by one of the exceptions in § 90.14. This means that if an agency intends to continue to use an age distinction previously imposed by administrative fiat or contained in a policy manual, it must include that age distinction as part of a regulation published in the FEDERAL REGISTER. this review, required by section 90.32, is designed to have each agency examine closely its own practices. The question to be asked is not simply what is the agency doing, but whether the age distinctions are permissible at all.

The Department is requiring this review of agency regulations, policies, and administrative practices so that recipients and subrecipients of federal financial assistance will know which age distinctions may be used in their own programs or activities. Moreover, this review will enable recipients to complete the self-evaluations required under § 90.43(c) of these regulations.

§ 90.33 *Interagency cooperation.*

Text of the proposed rule:

Where two or more agencies provide federal financial assistance to a recipient or class of recipients, their regulations shall provide for a single compliance and enforcement procedure. their regulations shall also designate one of the agencies as the sole agency for all compliance and enforcement purposes with repsect to those recipients, except the ordering of termination of funds and the notification of the appropriate committees of Congress.

The purpose of this proposed rule is to stimulate public comment with respect to eliminating the possibility that recipients will receive conflicting instructions and directives from different federal agencies on matters of compliance and enforcement. It is proposed that federal agencies which administer programs to a recipient or class of recipients for similar or related purposes designate one of the agencies as the "lead agency." The lead agency would have responsibility for all compliance and enforcement activities with respect to a particular class of recipients (e.g., educational isntitutions; neighborhood health centers), except for the actual termination of funds and the notification to Congress of that termination. Under the Act, only the agency administering funds may terminate them. Therefore, the termination of funds and notification to Congress would remain the responsibility of each federal agency. the use of a lead agency procedure means that a recipient would deal only with one agency for enforcement. However, it also means that the primary enforcement agency would have to be familiar with the operation of other agencies' programs in order to enforce the Age Discrimination Act.

The Department solicits comments on the wisdom and feasibility of this proposed rule. Should this proposed rule be retained in the final general, government-wide age discrimination regulations? Is there a need for coordination of compliance and enforcement activities under the Act? Will the lead agency approach provide the needed coordination? What specific classes of recipients should be grouped for assignment to a lead agency? Which agency should be designated the lead agency for specific classes of recipients? Will the lead agency concept be too difficult and confusing to implement?

§ 90.34 *Agency reports.*

Text of the proposed rule:

Each agency shall submit to the Secretary not later than December 31 of each year, beginning in 1979, a report which:

(a) Describes in detail the steps taken during the preceding fiscal year to carry out the Act;

(b) Contains data on the frequency, type, validity, and resolution of compliants and on compliance reviews sufficient to analyze the agency's progress in reducing age discrimination in its programs;

(c) Contains data directly relevant to the extent of any pattern or practice of age discrimination which the agency has identified in any of its programs, and to progress toward eliminating it; and

(d) Contains evaluative or interpretive information which the agency determines is useful in analyzing agency progress in reducing age discrimination in its programs.

(e) Contains such other data as the Secretary may require. The 1978 amendments to the Age Discrimination Act added a new section 308 on reporting requirements. Section 308 provides:

(a) Not later than December 31 of each year (beginning in 1979), the head of each federal department or agency shall submit to the secretary of Health, Education, and Welfare a report (1) discribing in detail the steps taken during the preceding fiscal year by such department or agency to carry out the provisions of section 303; and (2) containing specific data about program participants or beneficiaries, by age, sufficient to permit analysis of how well the department or agency is carrying out the provisions of section 303.

(b) Not later than March 31 of each year (beginning in 1980), the Secretary of Health, Education, and Welfare shall compile the reports made pursuant to subsection (a) and shall submit them to the Congress, together with an evaluation of the performance of each department or agency with respect to carrying out the provisions of section 303.

No other civil rights statute contains a comparable requirement. This provision raises two areas of concern. First, it requires HEW to evaluate co-equal departments of government regarding enforcement of the Age Discrimination Act in their programs. The Department does not have the detailed familiarity with the hundreds of programs operated by other agencies necessary to reach accurate conclusions about the presence or extent of age discrimination.

Second, the statutory requirement for submitting data on participants by age "sufficient" to permit analysis of compliance with the Act could involve, depending upon how it is interpreted, an extraordinarily expensive data collection burden, involving the collection of multiple measures of participation from hundreds of federal programs involving perhaps 100,000 recipients of federal funds. Moreover, these data, even where they exist, would not necessarily be useful in identifying patterns of age discrimination. Disparities in rates of participation by age among the many federal assistance programs may be due to many causes other than age discrimination, including differences in needs and desires among different age groups, different program objectives, and the effects of the many other programs available to similar age groups.

To identify patterns of age discrimination much additional data, such as ages of eligible beneficiaries in each recipient's area of service and the effects upon demand for services of other programs in the area, would be needed. These data are not now routinely available nationally (and rarely locally), can be expensive to collect, and still may not be sufficient to identify or measure age discrimination.

The Community Health Centers program, which provides ambulatory health care for persons without financial or physical access to private medical care, illustrates both the complexity of the problem and the potential for expensive data collection. Each center's utilization is affected by many factors, including its location in relation to housing and transportation, its location in relation to other health providers, the varying need for health care among different age groups, and the availability of financing for private health care for certain age groups provided by programs such as Medicare and Medicaid.

Which age groups use a health center will also be influenced by services it offers and which services are available from other sources. For example, if a State has especially large

and active Maternal and Child Health and Early and Periodic Screening, Diagnosis and Treatment programs, then the proportion of children served in its community health centers may be lower than in otherwise comparable centers in another State. Similarly, if a local hospital has a glaucoma testing program, then a nearby center might decide to refer patients to this service rather than offer it directly. This practice may result in a reduction in the number of older persons served.

There are many different indicators to describe the utilization of a health center: total number of persons served; number of persons who use the center regularly; number who use each service; amount spent per client; and, "success" rates. An analysis of these indicators could show different patterns of participation, by age, since different age groups have different needs for health services. The cost of collecting all the relevant data by age could easily reach $20,000 (or more) per year per center. There are about 570 such centers; the total cost for this *one program* could therefore reach $10 million dollars annually. Even with these data, it is doubtful that any firm conclusions about age discrimination could be reached, since many other factors could account for variations in the age of clients within and among the centers.

In view of these problems, the Department is proposing a targeted approach to data collection and analysis, both to maximize the opportunity to measure and analyze actual progress in complying with the Act and to minimize unnecessary data collection. That approach consists of five elements.

First, each agency must describe the steps taken to implement the Act. This report is to be prepared annually. Second, the Department proposes to require that complaint data be extensively analyzed. Complaint data, particularly when supplemented by other sources of compliance information, can serve to identify systematic patterns of discrimination, as well as isolated cases of discrimination. For example, even though only a fraction of those eligible to participate in a particular program file complaints follow-up on even one complaint could expose a pattern or practice of discrimination of a particular type which a comprehensive reporting system would never detect. Not only can the analysis of complaint data (supplemented by compliance reviews and in-depth investigations, as appropriate) be more effective than massive reporting systems, it would involve minimal cost, since the complaint process is a necessary enforcement step which would already exist.

Third, the Department proposes that each agency collect, where necessary, data on particular recipients linked to particular patterns or practices of discrimination revealed by complaints, compliance reviews, or in-depth investigations. For example, if it were found that health centers in a particular region of the country were discriminatorily denying a particular service needed by elderly persons, a narrow, specific reporting requirement could be levied to measure progress in providing the service to the elderly.

Fourth, the proposed approach gives each agency authority to collect additional information which the agency believes is useful in reporting its progress in reducing age discrimination. This could include, depending on the circumstances, sample surveys, one day data collections, special evaluation studies, data gathered as part of in-depth compliance reviews, and analysis of data already collected under existing reporting and evaluation systems. Finally, under the proposed rule, the Secretary may specify additional data requirements whenever the situation warrants.

The Department solicits public comment not only on the proposed approach to data collection, but also on other alternatives such as the following:

(a) Would a requirement for submission of the self-evaluation required of recipients employing 15 or more employees under section 90.43(c), and the review by the agency of the recipient's self-evaluation report and of age distinctions be useful in meeting the new reporting requirement?

(b) Would age-specific data generated by federal monitoring under section 90.48, and by additional evaluation studies which HEW or other agencies may determine are necessary, meet the new reporting requirement?

(c) If it were deemed necessary to institute in-depth, program-wide data collection requirements covering not only overall national participation by age, but also eligibility and services provided by each recipient, should such requirements be limited to those programs found to be engaging in age discrimination?

(d) Would it be possible or productive to focus on existing program participation reported on clients, and analyze the data to identify gross disparities in participation by age among recipients within each program to identify *possible* areas of age discrimination for appropriate follow-up?

(e) Should each agency be allowed discretion to use whichever of the above options or other methods it believes would be suitable and useful to evaluate its overall or program-by-program progress?

In commenting on the proposed regulations, the alternatives listed above, and any other alternatives, the Department requests that the public focus on what kinds of data would be sufficient to measure compliance with the prohibition against age discrimination, how that data can be gathered at the least cost, and whether the Department should seek changes in the provisions of Section 308 itself.

If, after comments on these and any other alternatives, the Department concludes that the requirements it then proposes to impose on other federal agencies are (together with the costs imposed by these regulations) likely to create national costs of $100 million or more in any year, the Department anticipates preparation of a Regulatory Analysis as required by Executive Order 12044.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

§ 90.41 *What is the purpose of this Subpart?*

Text of the proposed rule:

This subpart sets forth requirements for the establishment of compliance, investigation, conciliation, and enforcement procedures by agencies which extend federal financial assistance.

§ 90.42 *What responsibilities to recipients and agencies have generally to ensure compliance with the Act?*

Text of the proposed rule:

(a) A recipient has primary responsibility to ensure that its programs and activities are in compliance with the Age Discrimination Act and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford access to its records to the extent required by agencies to determine whether it is in compliance with the Act.

(b) An agency has responsibility to attempt to secure recipient compliance with the Act by voluntary means. This may include the use of the services of appropriate federal, State, local, or private organizations. An agency also has the responsibility to enforce the Age Discrimination Act when a recipient fails to eliminate violations of the Act.

No discussion is warranted on the above two sections. However, public comments are welcome and will be considered.

§ 90.43 *What responsibilities do recipients and agencies have specifically to ensure compliance with the Act?*

Text of the proposed rule:

(a) *General.* An agency and a recipient each have responsibilities for establishing and carrying out procedures to ensure compliance with the Age Discrimination Act.

(b) *Written notice, technical assistance, and educational materials.* Each

agency extending federal financial assistance to recipients shall:

(1) Provide written notice to each recipient of its obligations under the Act. The notice shall include a requirement that where the recipient initially receiving funds makes the funds available to a sub-recipient, the recipient must notify the sub-recipient of its obligations under the Act.

(2) Provide technical assistance, where necessary, to recipients to aid them in complying with the Act.

(3) Make available educational materials setting forth the rights and obligations of beneficiaries and recipients under the Act.

The provisions of § 90.43(b) are intended to make certain that federal agencies make available to recipients adequate information regarding requirements, procedures, and rights under the Act and under agency regulations. Each recipient has the responsibility to inform its subrecipients about compliance with the Act. The educational materials described in § 90.43(b)(3) must outline not only the rights and obligations of recipients, but also of beneficiaries. They should also inform beneficiaries about the regulations and indicate how to file an age discrimination complaint.

Text of the proposed rule:

(c) *Self-evaluation.* (1) Each agency extending federal financial assistance to recipients employing 15 or more persons shall require each recipient to complete a written self-evaluation of its compliance under the Act within 18 months of the effective date of the agency regulations.

(2) Each recipient's self-evaluation shall identify and justify those age distinctions imposed by the recipient.

(3) Each recipient shall take corrective and remedial action whenever a self-evaluation indicates a violation of the Act.

(4) Each recipient shall make the self-evaluation available on request to the agency and to the public for a period of 3 years following its completion.

Self-evaluation imposes upon recipients a primary responsibility for ensuring compliance with the Act. It is envisioned that these evaluations will be simple and straight-forward. Detailed legal analysis or empirical research will rarely, if ever, be necessary. Any single age distinction can normally be analyzed in a page or less. Where no age distinctions are imposed, the self-evaluation need merely state this fact. The Department also believes that the requirement to complete the self-evaluation should be uniform across federal agencies in order to avoid imposing conflicting and multiple requirements upon recipients.

The proposed rules require each recipient to identify and justify those age distinctions which it imposes. However, the Department expects each recipient to consult the review of agency regulations, policies and administrative practices required under § 90.32 of these regulations before completing its written self-evaluation. Each recipient must make certain that it is not using any age distinction unless that distinction is "established under authority of any law," or authorized by the regulations of the federal agency providing the federal assistance, or unless that distinction falls within one of the exceptions contained in § 90.14. The Department proposes an 18 month period for the self-evaluation so that the federal agency review of is regulations, policies and administrative practices, due within one year after the publication of final agency age discrimination regulations, will be available to recipients. It should be noted that the written self-evaluation does not have to be completed until 18 months after the effective date of the agency's final age discrimination regulations.

The Department solicits comments on the following major questions regarding self-evaluation:

- Are self-evaluations useful and will they have their intended effect?
- What should a self-evaluation consist of?
- Is it reasonable to require written self-evaluations from those recipients who employ 15 or more persons? Should the Department use some other cutoff number instead of 15 which was used in the regulations implementing section 504 of the Rehabilitation Act of 1973?

Text of the proposed rule:

(d) *Complaints.* (1) *Receipt of complaints.*

(i) A procedure for the filing of complaints with the agency;

(ii) A review of complaints to assure that they fall within the jurisdiction of the Act and contain all information necessary for further processing;

(iii) Notice to the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure; and

(iv) Notice to the complainant and the recipient (or their representative) of their right to contact the agency for information and assistance regarding the complaint resolution process.

(2) *Prompt resolution of complaints.* Each agency shall establish procedures for the prompt resolution of complaints. These procedures shall require each recipient and complainant to participate actively in efforts toward speedy resolution of the complaint.

(3) *Mediation of complaints.* Each agency shall promptly refer all complaints to a mediator.

(i) The agency shall require the participation of both the recipient and the complainant in the mediation process.

(ii) If the complainant and recipient reach a mutually satisfactory resolution of the complaint during the mediation stage, they shall reduce the agreement to writing. The mediator shall notify the referring agency that a settlement has been reached. No further action shall be taken based on that complaint unless it appears that the complainant or recipient is failing to comply with the agreement.

(iii) The mediator and the parties to the mediation shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator or party to a mediation shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the agency appointing the mediator and the parties to the mediation, except as required by law.

The procedures outlined in § 90.43(d) concern the processing of complaints alleging either specific instances or patterns or practices of age discrimination. The proposed rule requires the complaint to be filed with the agency which extends federal financial assistance to the recipient against whom an accusation of age discrimination is made. The Department considered a procedure that would have allowed complaints to be filed directly with the recipients of federal financial assistance. However, the Department decided that Federal agencies would not be able to keep track of complaints under this procedure. In fact, an agency might not even know that an age discrimination complaint had been filed against one of its recipients.

These proposed regulations would allow for a complaint to be filed with an agency by an individual or a class of individuals similarly situated. In filing a complaint, an aggrieved individual may seek assistance from a representative of his or her choice or an interested outside organization. The Department invites comments with respect to the appropriateness of this filing procedure.

The introduction of mediation as the first step in the resolution of age discrimination complaints is an attempt to apply established techniques of informal dispute resolution to a federal administrative enforcement process. The purpose of this innovation is to provide faster and more creative resolution of complaints through informal methods of dispute resolution. This, in turn, will mean less delay in resolving

justified complainant grievances and less resort to formal administrative enforcement procedures. Formal administrative enforcement processes are often too slow to meet a complainant's needs, burdensome on the recipient, and incapable of addressing the problem giving rise to the dispute in the most effective manner.

The proposed mediation process is an effort to achieve compliance with the Act while avoiding the harmful effects of bureaucracy, paperwork, excessive formalism, and reliance on the adversary process. These factors have led to a large backlog of cases under other civil rights statutes and thus denied swift and fair resolution of charges of discrimination. There are several major elements of the process. First, the process will be supervised by a trained mediator. We are proposing that the mediator have the authority to terminate the mediation if the process appears to have broken down. The mediation will last either for 60 or 90 days. [See § 90.43(d)(4).] Public comment is invited on the issue of whether 60 or 90 days is a more appropriate length of time to carry out mediation.

Second, participation in mediation is mandatory for both the complainant and the recipient. At the initial meeting with the mediator, the rights and responsibilities of the recipient and complainant, and the requirements of the law will be explained.

Third, the objective of the mediation is to obtain a resolution of the complaint which is satisfactory to both the complainant and the recipient. Experience with mediation in other areas indicates that even the most intransigent parties are often capable of arriving at satisfactory solutions to their problems if they will only make the initial attempt to overcome the communication and other barriers between them. The solution accepted by both parties may be more or less than could be required by a court or an administrative hearing, but must be acceptable to both parties.

Fourth, to the extent possible under law, mediators are to observe a policy of confidentiality with respect to the mediation process. The complainant and the recipient each must be confident that, in working towards a mutual settlement of their dispute, they are in no way prejudicing their rights under the formal enforcement process. This is particularly the case in the event that one of them should decide that the formal administrative process must be followed.

The mediation process offers advantages to both the complainant and the recipient. Complainants are protected and supported in their effort to achieve resolution of their complaint. Both complainants and recipients can avoid formal, legalistic, time-consuming federal agency investigative and enforcement processes.

To further the goal of efficient resolution of complaints, the Department and the Office of Management and Budget are considering assigning the administration of the mediation process for all federal agencies to the Federal Mediation and Conciliation Service. The Service would recruit and train mediators either from among its own staff or from the community. This would allow utilization of the Service's experience and resources in the mediation field. The alternative would be to have each federal agency design and staff its own mediation process. If the alternative is adopted, complainants and recipients could not look to a single and consistent source for the mediation of complaints under the Age Discrimination Act.

Use of the Federal Mediation and Conciliation Service to manage the mediation process for all agencies would also assure: that uniform standards are applied in the recruitment and training of mediators; that there is consistency in the handling of complaints; and that there can be a comprehensive and coherent evaluation of the mediation process.

An unresolved question raised by the use of a mediation process for age discrimination complaints is what should be done with "multiple" complaints. That is, what complaint handling procedures should be used if an age discrimination complaint also alleges a violation of another anti-discrimination law, for example Title VI of the Civil Rights Act of 1964. [Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance.]

Should a multiple complaint of this nature be handled under the existing Title VI procedures or age discrimination procedures? It seems excessively complicated to process each claim of discrimination under separate procedures, but consideration should also be given to this alternative. The Department welcomes comment on the most effective method for handling this type of complaint. It would also be valuable to have the benefit of any experiences which might indicate the incidence of age discrimination complaints being coupled with discrimination complaints under other civil rights authorities.

After 30 months, the Department would evaluate the government-wide experience under the mediation process in accordance with section 90.61 of these regulations. At that time we would examine a number of questions, including: How many complaints were referred to mediation? How many complaints were resolved during the mediation process? How much time did it take to resolve a complaint through mediation? Were the complainant and the recipient satisfied with the solution? Are complaints resolved faster through the use of mediation? Did the solutions accepted by both parties meet the requirements of law with respect to the prohibition against age discrimination?

The Department solicits comments on the following major questions raised by its proposed informal resolution procedure:

- How effective is the mediation process likely to be and how can it be made more effective? Should it be tried on an experimental basis for 30 months? The Department specifically requests suggestions on alternative means of effectively settling disputes.
- What burdens, if any, does it place on the complainant and the recipient? What can be done to ease the burdens?
- What are the problems associated with obtaining suitable mediators and how can these problems be solved?
- Should the mediation step be mandatory?
- Is it reasonable to expect complainants and recipients to pay their own expenses in connection with the mediation process?
- What existing sources of funds or volunteer assistance are available from State and local governments and private organizations to reduce any cost burden for individual complainants and recipients?
- Should one agency manage the mediation process, or should some or all agencies develop their own mediation capacities?
- Is the Federal Mediation and Conciliation Service using specially trained staff and community mediators, an appropriate and acceptable agency to manage the mediation process for all Federal agencies?

Text of the proposed rule:

(4) *Federal initial investigation.* each agency shall investigate complaints unresolved after mediation.

(i) Not more than 60/90 days after the agency receives the complaint, the mediator shall refer a still unresolved complaint to the referring agency for initial investigation.

(ii) As part of the initial investigation, the agency shall use informal fact finding methods including joint or individual discussions with the complainant and recipient to establish the facts, and, if possible, resolve the complaint to the mutual satisfaction of the parties. The agency may seek the assistance of any involved State or State program agency.

The first step in the formal enforcement process is initial investigation. Experience indicates that many discrimination complaints can be informally resolved prior to full-scale inves-

tigation. It is anticipated that this step will not be excessively time consuming and that adding a federal enforcement presence (in cases where mediation has not been successful) will improve the prospects for complaint resolution.

The investigation of the complaint will begin, during the initial investigation step, to establish the basis for a finding of compliance or noncompliance. However, in keeping with the statutory requirement that the agency seek voluntary compliance, and consistent with the regulations' objective of avoiding excessive paperwork and bureaucratic procedure, the agency should encourage informal settlement through voluntary compliance by a recipient or voluntary withdrawal of the complaint. When informal settlement is not possible or appropriate, the agency will proceed to formal investigation.

Text of the proposed rule:

(5) *Formal investigation, conciliation, and hearing.* If the agency cannot resolve the complaint during the early stages of the investigation, it shall:

(i) Complete the investigation of the complaint.

(ii) Attempt to achieve voluntary compliance satisfactory to the agency, if the investigation indicates a violation.

(iii) Arrange for enforcement as described in § 90.46, if necessary.

If the matter is not resolved during the initial investigation the agency must formally investigate the complaint. If a full-scale investigation indicates that the complaint is valid, the agency must still attempt to persuade the recipient to comply voluntarily with the Act. If voluntary compliance cannot be obtained, enforcement, as provided for by § 90.46, must begin. The Department invites comments on whether there should be a specified time period for initial investigation, such as 60 or 120 days, after which formal investigation, conciliation and enforcement would be mandatory.

§ 90.44 *Compliance reviews.*

Text of the proposed rule:

(a) Each agency may provide in its regulations for the conduct of compliance reviews, pre-award reviews, and other similar procedures which permit the agency to investigate, and correct, violations of the Act without regard to its procedures for handling complaints.

(b) If a compliance review or pre-award review indicates a violation of the Act, the agency shall attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, the agency shall arrange for enforcement as described in § 90.46.

The complaint process is not the only method by which an agency may enforce the Act. The agency may also use compliance reviews, pre-award reviews, and other similar methods. Depending on a variety of factors, including the relative effectiveness of the methods adopted, complaints may represent either a larger or smaller element of the overall agency enforcement process. Should these compliance reviews be made mandatory or should they remain optional with each agency as now proposed?

§ 90.45 *Information requirements and prohibition against intimidation or retaliation.*

Text of the proposed rule:

An agency shall provide in its regulations a requirement that the recipient:

(a) Provide to the agency information necessary to determine whether the recipient is in compliance with the Act.

(b) Permit reasonable access by the agency to the books, records, accounts, and other recipient facilities and sources of information to the extent necessary to determine whether a recipient is in compliance with the Act.

(c) May not engage in acts of intimidation or retaliation against any person who:

(1) Attempts to assert a right protected by the Act; or

(2) Cooperates in any investigation, hearing, or other part of the agency's investigation, conciliation, and enforcement process.

Traditionally, there has been much dissatisfaction with the paperwork burden imposed on recipients. The Department desires to avoid placing unnecessary burdens on recipients with respect to compliance and enforcement procedures. Accordingly, there is no requirement in these proposed regulations that each recipient of federal financial assistance submit a general assurance of compliance with the Act. Even without the assurance, the legal obligation of a recipient remains unchanged. In addition, as discussed in § 90.34, the Department is proposing a targeted approach to data collection. This approach should limit data collection to those data which are most likely to identify violations of the Act and to indicate what progress is being made toward the elimination of those violations. Every effort is being made to comply with the Congressionally mandated requirement that certain data be collected. Every effort also will be made to collect data useful in eliminating age discrimination. Finally, a concerted effort will be made to keep the cost of the data collection as inexpensive as possible.

§ 90.46 *What further provisions must an agency make in order to enforce its regulations after an investigation indicates that a violation of the Act has been committed?*

Text of the proposed rule:

(a) Each agency shall provide for enforcement of its regulations through:

(1) Termination of a recipient's federal financial assistance under the program or activity involved where the recipient has violated the Act or the agency's regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an impartial hearing examiner or an administrative law judge. Therefore, cases which are settled in the mediation process, or prior to the hearing before an impartial hearing examiner or an administrative law judge, will not involve termination of a recipient's federal financial assistance.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by agency regulations under the Act.

(ii) Use of any requirement of or referral to any federal, State, or local government agency which will have the effect of correcting a violation of the Act or implementing regulations.

(b) Any termination under section 90.46(a)(1) shall be limited to the particular recipient and particular program or activity receiving federal financial assistance or portion thereof found to be in violation of the Act or agency regulations. No termination shall be based in whole or in part on a finding with respect to any program or activity of the recipient which does not receive federal financial assistance.

(c) No action under paragraph (a) of this section may be taken until:

(1) The head of the agency involved has advised the recipient of its failure to comply with the regulations involved and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the head of the agency involved has sent a written report of the circumstances and grounds of the action to the committees of Congress having legislative jurisdiction over the federal program or activity involved. A report shall be filed whenever any action is taken under paragraph (a) of this section.

(d) An agency may defer granting new federal financial assistance to a recipient when termination proceedings under § 90.46(a)(1) are initiated.

(1) New federal financial assistance includes all assistance administered by or through the agency for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period. New federal financial assistance does not include assistance approved prior to the beginning of termi-

nation proceedings or to increases in funding as a result of changed computation of formula awards.

(2) A deferral may not begin until the recipient has received a notice of opportunity for a hearing under § 90.46(a)(1). A deferral may not continue for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the agency. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

Section 90.46 reflects a number of requirements with regard to termination of federal financial assistance. These include a requirement that termination take place only after notice and opportunity for a hearing, a finding on the record of a violation of the Act, a determination that compliance cannot be obtained by voluntary means, and the expiration of 30 days following an appropriate report to the Congress. Termination under the Act must be limited in its scope to the particular program or activity or portion thereof receiving federal financial assistance and may not be based on a finding with respect to any program or activity which does not receive assistance.

A report must also be sent to Congress whenever an agency enforces the Act by "other means authorized by law." These other means include an option to refer a matter, after investigation and conciliation efforts, to the Department of Justice with a recommendation to seek court enforcement of the terms and conditions of the receipt of federal financial assistance that are established by the Act.

Section 90.46(d) of the regulations provides that an agency may defer approval of new federal financial assistance during the time period when administrative hearings are taking place to enforce the Act. The purpose of this provisions is to avoid further commitments of federal financial assistance until the question of the recipient's compliance is resolved. A second purpose is to minimize the disruption which might occur if a new funding commitment were made and then, shortly thereafter, terminated as a result of the administrative hearing.

Section 90.46(d) contains two provisions protecting recipients in the event that action is deferred on their application for new federal financial assistance. First, deferral does not apply to federal financial assistance which is already due recipients under commitments made prior to the beginning of the hearing process. The flow of funds under existing commitments continues. Second, § 90.46(d)(2) places time limits on how long a deferral may last in order to prevent a deferral from becoming the equivalent of a termination because of agency imposed delays in the administrative hearing process.

§ 90.47 *Alternate funds disbursal procedure.*

Text of the proposed rule:

Whenever an agency withholds funds from a recipient pursuant to its regulations issued under § 90.31, the head of the agency may disburse the funds so withheld directly to any public or non-profit private organization or agency, or State or political subdivision of the State. These alternate recipients must demonstrate the ability to achieve the goals of the federal statute authorizing the program or activity while complying with the agency's regulations issued under this Act.

This section implements the language of a 1978 amendment. No further discussion is warranted on this section. However, public comments are welcome and will be considered.

§ 90.48 *Federal monitoring role.*

Text of the proposed rule:

Each agency shall have responsibility for monitoring the effectiveness of the compliance and enforcement program established by its regulations and shall take necessary corrective action.

Federal agencies are required to see that the entire compliance and enforcement effort, including that part carried out by the recipient, is operating effectively and to take corrective action when it is not.

§ 90.49 *Remedial and affirmative action by recipients.*

Text of the proposed rule:

(a) Where a recipient is found to have discriminated on the basis of age, the recipient shall take any remedial action which the agency may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, both recipients may be required to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

In the case of a formal finding of past discrimination, appropriate remedial action is a necessary part of an enforcement program. This section authorizes agencies to require remedial action when it is called for after a finding of discrimination. It also permits recipients voluntarily to take affirmative action to overcome the effects of conditions which have limited program participation on the basis of age.

§ 90.50 *Exhaustion of administrative remedies.*

Text of the proposed rule:

(a) The agency shall provide in its regulations that a complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and the agency has made no finding with regard to the complaint; or

(2) The agency issues any finding in favor of the recipient.

(b) If the agency issues a finding in favor of the recipient as described in § 90.50(a)(2), the agency shall:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right, under Section 305(e) of the Act to bring a civil action for legal or equitable relief that will effect the purposes of the Act; and

(3) Inform the complainant:

(i) That a civil action can only be brought in an United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these costs must be demanded in the complaint;

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary, the Attorney General of the United States, the head of the granting agency, and the recipient;

(iv) That the notice shall state: the alleged violation of the Act; the relief requested; the court in which the action will be brought; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That no action shall be brought if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

(c) The agency shall cooperate with the court and the parties to facilitate a fair resolution of the action. To the extent possible under the law, the agency shall observe a policy of confidentiality regarding the mediation process described in § 90.43(d)(3).

The 1978 amendments to the Act permit persons to file a private civil action to enforce the Act. The Act spells out the conditions under which a civil action can be brought. If a complainant exhausts the administrative remedies under § 90.50(a), the complainant may file a civil action in federal court even while the agency continues the investigation process. The provision of attorney's fees to successful complainants implements a statu-

tory requirement. Federal agencies will be required to cooperate fully in informing complainants of this right and facilitating fair resolution of these enforcement actions.

Subpart E—Future Review of Age Discrimination Regulations

Text of the proposed rule:

§ 90.61 *Review of general regulations.*

The Secretary shall review the effectiveness of these regulations in securing compliance with the Act. As part of this review, 30 months after the effective date of these regulations, the Secretary shall publish a notice of opportunity for public comment on the effectiveness of the regulations. The Secretary will assess the comments and publish the results of the review and assessment in the FEDERAL REGISTER.

§ 90.62 *Review of agency regulations.*

Each agency shall review the effectiveness of its regulations in securing compliance with the Act. As part of this review, 30 months after the effective date of its regulations, each agency shall publish a notice of opportunity for public comment on the effectiveness of the agency regulations. Each agency shall assess the comments and publish the results of the review in the FEDERAL REGISTER.

Sections 90.61 and 90.62 are included in the proposed general regulations as part of the President's attempt to reform the regulatory process. Under section 4 of Executive Order 12044, agencies are required to "periodically review their existing regulations." This periodic review will help agencies determine whether the regulations are achieving the objectives for which they were designed.

Under § 90.61, the Secretary must review the general age discrimination regulations 30 months after they become effective and under § 90.62, federal agencies must review their specific age discrimination regulations 30 months after they become effective. The public will be given an opportunity to comment on both the review of general regulations and the review of specific agency regulations.

Comment is invited on whether 30 months is a sufficient period of time in which to determine whether the general age discrimination regulations and the specific agency age discrimination regulations are effective.

REGULATORY ANALYSIS—COMPLIANCE COSTS

Section 3 of Executive Order 12044 *Improving Government Regulations*, requires a regulatory analysis for "significant" regulations which "may have major economic consequences for the general economy, for individual industries, geographical regions, or level of governments." The Department has concluded that a regulatory analysis is not required for these proposed regulations.

The Department has made every effort to minimize burdens of compliance with these proposed regulations and has prepared preliminary estimates of the costs. The principal burdens of the proposed regulations include the following elements:

Enforcement. Based on previous federal experience with complaints of discrimination, the Department anticipates 300–700 complaints annually, which may generate up to several million dollars annually in enforcement costs to recipients. (Similar costs for federal agencies might also be as much as several million dollars annually.) Non-federal enforcement costs are expected to affect less than 1% of the 90–100,000 recipients.

Self-evaluations. Self-evaluations will affect *all* of the approximately 70–80,000 recipients with 15 or more employees. However, self-evaluations are limited to the small portion of all policies and procedures which involve age distinctions created by recipients, and for most recipients should require no more than a day or two of staff time. Even so, one-time costs to recipients may total approximately $16–18 million nationally for self-evaluations.

Service Costs. Ending age discrimination may increase program service costs. There are no currently known types of noncompliance which would cost recipients significant sums to correct. Any such costs would be imposed only on those recipients discriminating on the basis of age.

Reporting. Developing detailed age specific participation and related data could involve costs of thousands of dollars for any single recipient and millions of dollars annually for any single program. However, as discussed in section 90.34, the Department is proposing a targeted approach which it believes will limit data collection to those data which are most likely to identify violations of the Act and measure progress toward their elimination. As a result, recipients which do not discriminate will not ordinarily be required to invest in new data reporting and total national costs are likely to be minimal.

As indicated earlier, the Department has concluded that a regulatory analysis for these proposed regulations is not required under Executive Order 12044. However, because of the possibility that cost burdens may exist of which the Department is currently unaware, and because there are alternatives which are substantially more costly, the Department invites comments which identify any significant costs recipients may encounter in complying with the requirements of the Act and these regulations.

Dated: November 27, 1978.

FRANK PETER S. LIBASSI,
General Counsel, Department of Health, Education, and Welfare.

Dated: November 28, 1978.

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

The Department of Health, Education, and Welfare proposes to add Part 90 to Title 45 of the Code of Federal Regulations, as set forth below:

PART 90—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General

Sec.

90.1 What is the purpose of the Age Discrimination Act of 1975?
90.2 What is the purpose of these regulations?
90.3 What programs and activities does the Age Discrimination Act of 1975 cover?
90.4 How are the terms in these regulations defined?

Subpart B—What is Age Discrimination (Standards for Determining Discriminatory Practices)

90.11 Purpose of this subpart.
90.12 Rules against age discrimination.
90.13 Definitions of "normal operation" and "statutory objective."
90.14 Exceptions to the rules against age discrimination. Normal operation or statutory objective of any program or activity.
90.15 Exceptions to the rules against age discrimination. Reasonable factors other than age.
90.16 Burden of proof.

Subpart C—What Are the Responsibilities of the Federal Agencies?

90.31 Issuance of regulations.
90.32 Review of agency policies and administrative practices.
90.33 Interagency cooperation.
90.34 Agency reports.

Subpart D—Investigation, Conciliation and Enforcement Procedures

90.41 What is the purpose of this Subpart?
90.42 What responsibilities do recipients and agencies have generally to ensure compliance with the Act?
90.43 What responsibilities do recipients and agencies have specifically to ensure compliance with the Act?
90.44 Compliance reviews.
90.45 Information requirements and prohibition against intimidation or retaliation.
90.46 What further provisions must an agency make in order to enforce its regulations after an investigation indicates that a violation of the Act has been committed?
90.47 Alternate funds disbursal procedure.
90.48 Federal monitoring role.

90.49 Remedial and affirmative action by recipients.
90.50 Exhaustion of administrative remedies.

Subpart E—Future Review of Age Discrimination Regulations

90.61 Review of general regulations.
90.62 Review of agency regulations.

AUTHORITY: *Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq.*

Subpart A—General

§ 90.1 What is the purpose of the Age Discrimination Act of 1975?

The Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance. The Act is also designed to permit federally assisted programs and activities, and recipients of federal funds, to continue to use age distinctions and factors other than age which are reasonable in light of the purposes of the Act.

§ 90.2 What is the purpose of these regulations?

(a) The purpose of these regulations is to state general, government-wide rules for the implementation of the Age Discrimination Act of 1975, as amended, and to guide each agency in the preparation of agency-specific age discrimination regulations.

(b) These regulations apply to each federal agency which provides federal financial assistance to any program or activity.

§ 90.3 What programs and activities does the Age Discrimination Act of 1975 cover?

(a) The Age Discrimination Act of 1975 applies to any program or activity receiving federal financial assistance, including programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 *et seq.*).

(b) The Age Discrimination Act of 1975 does not apply to:

(1) An age distinction contained in that part of an *Option #1* Federal statute, State statute, or local statute or ordinance; or Federal, State, or local regulation which: or *Option #2* Federal statute, State statute, or local statute or ordinance which: or *Option #3* Federal statute or State statute which: or *Option #4* Federal statute which:

(i) Provides any benefits or assistance to persons based on age; *or*

(ii) Establishes criteria for participation in age-related terms; *or*

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA), as amended.

§ 90.4 How are the terms in these regulations defined?

As used in these regulations, the term:

"Act" means the Age Discrimination Act of 1975, as amended, (Title III of Public Law 94-135).

"Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

"Age" means how old a person is, or the number of elapsed years from the date of a person's birth. "Age distinction" means any action using an age or age-related term.

"Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons").

"Agency" means a federal department or agency that is empowered to extend financial assistance.

"Federal financial assistance" means any grant, entitlement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(a) funds;

(b) services of federal personnel; or

(c) real and personal property or any interest in or use of property, including:

(1) transfers or leases of property for less than fair market value or for reduced consideration; and

(2) proceeds from a subsequent transfer or lease of property if the federal share of its fair market value is not returned to the Federal Government.

"Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee but excludes the ultimate beneficiary of the assistance.

"Secretary" means the Secretary of the Department of Health, Education, and Welfare.

Subpart B—What is Age Discrimination?

(STANDARDS FOR DETERMINING DISCRIMINATORY PRACTICES)

§ 90.11 Purpose of this subpart.

The purpose of this subpart is to set forth the prohibitions against age discrimination and the exceptions to those prohibitions.

§ 90.12 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in sections 90.13, 90.14, and 90.15 of these regulations.

(a) *General rule:* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

(b) *Specific rules:* A recipient may not, in any program or activity receiving federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving federal financial assistance, or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving federal financial assistance.

(c) *Reservation:* The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 90.13 Definitions of "normal operation" and "statutory objective."

The terms "normal operation" and "statutory objective" are important to an understanding of the statutory exceptions to the prohibition against age discrimination. Therefore, for purposes of §§ 90.14 and 90.15, the terms "normal operation" and "statutory objective" shall have the following meaning:

(a) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(b) "Statutory objective" means any purpose of a program or activity expressly stated in a statute [or reasonably inferred from its provisions or legislative history.]

§ 90.14 Exceptions to the rules against age discrimination. Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by § 90.12, if the action reasonably takes into ac-

count age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics (e.g., maturity);

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are difficult, costly, or otherwise impractical to measure directly.

§ 90.15 Exceptions to the rules against age discrimination. Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 90.12 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. However, the factor must bear a [rational/direct/substantial/necessary] relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 90.16 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 90.14 and 90.15 is on the recipient of federal financial assistance.

Subpart C—What are the Responsibilities of the Federal Agencies?

§ 90.31 Issuance of regulations.

(a) The head of each agency which extends federal financial assistance to any program or activity shall publish proposed and final age discrimination regulations in the Federal Register to:

(1) Carry out the provisions of section 303 of the Age Discrimination Act of 1975; *and*

(2) Provide for appropriate investigative, conciliation, and enforcement procedures.

(b) Each agency shall publish its proposed agency age discrimination regulations no later than 90 days after the publication date of the final general, government-wide age discrimination regulations.

(c) Each agency shall publish final agency regulations no later than 120 days after publication of proposed agency age discrimination regulations.

(d) Agency age discrimination regulations shall be consistent with these general, government-wide age discrimination regulations and shall not become effective until they meet all requirements of the Act.

(e) Each agency shall include in its regulations a provision governing the operation of an alternate funds disbursal procedure as described in § 90.47 of these regulations.

(f) Each agency shall publish an appendix to its final age discrimination regulations containing a list of each age distinction provided in a federal statute or regulation which affects the agency's programs of federal financial assistance.

§ 90.32 Review of agency policies and administrative practices.

(a) Each agency shall conduct a review of age distinctions it imposes on its recipients by regulations, policies, and administrative practices. The purpose of this review is to identify how age distinctions are used by each federal agency and whether those age distinctions are permissible under the Act and implementing regulations. Age distinctions used by a federal agency in its regulations, policies, or administrative practices are permissible if they are based on an explicit age distinction in a federal statute or are covered by at least one of the exceptions to the rules against age discrimination in § 90.14.

(b) No later than 12 months from the date the agency publishes its final regulations, the agency shall publish, for public comment, a report in the FEDERAL REGISTER containing its programs:

(1) The results of the review conducted under paragraph (a) of this section;

(2) A list of the age distinctions contained in regulations which are to be continued;

(3) A list of the age distinctions not contained in regulations but which will be adopted by regulation in order to remain in use;

(4) The justification for each age distinction to be continued; and

(5) A list of the age distinctions to be eliminated.

(c) An agency may not continue an existing age distinction, nor impose a new age distinction, 12 months after the publication of its age discrimination regulations, unless the age distinction is adopted by regulation under the Administrative Procedure Act.

§ 90.33 Interagency cooperation.

Where two or more agencies provide federal financial assistance to a recipient or class of recipients, their regulations shall provide for a single compliance and enforcement procedure. Their regulations shall also designate one of the agencies as the sole agency for all compliance and enforcement purposes with respect to those recipients, except the ordering of termination of funds and the notification of the appropriate committees of Congress.

§ 90.34 Agency reports.

Each agency shall submit to the Secretary not later than December 31 of each year, beginning in 1979, a report which:

(a) Describes in detail the steps taken during the preceding fiscal year to carry out the Act;

(b) Contains data on the frequency, type, validity, and resolution of complaints and on compliance reviews sufficient to analyze the agency's progress in reducing age discrimination in its programs;

(c) Contains data directly relevant to the extent of any pattern or practice of age discrimination which the agency has identified in any of its programs, and to progress toward eliminating it; and

(d) Contains evaluative or interpretative information which the agency determines is useful in analyzing agency progress in reducing age discrimination in its programs.

(e) Contains such other data as the Secretary may require.

Subpart D—Investigation, Conciliation and Enforcement Procedures

§ 90.41 What is the purpose of this Subpart?

This subpart sets forth requirements for the establishment of compliance, investigation, conciliation, and enforcement procedures by agencies which extend federal financial assistance.

§ 90.42 What responsibilities do recipients and agencies have generally to ensure compliance with the Act?

(a) A recipient has primary responsibility to ensure that its programs and activities are in compliance with the Age Discrimination Act and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford access to its records to the extent required by agencies to determine whether it is in compliance with the Act.

(b) An agency has responsibility to attempt to secure recipient compliance with the Act by voluntary means. This may include the use of the services of appropriate federal, State local, or private organizations. An agency also has the responsibility to enforce the Age Discriminatin Act when a recipient fails to eliminate violations of the Act.

§ 90.43 What responsibilities do recipients and agencies have specifically to ensure compliance with the Act?

(a) *General.* An agency and a recipient each have responsibilities for establishing and carrying out procedures to ensure compliance with the Age Discrimination Act.

(b) *Written notice, technical assistance, and educational materials.* Each agency extending federal financial assistance to recipients shall:

(1) Provide written notice to each recipient of its obligations under the Act. The notice shall include a requirement that where the recipient initially receiving funds makes the funds available to a sub-recipient, the recipient must notify the sub-recipient of its obligations under the Act.

(2) Provide technical assistance, where necessary, to recipients to aid them in complying with the Act.

(3) Make available educational materials setting forth the rights and obligations of beneficiaries and recipients under the Act.

(c) *Self-evaluation.* (1) Each agency extending federal financial assistance to recipients employing 15 or more persons shall require each recipient to complete a written self-evalution of its compliance under the Act within 18 months of the effective date of the agency regulations.

(2) Each recipient's self-evaluation shall identify and justify those age distinctions imposed by the recipient.

(3) Each recipient shall take corrective and remedial action whenever a self-evaluation indicates a violation of the Act.

(4) Each recipient shall make the self-evaluation available on request to the agency and to the public for a period of 3 years following its completion.

(d) *Complaints.* (1) *Receipt of complaints.* Each agency shall establish a complaint processing procedure which includes the following:

(i) A procedure for the filing of complaints with the agency;

(ii) A review of complaints to assure that they fall within the jurisdiction of the Act and contain all information necessary for further processing;

(iii) Notice to the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure; and

(iv) Notice to the complainant and the recipient (or their representative) of their right to contact the agency for information and assistance regarding the complaint resolution process.

(2) *Prompt resolution of complaints.* Each agency shall establish procedures for the prompt resolution of complaints. These procedures shall require each recipient and complainant to participate actively in efforts toward speedy resolution of the complaint.

(3) *Mediation of complaints.* Each agency shall promptly refer all complaints to a mediator.

(i) The agency shall require the participation of both the recipient and the complainant in the mediation process.

(ii) If the complainant and recipient reach a mutually satisfactory resolution of the complaint during the mediation stage, they shall reduce the agreement to writing. The mediator shall notify the referring agency that a settlement has been reached. No further action shall be taken based on that complaint unless it appears that the complainant or recipient is failing to comply with the agreement.

(iii) The mediator and the parties to the mediation shall protect the confidentially of all information obtained in the course of the mediation process. No mediator or party to a mediation shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the agency appointing the mediator and the parties to the mediation, except as required by law.

(4) *Federal initial investigation.* Each agency shall investigate complaints unresolved after mediation.

(i) Not more than 60/90 days after the agency receives the complaint, the mediator shall refer a still unresolved complaint to the referring agency for initial investigation.

(ii) As part of the initial investigation, the agency shall use informal fact finding methods including joint or individual discussions with the complainant and recipient to establish the facts, and, if possible, resolve the complaint to the mutual satisfaction of the parties. The agency may seek the assistance of any involved State or State program agency.

(5) *Formal investigation, conciliation, and hearing.* If the agency cannot resolve the complaint during the early stages of the investigation, it shall:

(i) Complete the investigation of the Complaint.

(ii) Attempt to achieve voluntary compliance satisfactory to the agency, if the investigation indicates a violation.

(iii) Arrange for enforcement as described in § 90.46, if necessary.

§ 90.44 Compliance reviews.

(a) Each agency may provide in its regulations for the conduct of compliance reviews, pre-award reviews, and other similar procedures which permit the agency to investigate, and correct, violations of the Act without regard to its procedures for handling complaints.

(b) If a compliance review or pre-award review indicates a violation of the Act, the agency shall attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, the agency shall arrange for enforcement as described in § 90.46.

§ 90.45 Information requirements and prohibition against intimidation or retaliation.

Each agency shall provide in its regulations a requirement that the recipient:

(a) Provide to the agency information necessary to determine whether the recipient is in compliance with the Act.

(b) Permit reasonable access by the agency to the books, records, accounts, and other recipient facilities and sources of information to the extent necessary to determine whether a recipient is in compliance with the Act.

(c) May not engage in acts of intimidation or retaliation against any person who:

(1) Attempts to assert a right protected by the Act; or

(2) Cooperates in any investigation, hearing, or other part of the agency's investigation, conciliation, and enforcement process.

§ 90.46 What further provisions must an agency make in order to enforce its regulations after an investigation indicates that a violation of the Act has been committed?

(a) Each agency shall provide for enforcement of its regulations through:

(1) Termination of a recipient's federal financial assistance under the program or activity involved where the recipient has violated the Act or the agency's regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an impartial hearing examiner or an administrative law judge. Therefore, cases which are settled in the mediation process, or prior to the hearing before an impartial hearing examiner or an administrative law judge, will not involve termination of a recipient's federal financial assistance.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by agency regulations under the Act.

(ii) Use of any requirement of or referral to any federal, State, or local government agency which will have the effect of correcting a violation of the Act or implementing regulations.

(b) Any termination under section 90.46(a)(1) shall be limited to the par-

ticular recipient and particular program or activity receiving federal financial assistance or portion thereof found to be in violation of the Act or agency regulations. No termination shall be based in whole or in part on a finding with respect to any program or activity of the recipient which does not receive federal financial assistance.

(c) No action under paragraph (a) of this section may be taken until:

(1) The head of the agency involved has advised the recipient of its failure to comply with the regulations involved and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the head of the agency involved has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the federal program or activity involved. A report shall be filed whenever any action is taken under paragraph (a) of this section.

(d) An agency may defer granting new federal financial assistance to a recipient when termination proceedings under § 90.46(a)(1) are initiated.

(1) New federal financial assistance includes all assistance administered by or through the agency for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period. New federal financial assistance does not include assistance approved prior to the beginning of termination proceedings or to increases in funding as a result of changed computation of formula awards.

(2) A deferral may not begin until the recipient has received a notice of opportunity for a hearing under § 90.46(a)(1). A deferral may not continue for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the agency. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 90.47 Alternate funds disbursal procedure.

Whenever an agency withholds funds from a recipient pursuant to its regulations issued under section 90.31, the head of the agency may disburse the funds so withheld directly to any public or non-profit private organization or agency, or State or political subdivision of the State. These alternate recipients must demonstrate the ability to achieve the goals of the federal statute authorizing the program or activity while complying with the agency's regulations issued under this Act.

§ 90.48 Federal monitoring role.

Each agency shall have responsibility for monitoring the effectiveness of the compliance and enforcement program established by its regulations and shall take necessary corrective action.

§ 90.49 Remedial and affirmative action by recipients.

(a) Where a recipient is found to have discriminated on the basis of age, the recipient shall take any remedial action which the agency may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, both recipients may be required to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

§ 90.50 Exhaustion of administrative remedies.

(a) The agency shall provide in its regulations that a complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and the agency has made no finding with regard to the complaint; or

(2) The agency issues any finding in favor of the recipient.

(b) If the agency issues a finding in favor of the recipient as described in § 90.50 (a)(2), the agency shall:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right, under Section 305(e) of the Act, to bring a civil action for legal or equitable relief that will effect the purposes of the Act; and

(3) Inform the complainant:

(i) That a civil action can only be brought in an United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these costs must be demanded in the complaint;

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary, the Attorney General of the United States, the head of the granting agency, and the recipient;

(iv) That the notice shall state: the alleged violation of the Act; the relief requested; the court in which the action will be brought; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That no action shall be brought if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

(c) The agency shall cooperate with the court and the parties to facilitate a fair resolution of the action. To the extent possible under the law, the agency shall observe a policy of confidentially regarding the mediation process described in § 90.43(d)(3).

Subpart E—Future Review of Age Discrimination Regulations

§ 90.61 Review of general regulations.

The Secretary shall review the effectiveness of these regulations in securing compliance with the Act. As part of this review, 30 months after the effective date of these regulations, the Secretary shall publish a notice of opportunity for public comment on the effectiveness of the regulations. The Secretary will assess the comments and publish the results of the review and assessment in the FEDERAL REGISTER.

§ 90.62 Review of agency regulations.

Each agency shall review the effectiveness of its regulations in securing compliance with the Act. As part of this review, 30 months after the effective date of its regulations, each agency shall publish a notice of opportunity for public comment on the effectiveness of the agency regulations. Each agency shall assess the comments and publish the results of the review in the FEDERAL REGISTER.

[FR Doc. 78-33742 Filed 11-30-78; 8:45 am]

[4110-12-M]

[45 CFR Part 90]

AGE DISCRIMINATION REGULATIONS

Public Hearings

AGENCY: Office of the Secretary, HEW.

ACTION: Proposed rules, notice of public hearings.

SUMMARY: The Department of Health, Education, and Welfare will conduct public hearings on the proposed general, government-wide regulations to carry out the provisions of the Age Discrimination Act of 1975, as amended. The Act applies to persons of all ages. It prohibits discrimination on the basis of age in programs or activities receiving Federal financial as-

sistance. However, the Act permits some distinctions based on age. The proposed regulations contain government-wide standards. The oral and written comments received at the hearings will be considered in the drafting of the final regulations.

DATES: Public hearings will be held in 10 cities and the District of Columbia. See Supplementary Information section for the dates of each hearing.

ADDRESSES: See Supplementary Information section for the address of each hearing.

FOR FURTHER INFORMATION CONTACT:

See Supplementary Information section for the person to contact in Washington, D.C. and in each region.

SUPPLEMENTARY INFORMATION: The schedule of hearings is set forth below. The date, time and location of the hearing is provided, as well as the name and address of the person to contact for further information.

WASHINGTON, D.C.

January 16 and 17, 1979, 9:30 a.m.-5:30 p.m., Department of Health, Education, and Welfare Auditorium, 330 Independence Avenue SW., *Washington, D.C.*

Contact: Ms. Bayla F. White, Director, Age Discrimination Task Force, Office of the General Counsel, Room 716E, 200 Independence Avenue SW., Washington, D.C. 20201. Telephone 202-245-6284.

REGION I (BOSTON)

February 5, 1979, 11 a.m.-8 p.m., John F. Kennedy Federal Building, Room 2003A, Government Center, *Boston, Massachusetts.*

Contact: Mr. Charles Vann, Staff Assistant to the Principal Regional Official, DHEW Regional Office, Room 2411, John F. Kennedy Federal Building, Government Center, Boston, Massachusetts 02203. Telephone 617-223-6831.

REGION II (NEW YORK)

January 30, 1979, 11 a.m.-8 p.m., Federal Office Building, Room 305, 26 Federal Plaza, *New York, New York.*

Contact: Ms. Stanlee Joyce Stahl, Executive Assistant to the Principal Regional Official, DHEW Regional Office, Room 3835, 26 Federal Plaza, New York, New York 10007. Telephone 212-264-4602.

REGION III (PHILADELPHIA)

January 26, 1979, 9 a.m.-7 p.m., Gold Room, Allegheny County Court House, Grant and Forbes Street, *Pittsburgh, Pennsylvania.*

Contact: Mr. Paul Cushing, Executive Assistant to the Principal Regional Official, DHEW Regional Office, P.O. Box 13716, Philadelphia, Pennsylvania 19101. Telephone 215-596-6492.

REGION IV (ATLANTA)

January 22, 1979, 9 a.m.-9 p.m., Atlanta City Council Chambers, 68 Mitchell Street NW., *Atlanta, Georgia.*

Contact: Mr. A. B. Albritton, Director, Public Affairs, DHEW Regional Office, Suite 1403, 101 Marietta Tower, Atlanta, Georgia 30323. Telephone 404-221-2311.

REGION V (CHICAGO)

January 23, 1979, 9 a.m.-7 p.m., 17th Floor Conference Room, DHEW Regional Office Building, 300 South Wacker Drive, *Chicago, Illinois.*

Contact: Ms. Marian H. Miller, Regional Program Director, Administration on Aging, DHEW Regional Office, 300 South Wacker Drive, 15th Floor, Chicago, Illinois 60606. Telephone 312-353-3141.

REGION VI (DALLAS)

February 2, 1979, 9 a.m.-7 p.m., South Ballroom, 2nd Floor, Southland Center, 2117 Live Oak St., *Dallas, Texas.*

Contact: Mr. John Stokes, Regional Attorney, DHEW Regional Office, Suite 1330, 1200 Main Tower Bldg., Dallas, Texas 75202. Telephone 214-767-3465.

REGION VII (KANSAS CITY)

January 31, 1979, 2 p.m.-8 p.m., Federal Office Building, 601 East 12th Street, *Kansas City, Missouri.*

Contact: Mr. Steve Glorioso, Director, Public Affairs, DHEW Regional Office, Room 612, 601 East 12th Street, Kansas City, Missouri 64106. Telephone 816-374-3436.

REGION VIII (DENVER)

February 1, 1979, 12 noon-9 p.m., Federal Office Building, Room 1083, 1961 Stout Street, *Denver, Colorado.*

Contact: Ms. Norma Jones, Consultant for Public Affairs, DHEW Regional Office, Room 11037, Federal Office Building, 19th and Stout Streets, Denver, Colorado 80294. Telephone 303-837-2694.

REGION IX (SAN FRANCISCO)

January 24, 1979, 9 a.m.-7 p.m., State Auditorium, 107 South Broadway, *Los Angeles, California.*

Contact: Ms. Sharon Fujii, Special Assistant to the Principal Regional Official, DHEW Regional Office, Room 443, 50 United Nations Plaza, San Francisco, California 94102. Telephone 415-556-2650.

REGION X (SEATTLE)

January 29, 1979, 9 a.m.-7 p.m., Federal Office Building, Rooms 380 and 390, 915 Second Avenue, *Seattle, Washington.*

Contact: Mr. Andrew Young, Regional Attorney, DHEW Regional Office, 1321 Second Avenue, Mail Stop 624, Arcade Plaza Building, Seattle, Washington 98101. Telephone 206-442-0470.

These hearings are being held to solicit views and experience of individuals and organizations with respect to issues raised by the proposed regulations. Requests to present statements at the hearing should be made in writing to the above addresses and should include the name, address, and telephone number of the participant and organizations represented, if any, as well as the issues upon which the person wishes to be heard. Each participant will have an opportunity to submit a written statement and other data for the record. In the event that time does not permit all interested persons to make oral presentations, persons will be selected to assure that all points of view are fairly represented. The hearings will be conducted in an informal manner.

Persons who are unable to attend the hearings may submit statements in writing to: Ms. Bayla F. White, Director, Age Discrimination Task Force, Office of the General Counsel, Room 716E, 200 Independence Avenue, S.W., Washington, D.C. 20201. 202-245-6284.

Dated: November 27, 1978.

FRANK PETER S. LIBASSI,
General Counsel, Department of Health, Education, and Welfare.

Dated: November 28, 1978.

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

[FR Doc. 78-33743 Filed 11-30-78; 8:45 am]

federal register

FRIDAY, DECEMBER 1, 1978
PART VIII



FEDERAL ENERGY REGULATORY COMMISSION

NATURAL GAS POLICY ACT OF 1978

Interim Regulations

[6740-02-C]

TITLE 18 - CONSERVATION OF POWER AND WATER RESOURCES

CHAPTER I - FEDERAL ENERGY REGULATORY COMMISSION

[DOCKET NO. RM79-3]

SUBCHAPTER A - GENERAL RULES

PART 2 - GENERAL POLICY AND INTERPRETATIONS

SUBCHAPTER E - REGULATIONS UNDER THE NATURAL GAS ACT

PART 157 - APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

SUBCHAPTER H - REGULATION OF NATURAL GAS SALES UNDER THE NATURAL GAS POLICY ACT OF 1978

PART 270 - RULES GENERALLY APPLICABLE TO REGULATED SALES OF NATURAL GAS

PART 271 -- CEILING PRICES

PART 273 - COLLECTION AUTHORITY; REFUNDS

PART 274 - DETERMINATIONS BY JURISDICTIONAL AGENCIES

PART 275 - COMMISSION DETERMINATIONS AND COMMISSION REVIEW OF JURISDICTIONAL AGENCY DETERMINATIONS

PART 276 - REPORTS

SUBCHAPTER I - OTHER REGULATIONS UNDER THE NATURAL GAS POLICY ACT OF 1978

PART 284 - CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS

INTERIM REGULATIONS IMPLEMENTING THE NATURAL GAS POLICY ACT OF 1978

AGENCY : Federal Energy Regulatory Commission.

ACTION : Interim Regulations.

SUMMARY: The Natural Gas Policy Act of 1978 (NGPA), enacted November 9, 1978, takes effect with respect to certain first sales of natural gas delivered on or after December 1, 1978. The new statutory provisions relating to pricing of natural gas and other issues must, therefore, be implemented by regulation by that date. These regulations implement certain provisions of the NGPA, and are issued as interim regulations.

PUBLIC HEARINGS: Dates and locations to be announced.

DATE : Written comments by January 31, 1979, except as otherwise noted. Effective December 1, 1978, except as otherwise noted.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D. C. 20426 (Reference Docket No. RM79-3)

FOR FURTHER INFORMATION CONTACT:

Romulo L. Diaz, Jr.
Office of the General Counsel
Federal Energy Regulatory Commission
825 North Capitol Street, N. E.
Washington, D. C. 20426
(202) 275-3771

or

Howard Kilchrist
Office of Pipeline and Producer Regulation
Federal Energy Regulatory Commission
825 North Capitol Street, N. E.
Washington, D. C. 20426
(202) 275-4539

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I. INTRODUCTION

On November 9, 1978, the Natural Gas Policy Act of 1978 (NGPA) was signed into law. By passage of the NGPA, Congress has mandated a new legislative framework for the regulation of most facets of the natural gas industry. The new law affects sales, transmission and distribution of natural gas. The previously controlling federal regulatory statute, the Natural Gas Act (NGA) has in many respects been limited, replaced or superseded by the NGPA, although it continues to be of significance with respect to gas previously dedicated to interstate commerce.

A primary effect of the NGPA is the substitution of a series of specific statutory maximum price levels applicable to discrete types of "first sales" of natural gas for the previously established system of price regulation of interstate sales of natural gas which had been grounded in a cost-based methodology. An important distinction between producer regulation under the NGA and the NGPA is the expansion of the Federal Energy Regulatory Commission's (Commission) jurisdictional scope to encompass not only sales made in interstate commerce but in intrastate commerce as well. Under the NGPA, all first sales of natural gas are controlled by the maximum statutory ceiling rates and as a result, it is unlawful for any person to sell

natural gas at a price in excess of the statutory maximum regardless of whether the sale occurs in the inter- or intrastate market.

The Commission wishes to call specific attention to the provisions of section 101(b)(9) of the NGPA. The Congress, by that provision, emphasizes and makes clear that the maximum lawful prices under the NGPA are ceiling prices and do not supersede or nullify the effectiveness of any contractual agreement to pay a lower price. Therefore, the Commission cautions producers not to assume entitlement to any NGPA ceiling price which is higher than their contract prices.

The Commission is directed to administer essentially all of the NGPA and is authorized to perform any and all acts and to prescribe and issue such rules and orders as it finds necessary or appropriate to carry out its functions under the NGPA. On November 13, 1978, the Commission proposed interim regulations as the first step in implementing the NGPA. These interim regulations, contained in this notice, mark the second step in carrying out the basic responsibilities for implementation and administration of the Act and provide a mechanism for transition from the NGA regulating regime to the NGPA scheme.

The NGPA is divided into six titles:

I. Pricing
   A. Price Controls Applicable to Sales of Natural Gas
   B. Decontrol of Certain Natural Gas Prices
II. Incremental Pricing
III. Additional Authorities and Requirements
   A. Emergency Authorities
   B. Other Authorities and Requirements
IV. Natural Gas Curtailment Policies
V. Administration, Enforcement, and Review
VI. Coordination with the Natural Gas Act, Effect on State Laws

The interim regulations prescribed here do not implement all titles under the NGPA. Rather, the regulations propose to deal with those areas demanding the most expeditious treatment.

This first group of regulations is designed to set in motion the new scheme for pricing of first sales of natural gas and to provide mechanisms for implementation of provisions of the NGPA covering certain arrangements for transportation of natural gas. However, before setting out in detail a full description of the specific regulations proposed, a summary of the most salient features of the NGPA, the effect on regulation under the NGA, and a capsule description of the implementing regulations and corollary modifications of regulations under the NGA, may be useful.

THE LEGISLATIVE SCHEME OF THE NGPA

The nature and scope of Commission regulation of producer sales under the NGPA has been substantially transformed from utility-type regulation of a limited market to what is essentially price regulation of an entire national market. Under the scheme set up by the NGPA, there exist two major categories of first sales: those requiring a prior determination of eligibility to be made by a jurisdictional federal or state agency (within the meaning of the NGPA) before collection of the maximum lawful price and those not explicitly requiring such a determination. A decision as to whether a first sale falls into a category requiring a determination is fundamental. A decision to seek a determination triggers quite different regulatory consequences than a decision not to seek a determination.

Although under certain provisions the Commission may be called upon to return to the cost-based, just and reasonable methodology within the meaning of the NGA in establishing rates in excess of the NGPA ceiling prices, the basic administration of the pricing provisions of the NGPA will be undertaken from an entirely different perspective.

The Commission will no longer inquire into producer costs or set permissible rates of return for producers. Instead, the Commission's focus will center on whether geological information, production history, field records, prior contractual relationships and information of a similar nature support the categorization for pricing purposes claimed by producers.

Another crucial factor in anticipating what regulatory treatment will be accorded producer sales of natural gas is whether gas is "committed or dedicated" for purposes of NGA regulation. The limitations on NGA regulation as a result of enactment of the NGPA will be addressed in another section of this preamble. However, the distinction between gas which is deemed to be subject to continuing regulation under the NGA and gas which falls solely within the NGPA regulatory format is significant and affects both pricing and nonpricing regulation of producer matters.

For categories of gas requiring a prior determination by a federal or state agency, the Commission's function is more in the nature of an appellate body, reviewing, on a substantial evidence basis, the factual determinations of the appropriate jurisdictional agency with the right of disapproval in the event the initial determination is not adequately substantiated. The Commission rules reflect

this role and prescribe the basic and minimum factual foundation necessary to meet its review responsibilities without directly interposing the Commission into the procedural functioning of the jurisdictional agency. The review process of initial determinations begins when notice is received of a jurisdictional agency's determination with the appropriate supporting material specified in Part 274 of the proposed regulations. In the absence of a reversal, the determination of the jurisdictional agency becomes final and no longer subject to review unless based on any untrue statement of material fact or upon any omission of material fact which omission was misleading.

Categories of first sales explicitly requiring that a determination as to qualification to collect the maximum lawful price be made by either a jurisdictional federal or state agency are:

- section 102 which sets a maximum lawful price for first sales of new natural gas (gas produced from a new lease on the Outer Continental Shelf (OCS) or certain new onshore wells) and gas produced from any old OCS lease which was from a reservoir discovered after July 27, 1976;

- Section 103 which sets a maximum price for first sales of new onshore production wells;
- Section 107 which sets a maximum lawful price for first sales of high-cost natural gas including gas produced from geopressurized brine, coal seams, Devonian shale or gas produced under other conditions the FERC determines to present "extraordinary" risks or costs; and
- Section 108 which sets the maximum lawful price for first sales of stripper well natural gas.

An essential element in the regulatory system established with respect to categories requiring a prior determination is the provision for interim collection procedures by producers awaiting a final determination or the outcome of a review of such determination. The Commission has a concomitant power to require refunds from the producer if the gas eventually qualifies for a lower price. Section 503(e) sets out this collection and refunding procedure.

Part 273 of the regulations states the prerequisites for interim collection. First, the Commission has established a "transitional rule" to permit the collection by producers of the section 109 price if a producer files

for a determination by March 1, 1979. Additional rules are established for interim collection pending and following a state or federal agency determination.

Those first sales of natural gas not requiring a prior determination to be made by a jurisdictional federal or state agency are tied to previously existing contractually set prices or price levels established by the Federal Power Commission or this Commission. First sales not requiring a prior determination under the NGPA are:

- section 104 which incorporates by reference the just and reasonable rates established under the NGA for first sales of gas committed or dedicated to interstate commerce on the day before the date of enactment of the NGPA;
- section 105 which establishes maximum lawful prices for first sales under existing contracts of natural gas not previously committed or dedicated to interstate commerce;
- section 106 which establishes maximum lawful prices for first sales under interstate and intrastate rollover contracts; and
- section 109 which establishes the maximum lawful price for first sales of natural gas

from the Prudhoe Bay in Alaska and categories of gas not otherwise covered by other sections of the NGPA.

The Commission has general administrative and enforcement authority under the NGPA and the NGA to order refunds in cases where the maximum lawful price level has been improperly exceeded.

EFFECT OF THE NGPA UPON CONTINUED NGA REGULATION

Natural gas which remains committed or dedicated to interstate commerce on the day before the date of enactment of the NGPA, or which is not specifically exempted from the jurisdictional consequences of commitment or dedication by the NGPA, remains subject to all the non-price regulatory requirements of the NGA. An important aspect of continued NGA regulation is the requirement that a producer file an abandonment application with the FERC pursuant to section 7(b) of the NGA before terminating service to the interstate market or before abandonment of facilities used to render interstate service. Additionally, although price regulation of first sales by producers of gas committed or dedicated is now governed by the NGPA, sections 104 and 106(a) are grounded in previously established rates under the NGA. As a result, producers wishing to establish their

right to collect under these sections will be required to make a filing under their rate schedules under the NGA. The Commission has amended its previously existing filing requirements to provide new procedures governing these rate increase filings.

If gas is not committed or dedicated to interstate commerce as defined in section 2(18) or is exempted from the jurisdiction of the NGA under section 601(a)(1)(B) as high cost natural gas, new natural gas, or natural gas produced from any new onshore production well, the prior framework of utility-type regulation under the NGA no longer applies.

If natural gas sales are freed from the requirements of the NGA, several adjuncts to NGA regulation are obviated. First, there is no longer any necessity for a producer to seek certification of the sale as serving the public convenience and necessity. The replacement for this requirement under the NGPA is limited to the prior determination mechanism, where applicable, and the pricing limits established in the NGPA. New sales of such gas in interstate commerce no longer require certification as a prerequisite to commencement of deliveries. Nor does the requirement for abandonment authorization before termination of deliveries of natural gas exist with respect to natural gas no longer

subject to NGA regulation. In the case of first sales of natural gas not previously committed or dedicated to interstate commerce or exempted from NGA regulation, tariff filings and rate increase applications are dispensed with. (Of course, specific requirements for filing to establish the right to collect the maximum lawful price levels exist under the regulations and annual reporting will be required under the NGPA in many instances. However, the nature of these filings, which are in many cases one-time notification type filings is quite different from the rate filings previously required under the NGA.)

For natural gas which on the date of enactment was committed or dedicated but which is exempted from the NGA under section 601(a)(1) of the NGPA, there are substitute mechanisms for NGA section 7(b) abandonment authorization. These substitute provisions, intended to provide a degree of certainty to purchasers dependent upon a predictable natural gas supply, are found in section 315 of the NGPA. The Commission has not attempted to implement these sections in the initial implementing regulations. It is our intent to do so in the near future. That section gives the Commission dual authority to establish by rule or order the minimum duration of any contract (other than an existing contract) for the purchase of natural

gas and to require by rule the right of first refusal with respect to any gas committed or dedicated to interstate commerce before the date of enactment if such gas is high cost gas, new natural gas or natural gas produced from any new, onshore production well.

Indirectly, NGA regulation is affected by the operation of section 601(b) and (c) of the NGPA. Section 601(b) provides that any amount paid in any first sale of natural gas shall be deemed to be just and reasonable if such amount does not exceed the maximum lawful ceilings established by the NGPA or if there is no maximum lawful price applicable by reason of elimination of price controls. Section 601(c), the guaranteed passthrough provision, states that the Commission may not deny, or condition, the grant of any certificate under section 7 of the NGA based upon the amount paid in any sale of natural gas if the amount paid meets the standards of section 601(b) and is, therefore, by statutory fiat, just and reasonable. Additionally, the Commission may only deny the recovery by any interstate pipeline of any amount paid with respect to the purchase of natural gas under section 601(b) to the extent the Commission determines that the amount paid was excessive due to fraud, abuse, or similar grounds.

Finally, included in the implementing regulations are provisions covering certain transportation arrangements by both interstate and intrastate pipelines. Provision is made for intrastate pipeline sales and for the assignment of natural gas excess to their requirements. Also, the Commission has revised its regulations previously applicable to emergency transactions and revised the procedure and the standards for emergency sales of natural gas for this winter's heating season.

GENERAL OUTLINE OF IMPLEMENTING REGULATIONS

The interim regulations add two new subchapters to the Commission's regulations in Chapter 1 of Title 18. New Subchapter H (Parts 270 through 276) contains the new producer regulations under the NGPA. Part 270 sets forth general rules applicable to the entire subchapter. Maximum lawful prices under NGPA sections 102 through 109 are implemented in Part 271. Part 273 provides for interim collections and refunds, while determinations of eligibility by state and federal agencies and Commission review of those determinations are provided for under Parts 274 and 275. Finally, Part 276 covers reports.

New Subchapter I will cover regulations under the NGPA other than those relating to producer regulation. The interim regulation prescribed today includes only

Part 284, which implements the Commission's authority under sections 311(a) (relating to certain pipeline transportation of natural gas) and 312 (relating to ausignment of intrastate pipeline's contractual right to receive surplus natural gas). Regulations relating to other authorities of the Commission will be added later under Subchapter I.

II. SUMMARY OF PROPOSED REGULATIONS

PART 270

Part 270 prescribes rules and definitions that apply to Subchapter H. Subpart A contains the general rules and definitions, and Subpart B contains special rules which relate to sales made under particular conditions.

The general rules of § 270.101 relate to the application of the maximum lawful price provisions of the NGPA. This section makes it unlawful for any person to sell natural gas at a first sale price which is greater than the highest maximum lawful price permitted under Part 271. Thus, if more than one maximum lawful price is applicable to a first sale, the "highest" maximum lawful price may be obtained.

This section also describes the categories of natural gas for which prior determinations by jurisdictional agencies must be made in order to establish the maximum lawful price. In addition, this section reflects the statutory rule that the pricing provisions of Part 271 do not supersede or nullify contract provisions which establish prices below the applicable maximum lawful price. It also provides that collection of a first sale price under Subchapter H is subject to any refund obligation as may be applicable. The refund provision has been modified from the proposal to

recognize the fact that refund obligations may arise as a result of provisions other than those in Part 273.

Comments on the proposed regulations requested additions to the general rules. One comment suggested a rule to protect confidential data submitted pursuant to these new regulations. The Commission, in response to this concern, has added a rule to Subpart B of Part 275 concerning the confidentiality of materials submitted to it as part of a determination by a jurisdictional agency.

Section 270.102 contains definitions. Paragraph (a) provides that unless further defined, terms defined in the NGPA have the same meaning for purposes of these regulations as they do under the NGPA.

The definitions provided under paragraph (b) include basic terms used throughout the regulations and particular terms, such as "production in commercial quantities," "crude oil," "surface location," "intrastate contract," "successor to an intrastate contract," and "intrastate rollover contract," used in more than one subpart. Two of these definitions differ from those which were first proposed: that for "Btu," and that for "production in commercial quantities."

The definition of "Btu," found in clause (2) of paragraph (b), has been amended to conform it to § 270.204. This was done in response to those comments which pointed out a discrepancy between these two sections.

In addition to several minor clarifying changes, the term "production in commercial quantities" has been amended in two major respects. First, in response to those comments which noted the Commission's omission of any reference to the rebuttable presumption in section 102(c)(3) of the NGPA, a citation to a new § 271.204(e), which embodies that presumption, has been included. Also in response to comments, the definition has been modified to make clear that the information in clauses (A) to (E) inclusive, of § 270.102(b)(4)(iii), may be considered evidence of production for beneficial economic use. However, the Commission wishes to point out that these enumerated clauses are not conclusive as to the matter; evidence to show the contrary may be presented by an applicant for a determination.

Several comments proposed that this section be expanded to include certain other terms, including "local distribution company," "intrastate sales," and "first sale." The Commission has determined that definition of these terms is not required at this time.

The table of names and addresses of the jurisdictional agencies has been moved from Part 270 to the new Subpart E of Part 274. In addition, several corrections have been made in the table.

The special rules of Subpart B apply to first sales of natural gas subject to differing maximum lawful prices, resales covered by first sale pricing regulations, sales of natural gas attributable to pipeline or distributor production, and the measurement of Btu content of natural gas.

Section 270.201 provides that the maximum lawful price for a first sale of natural gas produced from wells, properties, or reservoirs which have different applicable maximum lawful prices will be the weighted average of the maximum lawful prices applicable to each well, property or reservoir. The weighted average will be based upon the volumes of gas contributed by each such well, property or reservoir.

Section 270.202 applies to "resellers." The section provides that one who purchases natural gas at a first sale and subsequently resells the gas in a transaction which is also a first sale may collect a maximum lawful price which is the higher of either: (1) the maximum lawful price

which would apply to such a sale under Part 271 if it were not a resale; or (2) the maximum lawful price which was applicable to the transaction in which the reseller purchased the natural gas. A rule similar to § 270.201 applies to any sale by a reseller of volumes purchased subject to different maximum lawful prices.

Paragraph (c) of the rule contains two provisions applicable to allowances under Subpart K of Part 271. First, the reseller may collect the applicable maximum lawful price on his sale plus any allowances permitted by the Commission under the provisions of Subpart K of Part 271. Second, if the reseller's maximum lawful price is determined under § 270.202(a)(2) by reference to the maximum lawful price of the person selling to him, the reseller may pass through any Subpart K allowances which the person selling to him collected. In addition, under § 270.202(d), a reseller may apply to the Commission for adjustment relief pursuant to section 502(c) of the NGPA, to the extent the application of the reseller provisions results in hardship, inequity, or an unfair distribution of burdens.

Section 270.202 also spells out the manner in which the interim collection rules apply to resellers and sets out rules respecting reporting and record retention. With regard to reporting requirements, it should be pointed out that

resellers must make reports of their first sales under Part 276 in the same manner as other first sellers.

Significant modifications in the reseller rule as proposed were made in response to comments received by the Commission, in particular in its treatment of allowances under Subpart K of Part 271. The comments pointed to the possibility of a reseller's being "squeezed" between applicable prices at which he purchased and those at which he could sell. These comments suggested that the Commission explicitly provide for allowances such as the current gathering allowances permitted to interstate production and those afforded producers under Subpart K of Part 271. In addition, suggestions were made that the regulation provide for some form of margin protection to resellers. While the Commission declines to go so far as to guarantee existing margins, we believe that, as presently constructed, this regulation meets the concerns expressed by those who commented upon the proposed rule. The result, especially with the changes made respecting reseller allowances and passthrough of allowances, and with the provision for adjustments under section 502(c) of the NGPA, should provide for equitable treatment of resellers. It should be noted that changes in Subpart K of Part 271 have also been made.

Section 270.203 relates to pipeline and distributor production. Section 2(21)(B) of the NGPA provides that a sale of natural gas by a pipeline or distributor (or an affiliate thereof) is not a first sale unless the sale is "attributable to volumes of natural gas produced" by such pipeline or distributor (or an affiliate thereof). Section 270.203 describes the circumstances under which a sale of natural gas will be considered to be a first sale of natural gas attributable to volumes produced by a pipeline or distributor. To the extent a sale is comprised exclusively of production volumes from identifiable wells, properties, or reservoirs which are owned by the pipeline or distribution company or affiliate thereof making the sale, then it is attributable to volumes of natural gas produced by that pipeline or distributor.

For example, if a pipeline sells to a particular customer production volumes from a well which it owns, the volumes are commingled with system supply, and equivalent volumes are withdrawn for delivery to that customer, then the transaction would be a sale comprised of production volumes from a particular well, and thus a first sale.

In order to prevent circumvention of this rule, a provision is made pursuant to the Commission's authority under section 2(21)(A)(v) of the NGPA, that mixed-volume

sales comprised of both production volumes from identifiable wells, properties, or reservoirs owned by the pipeline or distributor/seller and of other production volumes will be considered as a first sale, unless one of the two exclusions under the rule applies. The first exclusion provides that if the rate at which such natural gas is sold by the pipeline or distributor is regulated under the NGPA or subject to regulation by a state agency under state law, then the sale will not be considered to be a first sale by reason of the "circumvention rule." (To qualify for the state regulation exemption, the sale must be subject to regulation by a state agency empowered by state statute to establish, modify or set aside the rate for the sale.) The second exclusion provides that the sale will not be considered as a first sale if, on application to the Commission, a determination has been made not to so treat the sale.

The effect of § 270.203 on sales made by an interstate pipeline of volumes of natural gas produced by it, is to continue resale rate regulation under the provisions of the NGA.

While some comments were received calling the Commission's attention to intracorporate transfers, the Commission will not specifically deal with this question without receiving further comment. Unless the Commission otherwise

provides, intracorporate transactions by interstate pipelines will continue to receive the treatment presently accorded them under the NGA.

The Commission should note at this point the relationship of section 602(a) of the NGPA to the attribution and circumvention rules set out in § 270.203. Section 602(a) states that nothing in the NGPA limits the authority of a state to establish or enforce a maximum lawful price for the first sale of natural gas produced in the state, provided the price set does not exceed any appropriate maximum lawful price under Title I of the NGPA.

Comments were received that indicate certain states have authorized their regulatory body to set or impute a price on the basis of fair value or reasonable market price for the sale or transfer to an intrastate pipeline by its producing affiliate or production department. These state-set values may be below the applicable NGPA ceiling price.

Nothing in § 270.203 or the NGPA precludes a state agency from establishing a ceiling price for a sale of gas by an intrastate pipeline affiliate to an intrastate pipeline at a rate which is lower than the NGPA ceiling price. Likewise, a state agency may impute a price for

an intracorporate transaction involving intrastate pipeline production which is lower than the NGPA ceiling price. Some comments received by the Commission interpreted the proposal as one which, contrary to the NGPA, worked to exclude all sales of pipeline-produced natural gas from the provisions of the NGPA. Others interpreted the proposed rule as one which would continue, where applicable, cost-of-service regulation subject to the maximum lawful pricing provisions of the NGPA. Still others, notably intrastate producer pipelines, pointed out cases where state regulation does not take the form of cost-of-service or average cost regulation.

We disagree with those comments that concluded that the Commission is without authority to determine the extent to which sales by pipelines and distribution companies are "attributable" to production by these entities, or their affiliates. Under a broad reading of this section, arguably all sales of natural gas by pipelines and distribution companies would be "first sales" where any volume of natural gas was produced by that pipeline, distribution company or an affiliate. Under such a reading, a substantial portion of retail sales by pipelines and distribution companies would be subject to the provisions of the NGPA. Moreover

under such a broad reading of the "first sale" definition, it could be asserted that the provisions of the NGA would not apply to jurisdictional sales by interstate pipelines by reason of section 601 of the NGPA.

Applying the provisions of Title I of the NGPA, particularly section 104, to "first sales" by interstate pipelines under such a broad reading would entail a major restructuring of pipeline regulation under the NGA. Retail sales by intrastate pipelines and distribution companies, which are traditionally regulated by the states, would also be subject to the provisions of Title I of the NGPA and the Commission's authority. Such incongenous results were clearly not intended by the legislative draftman.

For these reasons we have concluded that sales by pipelines and distribution companies should only be considered to be "attributable" to production by pipeline distributors where the sale is of production from identifiable wells, properties or reservoirs owned by such pipelines (or distributor or affiliates thereof) to an identifiable purchaser. In order to prevent circumvention of this rule by pipelines or distributors who sell volumes of production by others together with volumes produced by them, the Commission has found it necessary to exercise its authority under section 2(21)(A)(v) of the NGPA, to

impose first sale price regulation on these "mixed" sales where the price is not otherwise subject to regulation or where the Commission affirmatively finds that first sale regulation is unnecessary.

Section 270.205 incorporates discussion at page 83 of the Statement of Managers which relates to the effect of establishment of ceiling prices under the NGPA on indefinite price escalator clauses in existing contracts. As discussed there, the mere establishment of NGPA ceiling prices will not trigger these clauses. The special rule is consistent with that discussion which is equally applicable to existing intrastate and interstate contracts. The phrase "indefinite price escalator clause" is defined for purposes of this special rule by reference to the definition in Section 105(b)(3)(B). Good cause exists to incorporate this special rule in the interim regulations given the uncertainty that would result absent a provision which provides guidance to the parties to those contracts.

PART 271 - SUBPART A

Subpart A of Part 271 sets out, in summary tables, the pricing provisions applicable to certain categories of first sales of natural gas delivered in the months of December 1978 and January 1979. It also provides the method and the inflation adjustment factors to be used for calculating maximum lawful prices for those categories of natural gas for which prices cannot be derived from the summary tables. These latter categories are ones for which maximum lawful prices must be calculated by the seller.

Section 271.102 sets out the methodology by which certain maximum lawful prices are to be calculated. The procedure involves adjustment for inflation and requires only simple multiplication. The price for a given month is calculated by multiplying (1) the price which was allowed for the sale of natural gas delivered in the preceding month, by (2) a single adjustment factor which is published by the Commission. The adjustment factor, referred to as the "monthly equivalent of the annual inflation adjustment factor" in the NGPA, and "inflation adjustment" in the interim regulation, is computed by the Commission under the method of calculation prescribed by

section 101(a) and (b) of the NGPA. The inflation adjustment for each month after April 1, 1977, appears in Table III in § 271.102. This adjustment will be published by the Commission at least 5 days before the beginning of any month for which the factor will apply.

The first price from which all maximum lawful prices under § 271.102 are to be calculated is referred to as a "base price." This price varies according to the category of natural gas for which a calculation is to be made. Once this price is known the calculation can proceed, month-to-month, until the applicable monthly maximum lawful price is determined.

By way of example, assume that a calculation is to be to be made to determine the December 1978, maximum lawful price for natural gas subject to § 271.402(d)(1) for which a just and reasonable rate of $1.00 was in effect on April 20, 1977. First the "base month" and "base price" must be determined. These are determined under §271.102(d) to be April 1977, and $1.00 respectively. Second, a calculation for May 1978, is made. This is done by multiplying $1.00 by 1.00636, the inflation adjustment for May 1977, as presented in the table accompanying § 271.102(c). The result, rounded to the nearest mill, is $1.006. Next, the process is repeated for June 1978 by multiplying the $1.006

figure by 1.00636, the inflation adjustment for June. The product, again rounded to the nearest mill, is $1.012. This figure is then multiplied by the inflation adjustment for July 1977 (1.00431) and so on through the monthly iterations. The result should be a price of $1.115 for the month of November 1978. At this point, the maximum lawful price applicable for deliveries made in December 1978, can be determined. This is done by multiplying the November figure of $1.115 by 1.00581, the factor which applies for December. The result is a maximum lawful price of $1.121 for deliveries made during December 1978.

This example is chosen to illustrate the calculation which § 271.402 will require of some sellers. Sellers subject to either the § 271.502 or § 271.602 pricing provisions will be entitled to prices based on the contract price per MMBtu on November 9, 1978, or in the case of rollover contracts, the month in which the rollover occurs. In either event, only a single multiplication need be made to determine the next month's maximum lawful price.

PART 271 - SUBPART B

Subpart B of Part 271, which implements section 102 of the NGPA, establishes a maximum lawful price for "new natural gas" and for "natural gas produced from a new OCS reservoir on an old OCS lease." These terms are defined by reference to the NGPA.

Section 271.204(a) is a special rule for vertical measurement of the 1,000 foot distance between completion locations necessary for certain determinations under this subpart. The rule also clarifies the measurement methodology for completions made by perforation and for "open-hole" completions.

Section 271.204 also provides special rules regarding the statutory terms "capable of producing in paying quantities," "commercially producible," "suitable facilities," and "production in commercial quantities."

Comments suggested the term "reservoir" be defined in § 271.203. Section 270.102(a) of the regulations provide that the NGPA statutory definitions are incorporated by reference in the regulations. The term reservoir is defined in section 2(6) of the NGPA.

Comments suggested several modifications to the special rules in § 271.204. Specifically, comments directed toward § 271.204(a) suggested an alternate method of measuring

vertical depth, viz. from the lowest perforation point in the marker well to the highest perforation point in the new well completion location. Further comments suggested that measurement of open-hole completions should be from the total depth of the marker well to the highest point of the new well reservoir. The Commission has considered this suggestion and has decided for reasons of ease of measurement and consistency, not to change the special rule. However, in response to some comments, the rule regarding vertical measurements has been changed to make clear that for open-hole completions, measurements are from the highest elevation point of the reservoir "within the well bore."

Several comments sought modification of the special rule regarding "commercially producible" arguing that section 102(d)(2)(B)(ii) of the NGPA requires a determination based upon the producing characteristics of the reservoir. The Commission has found no basis for concluding that the term "commercially producible" has a meaning different from "production in commercial quantities." The latter term is defined in § 270.102(b)(4) of the regulations.

Other comments suggested that the language in § 271.204(d), which provides that suitable facilities were in existence if such facilities were "substantially installed and additional facilities necessary for such production and delivery were readily available," should be deleted or modified. It is the Commission's position that the statutory term "suitable facilities" includes facilities which were installed or substantially installed, if any additional facilities necessary for production and delivery were readily available. However, the section has been modified, in response to comments, to make clear that unless suitable facilities were actually in place, such facilities will not be considered to be "readily available" unless the additional facilities could have been installed in time to allow production and delivery to commence prior to April 20, 1977.

Finally, in response to other comments, § 271.204(d) has been modified to reflect the statutory provisions that facilities installed solely for purposes of sales under section 6 of the Emergency Natural Gas Act of 1977, or for the purposes of 60-day emergency sales are not "suitable facilities" within the meaning of section 102 of the Act.

PART 271 - SUBPART C

Subpart C of Part 271 implements section 103 of the NGPA and establishes a maximum lawful price for first sales of natural gas from new, onshore production wells. Section 271.303 defines a "new, onshore production well" in accordance with the statutory definition in section 103(c), as one spudded on or after February 19, 1977, which complies with applicable well-spacing requirements, and is outside an existing proration unit. Wells which do not comply with applicable well-spacing requirements or are drilled within an existing proration unit do not qualify for the new, onshore production well price unless the requirements of the special rule set out in § 271.304 are met. Section 271.304 makes clear that if a jurisdictional agency grants a waiver of well-spacing requirements prior to commencement of surface drilling, the new well is deemed to satisfy applicable well-spacing requirements.

The special rule in § 271.305 is divided into two parts. The first part, paragraph (b) of § 271.305, provides that for wells spudded after December 31, 1978, the requirements of section 103(c)(3) of the NGPA can only be satisfied if the jurisdictional agency finds that the

well is necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit, which portion of the reservoir cannot be effectively and efficiently drained by any existing well within the proration unit. Such a finding must involve a redefinition or alteration of the proration unit, or an exception to otherwise applicable well-spacing requirements.

Paragraph (c) of the rule recognizes that some wells drilled between February 19, 1977, and January 1, 1979, may qualify for the price established in section 103. The rule permits such wells to qualify if the agency which authorized the drilling of the new well explicitly or implicitly made the finding, prior to commencement of the drilling of the well, that the new well was necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit, which portion of the reservoir could not be effectively and efficiently drained by any existing well within the proration unit. Similar treatment is accorded certain wells for which drilling permits are issued prior to January 1, 1979.

Numerous comments requested that the applicability of the special rule in § 271.305 be clarified. The special rule only applies to a second well drilled in

an existing proration unit. If there is no proration unit in existence and applicable to the reservoir, or if there is no well drilled in the existing proration unit to the reservoir, the special rule does not apply. Paragraph (a) of the special rule regarding the applicability of the rule has been revised to clarify this point.

Several comments requested a transition period during which jurisdictional agencies may develop procedures necessary to make the explicit finding required by § 271.305(b). The Commission recognizes the need to permit a sufficient transition period. Paragraph (b) now applies to "wells spudded after December 31, 1978," and paragraph (c) now applies to "wells spudded on or after February 19, 1977, and before January 1, 1978."

Many comments questioned whether the finding that the new well is necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit which cannot be effectively and efficiently drained by any existing well within the proration unit must be made prior to the commencement of drilling. Comments stated that this requirement would cause drilling delays or make it impossible to obtain a new, onshore production well determination for wells drilled prior to the date of

enactment. The Commission believes that the statute requires that the necessary finding be made prior to the commencement of drilling. Consequently, this aspect of the special rule in § 271.305 remains unchanged.

PART 271 - SUBPART D

Subpart D of Part 271 implements sections 104 and 106(a) of the NGPA. These sections prescribe the maximum lawful price for the first sale of natural gas which was committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate under the NGA was in effect. Under section 104, the maximum lawful price is the just and reasonable rate for each vintage of gas established by the Commission as of April 20, 1977, as adjusted monthly for inflation from that date forward. Just and reasonable rates established by the Commission after April 20, 1977, constitute the ceiling rates under section 104 and are not generally adjusted for inflation. Section 106(a) prescribes the maximum lawful price for rollover contracts executed after November 9, 1978.

The interim regulations set forth the maximum lawful price applicable to each vintage of gas and define the various vintages of gas established by the Commission's national or area rate opinions. Rules for calculating the maximum lawful price applicable to natural gas for which a nonvintage just and reasonable rate was not previously established under special relief and optional procedures are also included in this subpart.

Section 271.402(a) of Subpart D includes a table of maximum lawful prices for each vintage of previously committed or dedicated natural gas. Transition from the Natural Gas Act prices to the NGPA prices affects two of the prices included therein differently from other categories. First, the price established in section 106(a) of the NGPA for sales by small producers of rollover contract gas is less than the rate such producers would have received for the same category of gas under the Natural Gas Act. Pursuant to § 157.40(c)(1) of this chapter, small producers were entitled, under the Natural Gas Act, to 130% of the maximum base rate established by the Commission for replacement contracts. Thus, for replacement contracts entered into prior to November 9, 1978, section 104 of the NGPA, which is keyed to the rates previously established by the Commission, prescribes a rate reflecting this 30% differential for sales by small producers. However, for contracts rolling over on or after November 9, 1978, section 106(a) prescribes a rate of 54 cents per MMBtu, as adjusted for inflation from April 20, 1977, for both large and small producers. As a result of this anomaly, a small producer who executed a replacement contract prior to November 9, 1978, would be entitled to a rate of 77.1 cents per MMBtu as of December 1, 1978, whereas a small producer who executed a rollover contract on or after

November 9, 1978, would be entitled, under section 106(a), to a rate of 60.3 cents per MMBtu.

In order to prevent a small producer from receiving a rate under the NGPA lower than that to which he would be entitled under the Natural Gas Act, the Commission finds it necessary to invoke our authority under section 106(c) of the NGPA. This section provides that the Commission may prescribe a maximum lawful price higher than would otherwise be applicable under section 106 if such higher rate is determined to be just and reasonable within the meaning of the Natural Gas Act. The Commission finds, pursuant to this section, that the rate previously established by the Commission for small producer replacement contract gas is just and reasonable within the meaning of the Natural Gas Act, and should be made applicable to small producer sales of rollover contract gas. The price so determined is 70.2 cents per MMBtu as of December 1, 1978. This price may be increased, in accordance with Opinion Nos. 770, et seq. and Opinion Nos. 742, et seq., by an amount not to exceed 1.3 cents per MMBtu per annum commencing on January 1, 1979, and the first day of every year thereafter for the term of the contract dedicating the subject gas for sale in interstate commerce.

We note that this price is still not identical to the 77.1 cents per MMBtu price prescribed in the table for small producer sales of replacement contract gas. The price in the table was determined by adjusting for inflation the April 20, 1977, price of 68.9 cents per MMBtu established by the Commission for replacement contract gas. We invite the submission of data, views and arguments on or before December 15, 1978, regarding the question whether, under the standard set forth in section 106(c), the 70.2 cents per MMBtu rate applicable to small producer rollover contracts should be found not just and reasonable, and the just and reasonable rate should be raised to the 77.1 cents per MMBtu rate as adjusted for inflation in months following December 1978.

One commenting party argues that the Commission has exceeded its authority in raising the small producer rollover contract rate to 70.2 cents per MMBtu. The comment alleged that by not mentioning small producers in section 106(a), Congress intended to eliminate the small producer differential for rollover contract gas. We disagree. The Commission believes the intent of Congress, as expressed in sections 104 and 106(a) of the NGPA, was to key the price of previously committed or dedicated gas to the prices previously determined by the Commission to be

just and reasonable under the Natural Gas Act. Accordingly, we believe that the failure of section 106(a) to mention small producers was inadvertent rather than intentional. In any event, the Congress clearly provided the Commission with the authority, under section 106(c), to prescribe a just and reasonable rate for small producers selling rollover contract gas which is higher than that provided in section 106(a).

A second transition problem exists regarding the large producer rate for rollover contracts prescribed in section 106(a). Such rate is determined by applying the inflation adjustment factor to an April 1977 rate of 54 cents per MMBtu in order to arrive at a December 1, 1978, rate of 60.3 cents per MMBtu. However, the large producer rate for replacement contracts was 53 cents as of April 20, 1977, which when adjusted for inflation translates to a rate of 59.3 cents per MMBtu as of December 1, 1978. Again, we note that the only difference between a replacement contract and rollover contract is that the latter is executed on or after November 9, 1978. In view of this disparity in treatment for the same types of sales of natural gas, we invite the submission of data, views and arguments on or before December 15, 1978, regarding the question whether, under

the standard set forth in section 104(b)(2), the large producer replacement contract rate of 59.3 cents per MMBtu should be found not just and reasonable, and the just and reasonable rate should be raised to the 60.3 cents per MMBtu rate for large producer rollover contracts.

Under § 271.402(d)(2) of these regulations, any "just and reasonable" rate established by the Commission for a sale of natural gas after April 20, 1977, and prior to November 9, 1978, is the maximum lawful price applicable to such sale if higher than the otherwise applicable price prescribed in § 271.402(a) or (d)(1). As to producer applications under the optional procedure regulation set forth in § 2.75 of this chapter, a "just and reasonable" rate is that rate established by the Commission in its final order on such applications. However, the holder of a certificate issued by the Commission under the optional procedure was required to waive the right to receive the applicable national and area rates and other rights under section 4 of the Natural Gas Act and regulations thereunder, we do not believe that the inflation adjustment should apply to rates established under the optional procedure.

Under § 271.403 of these regulations, we have provided a special rule regarding a carrying charge adjustment for advance payments. In Opinion No. 770-A, the Federal Power

Commission recognized that capital generated through the advance payment program was no longer required to bring additional gas supplies to the interstate market. The Commission noted that the rate level set forth in that opinion was designed to achieve the capital formation objective. Accordingly, the Commission found that as to additional advance payments made after the issuance of that opinion, it would be inequitable to require consumers also to pay the carrying charges on these amounts.

The Commission determined that producers who accept advance payments after the date of the opinion should reduce the rate prescribed therein for post-1974 gas which was committed under any further advance payments by the cost of the advances borne by consumers.

Because of these same considerations, we have provided in § 271.403 for the same adjustment in the rates charged by producers for post-1974 gas. Producers subject to this carrying charge rule would be required to reduce their rates by 83 cents per MMBtu for all deliveries made pursuant to the applicable advance payment agreement until the total amounts so deducted equal the amounts collected by the purchasing pipeline from its customers as a result of including the applicable advance payments in their rate base.

Several parties commented that § 271.402(a) should include a reference to the minimum rate of 18 cents per Mcf prescribed by § 2.56b(b) of this chapter. These parties also stated that this 18 cents per Mcf minimum rate be adjusted for inflation as provided for in section 104(b)(1)(A).

We agree that the 18 cents per Mcf minimum rate should be included in the table of rates set forth in § 271.402(a) and should be adjusted for inflation as provided in section 104(b)(1)(A). Accordingly, we have added a new category to the table of rates set forth in § 271.402(a) which is entitled "minimum rate gas." Also, we have added a new subparagraph (9) to § 271.402(c) which defines this term.

Several comments were received regarding the "small producer" definition set forth in § 271.402(c)(9). One comment suggested that the definition be expanded to include a crossreference to § 157.40, the current regulation governing sales made by small producers. Specifically, this comment requested that it be made clear that the small producer rates established under sections 104 and 106(a) should only be applicable to sales from "small producer reserves" as defined in § 157.40. In order to clarify this matter, we have deleted the definition of small producer and, in its place, provided a definition of "small

producer sales" which references the requirements of § 157.40 under which such sales may qualify for the small producer rate.

One comment recommended that we amend the definition of small producer to permit the small producer exemption to apply even where the producer is a director of a class A pipeline company and the producer makes no sales to such pipeline company. This prohibition against affiliation with a class A pipeline company was incorporated in the current small producer regulations set forth in § 157.40 as promulgated by Order No. 568. __/ On rehearing of Order No. 568, the issue presented in this comment was raised. Since this issue is more appropriately raised in the context of Order No. 568, we shall address it on rehearing of that order.

Finally, a comment was received recommending that small producers be defined by reference to the level of sales in both the inter- and intrastate markets, because the NGPA abolished this distinction between the markets. However, the small producer definition set forth in § 271.402(c)(9) is only applicable to sales of natural gas which was previously committed or dedicated to interstate commerce, and the maximum lawful prices established for such gas are based

__/ Order Amending and Clarifying Small Producer Regulations, Docket No. RM76-15, issued July 14, 1977.

on the just and reasonable rates previously established by the Commission. Accordingly, the small producer exemption which is provided for under the Commission's current pricing regulations and which is based solely on the level of interstate sales, should be maintained. To include intrastate sales in the exemption rule would mean that certain producers would receive a rate under the NGPA lower than that to which they would be entitled under the Natural Gas Act, a result clearly not intended under sections 104 and 106(a).

One party indicated that the term "replacement contract" as used in § 271.402(c)(4) should be clarified in that it may be confused with the term "successor to an existing contract" under section 2(14) of the NGPA. No further clarification in the regulations need be made because the two terms are distinguishable on their face. First, "successor to an existing contract" means a contract executed on or after November 9, 1978, whereas a "replacement contract" refers only to contracts executed prior to that date. Also, a replacement contract also differs from a "successor to an existing contract" in that it refers only to contracts for the sale of natural gas which was previously subject to an existing contract which expired by its own terms.

PART 271 - SUBPART E

Subpart E of Part 271 implements section 105 of the NGPA by setting forth the procedure for determining the maximum lawful price for first sales of natural gas under existing, or successors to existing, intrastate contracts. No prior Commission approval is required in order to collect the maximum lawful prices established in this subpart. Persons making sales under existing intrastate contracts need only file reports as provided in Part 276. "Existing intrastate contracts" are defined in § 270.102(b)(8) to be any intrastate contracts for the first sale of natural gas in existence on November 8, 1978.

Although throughout the proposed regulations the reference is to intrastate contracts, it should be noted that these provisions apply to contracts which govern the sale of natural gas which was not committed or dedicated to interstate commerce on November 8, 1978, (the day before the date of enactment of the NGPA). Included in this category is any gas which was sold in interstate commerce under an emergency sale, a limited term certificate, and certain direct sales for which specific transportation certificates had been issued by the Commission.

Under Subpart E of the proposed regulations, the maximum lawful prices depend upon the relationship that existed on November 9, 1978, between the price under the terms of the existing intrastate contract and the new natural gas price. Under § 271.502(a), if the existing intrastate contract price was less than the new natural gas price, then the maximum lawful price will be, pursuant to section 105(b)(1) of the NGPA, the lower of the new natural gas price of $2.060 per MMBtu or the price under the terms of the existing intrastate contract on November 9, 1978, (as such price may be changed from time to time in accordance with contract terms in effect on November 9, 1978). Under § 271.502(b), if the existing intrastate contract price exceeded the new natural gas price of $2.060 per MMBtu on November 9, 1978, then the maximum lawful price will be the higher of the new natural gas price or the existing intrastate contract price limited to escalation by the monthly equivalent of the annual inflation adjustment factor.

The term "contract price" is defined in § 271.504 to mean the price per MMBtu charged for deliveries of natural gas occurring on November 9, 1978, or the price that would have been charged had deliveries occurred on that date.

Comments were received from various parties concerning our use of the phrase "contract price" in § 271.502(a)(1). They asserted that its use in that paragraph caused confusion as to whether future contractually authorized fixed or indefinite price escalator clauses, including price redetermination provisions, operate to effect price increases. The commentors fear that an interpretation more restrictive than required by the legislation would apply in the case of § 271.502(a)(1). One commentor therefore suggested that § 271.502(a)(1) be revised to track the statutory language in section 105(b)(1)(A) of the NGPA to refer to the "price under the terms of the existing contract." We agree and we have revised § 271.502 (a)(1) to track the appropriate statutory language. This change should allay the apprehensions of those commentors who feared that fixed or indefinite price escalator clauses in contracts were abrogated by § 271.502(a)(1).

One comment suggested adding a new section which would provide, inter alia, that the mere establishment of ceiling prices under the NGPA shall not trigger indefinite price escalator clauses in existing intrastate contracts. Only prices actually paid for sales actually made under the NGPA would trigger such clauses. This is similar to

language at page 83 of the Joint Explanatory Statement of the Committee on Conference and reflects, in our opinion, the general intent of Congress with respect to sales under all existing contracts, whether inter- or intrastate. Accordingly as discussed above, we have added a new section 270.205 which provides that the establishment of maximum lawful prices under the NGPA shall not trigger "indefinite price escalator provisions," as defined in the NGPA in either existing intrastate or interstate contracts.

A comment suggested that § 271.502(a)(2) should be revised to allow the § 271.802 stripper well maximum lawful price to apply, instead of the new natural gas price, in any case where there is no contract price for such month or when prices for life-of-well contracts are established from time to time by price lists published by the buyer. We do not find merit in this suggestion. Section 105(b)(1)(B) is quite specific and only provides for the new natural gas rate. However, we have altered the language of § 271.502(a) slightly in order to make clear that that section applies in any case where there is no contract price established on November 9, 1978.

Another comment asserted that the previous language of § 271.504, respecting take-or-pay clauses, may lead to undue burdens where the purchaser has not made payments under a

take-or-pay clause or where the parties to the contract have not calculated the volumes to be taken under such clause. It was suggested that the last sentence of § 271.504, dealing with take-or-pay clauses, should either be eliminated or revised. We concur and have established a special provision in paragraph (b) of § 271.505 concerning the effect of take-or-pay clauses which incorporates the commentor's suggested revision. However, we wish to emphasize that this rule is to apply only with respect to the determination of "contract price" on November 9, 1978. It does not apply with respect to any other date (except to the extent the maximum lawful price is determined by reference to the contract price on such date).

Another comment sought clarification of the right to collect a contract price under § 271.502 that exceeds the new natural gas price solely because of the inclusion of contractually authorized payments for state severance taxes allowed under § 110 of the NGPA. No modification of Subpart E is required. The rules for determining adjustments for state severance taxes are found in Subpart K of this part.

Uncertainty was also expressed as to whether regulations under Subpart K would cause a roll-back of the contract price to less than $1.00 per MMBtu in a case where

it exceeds $1.00 per MMBtu because of reimbursement for state severance taxes. No such "roll-back" would occur if the severance tax provision was in the existing intrastate contract and effective as of November 9, 1978. No revision of Subpart E is required to reflect that fact.

Subpart E sets forth a special rule limiting the effects of modifications of contract terms executed after November 9, 1978. Section 271.505 has been revised to provide in paragraph (a)(1) that no such modification may have the effect of requiring the purchaser to bear any production-related costs which were allocated to the seller under the terms of the existing contract. We have also added a new paragraph (b) which clarifies that paragraph (a) does not preclude contract modifications in the limited circumstance in which a purchaser who was not a party to the existing intrastate contract agrees to bear responsibility to pay for increased production-related costs. The costs contemplated in this new paragraph are those necessary to enable the new purchaser to take delivery of the natural gas subject to the existing contract. We have made this revision in response to a comment pointing out that a new pipeline purchaser may have to install facilities to permit deliveries into its system which would be prohibited under a literal reading of this section. Paragraph (a)(2) of

§ 271.505 stipulates that no such modification may provide for an earlier date for deliveries than that provided for in the existing contract.

The previous paragraph (b) of § 271.505, which has now been deleted, provided that no modifications to existing successors to existing intrastate contracts may alter the terms of such contract to provide for a higher price. It was suggested that there was an ambiguity created by paragraph (b) respecting the right of parties to amend existing intrastate contracts where the sales under those contracts otherwise qualify for maximum lawful prices under another subpart of Part 271, and as to whether amendments relating to state severance taxes or production-related costs allowed under § 110 of NGPA are not considered part of the ceiling price. We have deleted the former paragraph (b) of § 271.505 that would have precluded such modifications and have restricted the scope of that section to Subpart E. The Commission wishes to study the matter further before specifying the latitude parties have to effect bilateral modifications to the terms of contracts in existence on November 9, 1978, and invites further comments thereon. Interpretation of contracts remains an initial responsibility of parties thereto.

PART 271 - SUBPART F

Subpart F of Part 271 implements section 106(b) of the NGPA. Subpart F applies to first sales of natural gas under intrastate rollover contracts, and sets forth the procedure for determining the maximum lawful price applicable to such sales.

Tables are provided in the regulation for the prices permitted to be charged under section 106(b)(1) and section 106(b)(2). As is the case with sales qualifying under Subpart E, persons who sell gas pursuant to intrastate rollover contracts may collect the maximum lawful prices without prior Commission approval. Reporting requirements with respect such sales are found in Part 276.

The maximum lawful price under Subpart F for first sales of natural gas under section 106(b)(1) of the NGPA is the higher of (a) the maximum price under the expired intrastate contract in the month of expiration as escalated by the monthly equivalent of the annual inflation adjustment factor, or (b) $1.00 per MMBtu escalated from April 1977 by the same inflation adjustment. Section 271.602(b) provides for the maximum lawful price for natural gas which may be charged for a certain state or an Indian tribe's natural gas production interests under section 106(b)(2) of the NGPA.

Subpart F also contains a special rule similar to the rule in § 271.505. Section 271.604 provides that no intrastate rollover contract may have the effect of shifting to the purchaser, production-related costs which were allocated to the seller under the expired contract.

We received one comment asserting that § 271.505 as proposed might have an adverse effect on interstate pipelines seeking to gain intrastate natural gas. The commentor suggested that § 271.505 should not operate to preclude intrastate rollover contracts from requiring the purchaser to bear costs of installing facilities necessary for the purchaser to take physical delivery of the gas. We have added a new paragraph (b) to this section which provides that a new purchaser may agree to incur increased production-related costs if such costs are necessary for the purchaser to take delivery of the natural gas. We deleted paragraph (b) of the previous draft which related to modifications of delivery dates after having concluded that such a restriction is unnecessary.

One comment asserted that Subpart F may not permit persons making final sales under intrastate rollover con-

tracts to collect severance taxes, borne by the seller and allowed under section 110 of the NGPA, in addition to the maximum lawful price.

The rule is not intended to restrict the collection of contractually authorized maximum lawful prices for which sales otherwise qualify. However, where the contract is silent as to payment of state severance taxes, the seller shall be presumed to be obligated to pay these taxes.

Finally, a comment requested a clarification of the effect of Subparts E and F in cases where sales were being made on November 9, 1978, pursuant to limited term or emergency sales contracts. As the November 15, 1978, notice stated, natural gas sold in interstate commerce under such contracts is excluded from the definition of "committed or dedicated to interstate commerce" under section 2(18) of the NGPA. Accordingly, the maximum lawful prices of Subparts E and F may apply to such sales.

PART 271 - SUBPART G

Subpart G of Part 271 implements section 107 (a) of the NGPA, which applies to first sales of natural gas from deep high-cost natural gas wells. It contains a special rule in § 271.704 clarifying the method of determining the depth of a well.

Section 107 of the Act authorizes the Commission to establish incentive prices for gas from geopressurized brine, occluded natural gas from coal seams, and gas from Devonian shale. It also authorizes the Commission to establish incentive prices for gas produced under other conditions as the Commission determines present extraordinary risks or costs.

This interim regulation does not attempt to implement the provisions of section 107 except as that section specifies prices for deep high-cost gas wells. Practical considerations have precluded our undertaking that effort at this time.

Comments suggested that the special rule in § 271.704, which provides the method of measurement to be used in this subpart, is "inapplicable to offshore wells." It was requested that for offshore wells the measurement be made from the floor of the drilling rig rather than from the surface of the ground. As written, the regulation reflects what the Commission believes to be the appropriate point

from which to measure the depth of the well. However, the Commission specifically requests additional comments with supporting data on the appropriate point from which to measure the 15,000 foot depth for offshore production.

PART 271 - SUBPART H

Subpart H of Part 271 implements section 108 of the NGPA, which is applicable to first sales of natural gas produced from stripper wells. This subpart contains definitions of terms used in section 108, and prescribes several special rules intended to assist in implementation.

Section 108 of the NGPA provides a maximum lawful price for stripper well natural gas, and prescribes a definition for stripper well gas. According to the general rule prescribed in section 108(b)(1) of the statute, natural gas is stripper well natural gas if, during the 90-day production period preceding the date on which application is made for a determination, the well produced nonassociated natural gas at its maximum efficient rate of flow and did not exceed an average of 60 Mcf per production day. Natural gas may qualify as stripper well natural gas regardless of the spud date for the producing well. Section 108(b)(2) also provides that a well may, after initial qualification, continue to qualify as a stripper well if production exceeds 60 Mcf per day during any 90-day production period, so long as the increased production is determined to have resulted from the application of recognized enhanced recovery techniques.

Section 271.803 of Subpart H defines "recognized enhanced recovery techniques" and "nonassociated natural gas." The definition of "recognized enhanced recovery techniques" includes processes or equipment which increase the ultimate recovery of gas from a well and excludes techniques or equipment necessary for normal well maintenance, repair or replacement.

The definition of "nonassociated natural gas" would permit a stripper well to qualify under this subpart if it produces crude oil in volumes which do not exceed specific limits. The rule provides for a sliding-scale ratio of natural gas to crude oil production. If a well produced an average volume of between 50 and 60 Mcf of gas per production day in the 90-day production period, it would qualify as a stripper well, provided that it produced no more than 1 barrel of crude oil during the same period. If, on the other hand, a well produced an average volume of between 30 and 50 Mcf per production day, it would qualify if crude oil production did not exceed 2 barrels per production day. Wells below 30 Mcf would qualify if crude oil production did not exceed 3 barrels per day.

Section 271.804 sets forth special rules which interpret and apply terms used in the NGPA. Section 271.804(a) and (b) concern the methodology for measurement of production from a well. Section 271.804(a) states that the volumetric basis for determining the rate of production from a single well is the total volume of gas produced from all producing intervals of the well.

Section 271.804(b) applies when the wells are not individually metered. In this circumstance, jurisdictional agencies may average rates of production in order to determine whether particular wells are stripper wells. For example, if six wells were attached to a single meter, and the meter showed deliveries averaging 360 Mcf per production day or less, presumptively all wells would qualify. If, on the other hand, deliveries from the six wells averaged 370 Mcf per production day, then presumptively, none of the wells would qualify. In either case, alternative evidence may be offered in rebuttal to establish qualification or the lack of qualiffcation.

Section 271.804(d) is a rule applying the statutory requirements with respect to "maximum efficient rate of flow" (MER). The section sets forth the statutory requirement. It also provides that a well is presumed to have produced at its MER during the 90-day production period if it produced

an average volume of 60 Mcf or less per production day during a 12-month period ending concurrently with the 90-day production period upon which the determination is based. There may, however, be situations in which a 12-month production history is not available. In such situations, the jurisdictional agency may look to other types of evidence, such as flow tests, which would measure the production capability of a well, or it may defer making the determination for a time necessary to acquire and submit a 12-month production history. If the agency defers the determination, the applicant would, if contractually entitled, be able to collect the stripper well price subject to refund.

The special rules contained in § 271.804(d) are designed to create a presumption upon which the jurisdictional agency may rely to determine that the well for which a determination is sought produced at its maximum efficient rate of flow during the 90-day production period upon which the application is based. This presumption is not exclusive, however. If results of well flow tests or other tests designed to determine the production capability of a well are available, the jurisdictional agency may rely on such results or other substantial evidence to make the factual finding that the well produced at its maximum efficient rate of flow.

Section 271.804(e) is a special rule which permits wells to retain stripper status despite increases in production above the 60 Mcf per day level, provided the increase is attributable to seasonal fluctuations. Jurisdictional agencies may make the determination that a well is seasonally affected on the basis of production history over a 24-month period if production from the well has not and cannot reasonably be expected to have exceeded an average of 60 Mcf per day for any 12-month period.

Section 271.805 is a rule implementing section 108(b)(2) of the NGPA. The rule disqualifies wells which, subsequent to the jurisdictional agency determination, produce quantities of gas in excess of the amounts permitted by the law and this subpart.

This rule provides for a reporting mechanism to monitor the continued qualification of the well. Both the operator of the well and the purchaser of the gas are obligated to report any increase in gas production above an average of 60 Mcf per production day for any 90-day production period. Unless the operator receives a determination from a jurisdictional agency that the increase was due to the application of recognized enhanced recovery techniques, or is determined to be seasonally affected, he may no longer collect the stripper price for the well. If the operator files a petition

for a determination that the increase in production results from enhanced recovery techniques or seasonal fluctuations, continued collection of the stripper well price shall be made subject to refund for deliveries made after the last day of the applicable 90-day or 12-month production period.

Most of the comments on this section were addressed to the proposed definition of "nonassociated natural gas." Many of the comments were made by persons from the Appalachian area -- Ohio, West Virginia, Pennsylvania, and Kentucky. Comments from the State of New Mexico also expressed concern over the definition of "nonassociated natural gas."

With only one exception, all of the parties concluded that the Commission's proposed definition of "nonassociated natural gas" was too restrictive. More specifically, they suggested that to base eligibility under this subpart on the showing that the well produced an average of one barrel of oil or less per production day for a 90-day production period will exclude many marginal wells in the Appalachian area from qualifying as stripper wells.

These comments asserted that the "one-barrel" limitation will result in the premature plugging and abandonment of marginal gas wells in the area which in turn could result in a permanent loss of reserves. It was argued that the

definition was unduly restrictive and was neither required nor contemplated by the law.

As is noted above, the Commission has decided to expand its definition of "nonassociated natural gas" so as to permit, in certain instances, a higher crude oil-to-natural gas production ratio than was originally proposed. The new definition uses a "sliding scale" which permits greater crude oil production as gas production declines. This approach is predicated in part on the economics of producing oil and gas from a marginal gas well. The new definition recognizes the limited revenues from marginal wells and attempts to provide a reasonable incentive to preserve this production. The Commission believes that the definition is a reasonable one, and is of the type contemplated by the authority given it in section 501(b) of the NGPA.

It was suggested that the proposed special rule which requires the total volume of natural gas produced from the well be utilized for purposes of calculating the average rate of production, regardless of whether the well is completed in more than one interval (§ 271.804(a)), be deleted. In support of this recommendation, it was argued that the proposed definition was contrary to the statutory intent of maintaining production from economically marginal wells.

In several instances, the NGPA clearly distinguishes between the terms "completion location" and "well." The terms are separately defined in section 2 of the NGPA. In sections 102 and 107 the distinction between "completion location" and "well" is clearly the basis for several determinations. However, section 108 provides that the stripper well natural gas classification can only be obtained for production from a "well." Unlike other sections, no mention is made of a "completion location" within a well. Accordingly, we have not adopted this recommendation.

One comment recommended that the special rule on "seasonally affected wells" (§ 271.804(e)) should be deleted because section 108 does not provide a statutory predicate for such a rule. The Commission disagrees. Production from a well often varies as a result of the pressure differentials created by temperature fluctuations. A rule that ignores this occurrence would place an undue administrative burden on producers, states and the Commission. Many wells would have to go through the qualification and disqualification process each year. For these wells the Commission believes that once a well qualifies as a stripper well, the provision permitting it to remain qualified as long as production does not exceed 60 Mcf per production day on a yearly basis, where

the well is determined to be seasonally affected, is both practical and within the spirit and intent of the law. The Commission believes that the practical result of not providing this exception to the 60-Mcf-per-production-day rule requires this exercise of its rulemaking authority under section 501(a) of the NGPA.

It was also proposed that §§ 271.804, 271.805, and 271.806 be amended to delete references to "90-day production period" and to insert in its place the phrase, "3-month production period." It was argued that this change will greatly simplify the administration of the regulations. It was further argued that because production records are kept on a monthly basis rather than a daily basis, it is impossible to calculate the 90-day production period figure required by section 108 of NGPA.

The Commission has incorporated the statutory language in its regulations. The Commission recognizes that production records and billing statements are often kept on a monthly basis. Consequently, the Commission believes that reasonable assumptions premised upon such records, which attempt to calculate average production per production day for the 90-day production period upon which the application is based, will provide the jurisdictional agency with sufficient evidence upon which a determination may be made.

Several comments requested that we define "recognized enhanced recovery techniques" with greater specificity. Some comments suggested that the proposed definition should be drafted to specifically exclude wellhead compression techniques.

The Commission believes that the term "recognized enhanced recovery techniques" should not be more explicitly defined until more experience has been gained as to what specific equipment and processes should be included. It is anticipated that the Commission will identify specific enhanced recovery techniques in the future. In the interim, the Commission will address the question of whether enhanced recovery techniques have been applied on a case-by-case basis. After some experience, the Commission will determine whether general rules are either necessary or desirable.

It was pointed out that the determination as to what constitutes enhanced recovery techniques under § 271.803(a) should be left to jurisdictional agencies and not to the Commission. This suggestion is contrary to the statutory requirement of section 108(b)(2). This section requires that the Commission provide a rule for continued qualification of nonassociated natural gas where such natural gas is produced from a well when production from such well exceeds 60 Mcf per production day as a result of the application of enhanced recovery techniques.

The rule promulgated by the Commission to implement this section relies on the expertise of both the jurisdictional agencies and the Commission. This reliance is required at this time since the question of whether enhanced recovery techniques have been applied will often turn upon factual considerations.

Finally, the Commission was asked to require that all flow tests be made by employees of jurisdictional agencies or independent engineers certified by a jurisdictional agency. At this time, we find that this requirement is unnecessary.

PART 271 - SUBPART I

Subpart I of Part 271 implements section 109 of the NGPA by setting a maximum lawful price for "other categories of natural gas," that is, for first sales of natural gas that are not covered by any maximum lawful price under any other subpart of Part 271. [Emphasis supplied.]

Section 109 of the NGPA presents an important question of interpretation. The portion of section 109(a) which precedes paragraph (1) limits section 109's application to "natural gas which is not covered by any maximum lawful price under any other section of this subtitle." [Emphasis supplied.] However, paragraph (1) of section 109(a) specifically includes natural gas "produced from any new well not otherwise qualifying for a higher maximum lawful price." [Emphasis supplied.] The question presented is whether the general language in section 109(a) is intended to limit the scope of the examples which follow (so that new wells which qualified for a lower price under another section of the NGPA would be excluded from section 109), or whether the specific examples override the general statement of the scope of section 109 (so that new wells otherwise subject to a maximum lawful price which is lower than the section 109 price nonetheless would be eligible for the higher section 109 price).

In this regard, it should be noted that the portion of section 109(a) which precedes paragraphs (1) through (4) introduces those paragraphs with the word "including." Under general rules of construction therefore, it would appear that paragraphs (1) through (4) are qualified and controlled by the general statement of applicability which limits section 109 to first sales not covered by any maximum lawful price. For this reason, the Commission is of the view that the first interpretation is correct and has incorporated that interpretation in the regulations implementing section 109. A special rule in § 271.904 provides that the maximum lawful price in this subpart applies to a first sale of natural gas described in paragraphs (1), (2), (3), or (4) of section 109 (a) only if that first sale is not covered by any other maximum lawful price in the NGPA.

Several comments were received which argue that the interpretation of section 109(a) which is reflected in the regulations is wrong. These comments state that the specific examples set forth in section 109(a)(1) through (4) are intended as additions to the general category set forth in the portion of section 109(a) which precedes

paragraph (1). We specifically invite further comments on this issue.

Finally, a comment was submitted recommending that § 271.904(a) contain a reference to § 273.201 in order to help eliminate confusion over the right of the producer initially to apply for the section 109 price under the interim collection regulations. The recommendation is in error in that natural gas which qualifies for the interim rate under § 273.201 must also be the subject of an application for a determination under Subparts B, C, G, or H of Part 271. The natural gas subject to the price established in § 271.904(a) under section 109 of the NGPA cannot, by definition, qualify under those subparts.

PART 271 - SUBPART K

Subpart K of Part 271 of the Commission's interim regulations implements section 110 of the NGPA. That section permits a first sale price of natural gas to exceed the applicable maximum lawful price for that sale to the extent necessary to recover state severance taxes borne by the seller. It also permits a first sale price of natural gas to exceed the applicable maximum lawful price for that sale to the extent necessary to permit the recovery of allowances for certain production-related costs which are a component of just and reasonable rates established under the NGA and certain production-related costs for natural gas not subject to just and reasonable rates under the NGA, if such costs are borne by the seller, and allowed by the Commission.

Section 271.1101(a) incorporates the definition of "state severance tax" contained in section 110(c) of the NGPA. This definition includes most types of production taxes, including ad valorem taxes which are based upon the amount of production. Therefore, the Commission believes it is unnecessary to specifically include the various types of severance taxes in the definition. Subparagraph (2) of paragraph (a) of § 271.1101 incorporates the statutory exclusion of taxes, which were enacted on or after December 1, 1977, and which do not apply equally to natural gas produced for

delivery to interstate commerce and gas produced but not so delivered.

Section 271.1102 states that the maximum lawful price applicable to a first sale of natural gas will not be deemed to be exceeded, if the first sale price exceeds the maximum lawful price only to the extent necessary to recover state severance taxes borne by the seller. Paragraph (b) of § 271.1102 acknowledges that the just and reasonable rates applicable to natural gas produced from the Permian Basin area already include a specific allowance for state severance taxes. Therefore, those amounts are excluded from the provisions of the section so as not to permit double-recovery by the seller of State severance taxes for production in the Permian Basin which is subject to the Permian Basin area rate. State severance taxes actually paid by the seller in excess of 2.6 cents per Mcf for large producers and 3.05 cents per Mcf for small producers will be permitted to be recovered under paragraph (a) of § 271.1102 (so long as such taxes are paid by the seller).

Section 271.1103 contains a requirement that sellers retain records verifying the amount of state severance taxes borne by the seller for transactions in which the maximum lawful price is exceeded as a result of the addition of amounts necessary to recover state severance taxes.

Section 271.1104 provides that an applicable maximum lawful price for a first sale may be exceeded to the extent necessary to recover certain allowances permitted under the Natural Gas Act. These allowances include the area-wide gathering allowances and the allowances permitted for the delivery of offshore natural gas currently described under Part 2 of the Commission's regulations. While references to both the national rates for sales from wells commenced on or after January 1, 1973 (§ 2.56a) and those from wells commenced prior to that date (§ 2.56b) are given, these allowances are identical. The two references were supplied to make it clear that persons who were receiving such allowances, under either provision, will continue to receive them if they are qualified. Qualifications for these allowances are set forth in paragraph (b). To receive these allowances for a first sale of natural gas the seller must (1) be selling natural gas which was committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate was in effect on that date; and (2) must meet the applicable requirements of §§ 2.56a(d), 2.56b(e), 2.56a(e), or 2.56b(f) of this chapter.

Several comments, particularly those dealing with the problems of resellers, requested the inclusion of what is now § 271.1104. The Commission believes that while the allowances are based on cost data supplied several years

ago, such allowances should be permitted inasmuch as they were permitted for rates previously set by the Commission. It would serve no regulatory purpose to require sellers making first sales under these previously established just and reasonable rates to apply for such allowances under § 271.1105 when such gathering allowances, as permitted in Part 2 of this chapter, have already been deemed just and reasonable.

Section 271.1105 establishes a procedure under which the Commission will consider applications for amounts to be collected in addition to maximum lawful prices to the extent necessary to recover certain production-related costs.

Paragraph (b) of § 271.1105 precludes the filing of any application for such an allowance if the natural gas subject to the first sale was committed or dedicated to interstate commerce as of November 8, 1978, and was subject to a just and reasonable rate in effect at that time. It also precludes applications with respect to natural gas subject to an existing intrastate contract, successor to an existing intrastate contract, or an intrastate rollover contract.

Several comments focused on the exclusions in this section. The exclusion of committed or dedicated natural gas is not an attempt on the part of the Commission to decide the issues now before the Commission on rehearing in

Phillips Petroleum Company, Docket No. CI77-412, et al. Instead, the exclusion of natural gas for which a just and reasonable rate was established by the Commission on or before November 8, 1978, from the operation of § 271.1105 reflects the Commission's intention to reserve these issues for decision in the Phillips case rather than in the interim regulations.

The subsequent and separate order in the Phillips rehearing will set out the Commission's policy in this regard. The exclusion of natural gas sold intrastate subject to existing contract obligations reflects a similar view: namely, that the existing contract provisions reflect the allocation of costs of production as they were contemplated by the parties at the time the contract was negotiated. These provisions, and more importantly any change in such provisions, would change the price actually paid for the natural gas subject to the existing contract. The NGPA in sections 105 and 106(b) establishes a pricing mechanism which relies upon the prices and the contractual terms as they relate to price as such prices and terms were in existence on the date of enactment of the NGPA. It would be contrary to the intent of Congress to permit a change in such prices and terms that would have the effect of increasing the total costs borne by the purchaser for acquiring the

very same commodity as he was acquiring for a lower price before date of enactment. This would also be contrary to the intent of this provision and the NGPA and would unnecessarily complicate the implementation of sections 105 and 106(b) of the NGPA. The Commission believes that the exclusion contained in § 271.1105(b)(2) is consistent with Congressional intent to establish maximum lawful prices for such contracts by reference to the terms and conditions as they relate to the allocation of production-related costs as they were in existence on the date of enactment.

The interim regulations provide, in paragraph (c), that applications to the Commission will be considered for costs of gathering, liquifaction or transportation only if those latter activities occur off the lease from which the natural gas was produced. It is the intent of the Commission that the costs of gathering, liquifaction, or transportation should only be permitted to the extent that they are not activities normally performed in the production of natural gas. The Commission believes that costs of gathering, liquifaction, and transportation when performed on-the-lease are activities normally performed by a producer in production of natural gas. Where such costs for activities performed on-the-lease are extraordinary, a seller may seek an

adjustment pursuant to section 502(c) of the NGPA to prevent special hardship, inequity, or an unfair distribution of burdens. Such relief is specifically recognized in § 271.1106.

The regulation does differ from the notice of proposed rulemaking in that the term "off-lease" has been revised to read "off of the lease from which the natural gas was produced." This change was made in response to a comment in the proposed regulation that the original language would unfairly impact upon operations where such activities were performed for one producer by another producer but off of the lease from which the natural gas was produced.

Paragraph (d) sets out certain quality standards for natural gas. Only applications for recovery of that portion of costs necessary to bring gas to a quality greater than specified in the standards will be considered under this section. This section provides an exception to this rule for transactions involving direct sales to end users. With respect to the pipelines, the Commission has determined after a review of existing contractual terms and data filed with the Commission, the standards specified are those which are normally required for pipeline quality natural gas. The Commission does not have sufficient data to draw the same conclusions with regard to direct sales to end users. The Commission requests further comment on these standards.

A substantial number of comments were received on this section. Some comments argued that section 110 of the NGPA addresses only costs relating to the production of natural gas. It was argued that, to the extent costs such as those enumerated under this section are incurred after production, the Commission lacked authority to regulate them under section 110. Second, it was argued that all costs, those respecting processing and treating, as well as those for such activities as gathering and transportation, should be treated together. Third, the method used to identify the minimum quality standards was questioned. It was submitted that such requirements, as set down by the Commission, overlooked the extraordinary costs which may be required to meet the stated conditions. Fourth, it was argued that no minimum standards should be set; that the Commission should merely permit a dollar-for-dollar passthrough of these and similar costs. Finally, the point was raised that if such standards are to be set, they should be made uniformly applicable and they should be based upon area-wide requirements determined after the gathering of more detailed data.

The Commission believes that section 110 of the NGPA does not require that all costs for compressing, gathering, processing, treating, liquifaction, or transportation must be treated together and dealt with identically. Indeed, this reading of section 110 is inconsistent with the fact that the

different types of costs are indeed incurred at different times and locations. Treating all such costs as a group is impossible as a practical matter and could not have been intended by the Congress. To restrict the applicability of section 110 to costs borne only by the producers and only to the extent necessary to bring natural gas to the surface of the ground would work a hardship on other "sellers" subject to maximum lawful prices. This result is clearly contrary to section 110 which refers to costs "borne by the seller".

The Commission has provided regulations to permit recovery of costs relating to certain gathering, liquifaction, transportation, and compression under § 271.1105(c). The Commission has also provided for the recovery of costs relating to certain conditioning and treating under § 271.1105(d). These separate provisions are warranted since the costs are similarly incurred during the production cycle.

Several comments were specifically directed to the provisions of § 271.1105(d). These comments argued that the Commission is establishing minimum standards of quality and that the Commission does not have the requisite authority. The Commission disagrees with these comments. First, the Commission is addressing the issue of which costs will be allowed to be added-on to the statutorily specified maximum prices. Section

110(a)(2) specifically states that costs for processing and treating, among other things may be recovered only to the extent "allowed for, by rule or order," of the Commission. The statute does not require the Commission to automatically permit the recovery of all such costs, but leaves to the discretion of the Commission whether to grant the authority to the sellers to recover such costs. In exercising such discretion, the Commission may attach such terms and conditions as it deems appropriate so long as they are not contrary to statutory intent or arbitrary and capricious. On the basis of the discussion set forth in this preamble, the Commission believes that the terms and conditions imposed by these regulations are necessary and appropriate to carry out the intent of Congress in enacting the NGPA.

Standards for determining when the Commission will entertain applications for a determination that the maximum lawful price has not been exceeded as a result of the addition of certain production-related costs are required in order to assure that natural gas for which the maximum lawful prices set by the NGPA are paid is that commodity which is of relatively uniform value to the purchaser. When a price is charged and collected for a specific commodity, such a product is normally deemed to have certain basic qualities which define the item being purchased. The

Commission does not believe that Congress, when setting the maximum lawful prices for natural gas, did not anticipate that the sellers would bear normal costs of production in making this commodity useful to the purchaser. The maximum lawful prices were designed to permit the sellers to recoup such costs. Section 110 recognizes that some sellers may incur abnormally high costs of production and permits recovery of those costs in circumstances where the Commission finds such recovery to be warranted.

The statute envisioned that the Commission could perform these responsibilities either by rule or on a case-by-case basis. Recognizing the differences in production cost that may occur, the Commission, through these regulations, is utilizing both rulemaking and particularized orders to implement section 110.

Section 271.1100(b) excludes from the operation of § 271.1104, § 271.1105, and § 271.1106, natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the system approved under the Alaska Natural Gas Transportation Act of 1976 (ANGTA). Prudhoe Bay is a new and unique producing area for which there is no history of industry practice relative to the bearing of production-related costs. Therefore, a separate rule under the provisions of ANGTA for natural gas from that producing area

is required and will be promulgated by the Commission in the immediate future.

This exclusion received some comment. One comment, while agreeing that natural gas produced from Prudhoe Bay should be treated differently from that produced in more conventional settings, evidenced a concern that it would not be so treated. Instead, it was feared, the Commission would seek to apply to this natural gas such standards as were set forth in Subpart K. In addition, the same comment raised the question of how natural gas produced from areas similar to that of Prudhoe Bay would be treated. Both of these concerns turned upon the view that as proposed, the regulation did not touch upon a typical situation of costs for production or transportation. A second comment took issue with the Commission's consideration of separate costs associated with the Prudhoe Bay effort. The gravemen of this comment was two-fold: first, that excepting Prudhoe Bay gas resulted in continued uncertainty as to the Commission's treatment of this natural gas; second, that a rulemaking under ANGTA, as opposed to the NGPA, was neither warranted nor proper.

The failure to except other, similar production areas (as for example the North slope), was intentional. It is envisioned that to the extent such other areas evidence

particular characteristics which require special treatment, either more data will be available whereby they can be properly treated, or they can be considered under § 271.1106. Prudhoe Bay requires special consideration, for in that case data is available to assist the Commission in considering the questions attendant to maximum lawful pricing provisions. As already mentioned, these questions are to be dealt with by a special rulemaking.

The issue as to which statute applies for purposes of providing for Prudhoe Bay is, like the issue of the actual treatment of production-related and similar costs for this production area, best addressed within the setting of the proposed rulemaking. Suffice it to say that the Commission believes that its authority under section 110 of the NGPA is broad enough to make special provisions and exceptions as between regions if good cause can be found. Considering the state of production from Prudhoe Bay, the Commission is of the opinion that the exception is, at this stage, required.

PART 273

The purpose of Part 273 is the establishment of procedures for the interim collections authorized by section 503(e) of the NGPA. Section 503(e) permits interim collection, subject to refund, of those prices for certain categories of natural gas for which a determination of eligibility is made by a jurisdictional agency and is subject to review by the Commission. These categories are new gas and certain OCS gas (as defined in section 102 of the NGPA), gas from new onshore production wells (section 103), high-cost natural gas (section 107) and stripper well natural gas (section 108).

Description of the regulations. Part 273 is divided into three subparts: general provisions, interim and retroactive collection provisions, and the procedures for refund guarantees and refund payments.

Subpart A which contains general provisions has not been revised. Few comments on this subpart were received. Section 273.101 states that eligibility under these regulations to collect a maximum lawful price for a particular category of gas does not give a seller the right to collect a price which is higher than that permitted by the sales contract. Section 273.102 defines a "final determination" for purposes of this part as a determination of eligibility

by the jurisdictional state or federal agency which is no longer subject to review and reversal by the Commission or the courts except pursuant to section 503(d)(1) of the NGPA. Section 273.103 requires each seller to file an annual report of any collections and refunds under this part.

One comment noted that the annual report requirement would be burdensome to small intrastate producers. Another comment suggested that this report replace the specific filing requirements of Subpart B for each first sale. The Commission believes that specific filings and the annual report are necessary to monitor collections and refunds under this part. Prior to the end of the first reporting period, on December 31, 1979, the Commission will issue a rule specifying the form and scope of the annual report.

Subpart B of Part 273 provides the specific rules for interim collections and for retroactive collections where the maximum lawful price established by a final determination exceeds the price collected on an interim basis. Section 273.201 establishes a transitional rule which is limited to first sales from new wells. It was suggested that the eligibility for interim collections under § 273.201 be broadened to include first sales of natural gas, in a new reservoir that is produced from an old well or is stripper

well natural gas. The limitation to new wells is taken directly from section 503(e)(1) of the NGPA and applies the definition of new wells found in section 2(3) of the NGPA. It will not be modified. Sales of stripper gas or new gas from an old well may qualify for interim collections under § 273.202 and for retroactive collections under § 273.204.

Under the regulations proposed for comment, the transitional rule would have terminated on March 1, 1979. The interim regulations have been revised to permit collections under this provision to continue until the jurisdictional agency issues a determination of eligibility. A seller may collect, subject to refund, the price determined under section 109 of the NGPA, if an application for determination is submitted to the jurisdictional agency by March 1, 1979. This price may be charged and collected beginning on the date on which the seller completes the filing requirements under this section and ending on the date of notice to the Commission of a determination by the jurisdictional agency for the well from which the sale is being made. One comment requested a grace period allowing full interim collections for December 1978 if the filing required under this section is submitted by December 31, 1978. This modification of the statutory scheme will not be adopted. The retroactive collection procedure under § 273.204 may be available

to recoup charges and collections which cannot be made immediately because of delayed compliance with the filing requirements.

To qualify for the transitional collection authority, the proposed regulation stated that a seller must file with the Commission a sworn statement that the sale is being made from a new well which is eligible for the price to be collected, and that the seller has filed an application for determination with the jurisdictional agency or will do so by March 1, 1979. Two comments noted that some jurisdictional agencies do not permit filings to be made by sellers who are not actually operating the well. Therefore, the filing requirements have been modified to permit a sworn statement that the seller will cause an application to be submitted, on or before March 1, 1979, by a person authorized to do so by the rules of the jurisdictional agency. A seller who cannot make that sworn statement in good faith may substitute a sworn statement by a person eligible to file a timely application.

After an application for determination has been filed, a seller may use the procedure established by § 273.202 to collect, subject to refund, the maximum lawful price for which the sale is believed to be eligible, for a period of

up to eighteen months (or twelve months where collections under this section begin on or after May 1, 1979). Alternatively, if the application for determination was filed by March 1, 1979, the seller may continue to collect the price specified in § 273.201(a) until the Commission receives notice of the determination by the jurisdictional; agency.

The proposed § 273.202 rule has been modified to some extent. To qualify for interim collection authority under § 273.202, a seller must fulfill certain filing requirements, by submitting a sworn statement of eligibility, a duplicate of FERC Form 121 accompanying the application for determination, and either a statement certifying that a portion of the amounts collected under this procedure will be placed in escrow or secured by surety bond or a release from this obligation executed by the purchaser.

The authorization to make interim collections of the price for which the sale is believed to be eligible terminates on the date on which the Commission receives a notice that a determination of eligibility has been made, or after eighteen months (or twelve months where collections under the section begin on or after May 1, 1979) where no determination has been made. After such termination, the seller may not use this procedure again for this sale or any other

sales from the same well. Where a determination has not been made within eighteen months and the authority to collect a price under this section ends, a seller may use § 273.201 to collect the price authorized by that section; but only where the application for determination was filed on or before March 1, 1979. Otherwise, the seller will be limited to collection of the applicable maximum lawful price specified in Subparts D, E, F, or I of Part 271. After an initial determination is made, § 273.203 can be used to collect the price established by that determination.

Three significant questions were posed by the comments on the proposed § 273.202. In addition, there was one suggestion that each of the items to be filed under paragraph (c) are not needed. Many comments requested deletion of the proposed condition in paragraph (a) that collections cannot begin under this section until the appropriate jurisdictional agency has filed with the Commission an undertaking to diligently consider and decide applications and the report on procedures to be used by the agency, as required by § 274.105. These comments argue that this qualifying condition is unlawful or inequitable, chiefly because compliance is beyond any seller's control. The comments recommend that sellers be permitted to make interim collections under this section after an appropriate filing with this Commission.

Section 503(e)(2) of the NGPA provides that the price sought in an application for determination can be charged and collected upon filing of an application. The Commission believes that it is particularly important that higher prices dependent on determinations of eligibility should not be charged and collected, subject to refund, until a jurisdictional agency has undertaken to consider these applications and has established procedures to make determinations that on these applications. Moreover, collections under this section should not continue if a jurisdictional agency is not actively proceeding to make specific determinations.

To better express our intent, the proposed § 273.202(a) will be changed in two respects. First, this condition will be restated as a requirement that no filing to charge and collect a maximum lawful price under this section may be submitted to this Commission until the jurisdictional agency to which the application for determination has been made has filed the report and undertaking required by § 274.105. As noted in the discussion of Subpart A of Part 274, the form of the undertaking has been modified to require the jurisdictional agency to state that it will take such steps as are reasonably necessary or appropriate to perform its functions under Part 274. Second, unless a jurisdictional agency has notified the Commission by March 1, 1979, that it is actively

processing the applications for determinations, then authority to make interim collections under this section will be suspended with respect to deliveries made during the period from March 1, 1979, until the date on which the jurisdictional agency gives notice that the applications are being processed. During this suspension period, collections under § 273.201 will be permitted if an application was submitted to such agency by March 1, 1979. A similar change is made in § 273.204 so that later retroactive collections will also be suspended and not permitted over the same period.

One comment has also addressed two of the other paragraphs within § 273.202. First, it is argued that the limitation of interim collections under this section to no more than eighteen or (twelve) months should be deleted as "unreasonable and inequitable", again because termination of interim collections under this section could result from inaction by a jurisdictional agency beyond the control of any seller. The Commission does not believe that this limitation is unreasonable or unnecessary. The Commission will consider a revision of this rule if it proves to be unworkable or if substantial hardships result. In any event, retroactive collections under § 273.204 or additional interim collections under § 273.201 may be available in such circumstances.

There is a final suggestion that paragraph (d) of § 273.202 should be modified to permit successive interim collections of the maximum lawful price for stripper natural gas; for example, where there is a determination that a well is not a stripper well under section 108 of the NGPA, but another application for determination is properly submitted after a change in the level or character of production from that well. This suggestion will not be adopted. Upon a final and later determination that a well qualifies as a stripper well, the seller may be eligible to use the provisions of § 273.304 to collect retroactively the maximum lawful price for stripper natural gas, plus carrying charges back to the date on which the later application was filed.

When the jurisdictional agency issues its determination of eligibility for the well from which the sale is being made, § 273.203 authorizes interim collection, subject to refund, of the price established by that initial determination. Within 15 days after interim collection begins under this section, a notice of collections must be filed with this Commission and the jurisdictional agency and also served upon the purchasers. There are no other filing requirements under this section. The Commission will not adopt the suggestions that these limited requirements should be deleted as unnecessary. The authority to collect the price

established by the initial determination of eligibility ends when that determination has been reviewed and becomes final. If the Commission does not approve or reverse an initial determination, but makes a final finding that the determination should be remanded to the jurisdictional agency for further consideration, then the seller may continue to collect the price established by the remanded determination for up to six months during reconsideration by such agency.

When a determination of well eligibility becomes final, a seller may immediately collect the price established there for all future sales from that well under the authority of the applicable section of Title I of the NGPA and Part 271 of these regulations. Section 273.204 of this part authorizes the retroactive collection of that finally determined price for all first sales of gas delivered after the application for determination was filed. If this application is filed by March 1, 1979, then retroactive collections may be made for gas delivered on or after December 1, 1978. However, as previously explained, retroactive collections cannot be made for first sales of gas delivered during the period in which a jurisdictional agency is not actively considering the applications for determination that have been submitted. Unless the Commission receives written notification by March 1, 1979,

that the jurisdictional agency is then making determinations, later retroactive collections of the finally determined price will not be authorized for the period from March 1, 1979, until the jurisdictional agency gives notice to the Commission that determinations are being made.

Although recognizing that section 501 of the NGPA empowers the Commission to impose conditions on retroactive collections, one comment stated that the "cut-off" of complete retroactive collections, (where the application for determination has not been filed by March 1, 1979) is unreasonable. Otherwise, it continued, producers lacking immediate engineering assistance will be precluded from retroactively collecting the finally-determined price from December 1, 1978 until the date of application for a determination (if filed after March 1, 1979) and thus suggested that the minimum acceptable "cut-off" would be July 1, 1979.

The Commission believes that the current "cut-off" of March 1, 1979, reflects a reasonable balancing of the sellers need for sufficient time to prepare applications against the burden to be placed on purchasers and their consumers by the accrual of large sums for later retroactive collection. Interstate pipelines commented that retroactive collections "could have substantial adverse repercussions" for them and for their customers.

We should also provide a clarification that the period of retroactive collections is based upon the filing date of a complete application for determination, in compliance with Subpart B of Part 274 and the applicable regulations of the jurisdictional agency receiving the application. Where an application is rejected, either by the jurisdictional agency or after an initial determination by this Commission that the application does not conform to these regulations, then retroactive collections will be authorized from the date on which a conforming application is refiled (or December 1, 1978, if the conforming application is refiled by March 1, 1978).

Conversely, there was one comment that any provision for retroactive collections would be unlawful, because there is no explicit authorization within section 503(e) of the NGPA. In our opinion, a retroactive collection rule is not inconsistent with the statutory language and is mandated by the Statement of Managers and the floor debate on the statute. We have attempted to establish reasonable limitations and conditions on these collections.

Many comments were directed to the qualifying conditions proposed in § 273.304(b); and the interim regulations will reflect several modifications. The proposed

subparagraph (1) of § 273.304(b) stated that "[r]etroactive collections may be made only to the extent and in the manner specified by the applicable sales contract (or amendment thereto). . . ." The Commission does not agree with this comment that some explicit statement of this principle is unnecessary although the specific wording has been changed. As that comment recognizes, no price or amount authorized by any of these regulations may actually be collected from the purchaser unless there is sufficient contractual authorization for the payment. Also, we will not accept the other suggestion that a single method for such payments should be mandated, believing that this question should be left to the discretion of the parties within the limits provided by the sales contract and any later amendments. Thus, we will not require that all retroactive amounts must be collected immediately after a determination becomes final or over a period equal to the time during which this obligation accrued. The seller will be required to file a concurrence by the purchaser in the method and amount of retroactive collections.

Proposed subparagrapn (2) of § 273.304(b) would have required "full compliance" with all applicable regulations of the Commission as a condition upon any retroactive collections. This requirement has been deleted. The

comments reflected substantial confusion about the scope of this subparagraph and argued that it is "overly broad", particularly because of the uncertainties and difficulties which the comments were anticipates during the initial implementation of these regulations. This deletion will not limit our ability to enforce compliance with the NGPA and these regulations.

Similarly, the scope and intent of subparagraph (3) of the proposed § 273.304(b) will be clarified. Subparagraph (2) of § 273.304 in the interim regulations will state that a seller may not collect a retroactive amount from a purchaser for any sale, until the seller has refunded to that purchaser any amounts due to be refunded to such purchaser for any other sale under the NGPA and this subchapter of the Commission's regulations. Compliance with any separate obligation to refund amounts collected under section 4 of the NGA (rather than under the NGPA) will be monitored and enforced using the Commission's existing producer regulations in Part 154.

Finally, the proposed regulations stated that carrying charges on the amount to be collected retroactively would be permitted "only to the extent agreed upon by the parties" to the sales contract. The interim regulations, § 273.304(b)(4), have been revised to require that any agreement of the parties

which provides for carrying charges must be reduced to writing and then filed with the Commission. There were no comments on this provision, except for one question: whether an interstate pipeline is entitled under section 601(c)(2) of the NGPA to guaranteed pass-through to its customers of any carrying charges paid under this section. Consideration of this question is not required at this time. It may be addressed by rule or in specific cases, after carrying charges have been paid by interstate pipelines. We should explain now that section 601(c)(2) of the NGPA does not guarantee automatic pass-through of charges to interstate pipelines under the interim collection provisions. Interim collections will necessarily precede final determination of the maximum lawful price for such sales. Therefore, interim collections cannot be deemed just and reasonable under section 601(b) and thus cannot qualify for guaranteed pass-through to pipeline customers under section 601(c)(2).

In some instances, the provisions of this part will be used to collect interim prices for first sales of natural gas which was committed or dedicated to interstate commerce on November 8, 1978, the day before the date of enactment of the NGPA. Under section 601(a)(1)(B) of the NGPA, sales of committed or dedicated gas will be subject to the Commission's jurisdiction under the Natural Gas Act, particularly to the filing requirements for making a rate

change, until a final determination that such gas qualifies as high-cost gas, new gas, or gas produced from a new onshore production well. The relationship between the filing requirements of these NGPA regulations and Part 154 of the regulations under the NGA is discussed in the Commission's final rule amending § 154.94(h) of Part 154, issued November 17, 1978 in Docket No. RM79-4, as Order No. 15. Under the final rule, in the case of interim collections for first sales of gas which remain subject to the requirements of the NGA, full compliance with the filing requirements of this part and the other regulations under the NGPA will also satisfy the additional filing requirements under section 4(e) of the NGA and Part 154 of the Commission's regulations. Thus, a seller which makes the filing required by § 273.202(c) may collect the price specified in the application for determination of eligibility without submitting the prior notice of rate change required by § 154.94 of the Commission's regulations under the NGA.

Subpart C of this part establishes procedures to assure that any interim collections will be refunded as necessary and for the actual payment of refunds with interest after a final determination that a first sale does not qualify for a price already collected under this part. Section 273.301 establishes a general obligation upon each seller to refund

any collections which are not authorized by the NGPA and these regulations, if ordered to do so by the Commission at any time. For example, a determination can be reconsidered and modified after it becomes final, if it was based on an untrue or misleading statement of material fact in the application for determination. As a result of that modification, additional refunds could be ordered even though the seller would have already discharged any specific refund obligations under § 273.302 and the prior final determination.

Section 273.302 sets out specific procedures for refund assurance and payment. A seller's potential liability to refund any interim collections must first be secured by the filing of a written undertaking to make refunds using one of the forms set out in § 273.302(b). A seller must file a series of refund undertakings covering collections for sales from the wells identified in an appendix to each successive undertaking, or one blanket undertaking which is a general agreement to make all refunds which may be required under the NGPA.

Interim collections that are made under § 273.202 pending an initial determination of eligibility and the proper price are subject to a further requirement providing additional refund assurance. Section 273.302 of the proposed regulations required the seller to secure

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by surety bond or to place in escrow the portion of the price collected under § 273.202 which exceeds the maximum lawful price determined under section 109 of the NGPA (for sales from new wells) or the maximum lawful price under sections 104, 105 or 106 of the NGPA (for sales from old wells).

This provision was opposed by comments from a variety of persons. These comments argued that a mandatory escrow provision would be unduly burdensome to producers and costly to consumers who would receive a lower rate of interest on escrowed refunds. A corporate guarantee or undertaking to make refunds should be sufficient, according to these comments, because this simple procedure has been used successfully by the Commission to provide ample assurance of refunds under the NGA. In response to these many comments, the proposed § 273.302(c) has been modified to require in the m interim regulations that a portion of interim collections under § 273.202 must be secured by a surety bond or placed in escrow, unless the purchaser by written agreement releases the seller from this requirement for additional refund assurance. Thus, the Commission will accept initially a judgment by the purchaser on the seller's ability to make future refunds; but, in specific cases under subparagraph (b)(3) of this section, additional refund assurance may be ordered

by the Commission at any time for any interim collections under Subpart B.

Other provisions of § 273.302 require each seller to maintain full records of the amounts that are collected subject to refund, and to make the actual refunds by cash or check within forty-five days after the applicable determination of eligibility becomes final. There is no provision for any other method to discharge a refund obligation, such as by work-offs, commitment of additional reserves to each purchaser, or reduction of the price charged for future deliveries. Permission to use an alternative refund method will be granted only in exceptional cases.

PARTS 274 AND 275

General. Under certain sections of the NGPA, eligibility for the maximum lawful price established by the NGPA Act is initially determined by the state or federal agency with regulatory jurisdiction over the production of natural gas. Jurisdictional agency determinations are subject to review by the Commission.

Jurisdictional agencies are authorized to make the determinations with respect to:

(1) new natural gas under section 102(c) of the NGPA;

(2) certain gas from the OCS under section 102(d);

(3) new, onshore production, defined in section 103(c);

(4) high-cost natural gas defined in section 107(c); and

(5) stripper well natural gas defined in section 108(b).

The purpose of Subparts B, C, G, and H, of Part 271, is to reflect the statutory criteria for qualification for the maximum lawful prices for the categories of gas noted above and to establish rules necessary to clarify or implement those provisions. Subpart B of Part 274 of the regulations contains the filing requirements which apply to applications for determinations filed with jurisdictional agencies. Subpart A of Part 274 of the regulations applies

to the procedures by which jurisdictional agencies make initial determinations and give notice of these determinations to the Commission. Subpart B of Part 275 of the regulations prescribes the method by which the Commission will review those determinations. Each of these provisions is summarized below.

PART 274 - SUBPART A

Subpart A of Part 274 prescribes procedures by which jurisdictional agencies make determinations pursuant to and in accordance with the NGPA. This subpart provides that the procedures applicable to the determinations by the agency shall be those procedures prescribed by State law to make the determinations under the NGPA or comparable determinations. In addition, this subpart contains a rule concerning the manner in which a jurisdictional agency must notify the Commission that it has made a final determination of eligibility.

Section 274.102 provides that a determination is made once it is "administratively final" before the jurisdictional agency. If, for example, a state agency's decisions are normally subject to rehearing under its usual procedures, the determination is not final until the period for rehearing expires or rehearing is sought and denied.

Section 274.104 provides that a jurisdictional agency must notify the Commission within 15 days after making a determination and prescribes the manner in which the jurisdictional agency shall give the notice. The notice must include: (1) a list of participants in the proceeding and any person who submitted or sought to submit written comments; (2) a statement indicating whether the matter was opposed before the jurisdictional agency; (3) the information set forth in § 275.105 as applied to the determination in question, unless the jurisdictional agency has filed a report with the Commission in accordance with § 274.105; (4) a copy of the application and a copy or description of other material in the record upon which the determination was made; and (5) an affirmative finding that the information described in the applicable filing requirements is contained in the notice.

The final regulations differ from the proposed regulations in three respects. First, the requirement that the agency submit to the Commission a copy of the FERC form submitted to the agency by the applicant has been deleted. The final rule requires the application to be filed whenever an affirmative determination is made, and the FERC form is part of the application. The rule also differs from the proposal by not requiring the jurisdictional agency to submit to the Commission a copy of the complete record; instead the

agency must submit the application and either a copy or a description of the materials in the record, in addition to the application, upon which it relied in making the determination. This change was made in response to two comments which indicated that the necessity to file the complete record would be unduly burdensome, requiring the copying and transmittal of large amounts of technical data for a single application. Upon reconsideration, the Commission has determined that it will be able to fulfill its review obligation by looking to the application and if necessary, procuring other materials described as being in the record upon which the agency relied.

The third change is reflected in a new subparagraph (5) in § 274.103. This subparagraph requires that the jurisdictional agency make an affirmative finding that the information required to be filed with an application has been forwarded to the Commission. If some of that information was in the files of the jurisdictional agency, copies of the relevant portions of the files must be forwarded to the Commission as part of the notice.

Several comments requested that the Commission add a provision to protect the confidentiality of material submitted under § 274.104, which material may include trade

secrets or other sensitive information. The Commission agrees and, accordingly, has added a provision to protect such material in § 275.206.

Section 274.105 provides an option to the procedures prescribed in § 274.104. If an agency chooses to adopt the § 274.105 option, it may file with the Commission a report in which it undertakes to make the necessary determinations and which includes a description of the procedures which it would follow in making them. The jurisdictional agency would then be relieved of the obligation to describe its procedures in each case.

Two comments requested the Commission to add provisions to Part 274 governing certain aspects of the proceedings before the jurisdictional agencies. One comment suggested that the Commission require the jurisdictional agencies to hold full adjudicatory hearings on delegated determinations and allow gas consuming states to participate as a party in interest to the hearings as of right. The other comment suggested that the Commission adopt procedures allowing distribution companies and state commissions and agencies to intervene and have the rights of full parties in interest in hearings held in gas producing states, and that the Commission's "Rules of Practice and Procedure" be made applicable to the

hearings before commissions and agencies in other states. The Commission has rejected these suggestions because it does not believe that it has the statutory authority to determine the nature of the proceedings before the jurisdictional agencies. Section 503(c)(3) of the NGPA states:

> Determinations of a Federal or State agency referred to in subsection (a)(1) shall be made in accordance with the procedures generally applicable to such agency for the making of such determinations or comparable determinations under the provisions of Federal or State law, as the case may be, pursuant to which they exercise their regulatory jurisdiction. The Commission may prescribe the form and content of filings with a Federal or State agency in connection with determinations made under this section.

The Statement of Managers indicates that questions regarding procedures followed by the jurisdictional agencies are to be reviewed directly by the state or federal court having jurisdiction to hear such appeals in accordance with applicable state or federal law. S. Rep. No. 95-1126, 95th Cong., 2d Sess. 119(1978). Since Congress specifically provided that proceedings before the jurisdictional agencies were to be in accordance with their generally applicable procedures and that review was to be by the courts, the Commission lacks the statutory authority to prescribe the procedures suggested in the comments. In

view of the Commission's lack of authority, comments concerning proceedings before jurisdictional agencies should be directed to those agencies.

PART 274 - SUBPART B

Subpart B of Part 274 prescribes the filing requirements which must be met by an applicant to obtain a determination from a jurisdictional agency.

Section 274.201 sets forth general rules applicable to all applications, including persons who may file for a determination, the persons who must sign the filing, and the requirement that an applicant give notice of the filing to purchasers.

A number of comments suggested changes in § 274.201(b) with respect to who may file. Several comments requested that the operator be designated as the responsible person. Other comments stated that designating the operator as the responsible person would be too limiting. Concern over non-operating interests was also expressed.

After consideration of these comments, the Commission determined that this is a matter best left to the jurisdictional agency. Accordingly, the section has been revised to provide that the application may be submitted by that person whom the jurisdictional agency identifies as eligible to make filings.

Comments addressing § 274.201(c) indicated that requiring the signature of a "responsible officer of the corporation" was too limiting. The Commission agrees and has modified this section to permit a "responsible official of the corporation" to attest to the application. It should also be noted that this section has been modified to delete the attestation requirement.

One comment requested that § 274.201(e), "Notice to Purchasers," be expanded to include notice to all working interest owners. Although the Commission has decided not to expand the notice requirements in this manner, it notes that such a requirement might be imposed by the jurisdictional agency. Also the applicant may want to give such notice as a prudent business practice.

Section 274.201(e), as proposed, required that the applicant provide the purchaser(s) with a copy of the application. Upon further consideration, it has been determined that the purpose of this paragraph can be served by requiring only that the applicant provide the purchaser with a copy of FERC Form No. 121.

One comment requested the addition to the general provisions of a section allowing the filing of simultaneous multiple applications for determinations. Permitting these filings appears to the Commission to be desirable;

there is clear legislative history that such filings were comtemplated under the NGPA. However, since this matter involves procedures of jurisdictional agencies, whether such filings will be permitted is a matter which is better left to the discretion of such agencies.

One comment suggested that the purchaser should be required to play a larger role in the regulatory scheme by concurring in a producer application for a determination with regard to a sale of at least 1,000,000 Mcf per year. The Commission recognizes the merits of a procedure which would involve the monitoring of applications by purchasers. Although this type of program will not be adopted at this time, purchasers are encouraged to participate in the determination process to the extent permitted by the jurisdictional agency.

Several comments suggested that the Commission recognize the problem of confidentiality which was not addressed in the proposed regulations. The Commission agrees that this problem should be addressed and has included such a regulation in § 275.206. Since this rule was not previously proposed, the Commission is particularly interested in comments on the procedures contained in this rule.

Section 274.202 sets forth filing requirements for a determination that gas qualifies as new natural gas under section 102 of the NGPA. The regulations require an applicant to present evidence substantiating, to the extent practicable, each element of proof required for a determination of eligibility. Section 274.202(c)(1) is typical of other sections in this subpart in that the applicant must file certain specific documents as well as the oath statements. Each applicant filing for a new onshore well determination under § 274.202(c)(1), must file a location plat locating his own well and any other well within the 2.5 mile radius which is producing or has produced natural gas after January 1, 1970. In order to demonstrate that none of these wells is a marker well, an applicant must consult available, relevant records which would indicate whether any of these wells produced in commercial quantities at any time during the period from January 1, 1970, to April 20, 1977. Rather than require an applicant to file all production records with the application, however, the proposal requires the filing of a statement under oath describing the applicant's search of records, and attesting to the fact that none of these wells is a marker well.

Applicants filing under § 274.202(d) for a new onshore reservoir determination must submit geological information

which demonstrates that production is from a new onshore reservoir. This information is accompanied by a sworn statement similar to that required by paragraph (c). In all cases, individual agencies may, if they wish, require certified copies of all documents relied upon by the applicant.

Several comments recommended the filing of the OCS lease in lieu of the proposed filing requirements. Acknowledging this recommendation, the Commission has changed the filing requirements to require a copy of the OCS lease or such other identification of the lease as permitted by the jurisdictional agency together with an oath statement by the applicant that the gas is produced from a new OCS lease.

Several comments suggested modification of the diligent search requirement for new onshore wells and new onshore reservoirs. Comments stated that in some instances royalty records do not exist and tax records were not public. Other comments stated that the search should be limited to pertinent records; still others stated that the search of production, severance tax and royalty records should be illustrative and not mandatory. In response to these comments, these requirements have been modified in all sections to require a "diligent search of all records (including but not limited to production, state severance tax, and royalty payment records)

which are reasonably available and contain information relevant to the determination of eligibility."

One comment suggested a modification in the "inconsistent information" language of the oath statements required for new onshore wells and new onshore reservoirs. The regulations now require that the applicant state under oath "that applicant has no knowledge of any other information not described in the application which is inconsistent with his conclusion." (§§ 274.202(c)(1) (v)(D) and (c)(2)(vi)(D)).

One comment regarding new onshore reservoirs suggested the addition of surface pressure surveys to the list of geological data which must be consulted if readily available. The regulation now requires in § 274.202(d)(1)(ii)(B), "bottom hole pressure surveys, or surface pressure surveys."

Several comments objected to the task of locating all wells within a 2.5 mile radius on the location plat (§ 274.202(c)(1)(iii)) or identifying all marker wells on a location plat (§ 274.202(c)(2)(iii)). Recognizing that this filing requirement may be unnecessarily burdensome, the regulations now require identification of those wells which are producing or have produced natural gas after January 1, 1970, within the 2.5 mile radius and a specific identification of all marker wells within the 2.5 mile radius.

Section 274.203 sets forth filing requirements for a determination that gas qualifies as a new reservoir on old OCS leases under section 102 of the NGPA. The regulations require the applicant to file geological information to the extent necessary to support such a determination. In addition to the submission of geological information, the applicant must file a statement under oath containing the basis for the conclusion that the gas is produced on an old lease on the OCS from a reservoir not discovered before July 27, 1976. If the date of penetration of the reservoir is prior to July 27, 1976, certain requirements of OCS Order No. 4 must be met in order to qualify for this determination.

Comments similar to those addressed in § 274.202 which requested modification of the diligent search filing requirement and the "inconsistent information" oath statement were filed. The changes noted above have been made.

Section 274.204 sets forth filing requirements for a determination that the well qualifies as a new onshore production well under section 103 of the NGPA. The regulations require the applicant to file, inter alia, the well completion report, a location plat which identifies the subject well and all other wells within that proration unit. In addition, the applicant must file a statement under oath,

that the surface drilling of the well was begun on or after February 19, 1977, that the well satisfies well-spacing requirements and was not within an existing proration unit. If the applicant is seeking a determination for a new well drilled in an existing proration unit, the applicant must also demonstrate that the new well is necessary to effectively and efficiently drain a portion of the reservoir covered by that proration unit.

Only comments similar to those addressed in § 274.202 were suggested for this section.

Section 274.205 sets forth filing requirements for a determination that gas qualifies as deep high-cost gas under section 107 of the NGPA. The regulations require the applicant to file, inter alia, the well completion reports, the well logs or well servicing company reports or such other information necessary to substantiate the depth of the well. In addition, the applicant must file a statement under oath that the surface drilling began on or after February 19, 1977 and that the well is completed at the depth of at least 15,000 feet.

Based on a concern for protecting confidential filings, several comments suggested the deletion of well logs as a filing requirement for high-cost gas. The Commission

recognizes the importance of protecting proprietary interests and the need for confidentiality. The regulation has been modified to require "well logs, or well servicing reports or such other information which will corroborate the depth of the completion location reported in the well completion report." The final phrase of the oath statement was modified slightly to read, "that he has no knowledge of any other information not described in the application which is inconsistent with his conclusions."

Section 274.206 prescribes the filing requirements for applications for stripper well determinations. To a greater extent than other sections of this subpart, this section requires the submission of actual documents rather than oath statements. In addition to the documents, applicants must submit an affidavit attesting to the well's eligibility.

After reviewing the comments, we believe that § 274.206(a)(6) should be modified. We adopt the comment suggesting that the Commission change this section to provide that an applicant must file the production records for crude oil produced during the 90-day period on which the application is based rather than the 12-month period immediately preceding the date of filing. We believe this change is consistent with section 108 of the NGPA.

Several comments objected to the requirement in § 274.206(b) that pipeline companies monitor the production

of natural gas from stripper wells. It was argued that the qualification of wells as strippers is a responsibility of the producers and not the pipelines. However, we find that to require the pipeline purchaser to monitor its purchases of stripper well natural gas is not unduly burdensome. Further, we believe that it is consistent with the obligation owed to their purchasers to insure that all gas purchases are properly priced.

One jurisdictional agency suggested that the Commission should require one-page production decline curves instead of monthly production reports. In those instances where a jurisdictional agency prefers to use a production curve, it may seek Commission approval of this alternative filing requirement under § 274.207.

Section 274.207 entitled "Alternative filing and notice requirements," acknowledges that due to differences in state records, some jurisdictional agencies may want to require other documents than those enumerated in the interim regulations. Under this section, a state agency may propose alternative filing requirements which might replace some or all of the requirements specifically provided in Subpart B. If the Commission concludes that the alternative requirements will satisfy its evidentiary requirements, the Commission may approve the alternative requirements. Upon such approval,

may approve the alternative requirements. Upon such approval, applicants for determinations in that jurisdictional agency would file according to the alternative plan rather than under Subpart B. The section has been modified to permit jurisdictional agencies, subject to Commission approval, to provide different documents in their notification to the Commission of determinations from those now required. As jurisdictional agencies and the Commission develop experience under the NGPA, this section will provide needed flexibility.

Several comments suggested that the Commission should formulate alternative filing requirements for small producers to ease the burden of complying with Section 274, Subpart B filing requirements. While the Commission appreciates the concerns of the small producer, a specific regulation addressing small producers is not contemplated. However, the regulations do not prohibit the jurisdictional agency from adopting specific small producer filing requirements under the alternative filing requirements section provided the alternative filings constitute a reliable record upon which determination may be based.

PART 274 - SUBPART C

Subpart C of Part 274 briefly prescribes the procedures by which a jurisdictional agency may execute an agreement to waive its authority to make NGPA determinations. It implements section 503(c)(2) of the NGPA.

In order for a jurisdictional agency to waive its authority, it must enter into an agreement with the Commission. Under § 274.302, an agency may submit a request for waiver to the Commission. Section 274.302 also specifies the contents of such a request and requires an agency to state the reasons and the necessity for a waiver. If the Commission agrees to enter an agreement of waiver, it may do so on terms and conditions agreed to by the Commission and the jurisdictional agency. The provisions of § 274.303 specify the method of revoking or terminating the waiver agreement by the Commission or the jurisdictional agency. Section 274.304 provides that the Commission shall give public notice of all agreements of waiver and any termination or revocation of a waiver.

PART 274 - SUBPART D

Subpart D of Part 274 authorizes delegation to certain state regulatory agencies of the Commission's authority under Part 276 to receive filings under Part 276. Any such delegation is made by agreement with the state agency in accordance with section 501(c) of the NGPA.

PART 274 - SUBPART E

This subpart defines jurisdictional agency, contains a table of agencies by state, defines Federal lands, and provides for recognition of agreements between the United States Geological Survey and state jurisdictional agencies which would permit the state agency to make determinations under Part 274 respecting wells on Federal lands within the state.

PART 275 - SUBPART B

Subpart B of Part 275 prescribes the procedures governing Commission review of determinations by jurisdictional agencies. The regulations are promulgated under the provisions of section 503 of the NGPA and the general rulemaking authority of section 501(a) of the Act.

Section 275.201 provides that upon receipt of the notice of determination from a jurisdictional agency, the Commission will give public notice of the determination in the Federal Register. In addition to identifying the specific proceeding, the notice will indicate that the application and a copy or description of materials relied on by the jurisdictional agency in making the determination is available for inspection in the Commission's Office of Public Information, except to the extent such material is treated as confidential under § 275.206. The final rule is changed from the proposal to reflect the change to § 274.104 which no longer requires the complete record to be submitted by the jurisdictional agency.

Subparagraph (a) of § 275.202 tracks section 503(b)(1) and (2) of the statute in setting forth the standards which govern Commission review. The determination of the jurisdictional agency will become final 45 days after the

Commission receives notice of the determination unless within that time the Commission issues a preliminary finding and notice that the determination was not supported by substantial evidence or that there is evidence in the Commission's records which was not before the jurisdictional agency and which is inconsistent with the determination.

One comment suggested that the Commission should delete paragraph (b) of the proposal which provided that the Commission would return determinations to jurisdictional agencies if such determinations were based on applications which did not satisfy applicable requirements. After consideration of this matter, the Commission has decided that a more appropriate procedure is to provide that the 45-day review period will not begin if the Commission notifies the jurisdictional agency that the notice is incomplete in certain respects. This provision is set out in § 275.202(b). This provision accomplishes the same purpose as the proposal and gives the jurisdictional agency an opportunity to perfect its notice to the Commission.

Paragraph (c) of § 275.202 changes the proposal by providing that the Commission will publish notice of a preliminary finding in the Federal Register and will also post the notice in its Office of Public Information. The notice will contain the reasons for the preliminary finding. This provision was

added in the final rule in response to comments suggesting that the views of interested persons and state or federal agencies should be allowed subsequent to a preliminary finding.

Paragraph (d) of § 275.202 provides that any state or federal agency, or any interested person may submit written comments with respect to a preliminary finding. The rule further provides that any jurisdictional agency, any state agency, any person who participated in, the proceeding before the jurisdictional agency and any person who has filed a protest may request a conference with the Commission staff, which request will be granted, if timely made. In response to one comment, the final rule has increased the time period within which comments may be filed to 30 days.

As noted above, the changes in procedure were made in response to a comment indicating that interested persons or state agencies may not be able to participate before a jurisdictional agency or be able to prepare a protest to the Commission within 15 days after public notice of a jurisdictional agency determination. Therefore, they might be effectively excluded from participation. The revised procedures provide the greatest opportunity for public involvement possible in the limited time for Commission review. Another comment

suggested that participation in proceedings before the Commission be limited to agencies or persons who had participated in proceedings before the jurisdictional agency, or who could show good cause why they did not participate. While the Commission agrees that participation before the jurisdictional agency would be preferable, it cannot guarantee, or provide procedures for such participation. Further, in view of the statutory time constraints, the Commission cannot undertake to make individual findings as to whether the person or agency had good cause for not participating before the jurisdictional agency. Accordingly, the Commission has rejected the suggestion to limit participation in its proceedings.

Section 275.202(e), consistent with sections 503(b)(1)(B), and (b)(2)(B) provides that the Commission will issue a final order within 120 days after issuance of a preliminary finding. While the statute requires a final order only when the Commission reverses or remands a decision, the regulation provides that the Commission will issue such an order in any case in which a protest was filed and a preliminary reversal or remand was issued. The final rule differs from the proposal only to clarify the persons to whom notice will be given.

Under § 275.203 any person may file a protest with the Commission within 15 days after the Commission publishes notice of receipt of a determination by a jurisdictional agency. Any person protesting a determination must indicate whether it is alleged that the determination is not supported by substantial evidence or that there is inconsistent information in the Commission's files. It should be noted that under § 275.203(b) (iii), a protestor may submit information for inclusion in the Commission's public records. Accordingly, the data or information on which the Commission may rely in remanding a determination need not have been in the Commission's records at the time the jurisdictional agency made the determination.

One comment suggested that a provision be added to permit an applicant to respond to protests prior to the preliminary finding. The Commission has not adopted this suggestion because it has determined that to provide for such a response before the preliminary finding is impracticable in view of the short time within which the Commission must make its preliminary finding. The applicant's interests are adequately protected by the procedure permitting comments and conferences after the issuance of the preliminary finding.

Another comment objected to the procedure which allows a protester to submit information for inclusion in the Commission's public record for purposes of supporting a remand of the determination. The Commission has retained this procedure because it believes its procedure should encourage interested persons to submit any relevant information which is likely to result in a correct final determination.

One comment suggested that the Commission require protests to be filed under oath. The Commission has not implemented this suggestion because it does not feel that such an oath is necessary. If, after gaining some experience in administering the Act, the Commission feels that such an oath is necessary, it will amend its regulations to include the suggested provision.

Under section 503(d), final determinations are binding unless based on an untrue statement of fact, or based on a record from which a statement of material fact was omitted. Section 275.205 of the regulations sets forth a procedure for reopening determinations on those grounds. The Commission may, at any time, on its own motion or in response to a petition, reopen a determination if it appears that the necessary grounds exist.

If the Commission does reopen a determination, it will give notice to the jurisdictional agency involved as well as to all persons who participated in the prior proceeding. Within 150 days of the Commission order reopening a determination the Commission will issue a final order after giving all persons who received notice an opportunity to express their views. If the Commission finds that the requisite grounds exist, it will vacate the determination and order remedies, including refunds, as it deems appropriate.

Confidentiality. Section 275.206(a) provides that the Commission will accord confidential treatment to any information submitted to the Commission by a jurisdictional agency under § 274.104, if the agency protected the information as confidential and if the grounds for confidential treatment fall within one of the nine exemptions of the Freedom of Information Act (5 U.S.C. 552(b)). Paragraph (b) provides that if the Commission receives a request for disclosure of the information protected as confidential under paragraph (a), it will determine whether the information is exempt from public disclosure under the Freedom of Information Act. If the information is determined not to be exempt, it will be released to the public. If it is determined to be exempt, the information will not be released unless the Commission determines

that its conduct of the proceedings requires the disclosure of the information to the public or to particular parties, subject to conditions prescribed by the Commission. The person who submitted the information will be given at least 10 days notice before the information is made public. This section of the regulations was not in the proposed rules. Several comments suggested that the Commission add a provision to protect the confidentiality of material submitted by the applicant or contained in the materials submitted by the jurisdictional agency to the Commission, since the release of such information could inflict substantial competitive harm upon the applicant. The Commission agrees with the comments and accordingly has added this section to the final rules.

PART 276 - SUBPART A

Subpart A of Part 276 sets forth reporting requirements applicable to first sales of natural gas sold under existing intrastate contracts and intrastate rollover contracts, as well as first sales of other categories of natural gas (Subparts E, F, and I of Part 271).

For each first sale under these subparts of Part 271, the seller is required to report certain information. If the purchaser of gas under section 105 and 106(b) of the NGPA is a pipeline, the purchaser must file certain reports. Finally, in some instances, sellers of less than 10,000 MMcf of natural gas per year may elect to make oath filings instead of detailed reports.

Under § 276.102 a seller of natural gas under an existing intrastate contract must file an annual report setting forth detailed contract information as well as an oath filing that the information in the report is true, and that sales in the reporting period comply with the NGPA and Subpart E of Part 271. Successive annual reports need not restate previously reported information. The seller must also undertake to retain all records containing information reported.

If the sale is to an interstate or intrastate pipeline, the pipeline, rather than the seller, is responsible for filing the contract information, as well as an oath statement attesting to the accuracy of the information so reported. If a pipeline purchaser makes the principal filing, the seller must still file a statement under oath that the sale complies with the NGPA and Subpart E of Part 271, and that the seller undertakes to retain records which reflect the detailed contract information required to be reported by the purchasing and reporting pipeline.

Reports required to be filed with respect to sales under intrastate rollover contracts are essentially the same as for sales under existing intrastate contracts, with appropriate modifications. These reporting requirements are set forth in § 276.103.

The annual report requirements with respect to sales under Subpart I of Part 271 are set forth in § 276.104. The report must be filed by the seller in all instances and must contain detailed information with respect to the sale. The seller is also required to make an oath statement that the gas does not qualify under any subpart of Part 271 which provides a maximum lawful price lower than that provided under Subpart I, and that, if the gas was committed or dedicated to interstate commerce, a notice of rate change has

been filed pursuant to § 154.94. The oath filing must also contain a statement regarding compliance with the NGPA and the requirements of Subpart I and must attest to the truth of the information reported.

Sellers who sell less than 10,000 MMcf per year may elect to comply with reduced reporting requirements with respect to sales under Subparts E and F of Part 271 to purchasers other than a pipeline. Instead of the detailed information otherwise required, these sellers may file an oath statement attesting to compliance with the NGPA and the applicable regulations. Such sellers must also undertake to retain books and records containing the requisite information.

As issued, the interim regulations in this subpart reflect several substantive changes. Sections 276.102(b) and 276.103(b) have been amended to impose two new reporting requirements. The requirement that the highest price per MMBtu charged and collected during the reporting period be reported for sales under Subparts E and F of Part 271 has been added in order to enable the Commission to conduct a more meaningful review of the reports filed. A requirement that all contract provisions be identified which were executed during the reporting period and which obligate a new purchaser to incur increased production-related costs has

been added to correspond to revisions made in §§ 271.505 and 271.604. In addition, all persons making first sales under sections 105, 106(b), and 109 of the NGPA must retain records containing the information relevant to those sales under § 276.107.

One comment on this subpart of the regulations challenged the statutory sufficiency of an audit procedure, alleging that the Commission must make separate determinations regarding each seller's ability to charge those maximum lawful prices prescribed under sections 105, 106(b), and 109(a)(1) and (3) of the NGPA. However, the statute does not specifically provide for nor require such determinations. Given the administrative burdens attendent on making such determinations, the delay which such a determination procedure would cause, and the efficacy of the current reporting system in providing the information necessary for auditing to ensure compliance with the pricing limitations in the statute, the Commission can foresee no valid reason for instituting such a determination procedure.

Correspondingly, the Commission rejects the suggestion by a second commentor that all intrastate producers be relieved of the burdens imposed by such reporting requirements for the next several years, and be required, instead, merely to retain the relevant records for that period until the need for such data is demonstrated through the

Commission's experience in enforcing the NGPA. The Commission considers the auditing process to be essential to ensuring that those persons making first sales comply with the new pricing system under the NGPA and Part 271 and emphasizes that, because compliance with the statute is an essential element to its workability, the pricing provisions must be enforced as soon as possible.

Another comment suggested that purchasers rather than sellers be required to fulfill all reporting requirements imposed by this subpart. The Commission has already implemented such a policy, where it deems it appropriate, in order to assist the Commission in enforcing compliance with sections 105 and 106(b) of the NGPA. The Commission concludes that pipelines are the appropriate entities for filing reports concerning those sales. As purchasers of the natural gas, the pipelines have an immediate economic interest in determining that a lawful price is charged. Accordingly, they should closely scrutinize any price charged by a seller in order to determine whether that price is consistent with the maximum lawful prices permitted by the NGPA and Part 271. Since the pipelines have the economic interest, the Commission believes it will receive the most accurate information from their filings and that such accuracy will more adequately ensure that maximum lawful

prices are not exceeded by sellers. By requiring pipeline to make filings under this subpart, the Commission has also more equally distributed the burden of making filings under the NGPA. Because the information required in this subpart will have been compiled incident to the pipeline's own audits, the burdens imposed should be limited.

Such filings by pipelines are appropriate from a legal as well as a policy perspective. Section 508(b) of the NGPA provides that:

> [i]n order to obtain information for the purposes of carrying out its functions under this Act, the Commission shall have the same authority as is vested in the Secretary [of Energy] under section 301(a) of the Department of Energy Organization Act with respect to the exercise of authority under section 11(b) of the Energy Supply and Environmental Coordination Act of 1974 and sections 13(b), (c), and (d) of the Federal Energy Administration Act of 1974.

The Congressional grant of authority in section 508(b) of the NGPA is broad. Section 301(a) of the Department of Energy Organization Act vests in the Secretary of Energy all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration; the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and the functions vested by law in officers and components of either such Administration.

Thus, the Commission may exercise these same powers in order to obtain information for the purposes of carrying out its functions under the NGPA. One such function is enforcement under section 504 of the NGPA of the pricing rules.

The information gathering powers enumerated in § 508(b) permit the Commission to carry out this function by requiring filings by pipelines. Section 11(b)(1)(A) of the Energy Supply and Environmental Coordination Act of 1974 permits the Commission "to require by rule, any person who is engaged in the production, processing, refining, transportation by pipeline or distribution (at other than the retail level) of energy resources to submit reports. . . ." [Emphasis supplied] Moreover, section 13(c) of the Federal Energy Administration Act of 1974 likewise provides for certain information gathering powers:

> [t]he Administrator [i.e., the Commission] may require, by general or special orders, any person engaged in any phase of energy supply or major energy consumption to file with the Administrator in such form as he may prescribe, reports or answers in writing to such specific questions, surveys, or questionnaires as may be necessary to enable the Administrator to carry out his functions under the Act. Such reports and answers shall be made under oath, or otherwise, as the Administrator may prescribe, and shall be filed with the Administrator within such reasonable period as he may prescribe. [Emphasis supplied]

The Commission has decided to exercise its information gathering powers in a manner that requires pipeline companies to submit the reports required by Subpart A of Part 276 of the regulations.

Another comment suggested that the category of sellers exempted from certain filing requirements under §§ 276.102 and 276.103 be revised to coincide with the definition of small producers in § 271.402(b)(9). That provision has now been revised, however, the use of the definition in paragraph (b)(9) would not cover all sellers intended to be included in the exemption. It would eliminate all sellers who were not also producers but who would qualify as having made a first sale subject to the pricing provisions of the NGPA. The Commission intends to establish in this regulation a simple volumetric limitation based on which sellers may be exempted from providing detailed contract information pursuant to this subpart. The purpose of the exemption is substantially different from the pricing considerations which were imposed by the NGA and which underlie the provisions of § 271.402(a). The definition in § 271.402(b)(9) only incidentally concerns filing requirements and was intended to implement under the NGPA a pricing system established under the NGA.

PART 284

Part 284 implements sections 311(a) and 312 of the NGPA. Subparts A and B govern transportation of natural gas by interstate and intrastate pipelines. Subpart D establishes requirements governing the assignment of producer contracts by intrastate pipelines. The Commission has reserved Subpart C which, when implemented, will apply to intrastate pipeline sales under section 311(b) of the NGPA.

Special mention should be made of the Commission's decision to reserve Subpart C at this stage. A number of comments were directed to the proposed implementation of section 311(b) in response to the Commission's notice of proposed rulemaking on November 13, 1978. These comments suggest that substantial revision of the proposal will be required. Thus, the Commission intends in the near future to issue a revised notice of proposed rulemaking. However, there was inadequate time to consider and deliberate on the revisions suggested so as to allow the Commission to issue the revised proposal at this time. It remains the Commission's intention, nonetheless, to implement section 311(b) effective March 1, 1979.

In the interim, intrastate pipeline sales will be governed under the emergency program established under the Natural Gas Act. Of course, assignments by intrastate pipelines may be made beginning on December 1, 1978, pursuant to the provisions of Subpart D which implements section 312 of the NGPA.

PART 284 - SUBPART A

This subpart governs the transportation of natural gas by interstate pipelines on behalf of intrastate pipelines and local distribution companies pursuant to the terms of section 311(a)(1) of the NGPA. Two mechanisms are established. The first is self-executing and allows transportation arrangements to be entered into without necessity of prior Commission approval for periods not in excess of two years. The Commission has also added a provision that would permit transportation arrangements for fixed periods in excess of two years. In this latter case, however, application must be made to the Commission and prior approval obtained. The Commission believes that it is appropriate to review and evaluate long-term transportation arrangements in view of the potential impacts of such arrangements on the operation of on an interstate

pipeline's system. Arrangements for fixed terms in in excess of two years may involve significant investments in the construction and operation of facilities. This consideration also supports the approach taken here by the Commission.

Several commentors suggested that the Commission should remove the two-year limitation and rely instead on its ability to impose terms and conditions which would have the effect of terminating an arrangement if the Commission concluded that a continuance of the arrangement was not in the public interest. We do not believe that is a sensible regulatory approach to this problem. As noted above, long-term transportation arrangements may be expected to contribute to the need for future investment which will require amortization over a period of years and may impose a burden upon all customers of the pipeline. Serious questions of equity and practicality would attend any attempt to abruptly terminate an arrangement which had been entered into in contemplation of its continuance for a period sufficiently long to justify the investment. Moreover, we doubt that parties would enter into long-term arrangements if they were subject to the jeopardy that the Commission may, on its own motion and at any time, terminate the arrangement.

The Commission wishes to emphasize that the two-year limitation applicable to transportation arrangements which may be entered into without prior Commission approval should not be read as indicating a predisposition on the part of the Commission against longer-term arrangements. Indeed, the Commission is well aware that the NGPA seeks to strike down the jurisdictional barriers which have precluded interstate and intrastate pipelines from taking advantage of the most economic and efficient means of transporting natural gas. Sections 311(a)(1) and 311(a)(2) provide the Commission with important new authorities designed to achieve a national transportation system with its attendant economies and efficiencies. On the other hand, transportation arrangements for fixed periods greater than two years contemplate service periods which may so significantly affect a pipeline's system operation as to require prior Commission scrutiny and approval. It is for these reasons that the Commission has chosen the two-pronged mechanism contained in Subpart A and Subpart B of Part 284.

Other than the addition of the application procedure for transportation arrangements in excess of two years, only minor revisions have been made to the proposed regulation. The most significant is the addition of provisions

to § 284.103 which would permit an interstate pipeline to retain revenues in excess of 1 cent per Mcf if it is able to demonstrate that the amounts retained represent actual out-of-pocket expenses in excess of the 1 cent allowance. The Commission notes, parenthetically, that the 1 cent per Mcf allowance for out-of-pocket costs derives from the Commission's experience in a number of individual cases under the Natural Gas Act which evidenced that the 1.0 cent per Mcf reasonably represented the level of out-of-pocket costs normally incurred by interstate pipelines in rendering transportation service. But, we recognize that individual transportation arrangements occurring under Subpart A may involve the incurrence of out-of-pocket expenses greater than 1.0 cent per Mcf. Accordingly, the Commission will permit an allowance in excess of 1 cent per Mcf provided the pipeline is able to substantiate greater out-of-pocket cost.

Section 284.104(c) has been revised, in response to comments, to provide that the terms and conditions which the Commission may impose by rule or order, under the section, shall be prospective. Section 284.106(d) has been revised to clarify that the final report is required only after the termination of an extension where one has been entered into in accordance with § 284.105.

Subpart A provides that interstate pipelines engaging in transactions under this subpart may recover the costs of providing the service including the retention of any revenues where such transportation transactions have been reflected in the pipeline company's rates either through the crediting of revenues or the inclusion of the transportation volumes in billing determinants.

PART 284 - SUBPART B

This subpart governs the transportation of natural gas by intrastate pipelines on behalf of interstate pipelines and local distribution companies served by interstate pipelines under section 311(a)(2) of the NGPA. Sections 284.122 and 284.127 have been revised to conform to §§ 284.102 and 284.107 of Subpart A. The considerations which prompted the Commission's decision under Subpart A apply equally here. Parity of treatment of interstate and intrastate pipelines under similar statutoty provisions also support this decision.

Section 284.123(b)(1)(i) has been revised to provide for rates which are based on recovery of all costs which may be associated with the transportation function. Section 284.123(b)(2) has been added to govern those cases where the intrastate pipelines' transportation rates are not subject to the jurisdiction of an "appropriate state

regulatory agency." Section 284.123(d) provides that transportation rates computed in accordance with § 284.123(b)(1) are presumed to be fair and equitable and not in excess of the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service. This is consistent with and conforms to statutory language in section 311(a)(2) of the NGPA. Moreover, the Commission presumes that all revenues associated with those transportation transactions engaged in by regulated intrastate pipelines have been, or will be, considered by the appropriate state regulatory authority in establishing rates to be charged. This treatment would be consistent with treatment of interstate pipelines by this Commission.

Section 284.124(a) has been added; and § 284.124(c) has been revised to conform to the corresponding section in Subpart A. The initial report required by § 284.126(a) will be filed with the "appropriate state regulatory agency." This term which is also used in § 284.123 is defined in § 284.128. The filing of the initial report with the "appropriate state regulatory agency" is necessary to implement the provisions of § 284.123(c).

The Commission wishes to call special attention to certain features of the regulation under Subpart B. The provisions of § 284.123 governing the rates and charges by intrastate pipelines for transportation arrangements under this subpart have been revised to permit an intrastate pipeline to elect to base its rates upon the methodology and cost used in determining the allowance permitted by an appropriate state regulatory agency for city-gate service. The Commission understands from a number of comments received that in some cases, state regulatory agencies exercise cost of service type regulation at the distribution company level permitting an allowance for city-gate service rendered by intrastate pipelines. Thus, commentors have pointed out, the intrastate pipeline is effectively regulated albeit the state regulatory agency does not directly accept for filing and pass on "rates and charges for transportation" as such. Also, the Commission has modified § 284.123 to specify that in any case where an intrastate pipeline does not elect to base its rates upon the methodology and cost formulae contained in paragraph (b)(1) or where the intrastate pipeline is not regulated directly or indirectly on a cost-of-service basis, the pipeline may file proposed

rates and charges with the Commission supported by information showing that the proposed rates and charges are fair and equitable. Upon filing, the intrastate pipeline may commence the transportation service and charge the proposed rates subject to refund. It need not await approval or further action of the Commission. Paragraph (b)(2) also provides, however, that the Commission may order refunds of any amounts which it may, through subsequent procedures, determine to have been charged in excess of rates and charges which interstate pipelines would be permitted to charge for similar service or amounts which it determined to be in excess of those which have been shown to be fair and equitable.

A number of commentors were concerned that the Commission had not allowed an opportunity for the intrastate pipeline to earn a reasonable profit as required by section 311 of the NGPA. If the intrastate pipeline files its proposed rates and charges pursuant to § 284.123(b)(2), the intrastate pipeline, of course, would include a reasonable profit within its proposed rates. If, on the other hand, the intrastate pipeline elects the alternative procedures contained in § 284.123(b)(1), the reasonable profit is built into

the formulae contained in clauses (i) and (ii). In other words, the intrastate pipeline is permitted the same opportunity for profit as is permitted by the appropriate state regulatory agency under the methodologies used in designing rates or in determining the allowance referred to in those clauses.

As set forth in § 284.123(d), the rate charged by an intrastate pipeline which elects the procedures under paragraph (b)(1)(i) or (ii) is presumed to be fair and equitable and not in excess of the rates and charges to which interstate pipelines would be permitted to charge for providing similar service. The Commission has had considerable difficulty in determining a practical method for applying the statutory limitation on rates contained in section 311(a)(2). At this time, we have attempted to resolve this problem by presuming that if an intrastate pipeline is regulated on a cost-of-service basis, it would not be permitted to charge a rate which is greater than the rate which would be allowed an interstate pipeline similarly regulated on a cost-of-service basis. The Commission recognizes, however, that no two pipelines are alike and that rate schedules of interstate pipelines reflect the particular characteristics of the pipeline

and are tied to the size and length of the line, the load factor of its operation, the location and nature of its supply and the characteristics of its markets.

It is for these reasons that the Commission rejected suggestions made by some commentors that the Commission permit intrastate pipelines to merely select a rate schedule on file with the Commission governing transportation service by interstate pipelines. We are also in doubt as to how we would measure comparability of service in the case of pipelines which have substantially different investments, operations and costs. While we are not prepared to conclude that an approach of this nature cannot be fashioned, we must admit that we are unable to do so at this time. For this reason, the Commission invites interested parties to address this question in the extended comment period on the interim regulations.

PART 284 - SUBPART D

Subpart D implements section 312 of the NGPA which governs assignments of contractual rights to receive surplus natural gas by intrastate pipelines to interstate pipelines and local distribution companies. Rates charged for transportation services in connection with assignments

are determined in accordance with Subpart B. Changes made in that subpart have been reflected in similar provisions of § 284.164(a) and §§ 284.165(a)(5) and (e)(1)(v). The report requirements have also been reduced in response to comments received. No other significant changes have been made in this subpart.

PARTS 2 and 157

The Commission's existing regulations promulgated under the Natural Gas Act exempt from the certificate requirements under section 7 of that Act certain emergency transactions. These provisions, contained in 18 C.F.R. §§ 2.68, 157.22 and 157.29, permit the transportation and sale of natural gas in interstate commerce without prior certificate authorization from the Commission. Under these provisions, emergency supplies of natural gas have been obtained in substantial quantities in past winter heating periods and during times of summer storage fill at market prices in excess of otherwise applicable national or area rates governing jurisdictional sales.

It is generally acknowledged that these exemptions for emergency transactions have allowed interstate pipelines, distribution companies and others dependent upon interstate pipeline supplies to avoid, or at least alleviate, the consequences of severe supply shortages of natural gas in the interstate market. Nonetheless, a number of criticisms have been leveled at the existing program suggesting that it was subject to abuse and required administrative tightening.

Accordingly, on April 7, 1978, the Commission determined to review the current emergency program and issued a Request for Comments inviting interested persons to submit their views on the program and to offer suggestions for change. After the comments were reviewed and analyzed, the Commission issued a Notice of Proposed Rulemaking on August 14, 1978, and again requested comments. That proposal would have substantially changed the provisions of the Commission's current regulations applicable to emergency transactions.

Comments were received from parties representing a wide range of interests, including independent and associate producers, interstate and intrastate pipelines, distribution companies, industrial consumers and the public.

The August 14, 1978, proposal was described in substantial detail in the Notice of Proposed Rulemaking and no recapitulation or further elaboration will be attempted here. It is sufficient to note only that it would have imposed stricter requirements for participation in emergency transactions and would have added additional reporting requirements to allow the Commission to monitor more closely the activities of emergency purchasers and sellers.

Prior to final action by this Commission on the August 14, 1978, proposal, the Congress passed and the President signed into law the NGPA, which changed much of the statutory authority on which the proposed rulemaking had been based and established new congressional directives and policies governing the sale and transportation of natural gas. For this reason, the Commission determined on November 13, 1978, to publish a revised Notice of Proposed Rulemaking more consonant with the requirements and policies of the NGPA. Comments were to be submitted no later than November 20, 1978. The Commission determined that good cause existed to dispense with the full 30 day notice and comment period, inasmuch as the winter heating season had already begun and because the NGPA was to take effect on December 1 -- one month into the heating season.

Practical considerations preclude the Commission from attempting to restate or discuss the comments received since November 13, 1978, in the detail which in other circumstances would be appropriate. The Commission advises, however, that it has read and considered the comments received and made revisions that it considers appropriate and practical given the exigencies of the moment.

Because emergency transactions under the NGA have been overtaken by passage of the NGPA on November 9, 1978, we have determined to promulgate the revised regulations applicable to emergency transactions as interim regulations to be effective December 1, 1978. Accordingly, the revised regulations under the NGA applicable to emergency transactions are to be considered together with the implementing regulation under the NGPA and may be subject to further revision as the Commission may find appropriate after the extended comment period.

Revised Interim Regulations

The interim emergency regulations prescribed herein leave the current emergency program largely intact. The Commission acknowledges that there are deficiencies in the program which would require correction if it were to continue as a permanent feature of the Commission's regulations. However, that is not to be the case. Rather the Commission intends to continue the emergency interim regulations in their present form only through the current winter heating season.

The Commission intends to substantially revise and limit the applicability of the emergency program following the current winter heating season. We did not, therefore, consider it wise public policy to attempt major revisions

in a program which is to last for only a few additional months. Moreover, recognizing that we are already in the midst of the current heating season, it did not appear reasonable to risk the disruption and uncertainty as would attend a significant revision of the prior existing program.

Some further comment on the proposed duration of the emergency program prescribed herein is appropriate. As previously announced, the Commission intends to implement section 311(b) of the NGPA governing sales by intrastate pipelines effective March 1, 1979. Although not included in this stage of implementing regulations, the Commission intends in the near future to issue a revised notice of proposed rulemaking under Subpart C of Part 284 which will reflect changes in the original proposal.

In the future, therefore, intrastate pipeline sales and assignments, as well as transportation arrangements between and among inter- and intrastate pipelines and local distribution companies are to be governed by the NGPA regulations contained in Part 284.

Effective December 1, 1978, all first sales by natural gas producers are subject to maximum lawful prices and other aspects of the Commission's regulations implementing

the NGPA. Moreover, under the NGPA it is no longer necessary for producers to obtain certificates under section 7 of the NGA to commence sales in tne interstate market, provided the natural gas was not previously committed or dedicated to interstate commerce. This is so whether producer sales are entered into for emergency purchases or otherwise.

Thus, an exemption from section 7 of the NGA is no longer required or appropriate for producer sales of natural gas not previously committed or dedicated to interstate markets. Accordingly, we have revised our existing regulations to remove those features applicable to producer sales.

Inasmuch as Part 284 is scheduled for full implementation on March 1, 1979, and because producer sales are now governed under the NGPA and not the NGA, the question occurs whether there is any continued need or justification for an emergency program under the NGA after the conclusion of this winter's heating season. The Commission specifically invites comments on this question. At the very least, it would seem that the emergency program, if it is to be continued at all, should be limited to circumstances involving a sudden unanticipated loss of supply or situations in which immediate action is required for protection

of life and health or the maintenance of physical property. The Commission would benefit from whatever guidance or suggestion is provided on this subject.

Brief Summary of Emergency Interim Regulations

Sections 2.68, 157.22 and 157.29 of the Commission's current regulations are preserved only to the extent that they apply to existing emergency transactions. Accordingly, the current regulations are to continue in effect and remain applicable to contracts executed before November 9, 1978, in the case of a first sale governed by the NGPA (which will include all producer sales), or before December 1, 1978, in any other case (including sales by intrastate pipelines whose sales are generally not considered first sales governed by the NGPA). The emergency interim regulations also add to the Commission's existing regulations under the NGA a new Subpart C which contains §§ 157.45 through 157.52.

Section 157.45 defines the purpose of new Subpart C and sets out the relationship of this subpart to other parts of the implementing regulations under the NGPA.

Section 157.46 contains definitions which establish the parameters of eligility for the exemption from section 7 of emergency transactions. The definition of emergency has been revised from the November 13 proposal

in a number of respects. Specifically the definition has been expanded to make clear that an emergency includes a sudden unanticipated loss of supply or increase in demand. An emergency qualifying under this section would also include situations where additional supplies are necessary to maintain deliverability from storage, or to replenish storage volumes in order to alleviate curtailment. Also, persons described in section 1(c) of the NGA have been included as qualified sellers and purchasers. This responds to a number of comments which has suggested the inclusion of so-called Hinshaw pipelines under the program.

In addition, the Commission has defined a "sale of emergency natural gas" to include an exchange of natural gas to alleviate an emergency, provided the volumes exchanged are paid back within 180 days after the termination of deliveries of emergency natural gas. The 180-day pay-back rule is designed to assure that the parties to the exchange are made whole prior to the commencement of the next winter heating season. The Commission, in addition, wishes to make clear that the emergency program contemplates the rendering of emergency storage service by local distribution companies as was permitted under § 2.68 of the Commission's Rules.

A number of comments expressed concern that the Commission may take action under its authority in

section 315 of the NGPA to specify a minimum contract duration in such a manner as to disrupt the emergency program. The Commission advises that, although it intends to act in the near future to implement section 315, any such specification of a minimum contract duration will operate prospectively only. Moreover, the Commission will give special consideration to the need to provide an exception to any minimum contract duration requirement for emergency transactions which by their very nature contemplate transactions of brief duration.

Section 157.47 contains the specific exemptions from certificate requirements under section 7 of the NGA. Only minor technical changes in this language have been made. Transporation by an interstate pipeline for another interstate pipeline or for a direct assignee is specifically exempted. Transportation by an interstate pipeline for a local distribution company or a person described in section 1(c) of the NGA is governed by Subpart A of Part 284. In this regard, the Commission should note parenthetically that although Hinshaw pipelines are not expressly governed by Subpart A of Part 284, the definition of local distribution companies under the NGPA specifically includes such persons.

The Commission wishes to call special attentior to paragraph (c) of § 157.47. Under its terms, the Commission seeks to make abundantly clear that the Commission's jurisdiction under the NGA does not vest with respect to any transaction or person participating in an emergency transaction except to the extent provided in the emergency regulations themselves. Several comments expressed concerned that provisions in existing producer contracts which preclude intrastate pipelines from reselling natural gas in interstate commerce or commingling natural gas in interstate commerce could operate to prevent intrastate pipelines from fully participating under the emergency program. This should no longer be a matter of concern. Those provisions contained in producer contracts were apparently designed to guard against a producer's becoming unwillingly and unknowingly subject to the cost-based rate regulation of the NGA. Passage of the NGPA coupled with the limited vesting of Commission jurisdiction under paragraph (c) of § 157.47 should obviate those concerns.

Section 157.48 contains terms and conditions applicable to emergency transactions. The section has been revised to delete or modify language previously proposed in the August 14, 1978, Notice of Proposed Rulemaking.

The revisions and deletions were considered appropriate in light of the interim character of the revised emergency program. In response to comments, this section has been revised to clarify its scope and applicability and to include a provision which places on the person for whom the emergency natural gas is acquired and transported, responsibility to provide volumes for compressor station fuel and line losses.

Section 157.49 establishes requirements which govern the rates for emergency transactions. No significant change has been made in the language. The Commission has determined to keep the presumption of prudence provided at paragraph (b) in cases where the purchased gas cost for emergency natural gas supplies does not exceed the maximum lawful price specified in § 271.202 of Subchapter H applicable to "new gas".

The Commission wishes to emphasize that this is a rebuttable presumption of prudence and is not intended to operate as a floor, as some comments suggested. Moreover, nothing in this section will operate to preclude an interstate pipeline from availing itself of the opportunity to establish that a rate in excess of the new natural gas price was prudent in the circumstances.

The Commission has significantly revised the treatment of revenues contained in § 157.50. Under its terms the interstate pipeline would not be required to credit revenues if its actual out-of-pocket expenses exceed the one cent per Mcf allowance or if the retention of revenues did not provide double recovery. Various formulas are contained in paragraphs (b), (c), (d) and (e) of this section to carry out this intent.

Section 157.51 contains reporting requirements for emergency requirements for emergency transactions. The Commission has revised the quarterly report requirement to limit it to calendar quarters occurring in 1979. Sections 157.52, regarding a waiver of requirements for emergency transactions, and 157.53, relating to certain exemptions for drilling, testing or purging of pipeline facilities are prescribed without revision.

III. PUBLIC PROCEDURE

Subchapters H and I of Title 18 were published in the Federal Register as a notice of proposed rulemaking at 43 FR 53270 on November 15, 1978. That proposal included the following description of the procedures the Commission had applied and would apply to the promulgation of final regulations implementing the Natural Gas Policy Act:

> Although the NGPA was not enacted until November 9, 1978, most of its provisions become effective on December 1, 1978. On that date, persons affected by the Act, including a large portion of the natural gas industry not previously regulated by the Federal government, will be subject to a comprehensive and complex new regulatory structure. For reasons set out more fully below, regulations implementing the Act must be effective on December 1, 1978, both for guidance to those regulated and to insure compliance with the new law.
>
> When it became apparent that the period between final enactment of the law and its effective date would not provide sufficient time for the normal rulemaking procedures, the Commission established the following schedule and procedures.
>
> The Commission has been meeting in public session since November 1, 1978, in order to discuss regulations drafted by the staff to implement the NGPA. Prior to the first meeting, the Commission made copies of the various proposals under consideration available to the public. As successive drafts were completed, these too were released prior to Commission discussion. During all of this period, certain members of the Commission staff were publicly designated as contact persons to answer legal and technical questions concerning the implementation of the Act.

> For other categories, pricing determinations must be made by State or Federal agencies with regulatory authority over the production of natural gas. Unless the interim regulations are available on December 1, 1978, members of the public whose sales are governed by provisions of the Act will not be able to ascertain the applicable maximum lawful price governing their sales of natural gas. Indeed, some sellers and transporters of natural gas could unknowingly be in technical violation of the law. Purchasers may be uncertain whether prices requested exceed the prices permitted under the law. Similarly, agencies which must make determinations with respect to eligibility for prices established by the Act must be made aware of Commission requirements applicable to these determinations, including the manner in which the Commission will review such determinations.
>
> After consideration of the problems associated with any delay in promulgating implementing regulations, the Commission has reached the conclusion that because the regulations must be effective by December 1, 1978, good cause exists to limit as described above notice and public procedure on this proposal. Full notice and public procedure on the proposal at this time, which as a practical matter would result in a delay of the effective date of the regulations beyond the effective date of the NGPA, are impractical and contrary to the public interest. It should be emphasized that all of the procedures described above will provide the fullest possible opportunity for public participation during the entire process leading to the promulgation of final regulations.

The Commission intends to promulgate interim regulations on November 27, 1978. The interim regulations will be effective on December 1. A 60-day comment period will be afforded with respect to the interim regulations and public hearings will be held. The interim regulations will, after the 60-day period and after all views received since November 1, 1978, have been considered, be modified to the extent such comments and the Commission's experience under the interim regulations indicate the modification is appropriate.

The proposal published today provides for a comment period ending on November 20. The Commission is aware that in view of the significance and complexity of these regulations, comments will be extensive. To the extent possible, comments received before November 20 will be reviewed and appropriate changes incorporated into the interim regulations. As stated above, all comments will be retained and considered together with the additional comments received during the 60-day period afforded for comments on the interim regulations. The Commission believes that to the extent practicable, the procedures being followed with respect to these regulations are those best designed to insure maximum public participation prior to the time when the interim regulations must be effective.

In establishing this notice and comment procedure, the Commission has considered a number of factors. Most important, as stated above, is the fact that most of the Act's provisions become effective on December 1, 1978, including provisions establishing maximum lawful prices applicable to first sales of natural gas delivered after November 30, 1978. Some of the prices which may be charged for natural gas deliveries under the Act are established by reference to existing prices.

CONSIDERATION OF COMMENTS

A substantial number of written comments have been received in response to the notice of proposed rulemaking. In addition, the staff met informally, prior to the close of the comment period, with representatives of state agencies, consumer groups, and the industries affected by the proposed regulations. A notice, describing these meetings and inviting any interested person to meet informally with designated members of the Commission staff was issued on November 17, 1978. Minutes of these informal meetings, together with any written materials presented at these meetings, have been included in the public file. All comments received by the Commission by November 20, 1978, and to the extent possible, comments received after that date, have been considered. In the limited time available to the Commission and its staff, changes in the regulations have been made. The major changes are noted in Section II of this preamble. The preamble also discusses a number of suggestions made in the comments which have not been incorporated into these regulations.

Because of the time limitation, some changes have been made, generally of a minor nature which are not discussed in the preamble, and the reasons for not

adopting some suggestions are not mentioned. To the extent possible, significant changes have been explained. The Commission wishes to emphasize that all comments will be retained and reconsidered with comments received as a result of this publication. Accordingly, suggested changes, deletions or additions, not adopted by the Commission in these rules, will, in light of additional information received in the next 60 days, be re-examined and possibly adopted as amendments to the interim regulations.

ADDITIONAL COMMENTS

In accordance with the procedures described below, the Commission solicits comments on all aspects of these interim regulations. It should be emphasized that the Commission intends to review the regulations in their entirety and make whatever changes it deems appropriate based on the comments already received, additional written comments, the views expressed in public hearings, and experiences under the regulations during the next 60 days.

Interested persons are invited to submit written comments on the regulations to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D. C. 20426. Comments should reference Docket No. RM79-3 on the outside of the envelope

and on all documents submitted to the Commission. To assist the Commission, it is requested that comments identify the section or subpart addressed, state whether the comments involve technical, legal, or policy matters, and if alternative approaches are suggested, provide proposed implementing language to the extent practicable.

Fifteen copies should be submitted. All comments and related information received by the Commission by January 31, 1979, will be considered prior to promulgation of revisions or amendments to these regulations.

PUBLIC HEARINGS

The Commission intends to hold a series of public hearings on these interim regulations, as required by section 502(b) of the NGPA. For the reasons stated above, however, the Commission finds that it is impracticable to provide an opportunity for oral presentation of data, views and arguments prior to the effective date of the regulations, and waives for 45 days the requirement of prior hearings under section 502(b). The dates and locations of the public hearings will be announced as soon as practicable.

EFFECTIVE DATE

As stated above, the Commission has determined that a delay of the effective date of the regulations beyond the effective date of the Natural Gas Policy Act is impractical and contrary to the public interest. Accordingly, the Commission finds that good cause exists for making the regulations effective on December 1, 1978.

(Natural Gas Act, as amended, 15 U.S.C. 717 et seq., Energy Supply and Environmental Coordination Act, 15 U.S.C. 791 et seq., Federal Energy Administration Act, 15 U.S.C. 761 et seq., Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350, Department of Energy Organization Act, P.L. 95-91, E.O. 12009, 42 F.R. 46267)

In consideration of the foregoing, Chapter I of Title 18, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Lois D. Cashell
Acting Secretary

PART 2 - GENERAL POLICY AND INTERPRETATIONS

1. Section 2.68 is amended by adding a new paragraph (c) to read as follows:

§ 2.68 Policy with respect to temporary emergency sales and deliveries of natural gas for resale in interstate commerce by persons with exemptions under the Natural Gas Act pursuant to section 1(c), and certain persons exempt under the Natural Gas Act pursuant to section 1(b).

* * * * *

(c) This section does not apply to any transaction other than an existing emergency transaction (as defined in § 157.46(i)).

PART 157 - APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

2. Section 157.22 is amended by amending a new paragraph (f) to read as follows:

§ 157.22 Exemption of temporary acts and operation.

* * * * *

(f) This section does not apply to any transaction other than an existing emergency transaction (as defined in § 157.46(i)).

3. Section 157.29 is amended by adding a new paragraph (e) to read as follows:

§ 157.29 Exemption of emergency sales or transportation.

* * * * *

(e) This section does not apply to any transaction which is not an existing emergency transaction (as defined in § 157.46(i)).

4. Part 157 is amended by adding new Subparts C (§§ 157.45 through 157.52) and D (§ 157.53), to read as follows:

SUBPART C -- EXEMPTION OF EMERGENCY SALE ARRANGEMENTS FOR NATURAL GAS FROM CERTIFICATE REQUIREMENTS

Sec.
157.45 Purpose and exclusion.
157.46 Definitions.
157.47 Exemptions from certificate requirements.
157.48 Terms and conditions of emergency transactions.
157.49 Rates for emergency transactions.
157.50 Treatment of revenues.
157.51 Reporting requirements for emergency transactions.
157.52 Waiver of requirements for emergency transactions.

§ 157.45 Purpose and exclusion.

(a) Purpose. The purpose of this subpart is to prescribe the conditions under which certain emergency transactions involving the construction and operation of facilities or the sale or transportation of natural

gas in interstate commerce are exempt from the requirements of section 7 of the Natural Gas Act. Requirements relating to certain arrangements for the transportation of natural gas, including transportation in emergency situations, are set forth in Part 284 of this chapter and apply to transportation for intrastate pipelines and certain local distribution companies including persons exempt from Natural Gas Act jurisdiction under section 1(c). Requirements relating to certain arrangements for the transportation of emergency natural gas by an interstate pipeline on behalf of another interstate pipeline and certain direct assignees of emergency natural gas are set forth in this subpart. This subpart also applies to certain arrangements for exchange of natural gas for emergency purposes.

(b) Exclusion. This subpart does not apply to existing emergency transactions.

§ 157.46 Definitions.

For purposes of this subpart:

(a) "Emergency" means:

(1) a situation where the gas supply either available or expected to be available would require the interstate pipeline company, distribution company, or person described in section 1(c) of the Natural Gas Act to impose curtailment on its system (including a situation where additional supplies

are necessary to maintain deliverability from storage or to replenish storage volumes in order to avoid or alleviate curtailment on its system);

(2) a sudden unanticipated (i) loss of natural gas supply or (ii) increase in demand; or

(3) a situation in which the qualified purchaser, in good faith, determines that immediate action is required or is reasonably anticipated to be required for protection of life or health or for maintenance of physical property.

(b) "Qualified seller" means any intrastate pipeline, interstate pipeline, distribution company or person described in section 1(c) of the Natural Gas Act.

(c) "Qualified purchaser" means a distribution company, interstate pipeline or person described in section 1(c) of the Natural Gas Act.

(d) "Interstate pipeline" means any natural gas company as defined in section 2(6) of the Natural Gas Act which is engaged in the transportation by pipeline of natural gas.

(e) "Distribution company" means any person (or governmental entity) who receives natural gas for local distribution and resale to natural gas users.

(f) "Intrastate pipeline" means any person (other than an interstate pipeline or distribution company)

engaged in the transportation by pipeline of natural gas.

(g) "Emergency natural gas" means natural gas sold or transported to alleviate an emergency in accordance with this subpart.

(h) "Sale of emergency natural gas" includes an exchange of natural gas to alleviate an emergency in accordance with this subpart between a qualified seller and qualified purchaser, provided that the volumes exchanged are paid back within 180 days after the termination of deliveries of emergency natural gas.

(i) "Existing emergency transactions" means a transaction under §§ 2.68, 157.22, or 157.29 pursuant to a contract executed:

(1) before November 9, 1978, in the case of a sale which is a first sale within the meaning of the Natural Gas Policy Act of 1978; or

(2) before December 1, 1978, in any other case.

§ 157.47 Exemptions from certificate requirements.

(a) Sales, construction and operation of facilities. Any qualified seller who sells emergency natural gas to a qualified purchaser, and any person who constructs or

operates facilities for the sale or transportation of emergency natural gas, is exempt from the requirements of section 7 of the Natural Gas Act, to the extent that:

(1) the sale of emergency natural gas or the construction or operation of facilities is necessary to alleviate an emergency; and

(2) the sale, construction or operation is conducted in accordance with the provisions of this subpart.

(b) Transportation. Any interstate pipeline transporting emergency natural gas on behalf of (1) any direct assignee described in § 157.48(d), or (2) another interstate pipeline, may engage in such transportation in accordance with this subpart without necessity of obtaining any other authorization for such transportation under section 7 of the Natural Gas Act.

(c) Jurisdiction of the Commission under the Natural Gas Act. Participation in any transaction in accordance with this subpart shall not subject any person to the jurisdiction of the Commission under the Natural Gas Act except to the extent provided in this subpart.

§ 157.48 Terms and conditions of emergency transactions.

(a) General conditions. (1) Qualified purchasers may purchase emergency natural gas in accordance with the provisions of this subpart but should make every reasonable attempt to conduct their operations in such a manner as to minimize or, if possible, to avoid continuing reliance upon emergency natural gas supplies.

(2) In applying the definition of emergency, flexibility will be accorded interstate pipelines and distribution companies to account for colder than normal winter weather. A reasonable relationship should exist between volumes purchased under this subpart and the volumes which are anticipated to be needed during the emergency.

(3) When a distribution company purchases, or a direct sale customer or distribution company requests assignment of emergency natural gas, a responsible official of the distribution company or direct sale customer shall advise the interstate pipeline which will make the deliveries, before commencement of the deliveries, that the emergency exists or is imminent and shall provide the interstate pipeline with such information as may be required within sufficient time to enable the interstate pipeline to make the reports required in § 157.51 of this subpart.

(b) Duration. (1) An emergency transaction under this subpart shall be limited to a period of not more than 60 consecutive calendar days, except that such transaction may be continued for an additional period of not more than 60 consecutive days where:

(i) fifteen days prior to the end of the initial 60-day period, the qualified purchaser files a petition requesting a waiver so as to permit one additional 60-day period of exemptions describing fully the continued emergency; and

(ii) the Commission does not, within the 15-day period, by order, prohibit continuation of the emergency transaction for such additional period.

(2) Transactions necessary for the pay back of volumes of natural gas exchanged for emergency natural gas, may occur within the 180-day period which follows the termination of deliveries of the emergency natural gas for which the pay back volumes are exchanged.

(c) Cost of facilities. No cost associated with facilities installed by interstate pipelines in connection with emergency transactions shall be included in the interstate pipeline's jurisdictional rates unless certificate authorization under section 7 of the Natural Gas Act exists or is obtained for such facilities.

(d) System supply and direct assignment of supplies. (1) Interstate pipelines may purchase emergency natural gas for general system supply for an emergency.

(2)(i) Interstate pipelines may purchase emergency natural gas and directly assign volumes and costs associated with such gas, including transportation costs, to its direct sale and distribution company customers, or persons described in section 1(c) of the Natural Gas Act, faced with an emergency, if such customers or persons comply with paragraph (a)(3) of this section.

(ii) An interstate pipeline, at its discretion, may choose to establish a separate account to cover the cost of all assigned emergency purchases and allocate costs in that account to the individual assignment customers or person described in section 1(c) of the Natural Gas Act on a weighted average cost basis. If an interstate pipeline purchases emergency gas supplies for direct assignment in quantities greater than related emergency requirements, then the balance may be used for general system supply. It is expected that such excess emergency natural gas volumes will be small and that pipelines will make every reasonable attempt to balance assignments with supplies. Interstate pipelines may also act as brokers or agents

(without compensation for acting as broker or agent) in acquiring and transporting emergency natural gas for distribution company customers, or persons described in section 1(c) of the Natural Gas Act, faced with an emergency and shall cooperate with these customers, or persons in arranging for such acquisition and transportation.

(iii) In the case of any direct assignment of emergency natural gas or brokered or agency transaction, the customer or person for whom the natural gas is acquired and transported shall be responsible for providing volumes for compressor station fuel and lost and unaccounted for volumes of natural gas.

§ 157.49 Rates for emergency transactions.

(a) Rates and charges. (1) Rates for transportation by an interstate pipeline under this subpart shall be computed in accordance with subparagraph (2) of this paragraph. Sales by interstate pipelines shall be made at rates prescribed in their tariffs, except that if the natural gas is purchased for assignment to particular direct customers, distribution companies, or persons described in section 1(c) of the Natural

Gas Act, the natural gas will be priced to recover the cost of purchased gas plus an amount for transportation as provided in subparagraph (2) of this paragraph.

(2)(i) If an interstate pipeline has on file with the Commission a transportation rate schedule applicable to transportation arrangements under Subpart A of Part 284, the interstate pipeline shall use the rates contained in that schedule.

(ii) if an interstate pipeline does not have on file with the Commission a transportation rate schedule applicable to transportation arrangements under Subpart A of Part 284, the interstate pipeline may elect either:

(A) to base its rates upon the methodology and cost used in designing rates to recover the transmission and related storage costs included in its then effective sales rate schedules; or

(B) to use the rates contained in a transportation rate schedule on file with the Commission which the interstate pipeline determines covers service comparable to transportation service under Subpart A of Part 284.

(b) Presumption of prudence. The Commission will examine the prudence of emergency purchases by interstate pipelines, except that a rebuttable presumption of prudence

shall be accorded to the extent that the rates paid do not exceed the maximum lawful price specified in § 271.202 of this chapter.

§ 157.50 Treatment of revenues.

(a) General. Except as provided in paragraphs (b) (c),(d), and (e), an interstate pipeline shall credit to Account No. 191 all revenues, received from emergency transactions in excess of the sum of (1) the cost of purchased gas, plus (2) one cent per Mcf, for any such volumes of natural gas transported, sold or assigned.

(b) Direct assignments. An interstate pipeline purchasing emergency natural gas for direct assignment will not be required to credit to Account No. 191 revenues pursuant to paragraph (a) to the extent the pipeline can show that:

(1) its currently effective rates are based upon billing determinants which include a representative level of sales associated with assigned volumes; or

(2) its currently effective rates reflect a representative level of revenues associated with sales of assigned volumes which have been credited to the cost of service.

(c) Transportation. An interstate pipeline providing transportation of emergency natural gas will not be required to credit revenues to Account No. 191 pursuant to paragraph (a):

(1) to the extent revenues attributable to such services fall within representative levels which have been credited in arriving at a test period cost of service; or

(2) to the extent that volumes transported fall within representative levels which have been included in billing determinants for the purpose of establishing rates.

(d) An interstate pipeline selling emergency natural gas will not be required to credit revenues to Account No. 191 pursuant to paragraph (a) to the extent the pipeline can show that:

(1) its currently effective sales rates are based upon billing determinants which include a representative level of sales associated with emergency natural gas volumes; or

(2) its currently effective sales rates reflect a representative level of revenues associated with sales of emergency natural gas volumes which have been credited to the cost of service.

(e) Actual expenses. An interstate pipeline will not be required to credit to Account No. 191 any amount in excess of one cent per Mcf if the pipeline demonstrates upon application to the Commission that the amount is necessary to compensate for actual out-of-pocket expenses incurred by reason of engaging in the emergency transaction.

§ 157.51 Reporting requirements for emergency transactions.

(a) Initial reports. Within 48 hours after commencement of deliveries of emergency natural gas, the interstate pipeline shall notify the Commission in writing of the sale, stating the specific nature and duration of the emergency; the amount of emergency natural gas to be purchased or transported on a daily basis; the name of the seller, transporter, and any person to whom the emergency natural gas is to be assigned; and the price.

(b) Quarterly reports. For any calendar quarter during which an interstate pipeline engages in any transaction for emergency natural gas, the interstate pipeline shall file with the Commission, within thirty days after the end of each calendar quarter occurring in 1979, whether the transactions are completed or in progress, a sworn statement and four conformed copies thereof, which shall include the following information:

(1) identification of each emergency transaction completed or in progress;

(2) the volumes of emergency natural gas delivered during the quarter under each transaction;

(3) the total revenue or other compensation received by each seller for each emergency transaction during the quarter;

(4) the total amount of revenue or other compensation received for each emergency transaction during the quarter;

(5) the charges and the methods by which the pipeline determined compensation for the transportation of assigned emergency gas;

(6) information relied on to determine eligibility for each transaction;

(7) the volumes of emergency natural gas included in system supply;

(8) a statement from a responsible company official attesting that the activities of the interstate pipeline were carried out in accordance with the requirements of this subpart and to the best of his or her knowledge, an emergency did exist or was reasonably anticipated, and a sworn statement from a responsible company official of each purchasing distribution company or each direct sale customer or distribution company which requested the assignment of emergency supplies describing the emergency circumstances as required by § 157.48(a)(3).

§ 157.52 Waiver of requirements for emergency transactions.

The Commission may by order waive the requirements of this subpart in connection with any emergency transaction to the extent required by the public interest.

SUBPART D - EXEMPTION OF NATURAL GAS SERVICE FOR DRILLING, TESTING, OR PURGING FROM CERTIFICATE REQUIREMENTS

§ 157.53 Drilling of gas or oil wells and testing or purging of new natural gas pipeline facilities.

(a) Construction and operation of facilities necessary to render direct natural gas service for use in the drilling of gas or oil wells or for the use in the testing and purging of new natural gas pipeline facilities are exempted from the certificate requirements of section 7(c) of the Natural Gas Act, when the construction and operation of such facilities are conducted in accordance with paragraph (b) of this section.

(b) Operations undertaken to render direct natural gas service shall be terminated upon the completion of the well or the purging or testing of the pipeline facilities. Persons undertaking any construction or operation of facilities or service under this section shall file an original and two copies of an annual statement, by February 1 of each year, describing their activities hereunder.

5. Chapter I of Title 18 is amended by adding new Subchapters H and I to read as follows:

SUBCHAPTER H - REGULATION OF NATURAL GAS SALES UNDER THE NATURAL GAS POLICY ACT OF 1978

Part
270 Rules generally applicable to regulated sales of natural gas.
271 Ceiling prices.
272 [Reserved]
273 Collection authority; refunds.
274 Determinations by jurisdictional agencies.
275 Commission determinations and review of jurisdictional agency determinations.
276 Reports.

PART 270 - RULES GENERALLY APPLICABLE TO REGULATED SALES OF NATURAL GAS

Subpart A - General Rules and Definitions

Sec.
270.101 Application of ceiling prices to first sales of natural gas.
270.102 Definitions.
270.103 Effective date.

Subpart B - Special Rules

Sec.
270.201 First sale of natural gas subject to differing maximum lawful prices.
270.202 Resales.
270.203 Pipeline or distributor production.
270.204 Btu content per unit volume of natural gas.
270.205 Indefinite price escalator clauses.

Authority: This part is issued under the Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350.

SUBPART A - GENERAL RULES AND DEFINITIONS

§ 270.101 Application of ceiling prices to first sales of natural gas.

(a) Maximum lawful price. It is unlawful for any person to sell natural gas at a first sale price in excess of the highest maximum lawful price applicable to such gas under Part 271.

(b) Effect of maximum lawful price on contract price. If the price established under a contract for the first sale of natural gas does not exceed the applicable maximum lawful price, then such maximum lawful price does not supersede or nullify the effectiveness of the price established under such contract.

(c) Maximum lawful prices requiring jurisdictional agency determinations. Except to the extent that a seller is authorized to make interim collection under Part 273, any price specified in any of the following subparts of Part 271 applies to a first sale of natural gas only if a determination by a jurisdictional agency that such gas qualifies under such subpart has become final in accordance with Parts 274 and 275:

(1) Subpart B (relating to new natural gas and certain OCS gas);

(2) Subpart C (relating to new, onshore production wells);

(3) Subpart G (relating to high-cost natural gas); and

(4) Subpart H (relating to stripper well natural gas).

(d) Other categories of natural gas. (1) Certain committed or dedicated natural gas. The maximum lawful prices under Subpart D of Part 271 (relating to certain committed or dedicated natural gas) apply to a first sale to the extent provided in such subpart, if the applicable filing requirements under §§ 154.92 and 154.94 of this chapter are met.

(2) Existing intrastate contracts; intrastate rollover contracts; certain other categories. The maximum lawful prices under Subparts E, F, and I of Part 271 (relating to existing intrastate contracts, intrastate rollover contracts, and certain other categories of natural gas) apply to first sales of natural gas without requirement of a prior determination by the Commission or a jurisdictional agency.

(e) Refund obligations. Any collection of a first sale price under this subchapter is subject to any refund obligation which may be applicable under Part 273 or under otherwise applicable law or regulation.

§ 270.102 Definitions.

(a) NGPA definitions. Terms defined in the NGPA shall have the same meaning for purposes of this subchapter as they have under the NGPA, unless further defined in this subchapter.

(b) Subchapter H definitions. For purposes of this subchapter:

(1) "NGPA" means the Natural Gas Policy Act of 1978.

(2) "British thermal unit" or "Btu" means the quantity of heat required to raise the temperature of one pound avoirdupois of pure water from 58.5 degrees to 59.5 degrees Fahrenheit, determined in accordance with § 270.204.

(3) "MMBtu" means million British thermal units.

(4)(i) Except as provided in clause (ii), "production in commercial quantities" means production of natural gas from a well or reservoir which is either: (A) sold and delivered to one other than the operator; or (B) (subject to § 271.204(e)) retained by the operator, or any owner of the production at severance, for beneficial economic use.

(ii) Natural gas used for the testing of natural gas wells or for other field uses which are production related shall not be considered produced in commercial quantities.

(iii) Any of the following information may be considered as evidence of sale and delivery, or production for the operator's or other owner's beneficial economic use:

(A) payment of severance taxes;

(B) payment of royalties;

(C) production reports filed with a jurisdictional agency;

(D) a sales contract together with verification by a purchaser that natural gas had been delivered and paid for under the contract; or

(E) any other substantial evidence that production has been sold and delivered, or retained for the beneficial use of the operator or other owner of production at severance.

(5) "Crude oil" means a mixture of hydrocarbons that exists in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities.

(6) "Surface location" means the point on the earth's surface from which drilling of a well is commenced, except that in the case of a well drilled in permanent surface waters, surface location means the point of penetration of the earth's surface immediately below the water's surface, beneath a floating or fixed drilling structure.

(7) "OCS" means the Outer Continental Shelf as defined in section 2(35) of the NGPA.

(8) "Existing intrastate contract" means any intrastate contract for the first sale of natural gas in existence on November 8, 1978. A contract is in existence on November 8, 1978 if on that date, there is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. For the purposes of this subchapter "existing intrastate contract" includes a "successor to an existing intrastate contract."

(9) "Successor to an existing intrastate contract" means any intrastate contract, other than an intrastate rollover contract, entered into on or after November 9, 1978, for the first sale of natural gas which was previously subject to an existing contract, whether or not there is an identity of parties or terms with those of such existing contract. The term "successor to an existing intrastate contract" includes a contract the primary term of which has not expired but which has been assigned to a different party in interest.

(10) "Intrastate contract" means any contract applicable to the sale of natural gas which was not committed or dedicated to interstate commerce on November 8, 1978.

(11) "Intrastate rollover contract" means any contract, entered into on or after November 9, 1978, for the first sale of natural gas that was previously subject to an existing intrastate contract which expired at the end of a fixed term (not including any extension thereof taking effect on or after November 9, 1978), specified by the provisions of such existing contract, as such contract was in effect on November 9, 1978, whether or not there is an identity of parties or terms with those of such existing contract.

(12) "Jurisdictional agency" means the state or federal agency identified in Subpart E of Part 274.

§ 270.103 Effective date.

The provisions of this subchapter apply to deliveries of natural gas on or after December 1, 1978.

SUBPART B - SPECIAL RULES

§ 270.201 First sale of natural gas subject to differing maximum lawful prices.

In the case of a first sale of any quantity of natural gas (a) which is sold at a single price, and (b) which is comprised of various volumes of natural gas to which different maximum lawful prices are applicable, the maximum lawful price for such sale shall be the average of such maximum lawful prices (weighted according to the respective volumes of gas subject to different maximum lawful prices).

§ 270.202 Resales.

(a) General rule. In the case of any first sale of natural gas which is a resale of such gas, the maximum lawful price shall be the higher of:

(1) the maximum lawful price which would be applicable to such sale if it were not a resale; or

(2) whichever of the following is applicable:

(i) in the case of natural gas which when sold to the reseller was subject to a single maximum lawful price, the maximum lawful price applicable to the natural gas sold to the reseller; or

(ii) in the case of natural gas which when sold to the reseller was subject to more than one maximum lawful price,

the average of the maximum lawful prices applicable to the natural gas sold to the reseller (weighted according to the volumes of the purchased natural gas that are subject to the different maximum lawful prices).

(b) Special rule for interim collections.

(1) If the price charged and collected for a sale to a reseller is charged and collected under the authority of Part 273 (relating to interim collection), then:

(i) the price authorized to be collected by Part 273 shall be treated as a maximum lawful price for purposes of paragraph (a)(2); and

(ii) the price charged and collected by the reseller shall be subject to the same refund conditions as are imposed on the person who sold the natural gas to the reseller under Part 273.

(2) The reseller is not obligated by Part 273 to make any filings with the Commission if the person who sold the natural gas to the reseller has made the filings required by Part 273.

(c) Allowances. A resale of natural gas shall not be considered to exceed any maximum lawful price established in paragraph (a) of this section if it exceeds such price to the extent necessary to recover state severance taxes or production-related costs which are borne by the reseller and

recovery of which is authorized under Subpart K of Part 271. If a price for a first sale to a reseller of natural gas is not considered to exceed the applicable maximum lawful price applicable to such sale by reason of an amount allowed under Subpart K, then for purposes of applying paragraph (a)(2), the maximum lawful price applicable to the sale to the reseller shall be considered to include the amount so allowed.

(d) Adjustments. Pursuant to section 502(c) of the NGPA, a reseller may apply to the Commission for an adjustment of the maximum lawful price in paragraph (a) of this section on the grounds that such price results in special hardship, inequity or an unfair distribution of burdens.

(e) Definition. For purposes of this section:

(1) "Resale" of natural gas means the sale of natural gas, all or a portion of which was both purchased and resold in transactions which are first sales as defined in the NGPA.

(2) A "reseller" means the seller in a resale of such natural gas.

(f) Record retention. In addition to any records required to be retained by reason of an election made under § 276.101(b), resellers shall maintain such records as are sufficient to demonstrate that prices charged in connection

with resales of natural gas do not exceed the maximum lawful prices prescribed in this section. Such records shall include:

(1) a record of each resale of natural gas by the reseller, including the identity of the purchaser and the volume and price of such sale;

(2) a record of each sale of natural gas to the reseller including the volume and price of such sale;

(3) a copy of each contract covering the purchase and sale of natural gas resold; and

(4) a record of the method by which the reseller computes the maximum lawful price applicable to each resale and the documents relied on to make the computations.

(g) Period for keeping records. Each reseller required to maintain records under this section shall maintain and preserve contracts for at least three years after expiration and such other records for at least three years after the date of the relevant transaction or event.

§ 270.203 Pipeline or distributor production.

(a) Attribution rule. For purposes of applying section 2(21)(B) of the NGPA, a sale by a pipeline or

distributor is a sale of natural gas attributable to volumes of natural gas produced by such pipeline or distributor (or affiliate thereof) to the extent such sale is a sale comprised of production volumes from identifiable wells, properties, or reservoirs which are owned by such pipeline or distributor (or affiliate thereof).

(b) Circumvention rule. To the extent a sale of natural gas by a pipeline or distributor is comprised of production volumes from identifiable wells, properties, or reservoirs and a portion of those volumes is produced from wells, properties, or reservoirs owned by such pipeline or distributor (or affiliate thereof), then such sale shall be treated as a first sale pursuant to the Commission's authority under section 2(21)(A)(v) of the NGPA unless:

(1) the price at which such natural gas is sold is regulated pursuant to the Natural Gas Act or is regulated or subject to regulation by a state agency; or

(2) the Commission, on application, has determined not to treat such sale as a first sale.

(c) Definitions. For purposes of this section:

(1) "Pipeline or distributor" means an interstate pipeline, an intrastate pipeline, a local distribution company, or an affiliate of any of the above.

(2) "State agency" means a state, a political subdivision of a state, or an agency or instrumentality of either.

§ 270.204 Btu content per unit volume of natural gas.

For purposes of determining the number of Btu's per unit volume of natural gas, the Btu content of one cubic foot of natural gas is the number of Btu's produced by the combustion, at constant pressure, of the amount of gas which would occupy a volume of 1.0 cubic foot at a temperature of 60 degrees Fahrenheit, saturated with water vapor and under a pressure equivalent to that of 30.00 inches of mercury at 32 degrees Fahrenheit, and under standard gravitational force (980.665 centimeters per second squared) with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of the gas and air and when the water formed by combustion is condensed to the liquid state.

§ 270.205 Indefinite price escalator clauses.

(a) The establishment of maximum lawful prices under the NGPA shall not trigger indefinite price escalator clauses in existing intrastate or interstate contracts.

(b) For purposes of this section, the term

"indefinite price escalator clause" shall have the same meaning as provided in section 105(b)(3)(B) of the NGPA.

PART 271 - CEILING PRICES

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Authority: This part is issued under the Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350.

SUBPART A - SUMMARY TABLES AND CALCULATIONS

§ 271.101 Ceiling prices for certain categories of natural gas.

(a) Subparts B through J of this part specify maximum lawful prices applicable to first sales of natural gas. Maximum lawful prices for Subparts B, C, G, H, and I, and for certain categories of natural gas under Subpart D, are determined in accordance with price tables which appear in those subparts and which are summarized in the following tables:

Table I - Summary of certain gas ceiling prices

(Prices in $/MMBtu)

Subpart A of Part 271	NGPA Section	Category of Gas	Maximum Lawful Price for Deliveries made in: December 1978	January 1979
B	102	New Natural Gas, Certain OCS Gas	$2.078	$2.096
C	103	New Onshore Production Wells	1.969	1.980
G	107	High Cost (below 15,000 only)	2.078	2.096
H	108	Stripper	2.224	2.243
I	109	Not Otherwise Covered	1.630	1.639

Table II - Certain gas committed or dedicated to interstate commerce on November 8, 1978.

Subpart of Part 271	NGPA Section	Category of Natural Gas	Type of Sale or Contract	Maximum lawful Price per MMBtu for Deliveries Made in: December 1978	January 1979
D	104	Post-1974 gas	All producers	$1.630	$1.639
		1973-1974 biennium gas	Small producer	1.379	1.387
			Large producer	1.058	1.064
	106(a)	Interstate Rollover gas	Small producer	0.702	0.715
			Large producer	0.603	0.607
	104	Replacement contract gas or recompletion gas	Small producer	0.771	0.775
			Large producer	0.593	0.596
		Flowing gas	Small producer	0.393	0.395
			Large producer	0.332	0.334
		Certain Permian Basin gas	Small producer	0.462	0.465
			Large producer	0.405	0.407
		Certain Rocky Mountain gas	Small producer	0.462	0.465
			Large producer	0.393	0.395
		Certain Appalachian Basin gas	North subarea contracts dated after 10-7-69	0.368	0.370
			Other contracts	0.344	0.346
		Minimum rate gas	All producers	0.203	0.204

(b) Caveat. The tables in paragraph (a) of this section are summaries of applicable maximum lawful prices and may not be relied upon to establish qualification for a particular price. The seller should examine the other provisions of this subchapter in order to ascertain whether the natural gas in question qualifies for the price appearing in the table or some other price.

(c) Cross reference. For maximum lawful prices applicable to natural gas sold under existing intrastate contracts or intrastate rollover contracts, see Part 271, Subparts D and F.

§ 271.102 Calculation of inflation adjustment for certain maximum lawful prices.

(a) Maximum lawful prices for first sales of certain categories of natural gas to which Subparts D, E, and F apply are to be calculated in the following manner:

(1) Determine the base price applicable for the base month.

(2) For the month following the base month, multiply the inflation adjustment applicable for such following month by the base price.

(3) For each succeeding month (through the month of delivery), multiply the inflation adjustment applicable for

such succeeding month by the price calculated under this paragraph for the prior month.

(b) The price determined for each month under paragraph (a) shall be rounded to the nearest mill (rounding to the next highest mill only that fraction which is one-half a mill or greater).

(c) Inflation adjustment. The following table contains the inflation adjustment applicable for each month beginning with May 1977, and ending with January 1979:

Table III - Inflation adjustment.

Month of Delivery	Factor by which price in preceding month is multiplied
1977	
May	1.00636
June	1.00636
July	1.00431
August	1.00431
September	1.00431
October	1.00463
November	1.00463
December	1.00463
1978	
January	1.00597
February	1.00597
March	1.00597
April	1.00889
May	1.00889
June	1.00889
July	1.00581
August	1.00581
September	1.00581
October	1.00581
November	1.00581
December	1.00581
1979	
January	1.00581

(d) Definitions. For purposes of this section:

(1) "base price" means:

(i) for maximum lawful prices to be calculated under § 271.402(d)(1) (relating to certain committed or dedicated gas), the just and reasonable rate for April 20, 1977;

(ii) for maximum lawful prices to be calculated under § 271.502(b)(2) (relating to certain existing intrastate contracts), the contract price per MMBtu on November 9, 1978; and

(iii) for maximum lawful prices to be calculated under § 271.602(a)(1) (relating to certain rollover contracts), the contract price per MMBtu under the expired contract for the month in which the effective date of the rollover contract occurs.

(2) "base month" means:

(i) April 1977, for maximum lawful prices under § 271.402(c)(1);

(ii) November 1978, for maximum lawful prices under § 271.502(b)(2); and

(iii) the month in which the effective date of the rollover contract occurs, for maximum lawful prices under § 271.602(a)(1).

SUBPART B - NEW NATURAL GAS AND CERTAIN NATURAL GAS PRODUCED FROM THE OUTER CONTINENTAL SHELF

§ 271.201 Applicability.

This subpart implements section 102 of the NGPA and applies to the first sale of:

(a) new natural gas; or

(b) natural gas produced from a new OCS reservoir on an old OCS lease.

§ 271.202 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
December 1978	$ 2.078
January 1979	$ 2.096

§ 271.203 Definitions.

For purposes of this subpart:

(a) "New natural gas" means natural gas which a jurisdictional agency has determined, in accordance with Parts 274 and 275, to be new natural gas (as defined in section 102(c) of the NGPA).

(b) "Natural gas from a new OCS reservoir on an old OCS lease" means natural gas which the jurisdictional agency determines, in accordance with Parts 274 and 275 and under section 102(d)(2), (3), (4), and (5) of the NGPA, to be natural gas produced from a reservoir which is on an old lease on the OCS and which was not discovered before July 27, 1976.

(c) "OCS lease" means a lease of submerged acreage which is entered into with the Secretary of the Interior under the Outer Continental Shelf Lands Act, as amended, (43 U.S.C. 1331, et seq.).

(d) "New OCS lease" means an OCS lease entered into by the Secretary of the Interior on or after April 20, 1977.

(e) "Old OCS lease" means an OCS lease other than a new OCS lease.

§ 271.204 Special rules.

(a) Vertical measurement of 1,000 feet between completion locations. For the purpose of determining under section 102(c)(1)(B)(ii) of the NGPA the vertical distance between the deepest marker well completion location and a new well completion location, for which a determination is sought, measurement shall be the true vertical depth from the highest perforation point of such marker well completion location to the highest perforation point in the new well completion location. In the case of any well which is an open-hole completion, measurement shall be from the highest elevation point within the well bore of the reservoir being produced.

(b) Capable of producing in paying quantities. For purposes of section 102(d)(2)(B)(i) and (ii) of the NGPA, a reservoir is capable of producing in paying quantities if a well completed therein can reasonably be expected to produce natural gas in quantities sufficient to yield revenues in excess of operating costs.

(c) Commercially producible. For purposes of section 102(d)(2)(B)(iii) of the NGPA, a reservoir is commercially producible if a well completed therein can reasonably be expected to produce natural gas in commercial quantities as defined in § 270.102(b)(4).

(d) Suitable facilities. For purposes of section 102(c)(1)(C)(iii)(II) of the NGPA (but subject to section 102(c)(1)(C)(iv) thereof), suitable facilities for the production and delivery of natural gas described in section 102(c)(1)(C)(iii)(I) of the NGPA were in existence on April 20, 1977, if on that date facilities for the production and delivery of natural gas to a pipeline were:

(1) installed; or

(2) substantially installed and additional facilities necessary for such production and delivery were readily available and could have been installed by April 20, 1977.

(e) Production in commercial quantities. For purposes of determining whether production of natural gas in commercial quantities has occurred under section 102(c)(1)(C) of the NGPA:

(1) a rebuttable presumption exists that production from a reservoir in commercial quantities has not occurred if natural gas has not been sold and delivered from such reservoir before April 20, 1977. Such presumption may be rebutted by evidence of retention of the natural gas by the operator, or owner of the production at severance, for beneficial economic use; and

(2) quantities of natural gas sold in interstate commerce (within the meaning of the Natural Gas Act) before November 9, 1978, shall not be taken into account if such sales were made:

(i) under section 6 of the Emergency Natural Gas Act of 1977; or

(ii) under the emergency sale authority pursuant to Opinion 699-B, issued by the Commission under section 7(c) of the Natural Gas Act.

SUBPART C - NEW, ONSHORE PRODUCTION WELLS

§ 271.301 Applicability.

This subpart implements section 103 of the NGPA and applies to the first sale of natural gas produced from a new, onshore production well.

§ 271.302 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
December 1978	$ 1.969
January 1979	$ 1.980

§ 271.303 Definition of new, onshore production well.

For purposes of this subpart, the term "new, onshore production well" means a well which a jurisdictional agency has determined, in accordance with Parts 274 and 275, to be a new, onshore production well (as defined in section 103(c) of the NGPA).

§ 271.304 Waivers of well-spacing requirements.

If a jurisdictional agency alters, or grants a waiver of, any applicable well-spacing requirements prior to the commencement of surface drilling of the well for which a determination is sought, the new well shall be deemed to satisfy any applicable Federal or State well-spacing requirements as required by section 103(c)(2) of the NGPA.

§ 271.305 Special rule applicable to existing proration units.

(a) Applicability. This section applies to a jurisdictional agency determination with respect to a new well which is drilled:

(1) within a proration unit in existence at the time the surface drilling of such new well began; and

(2)(i) to a reservoir to which the proration unit applies and from which natural gas either was or is being produced in commercial quantities through an existing well or (ii) to a reservoir to which the proration unit applies and from which natural gas was capable of being produced in commercial quantities through a well, the surface drilling of which commenced prior to February 19, 1977.

(b) Wells spudded after December 31, 1978, and for which a drilling permit had not been issued prior to January 1, 1979. (1) This paragraph applies to wells to which this section applies and:

(i) for which a drilling permit is issued after December 31, 1978; or

(ii)(A) the surface drilling of which began after December 31, 1978; and

(B) for which a drilling permit had not been issued prior to January 1, 1979.

(2) In order for natural gas from a well to which this paragraph applies to qualify for the maximum lawful price under this subpart, the jurisdictional agency must find, prior to the commencement of drilling, that the well is necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit which cannot be effectively and efficiently drained by any existing well within the proration unit. Such finding must be explicit and must involve either a redefinition of the boundaries of the previously existing proration unit or an alteration of or exception to otherwise applicable well-spacing rules.

(c) Wells spudded after February 19, 1977, and before January 1, 1979, or for which a drilling permit was issued before January 1, 1979. (1) This paragraph applies to wells to which this section applies and:

(i) the surface drilling of which began on or after February 19, 1977, and before January 1, 1979; or

(ii) for which a drilling permit was issued before January 1, 1979.

(2) Upon request of an applicant for a determination for a well to which this paragraph applies, the jurisdictional agency shall review the record which was developed prior to the commencement of drilling of (in the case of a well described in subparagraph (1)(i) of this paragraph) or the issuance of the drilling permit for (in the case of a well described in subparagraph (1)(ii) of this paragraph) the well for which the determination is sought. In order for natural gas from such well to qualify for the maximum lawful price under this subpart, the jurisdictional agency must make a finding based on such review that prior to the commencement of drilling or the issuance of the drilling permit:

(i) the agency explicitly found that the drilling of the new well was necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit which could not be effectively and efficiently drained by any existing well within the proration unit; or

(ii) the agency implicitly made such finding and the record developed by such agency before commencement of drilling would support an explicit finding that the drilling of the new well was necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit which could not be effectively and efficiently drained by any existing well within the proration unit.

(d) Notice of findings.. If the jurisdictional agency makes a finding under paragraph (b) or (c) of this section, it shall notify the Commission of such a determination in accordance with § 274.104.

SUBPART D - NATURAL GAS COMMITTED OR DEDICATED TO INTERSTATE COMMERCE

§ 271.401 Applicability.

This subpart implements sections 104 and 106(a) of the NGPA and applies to the first sale of natural gas committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate under the Natural Gas Act was in effect on November 8, 1978, for the sale of such gas.

§ 271.402 Maximum lawful prices.

(a) Ceiling prices. Unless a different rate is applicable under paragraph (d), the maximum lawful price for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

NGPA Section	Category of Natural Gas	Type of Sale or Contract	Maximum Lawful Price per MMBtu for Deliveries made in: December 1978	January 1979
104	Post-1974 gas	All producers	$1.630	$1.639
104	1973-1974 biennium gas	Small producer	1.379	1.387
		Large producer	1.058	1.064
106(a)	Interstate rollover gas	Small producer	0.702	0.715
		Large producer	0.603	0.607
104	Replacement contract gas or recompletion gas	Small producer	0.771	0.775
		Large producer	0.593	0.596
	Flowing gas	Small producer	0.393	0.395
		Large producer	0.332	0.334
	Certain Permian Basin gas	Small producer	0.462	0.465
		Large producer	0.405	0.407
	Certain Rocky Mountain gas	Small producer	0.462	0.465
		Large producer	0.393	0.395
	Certain Appalachian Basin gas	North subarea contracts dated after 10-7-69	0.368	0.370
		Other contracts	0.344	0.346
	Minimum rate gas	All producers	0.203	0.204

(b) Definitions. For the purposes of this section:

(1) "Post-1974 gas" means natural gas to which this subpart applies which is produced from a well the surface drilling of which commenced on or after January 1, 1975.

(2) "1973-1974 biennium gas" means natural gas, to which this subpart applies, from a well the surface drilling of which commenced on or after January 1, 1973, and prior to January 1, 1975.

(3) "Interstate rollover gas" means:

(i) natural gas to which this subpart applies which is sold under a rollover contract as defined in section 2(12) of the NGPA; or

(ii) natural gas to which this subpart applies which is sold under a contract which would have been a rollover contract, but for the fact that the expiration of the previous contract occurred prior to November 9, 1978.

(4) "Replacement contract gas or recompletion gas" means natural gas to which this subpart applies which is:

(i) sold under a replacement contract which was executed on or after January 1, 1973, but prior to November 9, 1978, where the prior contract expired by its own terms prior to January 1, 1973; or

(ii) sold under a replacement contract executed prior to November 9, 1978, where the prior contract expired by its own terms after January 1, 1973; or

(iii) sold under a contract for the sale of natural gas from a well commenced prior to January 1, 1973, and

not sold in interstate commerce prior to January 1, 1973, (excluding gas sold prior to such date under §§ 2.68, 2.70, 157.22 or 157.29 of this chapter); or

(iv) produced as a result of a completion operation into a different formerly nonproductive reservoir, commenced on or after January 1, 1973, and produced through a well commenced prior to January 1, 1973.

(5) "Certain Permian Basin gas" means natural gas (other than replacement contract gas or recompletion gas) to which this subpart applies and which is produced in the Permian Basin Area, as defined in FPC Opinion No. 662 (50 F.P.C. 390 at 400-401) and is sold pursuant to a contract executed on or after October 1, 1968.

(6) "Certain Rocky Mountain gas" means natural gas (other than replacement contract gas or recompletion gas) to which this subpart applies and which is produced in the Rocky Mountain Area, as defined in § 154.109(b) of this chapter and sold pursuant to a contract executed on or after October 1, 1968.

(7) "Certain Appalachian Basin gas" means natural gas (other than replacement contract gas or recompletion gas) to which this subpart applies and which is produced by a large producer either (i) in the south subarea under

contracts dated after October 7, 1969, or (ii) in the north subarea, of the Appalachian Basin Area, as defined in § 154.107 of this chapter.

(8) "Flowing gas" means natural gas to which this subpart applies (other than natural gas described in the preceding subparagraphs of this paragraph) produced from a well the surface drilling of which commenced prior to January 1, 1973.

(9) "Minimum rate gas" means natural gas to which this subpart applies produced from a well the surface drilling of which commenced prior to January 1, 1973, and which is sold pursuant to a contract providing for a fixed rate lower than that applicable to such gas under paragraph (a).

(10) A sale qualifies as a small producer sale under this subpart: (i) if it is a small producer sale (as defined in § 157.40(a)) covered by a blanket certificate under § 157.40(b) and (d), or (ii) if it is a sale by a large producer from small producer reserves, and such sale is entitled to the small producer rate under § 157.40(f)(2).

(11) A large producer sale is a first sale which does not qualify as a small producer sale under subparagraph (10) of this paragraph.

(c) Applicable higher rates.

(1) If a just and reasonable rate in effect on April 20, 1977, under §§2.56a(g), 2.56(h), 2.76, or 2.77 of this chapter was applicable on November 30, 1978, to a first sale of natural gas, then such rate (plus an inflation adjustment from April, 1977, determined in accordance with § 271.102), if higher, shall apply in lieu of the rate determined under paragraph (a).

(2) Any just and reasonable rate for a sale of natural gas which was established by the Commission after April 20, 1977, and before November 9, 1978, shall be the maximum lawful price applicable to such sale if higher than the otherwise applicable rate prescribed under paragraph (a) or (d)(1) of this section.

(3) Any seller seeking to charge a rate in excess of the applicable maximum lawful price described in paragraph (a), or (d)(1), or (d)(2) of this section must first file a petition seeking special relief pursuant to § 1.7(b) of this chapter fully justifying the relief sought. Such seller may not file a rate increase for, or charge or collect any rate in excess of the maximum lawful price otherwise applicable under this section unless the Commission has granted such petition for special relief.

§ 271.403 Special rule regarding carrying charge adjustment for advance payments.

The rate prescribed in § 271.402 for post-1974 gas to which Opinion No. 770-A applies shall be subject to a deduction of 83 cents per MMBtu as a carrying charge adjustment if the seller has accepted advance payments on or after 1:00 p.m., EST, November 5, 1976, under an advance payments contract with an interstate pipeline company and such pipeline company has received rate base treatment of such advance payments made. The resulting adjusted rate shall be employed in the discharge of the obligations of any advance payments after 1:00 p.m., EST, November 5, 1976, for all deliveries until an amount of natural gas has been delivered at the adjusted rate such that the total carrying charge credits equal the amounts lawfully collected by the jurisdictional pipeline company as a result of including the advance payments in rate base.

SUBPART E - SALES UNDER EXISTING INTRASTATE CONTRACTS

§ 271.501 Applicability.

This subpart implements section 105 of the NGPA and applies to the first sale of natural gas under an existing intrastate contract or under a successor to an existing intrastate contract. This subpart is not applicable to sales made under an intrastate rollover contract as defined in § 270.102(b)(11) of this part.

§ 271.502 Maximum lawful prices.

(a) November 9, 1978, contract price at or below $2.060 per MMBtu. In the case of a first sale of natural gas to which this subpart applies (other than a first sale to which paragraph (b) applies), the maximum lawful price for natural gas delivered in any month shall be the lower of:

(1) the price for such month under the terms of the existing intrastate contract to which such natural gas was subject on November 9, 1978, as such contract was in effect on November 9, 1978; or

(2) the maximum lawful price per MMBtu for such month under § 271.202 (relating to new natural gas).

(b) November 9, 1978, contract price greater than $2.060 per MMBtu. In the case of a first sale of natural gas to which this subpart applies, if the contract price applicable on November 9, 1978, was greater than $2.060 per MMBtu, the maximum lawful price for natural gas delivered in any month shall be the higher of:

(1) the maximum lawful price per MMBtu for such month under § 271.202 (relating to new natural gas); or

(2) the contract price per MMBtu on November 9, 1978, adjusted for inflation in accordance with § 271.102 of this part.

§ 271.503 Filing requirements.

Any person who collects a price under this subpart shall file reports required by § 276.101.

§ 271.504 Determination of contract price.

For purposes of this subpart:

(a) Contract price. "Contract price," when used with respect to any specific date and contract, means:

(1) the price paid per MMBtu under a contract for deliveries of natural gas occurring on that date; or

(2) if no deliveries of natural gas occurred under such contract on that date, the price per MMBtu that would have been paid had such deliveries occurred on that date.

(b) Take-or-pay clauses. If the contract contains a take-or-pay clause and payments were made under such clause for deliveries on November 9, 1978, the contract price on November 9, 1978, shall be determined as if volumes obligated to be taken were taken.

§ 271.505 Contract modifications.

(a) Except as provided in subparagraph (b), for purposes of this subpart, no successor to an existing intrastate contract or modification executed after November 9, 1978, of an existing intrastate contract may:

(i) alter the terms of the existing intrastate contract in a manner which has the effect of requiring the purchaser to bear any production-related costs (as defined in § 271.1101(b)) which were allocated to the seller under the existing intrastate contract; or

(ii) provide for an earlier date for deliveries than provided for under the existing contract.

(b) Nothing in paragraph (a) shall preclude a purchaser who was not a party to the existing intrastate

contract on November 9, 1978, from agreeing, by modifications of the existing intrastate contract, or otherwise, to bear responsibility and pay for any increase (or portion thereof) in production-related costs, incurrence of which is necessary in order for such person to take delivery of the natural gas subject to the existing intrastate contract.

SUBPART F - INTRASTATE ROLLOVER CONTRACTS

§ 271.601 Applicability.

This subpart implements section 106(b) of the NGPA and applies to the first sale of natural gas under an intrastate rollover contract.

§ 271.602 Maximum lawful price.

(a) The maximum lawful price for a first sale of natural gas under an intrastate rollover contract to which section 106(b)(1) of the NGPA applies shall be the higher of:

(1)(i) the maximum lawful price paid under the expired contract, per MMBtu, in the case of the month in which the effective date of such rollover contract occurs; and

(ii) in the case of any month thereafter, the maximum lawful price, per MMBtu, prescribed under this paragraph for the preceding month adjusted for inflation in accordance with § 271.102; or

(2) the amount determined under the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
December 1978	$ 1.121
January 1979	$ 1.128

(b) The maximum lawful price, per MMBtu, for natural gas to which section 106(b)(2) of the NGPA (relating to certain State or Indian natural gas production interests) applies shall be the amount determined in accordance with the following table in lieu of the amount determined under the table under paragraph (a)(2):

If delivery occurs in the calendar month of:	The maximum lawful price is:
December 1978	$ 2.078
January 1979	$ 2.096

§ 271.603 Filing requirements.

Any person who collects a price under this subpart shall file reports required by § 276.101.

§ 271.604 Special rule.

(a) No intrastate rollover contract may contain terms which differ from the terms of the expired contract and which have the effect of requiring the purchaser to bear any production related costs (as defined in § 271.1101(b)) which were allocated to the seller under the expired contract.

(b) Nothing contained in paragraph (a) shall preclude a purchaser who was not a party to the expired contract from agreeing in the intrastate rollover contract to bear responsibility and pay for any increase (or portion thereof) in production-related costs, the incurrence of which is necessary in order for such person to take delivery of the natural gas subject to the intrastate rollover contract.

SUBPART G - HIGH-COST NATURAL GAS

§ 271.701 Applicability.

This subpart implements section 107(a) of the NGPA and applies to the first sale of natural gas which is deep, high-cost natural gas.

§ 271.702 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
December 1978	$ 2.078
January 1979	$ 2.096

§ 271.703 Definition of deep, high-cost natural gas.

For purposes of this subpart, deep, high-cost natural gas is natural gas which a jurisdictional agency determines, in accordance with Parts 274 and 275, is produced:

(a) from any well, the surface drilling of which began on or after February 19, 1977; and

(b) from a completion location which is located at a depth of more than 15,000 feet.

§ 271.704 Special rule.

For purposes of determining depth under this subpart and section 107(c)(1) of the NGPA, measurement shall be the true vertical depth from the surface of the ground to the highest perforation point in the completion location.

SUBPART H - STRIPPER WELL NATURAL GAS

§ 271.801 Applicability.

This subpart implements section 108 of the NGPA and applies to any first sale of natural gas which a jurisdictional agency determines is stripper well natural gas.

§ 271.802 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
December 1978	$ 2.224
January 1979	$ 2.243

§ 271.803 Definitions.

For purposes of this subpart:

(a) "Recognized enhanced recovery techniques" means processes or equipment, or both, which when performed or installed, increase the ultimate recovery of gas from a well. Processes qualifying as enhanced recovery techniques include mechanical as well as chemical stimulation of the reservoir formation. Equipment may include items installed in the well bore or on the surface. Normal well maintenance, repair, or replacement of equipment or facilities does not qualify as enhanced recovery techniques.

(b) "Nonassociated natural gas" means natural gas produced from a well which a jurisdictional agency determines produced an average number of barrels of crude oil per production day during the production period upon which the determination is based, which does not exceed the number of barrels determined in accordance with the following table:

If the average production of natural gas per production day during such production period was:	then average crude oil production per day may not exceed:
50 Mcf or more but less than 60 Mcf	1 bbl
30 Mcf or more but less than 50 Mcf	2 bbl
Less than 30 Mcf	3 bbl

§ 271.804 Special rules.

(a) Rate of production. For purposes of determining the rate of production from a well for which a stripper well determination is sought, the total volume of natural gas produced from the well shall constitute its daily production regardless of whether the well is completed in more than one interval or the production is separately metered from separate intervals.

(b) Averaging of production. If a determination of stripper well status is sought with respect to wells which are not individually metered, rates of production of natural gas and oil may, in the absence of other reliable evidence, be averaged equally among the non-metered wells.

(c) Applications for determinations. Applications under this subpart shall be based on a 90-day production period ending within 120 days prior to the date on which the application is filed.

(d) Maximum efficient rate of flow.

(1) Where a maximum efficient rate of flow for a well, determined in accordance with recognized conservation practices designed to maximize the ultimate recovery of natural gas, has been established by a jurisdictional agency, production of natural gas at that rate shall be deemed to be production at the maximum efficient rate of flow.

(2) In the absence of applicable recognized conservation practices designed to maximize the ultimate recovery of natural gas established by a jurisdictional agency for determining the maximum efficient rate of flow of wells producing natural gas, a well which has produced nonassociated natural gas at an average rate of 60 Mcf per day or less for a 90-day production period is presumed to have produced

at its maximum efficient rate of flow if during the 12-month period ending concurrently with the 90-day production period which is the basis for the application under paragraph (c), such well produced nonassociated natural gas at a rate which did not exceed an average of 60 Mcf per production day; or

(3) if the production data described in subparagraph (2) of this paragraph are not available, the jurisdictional agency shall, if the well has produced nonassociated natural gas at an average rate of 60 Mcf or less for a 90-day production period:

(i) make the determination as to whether the well produced at its maximum efficient rate of flow based upon other substantial evidence, such as flow tests, which measure the capability of the well to produce natural gas under normal operating conditions; or

(ii) defer making an affirmative determination and designate a 12-month period during which the applicant may secure the data described in subparagraph (2) of this paragraph, allowing the applicant 30 days from the end of such period to submit the data.

(4) The jurisdictional agency shall make a negative determination as to eligibility and give notice thereof to the applicant, any identified purchasers and the Commission, if:

(i) the applicant fails to submit production data pursuant to subparagraph (3)(ii) of this paragraph, within the time allowed; or

(ii) the production data submitted by the applicant indicate that for the 12-month period, the well produced nonassociated natural gas at a rate which exceeded an average of 60 Mcf per production day.

(5) Upon submission of an application which is to be considered pursuant to subparagraph (3)(ii) of this paragraph, the applicant, if permitted to do so by contract, may collect the maximum lawful price provided in § 271.802 from the date of filing until the date of a final determination pursuant to this subpart, subject to the interim collection requirements in Part 273.

(e) Seasonally affected wells. (1) If together with a petition for qualification as a stripper well, the applicant submits to the jurisdictional agency, production reports for a period of at least 24 months ending concurrently with the 90-day production period which is the basis for the application under paragraph (c), and if such reports demonstrate that the well is subject to seasonal fluctuations which temporarily increase average production above 60 Mcf per production day, the jurisdictional agency may, upon

request, designate the well as "seasonally affected." Such designation shall be granted by the jurisdictional agency only if it finds that the seasonal fluctuations have not and cannot reasonably be expected to increase production levels above an average of 60 Mcf per production day for any 12-month period.

(2) If at any time subsequent to a final determination of stripper well status, the operator acquires production reports for a period of 24 consecutive months which demonstrate that the well is seasonally affected, a petition may be filed with the jurisdictional agency for designation as a seasonally affected well unless the average rate of production exceeds 60 Mcf per production day for any 12-month period.

(3) If a well is designated as seasonally affected, the operator of such well and the purchaser of production from such well are exempt from the filing requirements of § 274.805 unless the average rate of production exceeds 60 Mcf per day for a 12-month period.

§ 271.805 Continuing qualification.

(a)(1) Unless exempt under § 271.804(e)(3), the operator or any purchaser of natural gas shall give written notice if:

(i) such well produces nonassociated natural gas at a rate exceeding an average of 60 Mcf per production day for any 90-day production period; or

(ii) such well which has been designated a seasonally affected well produces at an average rate in excess of 60 Mcf per day for a 12-month production period.

(2) Such notice shall, as appropriate, be given to the jurisdictional agency, the Commission, and any purchaser. Except as provided in paragraph (b) of this section, such notice shall terminate the right of any seller to continue the collection of the maximum lawful price set forth in § 271.802 for natural gas from the well identified in the notice.

(b) The operator may, at the same time the notice described in paragraph (a)(1) of this section is filed, file a petition with the jurisdictional agency for a determination under § 271.806 that the increased production of nonassociated natural gas is the result of the application of enhanced recovery techniques or, if the well has not been designated as seasonally affected, the result of seasonal fluctuations. A copy of the petition shall be provided to the jurisdictional agency, the Commission, and the purchaser together with the notice under paragraph (a)(1) of this section.

(c) Any notice required by this section shall be made within 45 days after the last day of the 90-day or the 12-month production period in which the increased production of natural gas occurred.

(d) If the notice pursuant to paragraph (a)(1) of this section is filed by a purchaser, an operator shall have 30 days from the date of the notice within which to oppose the allegation or to seek a determination from the jurisdictional agency that the increase in production is the result of the application of recognized enhanced recovery techniques or seasonal fluctuations. Unless the operator of a well, within 30 days of such notice, files a petition with a jurisdictional agency as provided in paragraph (b) of this section, a well for which notice is given under paragraph (a)(1) of this section shall immediately be disqualified as a stripper well and the right of any seller to collect the maximum lawful price set forth in § 271.802 shall terminate as of the last day of the 90-day or the 12-month production period described in the notice.

(e) If an operator files a petition with a jurisdictional agency pursuant to paragraph (b) or (d) of this section, further collection of the maximum lawful price set forth in § 271.802 shall be made subject to refund from the last day of the 90-day or the 12-month production period

described in the notice under paragraph (a)(1) of this section.

(f) If subsequent to the filing of a petition it is determined that an increase in production of natural gas is the result of recognized enhanced recovery techniques, neither the operator nor the purchaser shall be obligated to report average production levels above 60 Mcf per day during any 90-day production period unless the increased production results from a cause other than recognized enhanced recovery techniques determined to have been used.

§ 271.806 Jurisdictional agency determinations and Commission review.

(a) Upon receipt of a petition to designate a well as a seasonally affected well pursuant to § 271.804(c) or an application to determine that production in excess of an average of 60 Mcf per production day for any 90-day production period was due to enhanced recovery techniques, the jurisdictional agency shall treat the petition or application as if it were an application for an initial determination and follow the applicable provisions of Subpart A of Part 274.

(b) Upon receipt of notice of a determination under paragraph (a), the Commission will review such a determina-

tion pursuant to the applicable provisions of Subpart B of Part 275.

(c) A jurisdictional agency, when making a determination under § 271.806 (relating to production in excess of 60 Mcf per production day resulting from the application of recognized enhanced recovery techniques), may seek a declaratory order from the Commission that a process (or type of process) or the installation of equipment (or type of equipment) qualifies as recognized enhanced recovery techniques as defined in § 271.803(a) of this subpart.

SUBPART I - OTHER CATEGORIES OF NATURAL GAS

§ 271.901 Applicability.

This subpart implements section 109 of the NGPA and applies to a first sale of natural gas that is not covered by any maximum lawful price under section 102, 103, 104, 105, 106, 107, or 108 of the NGPA.

§ 271.902 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
December 1978	$ 1.630
January 1979	$ 1.639

§ 271.903 Filing requirements.

Any person who collects a price under this subpart shall file reports required by § 276.101.

§ 271.904 Special rule.

First sales of natural gas described in section 109(a)(1), (2), (3), or (4) of the NGPA are covered by this subpart only to the extent such first sales are not covered by any maximum lawful price under section 102, 103, 104, 105, 106, 107, or 108 of the NGPA.

SUBPART J - [RESERVED]

SUBPART K - ADJUSTMENTS FOR STATE SEVERANCE TAXES, ALLOWANCES AND CERTAIN PRODUCTION-RELATED COSTS

§ 271.1100 Applicability.

(a) General. This subpart prescribes regulations under which a price for a first sale of natural gas shall not be considered to exceed the applicable maximum lawful prices set forth in Part 271 if such first sale price exceeds the maximum lawful price to the extent necessary to recover:

(1) State severance taxes under § 271.1102;

(2) Natural Gas Act allowances under § 271.1104; and

(3) production-related costs approved by order of the Commission under § 271.1105.

(b) Exclusions. Sections 271.1104, 271.1105 and 271.1106 shall not apply to any natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

§ 271.1101 Definitions.

(a)(1) Except as provided in subparagraph (2), the term "State severance tax" as used in this subpart means any severance, production, or similar tax, fee, or other levy imposed on the production of natural gas:

(i) by any State;

(ii) by any Indian tribe recognized as eligible for services provided by the Secretary of the Interior to Indians; or

(iii) by any political subdivision of a State if the authority to impose such tax, fee, or other levy is granted to such political subdivision under State law.

(2) The term "State severance tax" does not include any amount of tax which results from a provision of state law enacted on or after December 1, 1977, unless such provision of law is equally applicable to natural gas produced in such State and delivered in interstate commerce and to natural gas produced in such State and not so delivered.

(b) The term "production-related costs" as used in this subpart means costs of compressing, gathering, processing, treating, liquifaction, conditioning, or transporting natural gas, or other similar costs.

§ 271.1102 State severance taxes.

(a) Except as provided in paragraph (b) of this section, the price for any first sale of natural gas shall not be considered to have exceeded the maximum lawful price applicable to that sale as set forth in this part if such

first sale price exceeds the maximum lawful price to the extent necessary to recover State severance taxes borne by the seller.

(b) The maximum lawful prices prescribed under this part for interstate sales of natural gas produced from the Permian Basin area include State severance taxes in the amount of 2.6 cents for large producers and 3.05 cents for small producers. To the extent maximum lawful prices are established by reference to the Permian Basin area rate, only amounts of State severance tax in excess of those amounts already included may be considered under paragraph (a) of this section.

§ 271.1103 Record retention.

A seller in a first sale in which the price includes State severance taxes permitted under § 271.1102 shall retain a record of the sale which shall identify the seller, and shall retain such other records as are necessary to demonstrate that such seller has borne the amount of State severance taxes included in the sale price. Such records shall be preserved for at least three years from the date on which the sale occurred.

§ 271.1104 Natural Gas Act allowances.

(a) Applicability. The provisions of this section shall apply only to natural gas which was committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate was in effect on that date.

(b) General rule. A maximum lawful price applicable to a first sale of natural gas to which this section applies may be exceeded to the extent necessary to recover:

(1) gathering allowances, if allowable in accordance with §§ 2.56a(d) or 2.56b of this chapter; and

(2) allowances for delivery of offshore natural gas, if allowable in accordance with §§ 2.56a(e) or 2.56b(f) of this chapter.

§ 271.1105 Production-related costs.

(a) General rule. The Commission will entertain applications for a determination that the maximum lawful price applicable to a first sale of natural gas shall not be considered to be exceeded as a result of the addition to such price of an amount expended for production-related costs only as permitted by this section.

(b) Exclusion of certain natural gas. Applications under paragraph (a) of this section will not be considered

by the Commission if the natural gas for which the determination is sought:

(1) was committed or dedicated to interstate commerce on November 8, 1978, and is natural gas for which there was a just and reasonable rate in effect on that date; or

(2) is subject to an existing intrastate contract, an intrastate rollover contract or a successor to an existing intrastate contract.

(c) Costs for gathering, liquifaction, transportation, and compression. Except as provided in paragraph (b) of this section, applications under paragraph (a) of this section will be entertained by the Commission respecting costs incurred for:

(1) compression; and

(2) gathering, liquifaction, or transportation to the extent such activities take place off the lease from which the natural gas was produced.

(d) Other production-related costs. (1) Except as provided in paragraph (b) of this section and in subparagraph (2) of this paragraph, the Commission will entertain applications under paragraph (a) of this section only with respect to production-related costs to the extent they exceed the amount attributable to meeting the following standards:

(i) total sulphur (grains per 100 cf.) 20

(ii) hydrogen sulphide (grains per 100 cf.) . . 1

(iii) water (pounds per MMcf) 7

(iv) carbon dioxide (percent by volume) 3

(v) oxygen, nitrogen, dust, dirt, gum, or other impurities in amounts in excess of which the buyer would be required to incur costs to to meet pipeline requirements.

(2) Subject to paragraph (b) of this section, the Commission will entertain applications for costs necessary to meet or exceed the standards in subparagraph (1) of this paragraph with respect to first sales of natural gas to any person for use by such person.

(e) Applications. Applications made to the Commission pursuant to this section shall be under oath and shall include the following information:

(1) identification of the maximum lawful price applicable to the first sale of the natural gas under Part 271;

(2) documents supporting the identification of the applicable maximum lawful price, including copies of any determinations by a jurisdictional agency or the Commission or copies of applications made for such determinations;

(3) a summary of the contract provisions which contain the obligations of the parties with respect to production-related costs;

(4) if the applicant has purchased the natural gas which is the subject of an application under this paragraph, documentation of the price paid by the applicant for such gas;

(5) the specific costs sought to be recovered by the applicant and a description of the method used to compute such costs; and

(6) the circumstances which make it necessary for the applicant to collect any amount in excess of the maximum lawful price provided for under Part 271.

(f) Additional information. The Commission may, upon receipt of an application made under this section, require the submission of additional information and hold or cause to be held such other proceedings as it deems necessary or appropriate.

§ 271.1106 Adjustments.

Pursuant to section 502(c) of the NGPA, any person may apply to the Commission for an adjustment on the grounds that the operation of § 271.1105 results in special hardship, inequity, or an unfair distribution of burdens to such person.

PART 273 COLLECTION AUTHORITY; REFUNDS

Subpart A - General Provisions

Sec.
273.101 Private contractual rights.
273.102 Definition of final determination.
273.103 Annual report of collections and refunds.
273.104 Cross reference.

Subpart B - Interim Collection Authority

Sec.
273.201 Transitional rule for certain new wells.
273.202 Collection pending jurisdictional agency determination of eligibility.
273.203 Collection pending review of jurisdictional agency determination.
273.204 Retroactive collection after final determination.

Subpart C - Refund Obligation

Sec.
273.301 General refund obligation.
273.302 Refunds of interim collections.

Authority: This part is issued under the Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350.

SUBPART A - GENERAL PROVISIONS

§ 273.101 Private contractual rights.

Authorization by this part to collect a price for natural gas does not affect any person's contractual right to purchase natural gas at a lower price.

§ 273.102 Definition of final determination.

For purposes of this part, a determination by a jurisdictional agency of eligibility to collect a maximum lawful price under Subpart B, C, G, or H of Part 271 is final at

such time as such determination is no longer subject to:

(a) remand or reversal (other than on grounds specified in section 503(d)(1)(A) or (B) of the NGPA) by the Commission under Part 275; or

(b) judicial review in the Court of Appeals under section 503(b)(4)(B) of the NGPA.

§ 273.103 Annual report of collections and refunds.

(a) General rule. A seller which makes any first sale of natural gas for which a price authorized by this part is charged or collected shall file an annual report of all collections and refunds under this part for all such first sales, beginning with the period from December 1, 1978 through December 31, 1979, and for each calendar year thereafter until all collections and refunds under this part for such first sales have been reported fully. An original and 2 copies of each annual report shall be filed with the Commission on or before April 1st of the next year.

(b) Contents. The annual report shall be filed in accordance with forms and instructions prescribed by the Commission and shall include:

(1) all collections for each first sale for which a price authorized by this part is charged or collected,

identifying the well from which such sale is made and the application for or determination of eligibility for that well;

(2) the portions of such collections which are subject to the refund undertaking required by § 273.302(b) and those portions which were secured by surety bond or placed in escrow as required by § 273.302(c); and

(3) for each first sale, the amount of any refunds paid to each purchaser and the basis for computation of that amount, together with releases signed by each purchaser to indicate payment and full satisfaction of the seller's refund obligation or a statement that the purchaser did not sign such a release.

§ 273.104 Cross reference.

For special rule applicable to resellers, see § 270.202(b).

SUBPART B - INTERIM COLLECTION AUTHORITY

§ 273.201 Transitional rule for certain new wells.

(a) General rule. (1) The price determined under the following table may be charged and collected for any first sale of natural gas from a new well to which this section applies:

If delivery occurs in the calendar month of:	The price per MMBtu which may be charged and collected is:
December 1978	$ 1.630
January 1979	$ 1.639

(2) This section does not apply to a first sale if the seller is collecting a price under the authority of §§ 273.202 or 273.203.

(b) Period of collection. (1) Except as provided in subparagraph (2), the price authorized by paragraph (a) may be charged and collected for natural gas deliveries:

(i) beginning on the date on which the seller first meets the requirements of paragraph (c); and

(ii) ending on the date on which the Commission receives a notice of jurisdictional agency determination under § 275.201.

(2) No collection may be made under this section for deliveries of natural gas on or after March 1, 1979, unless before March 1, 1979, the seller has filed an application with a jurisdictional agency for a determination respecting such natural gas under Subpart B, C, G, or H of Part 271.

(c) Filing requirements. (1) Prior to making any collection under the authority of this section, the seller shall file with the Commission and the jurisdictional agency a statement under oath that:

(i) the natural gas for which the collection is made is produced from a new well;

(ii) the seller believes in good faith that such natural gas is eligible under the NGPA to be sold at a price not less than the price specified in paragraph (a); and

(iii) the seller has filed, or will cause to be filed not later than March 1, 1979, an application with the jurisdictional agency for a determination of qualification under Subpart B, C, G, or H of Part 271. Where the seller is not eligible to apply directly for a determination, the seller shall file either a duplicate of FERC Form No. 121 already submitted to the jurisdictional agency or a statement under oath by a person eligible to file the application that it will be filed not later than March 1, 1979.

(2) The statement shall include any well identification number assigned to the well or if none has been assigned, other information sufficient to identify the well, and shall specify the extent to which such natural gas was committed or dedicated to interstate commerce on November 8, 1978, and if so committed or dedicated, the just and reasonable rate applicable to such natural gas under the Natural Gas Act on November 8, 1978, and any rate schedules for such natural gas on file with the Commission on November 8, 1978.

§ 273.202 Collection pending jurisdictional agency determination of eligibility.

(a) General rule. If an application has been filed with the jurisdictional agency for a determination of eligibility under Subpart B, C, G, or H of Part 271 (relating to new natural gas and certain OCS natural gas, natural gas from new onshore production wells, high-cost natural gas or stripper well natural gas), the price specified in § 273.201(a)(1) or the highest maximum lawful price which is specified in any of the subparts for which application is made may be charged and collected.

(b) Period of collection. Except to the extent prohibited by paragraph (c), the price authorized by paragraph (a) may be charged for natural gas deliveries occurring on or after the date on which the application is filed with the jurisdictional agency and collected for such deliveries:

(1) beginning on the date on which the seller complies with the requirements of paragraph (d); and

(2) ending on the earlier of:

(i) 18 months after the first delivery for which collection is made under this section (12 months in the case of deliveries beginning on or after May 1, 1979); or

(ii) the date on which the Commission receives a notice of jurisdictional agency determination under § 275.201.

(c) Special limitation on the period of collection Unless by March 1, 1979, the jurisdictional agency to which

application is made has notified the Commission in writing that such agency has authority to process applications for determinations under Subparts B, C, G and H of Part 271 and is making such determinations, then the price authorized to be charged and collected by paragraph (a) may not be charged and collected under this section for deliveries during the period beginning on March 1, 1979 and ending on the date on which such jurisdictional agency notifies the Commission in writing that such agency has the authority to process applications for determinations under Subparts B, C, G and H of Part 271 and is making such determinations.

(d) Filing requirements. (1) In order to make an interim collection under this section with respect to a first sale of natural gas, a seller shall file with the Commission:

(i) a statement under oath that he believes in good faith that such natural gas is eligible under the NGPA and this subchapter for a maximum lawful price not less than that to be collected;

(ii) a duplicate of FERC Form No. 121 submitted to the jurisdictional agency;

(iii) a certificate of service of this filing upon any purchasers in the form required by §§ 1.17 and 1.51 of this chapter;

(iv) either a statement certifying that collections under this section will be placed in escrow or secured by a surety bond to the extent required by § 273.302(c) or a release from the surety or escrow obligation executed by the purchaser; and

(v) a statement of the extent to which such natural gas was committed or dedicated to interstate commerce on November 8, 1978, and if so committed or dedicated, the just and reasonable rate applicable to such natural gas under the Natural Gas Act on November 8, 1978, and any rate schedules for such natural gas on file with the Commission on November 8, 1978.

(2) No filing may be made under this paragraph unless the Commission has given public notice that the jurisdictional agency to which the application for determination has been made has filed a report in conformance with § 274.105.

(e) Filing limitation. Upon termination of the interim collection authority under this section for any sale, further filings under this section cannot be made for any sale from the same well.

§ 273.203 Collection pending review of jurisdictional agency determination.

(a) General rule. If the jurisdictional agency has determined in accordance with Part 274 that natural gas

qualifies for a maximum lawful price under Subpart B, C, G, or H of Part 271, the seller may charge and collect such price during the period described in paragraph (b).

(b) Period of collection. The price authorized by paragraph (a) may be charged and collected for natural gas deliveries:

(1) beginning on the date on which the Commission receives notice under § 275.201 of a jurisdictional agency determination with respect to such gas; and

(2) ending on the date the jurisdictional agency's determination becomes final, or if the determination of the jurisdictional agency is remanded by final finding of the Commission, six months after the date of such remand.

(c) Filing requirements. No later than ten days after commencement of collection under this section, the seller shall file with the Commission and jurisdictional agency a notice of interim collection of the applicable price established by a determination of the jurisdictional agency and a certificate of service of this notice upon any purchasers in the form required by §§ 1.17 and 1.51 of this chapter. If the seller is not the operator of the well for which the determination has been made, then the notice shall identify the well and operator.

§ 273.204 Retroactive collection after final determination.

(a) General rule. If (1) a jurisdictional agency determination that first sales of natural gas from a well qualify for a maximum lawful price under Subpart B, C, G, or H of Part 271 has become final, and (2) such maximum lawful price exceeds the price collected for deliveries of such natural gas for any period between the date of filing for the determination and the date on which the determination became final, then the seller may retroactively charge and collect for such period the amount of such excess; except that if the application for determination was filed by March 1, 1979, then the amount of such excess may be computed, charged and collected for first sales of natural gas delivered after November 30, 1978.

(b) Special limitation on the period of retroactive collection. Unless by March 1, 1979, the jurisdictional agency to which application was made has notified the Commission in writing that such agency has authority to process applications for determination under Subparts B, C, G, and H of Part 271 and is making such determinations, then retroactive collections otherwise authorized by paragraph (a) may not be collected for deliveries during the period beginning on March 1, 1979 and ending on the date on which such jurisdictional agency notifies the Commission in writing that such agency has the

authority to process applications for determinations under Subparts B, C, G, and H of Part 271 and is making such determinations.

(c) Conditions. Collections may be made under this section only in accordance with the following conditions:

(1) Retroactive collections may not begin until 45 days after a determination of eligibility under Subpart B, C, G, or H of Part 271 becomes final pursuant to § 275.202.

(2) A seller may not collect any amount under this section from any purchaser unless the seller has paid to such purchaser all amounts that are due to be refunded under this subchapter by the seller to such purchaser under this subchapter on or before any date on which retroactive collections are made.

(3) Within 15 days after retroactive collection begins for any first sale, the seller shall file with the Commission:

(i) a notice specifying the total amount to be collected and the amount of and basis for any carrying charges;

(ii) a statement that the seller has paid all refunds then due to such purchaser under this subchapter; and

(iii) a statement of concurrence in the filing signed by such purchaser from whom retroactive collections are made.

(4) Collection under this section may be made only to

the extent permitted by the applicable sales contract.

(5) Carrying charges may be collected only to the extent provided by a written agreement of the parties to the applicable sales contract (or amendment thereto) which shall be included in the filing required by this paragraph. The rate of such charges may not exceed nine percent per annum.

SUBPART C - REFUND OBLIGATION

§ 273.301 General refund obligation.

Any price collected with respect to a first sale of natural gas to which this subchapter applies is collected subject to a general obligation promptly to refund any portion of such price which is in excess of the maximum lawful price, or collection of which is not authorized by this subchapter. Compliance with the specific refund requirements of § 273.302 shall not terminate the general refund obligation under this section.

§ 273.302 Refunds of interim collections.

(a) Applicability. The provisions of this section apply to any interim collections made under the authority of Subpart B of this part.

(b) General undertaking.

(1) Except as provided for in subparagraph (2), any notice of collection which is filed with the Commission

pursuant to Subpart B for a first sale of natural gas shall include an undertaking with respect to particular first sales in the following form:

AGREEMENT OF
(Name of Applicant) TO COMPLY WITH REFUND
PROVISIONS OF PART 273 OF THE COMMISSION'S REGULATIONS
UNDER THE NATURAL GAS POLICY ACT

(Name of Applicant) hereby agrees and undertakes to comply with the refund provisions of Part 273 of the Commission's Regulations under the Natural Gas Policy Act insofar as they are applicable to the collections for the wells identified in the annex to this agreement.

By _____
(Authorized Signatory)

Attest:

_____ _____, 19__

(2) In lieu of filing undertakings with respect to particular first sales as provided in subparagraph (1), a seller may elect to file a general undertaking applicable to all first sales made by the seller in the following form:

AGREEMENT OF
(Name of Applicant) TO COMPLY WITH REFUND
PROVISIONS OF PART 273 OF THE COMMISSION'S REGULATIONS
UNDER THE NATURAL GAS POLICY ACT AND PART 154
OF THE COMMISSION'S REGULATIONS UNDER THE
NATURAL GAS ACT

(Name of Applicant) hereby agrees and undertakes to comply with the refund provisions of Part 273 of the Commission's Regulations under the Natural Gas Policy Act insofar as they are applicable to any collections made by or for the applicant under these regulations.

By _____

(Authorized Signatory)

Attest:

_____, 19__

(3) Additional refund assurance may at any time be required by order of the Commission.

(4) Any undertaking filed under subparagraph (2) or (3) shall be signed in the manner required by § 274.201(c).

(c) Escrow. In the case of interim collections under § 273.202, the following additional requirements apply:

(1) Any amount (i) which is collected under § 273.202 and (ii) which (A) in the case of a new well, is in excess

of the price specified in § 273.201(a)(1); or (B) in the case of any other well, is in excess of the otherwise applicable maximum lawful price, shall be secured by a surety bond or held in escrow unless the purchaser has executed a written agreement which releases the seller from this obligation.

(2) Any amount held in escrow under subparagraph (1) shall be deposited in an interest-bearing account (segregated from the assets of the seller) at a financial institution which is chartered and supervised by a state or federal agency and in which deposits are insured by a state or federal agency.

(d) Records. If any collection is made under Subpart B, the seller shall keep accurate accounts of all amounts so collected for each billing period and for each purchaser; and resulting revenues as computed under the price being charged pursuant to this part; the price charged immediately prior to any interim collections; and the price prescribed by § 273.201 of this part (or any other maximum lawful price used to compute the amount bonded or escrowed under this paragraph), together with the differences in revenues so computed for each sale.

(e) Refund payment.

(1) Within 45 days after a determination that a first

sale is not eligible for the price collected under this part becomes final, the seller shall refund to the purchaser by cash or check the refund amount computed under paragraph (g) together with interest at the rate of nine percent per annum on the excess charges that have been collected from the date of payment until the date of refund.

(2) No interest is required to be paid on any portion of a refund:

(i) which represents payments of royalties or taxes to federal or state governmental authorities, except to the extent that such authorities pay interest to the seller when refunding overpayments of royalties or taxes; or

(ii) which is paid from escrow (but interest which accrued in the escrow on the amount required to be refunded shall be paid at the time of refund).

(f) Discharge of obligation. If a determination that natural gas is eligible for the price collected becomes final, then upon receipt of such final determination, the bond, escrow, or undertaking shall be discharged to the extent it applies to first sales from the well for which the determination was made. If any refunds required by this section are made in conformity with the terms and conditions of the bond, escrow, or undertaking, the bond, escrow, or undertaking shall be discharged insofar as it applies to such refund obligation.

(g) Refund computation. (1) Where the final determination that the sale is not eligible for the price collected under Subpart B also includes a final determination of the maximum lawful price for that sale, that finally determined price, to the extent permitted by the applicable sales contract, shall be used to compute the excessive interim collections and refund amount.

(2) In any other case, the appropriate maximum lawful price specified under Subpart D, E, F, or I of Part 271, to the extent permitted by the applicable sales contract, shall be used to compute the excessive interim collections and refund amount.

REPORT OF AMOUNTS COLLECTED SUBJECT TO REFUND AND AMOUNTS REFUNDED
Section 273.103 of Regulations

Filing Party:_____ Code:_____ Report Period:_____

API Well No.	Purchaser Code	Contract Date	Volume Sold (MMcf)	Price Collected	Amount Collected Subject To Refund	Amount Refunded

PART 274 - DETERMINATIONS BY JURISDICTIONAL AGENCIES

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Authority: This part is issued under the Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350.

SUBPART A - GENERAL PROVISIONS

§ 274.101 Applicability.

This part applies to determinations of jurisdictional agencies (as defined in § 274.501) made under the following subparts of Part 271:

(a) Subpart B (relating to new natural gas and certain OCS natural gas);

(b) Subpart C (relating to new, onshore production wells);

(c) Subpart G (relating to high-cost natural gas); and

(d) Subpart H (relating to stripper well natural gas).

§ 274.102 Definition of determination.

For purposes of this part and Part 275, a determination has been made by a jurisdictional agency when such determination is administratively final before such agency.

§ 274.103 Determinations by jurisdictional agencies.

A jurisdictional agency shall make determinations to which this part applies in accordance with procedures applicable to it under the law of its jurisdiction for making such determinations or for making comparable determinations.

§ 274.104 Notice to the Commission.

(a) Affirmative determinations. Within 15 days after making a determination that natural gas qualifies for a maximum lawful price under this part, the jurisdictional agency shall give written notice of such determination to the Commission. Unless alternative notice requirements under § 274.207 have been approved, such notice shall include the following:

(1) a list of all participants in the proceeding as well as any persons who submitted or who sought an opportunity to submit written comments (whether or not such persons participated in the proceeding);

(2) a statement indicating whether the matter was opposed before the jurisdictional agency;

(3) the information set forth in paragraph (a)(1) through (7) of § 274.105 as applied to the determination in question, unless the jurisdictional agency has on file with the Commission a report describing its determination process under that section; and

(4) a copy of the application together with a copy or description of other materials in the record upon which the determination by the jurisdicational agency was made; and

(5) an affirmative finding that the information contained in the notice to the Commission pursuant to this section includes all of the information required to be filed by the applicant under Subpart B of Part 274 or under § 274.207, and in any case in which other materials in the record constitute portions of such information, a copy of those portions of the record.

(b) Negative determinations. Within 15 days after making a determination that natural gas does not qualify for a maximum lawful price under this part, the jurisdictional agency shall give written notice of such determination to the Commission, including a copy of FERC Form No. 121; except that if the applicant or any aggrieved party so requests within the 15 days following the determination, the notice shall include all of the information specified in paragraph (a) of this section.

§ 274.105 Reports of determination process.

(a) Report. A jurisdictional agency may file with the Commission a report which states that it will take such steps as are reasonably necessary or appropriate to perform its functions under this part and which describes the method by which such agency will make determinations to which this part applies. The report shall be in narrative form and shall include:

(1) any filing requirements imposed by the jurisdictional agency in addition to those required by Subpart B of this part including specific forms; as well as any more specific identification of documents listed as minimum requirements as provided in Subpart B;

(2) the type of notice of filing that applicants will be required to give;

(3) the public or specific notice that will be given by the agency of filings, hearings, and determinations;

(4) the internal procedures applicable to such determinations, including specific references to the use of hearings, examiners, and formal consideration by the agency;

(5) the extent to which applicable rules permit interested parties to intervene, participate, or express views in proceedings before the agency;

(6) a description of the relevant data contained in the official records of the agency or contained in the official records of other agencies to which the jurisdictional agency has access; and

(7) a detailed explanation of the manner in which the agency will review applications including identification of the official records which will be examined.

(b) Change in procedures. The jurisdictional agency shall give written notice to the Commission of any change

in procedures described in the report filed pursuant to this section.

(c) Public files. Reports and any changes thereto filed by the jurisdictional agency will be placed in the public files of the Commission.

SUBPART B - REQUIREMENTS FOR FILINGS WITH JURISDICTIONAL AGENCIES

§ 274.201 General requirements.

(a) Filing requirements applicable if alternative requirements are not adopted. The provisions of §§ 274.201 through 274.206 of this subpart apply to the extent not superseded by alternative filing requirements which have taken effect under § 274.207.

(b) Who may file. An application to which this subpart applies may be filed with the jurisdictional agency by any person the jurisdictional agency designates as eligible to make filings with respect to the well for which the application is made.

(c) Signature. If the person filing an application under this part is an individual, the filing shall be signed by such individual, or in the case of a minor or other legally disabled person, his duly qualified legal representative. If the person making such filing is a corporation,

partnership, or trust, the filing shall be signed by a responsible official of the corporation, a general partner of the partnership, or the trustee of the trust. In the case of any other legal entity, the operator of the well may sign the application. An operator under a joint operating agreement may sign an application for a well covered by the operating agreement if notice of the application is given by the operator to all other parties to the joint operating agreement and that fact is certified in the application.

(d) Additional information. The documents required by this subpart are the minimum required in support of a request for a determination. The jurisdictional agency may require additional support as it deems appropriate, and may more specifically identify the documents indicated as the minimum required.

(e) Notice to purchasers. Where an application for a determination is sought for natural gas for which the applicant has an identified purchaser, the application shall include a statement that the applicant has delivered or mailed a copy of the completed FERC Form No. 121 to the purchaser.

§ 274.202 New natural gas.

(a) Applications for determination. A person seeking a determination for purposes of Subpart B of Part 271 that

production from a well qualifies as new natural gas shall file an application with the jurisdictional agency for a determination that:

(1) such production is from a new OCS lease, in accordance with paragraph (b);

(2) such production is from a new onshore well, in accordance with paragraph (c); or

(3) such production is from a new onshore reservoir, in accordance with paragraph (d).

(b) New OCS lease. For purposes of demonstrating that natural gas is, or is to be, produced from a new OCS lease, the applicant shall file:

(1) FERC Form No. 121;

(2) a statement by the applicant under oath that the natural gas is, or is to be, produced from a new OCS lease which is a lease of submerged acreage, entered into with the Secretary of the Interior on or after April 20, 1977; and

(3) a copy of the OCS lease or such other identification of the lease as the jurisdictional agency may permit.

(c) New onshore wells. An application for a determination that a well is a new onshore well may be filed under subparagraph (1) or (2) of this paragraph, or both.

(1) 2.5 mile test. For purposes of demonstrating that a new onshore well is not within 2.5 miles of any marker well, the applicant shall file:

(i) FERC Form No. 121;

(ii) the well completion report;

(iii) the directional drilling survey, if the jurisdictional agency requires such a survey to be conducted;

(iv) a location plat which locates and identifies the well for which the determination is sought and any other well which is producing, or produced after January 1, 1970, natural gas and is within the 2.5 mile radius drawn from the well for which a determination is sought;

(v) a statement by the applicant under oath:

(A) that he has made, or has caused to be made, pursuant to his instructions, a diligent search of all records (including but not limited to production, severance tax, and royalty payment records) which are reasonably available and contain information relevant to the determination of eligibility;

(B) describing the search made, the records reviewed, the location of such records, and a description of any records which he believes may contain information relevant to the determination but which he has determined are not reasonably available to him;

(C) that on the basis of the results of this search and examination, he has concluded that to the best of his information, knowledge and belief, there is no marker well

within 2.5 miles of the well for which he seeks a determination; and

(D) that he has no knowledge of any other information not described in the application which is inconsistent with his conclusion; and

(vi) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

(2) 1,000 feet deeper test. For purposes of demonstrating that the completion location of a new onshore well is at least 1,000 feet deeper than the deepest completion location of each marker well within a 2.5 mile radius of the well for which a determination is sought, the applicant shall file:

(i) FERC Form No. 121;

(ii) the well completion report;

(iii) a location plat which locates and identifies the well for which the determination is sought and all wells which are producing, or produced after January 1, 1970, natural gas within the 2.5 mile radius drawn from the well for which a determination is sought; including specific identification of all marker wells within the 2.5 radius drawn from the well for which a determination is sought;

(iv) a list of the deepest completion locations for all marker wells identified on the location plat;

(v) the directional drilling survey, if the jurisdictional agency requires such survey to be conducted;

(vi) a statement by the applicant, under oath:

(A) that he has made, or has caused to be made pursuant to his instructions, a diligent search of all records (including but not limited to production, State severance tax, and royalty payment records) which are reasonably available and contain information relevant to the determination of eligibility;

(B) describing the search made, the records reviewed, the location of such records, and a description of any records which he believes may contain information relevant to the determination but which he has determined are not reasonably available to him;

(C) that on the basis of the results of this search and examination, he has concluded that to the best of his information, knowledge and belief, there is no marker well within 2.5 miles of the well for which he seeks a determination which has a completion location less than 1,000 feet above the completion location of the new well; and

(D) that he has no knowledge of any other information not described in the application which is inconsistent with his conclusion; and

(vii) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

(d) New onshore reservoir.

(1) For purposes of demonstrating that production is from a new onshore reservoir, the applicant shall file:

(i) FERC Form No. 121;

(ii) geological information sufficient to support a determination that the reservoir is a new onshore reservoir. Such information shall include to the extent reasonably available to the applicant at the time the application is filed:

(A) well logs;

(B) bottom hole or surface pressure surveys;

(C) well potential tests;

(D) formation structure maps;

(E) a subsurface cross-section chart; and

(F) a gas analysis;

(iii) the well completion report;

(iv) the directional drilling survey if the jurisdictional agency requires such a survey to be conducted; and

(v) a statement by the applicant, under oath:

(A) that he has made, or has caused to be made pursuant to his instructions, a diligent search of all records

(including but not limited to production, State severance tax, and royalty payment records) which are reasonably available and contain information relevant to the determination of eligibility;

(B) describing the search made, the records reviewed; the location of such records, and a description of any records described in clause (ii) of this subparagraph or any records which he believes may contain information relevant to the determination but which he has determined are not reasonably available to him;

(C) that on the basis of the results of this search and examination, he has concluded that to the best of his information, knowledge and belief, the natural gas to be produced and for which he seeks a determination is from a new onshore reservoir;

(D) that he has no knowledge of any other information not described in the application which is inconsistent with his conclusion; and

(vi) if the jurisdictional agency so requires, certified copies of records relied on by the applicant, including copies of the agency's official files.

(2) The applicant, in his statement under oath, shall also answer, to the best of his information, knowledge and

belief, and on the basis of the results of his search and examination, the following questions:

(i) was natural gas produced in commercial quantities from the reservoir prior to April 20, 1977?

(ii)(A) was the reservoir penetrated before April 20, 1977, by an old well from which natural gas or crude oil was produced in commercial quantities from any reservoir?

(B) if the question in clause (ii)(A) is answered in the affirmative, could natural gas have been produced in commercial quantities from the reservoir before April 20, 1977, from any old well described in clause (ii)(A)?

(C) if the natural gas is to be produced through an old well, were suitable facilities for the production and delivery to a pipeline of such natural gas in existence on April 20, 1977?

(D) if the applicant is unable to answer the questions in clauses (B) and (C) in the negative, the applicant shall provide the information upon which he bases his conclusion that the natural gas for which he seeks a determination is to be produced from a new onshore reservoir.

§ 274.203 New reservoirs on old OCS leases.

A person seeking a determination for purposes of Subpart B of Part 271 that natural gas is produced from a new reservoir on an old OCS lease (as defined in

§ 271.203(b)), shall file an application with the jurisdictional agency which contains the following items:

(a) FERC Form No. 121;

(b) the date the reservoir was penetrated;

(c) geological information sufficient to support a determination that the reservoir is a new reservoir on an old OCS lease. Such information shall include to the extent reasonably available to the applicant at the time of the determination:

(1) well logs;

(2) bottom hole or surface pressure surveys;

(3) well potential tests;

(4) formation structure maps;

(5) a subsurface cross-section chart;

(6) a gas analysis;

(d) the well completion report;

(e) if the date of penetration of the reservoir is prior to July 27, 1976:

(1) the results of any production test meeting the requirements of OCS Order No. 4 demonstrating that, as of the time of such test, the reservoir was not capable of producing in paying quantities;

(2) any production capability evidence meeting the requirements of OCS Order No. 4 demonstrating that, as of

the time such evidence was obtained, the reservoir was not capable of producing in paying quantities;

(3) an induction-electric log, sidewall cores and core analysis, or a wire line formation test indicating that, as of the time of such tests, the reservoir was not capable of producing in commercial quantities; or

(4) a statement by the applicant, under oath, that no such production tests were performed and that no evidence existed on the date the reservoir was penetrated that the reservoir was capable of producing in paying quantities;

(f) a statement by the applicant, under oath:

(1) that he has made, or has caused to be made pursuant to his instructions, a diligent search of all records (including but not limited to production and royalty payment records) which are reasonably available and contain information relevant to the determination of eligibilitiy;

(2) describing the search made, the records reviewed, the location of the records, and a description of any records which he believes may contain information relevant to the determination but which he has determined are not reasonably available to him;

(3) that on the basis of the results of this search and examination, he has concluded that to the best of his information, knowledge and belief, the natural gas for

which he seeks a determination is produced on an old lease on the OCS from a reservoir which was not discovered before July 27, 1976; and

(4) that he has no knowledge of any other information not described in the application which is inconsistent with his conclusion; and

(g) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

§ 274.204 New, onshore production wells.

A person seeking a determination for purposes of Subpart C of Part 271 that a well is a new, onshore production well shall file an application with the jurisdictional agency which contains the following items:

(a) FERC Form No. 121;

(b) the well completion report;

(c) a location plat which locates and identifies the well for which a determination is sought and all other wells within the proration unit in which the well for which a determination is sought is located;

(d) a statement by the applicant, under oath:

(1) that the surface drilling of the well for which he seeks a determination was begun on or after February 19, 1977;

(2) that the well satisfies any applicable federal or state well-spacing requirements; and that the well is not within a proration unit:

(i) which was in existence at the time the surface drilling of the well began;

(ii) which was applicable to the reservoir from which such natural gas is produced; and

(iii) which applied to any other well which either produced natural gas in commercial quantities or the surface drilling of which was begun before February 19, 1977, and was thereafter capable of producing natural gas in commercial quantities;

(3) that he has concluded that to the best of his information, knowledge and belief, the natural gas for which he seeks a determination is produced from a new, onshore production well and the basis for such conclusion; and

(4) that he has no knowledge of any other information not described in the application which is inconsistent with his conclusions;

(e) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files; and

(f) if the applicant is seeking a determination with respect to a new well drilled into an existing proration

unit, then pursuant to § 271.304, the applicant must, in addition to the filing requirements listed in paragraphs (a) through (e) of this section demonstrates by appropriate geological evidence that the new well is necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit which cannot be effectively and efficiently drained by any existing well within the proration unit.

§ 274.205 High-cost natural gas.

A person seeking a determination for purposes of Subpart G of Part 271 that natural gas is produced from a well which is a deep, high-cost well shall file an application with the jurisdictional agency which contains the following items:

(a) FERC Form No. 121;

(b) all well completion reports for the well for which a determination is sought;

(c) well logs or well servicing company reports or such other information which will corroborate the depth of the completion location reported in the well completion report;

(d) directional drilling surveys if available;

(e) a statement by the applicant, under oath, that the

surface drilling of the well for which he seeks a determination began on or after February 19, 1977, and that the well completion location is below a true vertical depth of 15,000 feet; and that he has no knowledge of any information not described in the application which is inconsistent with his conclusions; and

(f) if the jurisdictional agency so requires, certified copies of records relied on by the applicant, including copies of the agency's official files.

§ 274.206 Stripper well natural gas.

A person seeking a determination for purposes of Subpart H of Part 271 that a well either qualifies or continues to qualify as a stripper well shall file an application with the jurisdictional agency which contains the following items:

(a) Application for determination. For purposes of initially qualifying a stripper well, the applicant shall file:

(1) FERC Form No. 121;

(2) production records, if available, and if not, tax records, if available, or verified copies of billing statements upon which the average production for the 90-day production period is based;

(3) a copy of the results of any tests which measure the production capability of the well; and, if such test

results are not available and the maximum efficient rate of flow has not been previously established:

(i) production records, if available, and if not, tax records, if available, or verified copies of billing statements for 12 calendar months ending on the last day of the 90-day production period upon which the application is based, which demonstrate that the well produced non-associated natural gas at a rate which did not exceed an average of 60 Mcf per production day during the 12-month period;

(ii) if the well for which a determination is sought has produced nonassociated natural gas at an average rate not in excess of 60 Mcf per production day for a 90-day production period within 120 days of the date of filing, but such an average rate of production has not been experienced for a 12-month period, the applicant shall file, as soon as practicable but in no event later than 10 months after the date the application for the determination is filed with the jurisdictional agency, either production records, if available, and if not, tax records, if available, or verified copies of billing statements for the 12-month period, including any part of the 90-day production period upon which the application is based, which demonstrates that such well produced nonassociated natural gas at a

rate which did not exceed an average of 60 Mcf per production day during such period; or

(iii) such other evidence as the applicant may submit upon which the jurisdictional agency could establish the maximum efficient rate of flow;

(4) the number of days natural gas was not produced during the 90-day production period and a description of the state law or conservation practice recognized or approved by the state agency having regulatory jurisdiction over the production of natural gas which prohibited production;

(5) the number of days not included in the 90-day production period and a statement of the reasons why each day was excluded except to the extent they are covered under subparagraph (4);

(6) the production records for crude oil produced from the well for the 90-day production period upon which the application is based;

(7) an inventory of the lease and production equipment used for the well for the past 24 months or for such lesser period as the well has been in production prior to date of filing, as well as the identification of any equipment or processes used in connection with recognized enhanced recovery techniques during the completion of

the well or during production subsequent to the completion of the well but prior to the filing for a determination;

(8) a statement by the person signing the application, under oath, that he has made, or has caused to be made pursuant to his instructions, a diligent search of all records which are reasonably available and contain information relevant to the determination; a description of the search made, the records reviewed, the results of this search and examination he has concluded that to the best of his information, knowledge and belief, the well qualifies as a stripper well; and that he has no knowledge of any other information which is inconsistent with his conclusion;

(9) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

(b) Notice by an operator or purchaser of an increase in production. For purpose of the notices required under § 271.805, the person filing shall include:

(1) the names and addresses of the operator and purchaser(s) with a designation of who is filing the notice;

(2) identification of the subject well and accurate record reference to the original determination qualifying the well as a stripper well;

(3) the monthly production reports, tax records or billing statements upon which the notice is based for the period of production in question;

(4) a statement of the average production per production day for the period in question;

(5) a statement that all of the information contained in the notice is true to the best of his information, knowledge and belief; and that the notice has been served on the appropriate entities specified in § 271.805; and

(6) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

(c) Determination of increased production resulting from enhanced recovery techniques. For purposes of a determination that increased production resulted from the use of enhanced recovery techniques, the applicant shall file:

(1) the names and addresses of the applicant and purchaser(s);

(2) an identification of the well and accurate record reference to the original determination qualifying the well as a stripper well and the notice, if any, filed by a purchaser pursuant to § 271.805;

(3) a description of all processes used or equipment installed together with all dates of use or installation;

(4) a statement, under oath, that to the best of his information, knowledge and belief, the information supplied and the conclusions drawn are true, that the operator has no knowledge of any information not described in the application which is inconsistent with any of his conclusions; and that the notice has been served on the appropriate entities specified in § 271.805; and

(5) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

(d) Designation that a well is seasonally affected. For purposes of a designation that a well is seasonally affected, the applicant shall file:

(1) the names and addresses of the applicant and purchaser(s);

(2) an identification of the well and accurate record reference to the original determination qualifying the well as a stripper well and any notice filed by a purchaser pursuant to § 271.805;

(3) production records, tax records or billing statements for a period of 24 months, including the 90-day or

12-month production period which is the subject of the notice by the operator or the purchaser;

(4) a description of the nature of the seasonal fluctuations as inferred from the data supplied;

(5) a statement, under oath, that the production records, tax records or billing statements relied upon in the application for the designation are correct; that the operator has no knowledge of any information not described in the application which is inconsistent with any of his conclusions; and that the notice has been served on the appropriate entities specified in § 271.805; and

(6) if the jurisdictional agency so requires, certified copies of the records relied on by the applicant including copies of the agency's official files.

§ 274.207 Alternative filing and notice requirements.

(a) General. Upon written application by a jurisdictional agency pursuant to this section, the Commission may approve:

(1) filing requirements which differ from those in §§ 274.201 through 274.206 of this subpart; and

(2) notice requirements which differ from those in § 274.104 of this subpart;

(b) Contents of applications. Applications for approval of alternative filing or notice requirements shall include:

(1) each requirement of this part for which an alternative is proposed;

(2) a description of the specific requirements which will replace the requirements in subparagraph (1), including copies of any forms to be used by the agency;

(3) the reasons for requesting approval of each alternative requirement, which may include the fact that such information is not available; and

(4) the basis for the belief that filings under the alternative filing requirements provide substantial evidence on which the jurisdictional agency may base a determination or that notice under the alternative notice requirements provides the Commission with an adequate basis upon which to review the determination.

(c) Commission review of applications. Upon receipt of an application pursuant to this section, the Commission shall give public notice of such application and after review of any written comments, may issue an order approving the alternative requirements. The Commission will publish the order in the Federal Register.

(d) Effective date of alternative filing and notice requirements. (1) With respect to applications received by a jurisdictional agency after the effective date of approval of alternative filing requirements, such alternate

requirements as are specified and approved shall apply in lieu of the provisions of §§ 274.201 through 274.206 of this subpart.

(2) With respect to determinations made by a jurisdictional agency after the effective date of approved alternative notice requirements, the alternative notice requirements as are specified and approved shall apply in lieu of the provisions of § 274.104 of this subpart.

(e) Termination of alternative filing and notice requirements. (1) A jurisdictional agency may, upon notice to the Commission, discontinue the use of any alternative filing or notice requirements approved under this subpart.

(2) The Commission may, after a public comment period of no less than 30 days give notice to a jurisdictional agency that the Commission has terminated its approval of alternative filing or notice requirements, if it finds that the alternative filing or notice requirements:

(i) are not sufficient to carry out the purpose of the NGPA; or

(ii) after notice and opportunity for hearing, the jurisdictional agency has not complied, or required compliance, with the alternative provisions.

(3) Applications for determinations received by jurisdictional agencies after notice of termination of

the applicability of alternative filing requirements pursuant to this section shall be subject to the filing requirements set forth in §§ 274.201 through 274.206 of this subpart.

(4) Notice of determinations made by jurisdictional agencies after notice of termination of the applicability of alternative notice requirements pursuant to this section shall be subject to the notice requirements set forth in § 274.104 of this subpart.

FERC-121

Form Approved
OMB No. 035-R0381

U.S. DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission
Washington, D.C. 20426

APPLICATION FOR DETERMINATION OF THE MAXIMUM LAWFUL PRICE UNDER THE NATURAL GAS POLICY ACT (NGPA)

(Sections 102, 103, 107 and 108)

PLEASE READ BEFORE COMPLETING THIS FORM.

General Instructions

Complete this form if you are applying for price classification under sections 102, 103, 107 or 108 of the NGPA. A separate application is required for each well. If any reservoir qualifies for a category which differs from the category applicable to the producing well, separate applications must be made for the producing well and the reservoir. Complete each appropriate item on the reverse side of this page. The code numbers used in items 4.0 and 6.0 can be obtained from the Buyer/Seller Code Book. If there is more than one purchaser or contract, identify the additional information in the space below. Enter any additional remarks in the space below.

Submit the completed application to the appropriate Jurisdictional Agency as listed in title 18 of the CFR, part 270.103. If there are any questions, call (202) 275-4539.

Specific Instructions for Item 2.0, Type of Determination:

Section of NGPA	Category Code	Description
102	1	New OCS Lease
102	2	New onshore well (2.5 mile test)
102	3	New onshore well (1,000 feet deeper test)
102	4	New onshore reservoir
102	5	New reservoir on old OCS Lease
103	–	New onshore production well
107	–	High cost natural gas
108	–	Stripper well

Other Purchasers/Contracts:

Contract Date (Mo. Day Yr.)	Purchaser	Buyer Code

Remarks:

FT7900806/1-2

FERC-121

1.0 API well number. (If not available, leave blank. 14 digits.)

2.0 Type of determination being sought. (Use the codes found on the front of this form.) — Section of NGPA / Category Code

3.0 Depth of the deepest completion location. (Only needed if sections 103 or 107 in 2.0 above.) — feet

4.0 Name, address and code number of applicant. (35 letters per line maximum. If code number not available, leave blank.) — Name / Seller Code; Street; City / State / Zip Code

5.0 Location of this well. (Complete (a) or (b).)

(a) For onshore wells (35 letters maximum for field name.) — Field Name; County / State

(b) For OCS wells — Area Name / Block Number; Date of Lease (Mo. Day Yr.); OCS Lease Number

(c) Name and identification number of this well. (35 letters and digits maximum.)

(d) If code 4 or 5 in 2.0 above, name of the reservoir. (35 letters maximum.)

6.0 (a) Name and code number of the purchaser. (35 letters and digits maximum. If code number not available, leave blank.) — Name / Buyer Code

(b) Date of the contract (Mo. Day Yr.)

(c) Estimated annual production — MMcf

	(a) Base Price ($/MMBTU)	(b) Tax	(c) All Other Prices (Indicate (+) or (-).)	(d) Total of (a), (b) and (c)
7.0 Contract price. (As of filing date. Complete to 3 decimal places.)	—.— — —	—.— — —	—.— — —	—.— — —
8.0 Maximum lawful rate. (As of filing date. Complete to 3 decimal places.)	—.— — —	—.— — —	—.— — —	—.— — —

9.0 Person responsible for this application.

Agency Use Only
Date Received by Juris. Agency
Date Received by FERC

Name / Title
Signature
Date Application is Completed / Phone Number

FT7900806/2-2

SUBPART C - WAIVERS

§ 274.301 Applicabilit .

This subpart contains the procedures by which jurisdictional agencies and the Commission may enter into agreements under which jurisdictional agencies waive to the Commission authority to make the determinations set forth in Subpart A of this part.

§ 274.302 Requests for waiver.

(a) General. A jurisdictional agency may file with the Commission a request to enter into a written agreement waiving, in whole or in part, the authority of the jurisdictional agency to make determinations pursuant to Subpart A of this part.

(b) Contents of requests. Requests filed pursuant to this section shall include:

(1) the name of the jurisdictional agency;

(2) each class of determination for which a waiver is sought;

(3) the reasons the jurisdictional agency believes a waiver is necessary; and

(4) the length of time any waiver is to remain in effect.

(c) Commission action on requests. After consideration of any request under this section, the Commission

may execute a written agreement which shall provide:

(1) that upon written acceptance of the agreement by the jurisdictional agency, the Commission, in lieu of such agency, will make the determinations waived in the agreement, and

(2) any terms and conditions the Commission deems appropriate with respect to such waiver, including the date on which the waiver shall terminate; and

(3) the effective date of the waiver.

§ 274.303 Termination or revocation of agreements.

Agreements pursuant to this subpart shall remain in effect until public notice is given by the Commission that:

(a) the agreement of waiver has expired pursuant to a term or condition of the waiver agreement;

(b) the Commission has received written notice from the jurisdictional agency that such agency terminates the agreement as of a specified date and assumes the authority to make determinations under Subpart A of this part; or

(c) the Commission has revoked the agreement pursuant to a term or condition of the waiver agreement.

§ 274.304 Notice.

The Commission shall cause public notice to be made of agreements of waiver and of any termination or revocation of a waiver.

SUBPART D - DELEGATIONS TO STATE AGENCIES

§ 274.401 Delegation of authority to receive certain reports.

(a) Delegation. The Commission may delegate to a state agency the authority to recieve the reports required by §§ 276.102(d) and 276.103(d) to be filed by an intrastate pipeline pursuant to sections 105 and 106(b) of the NGPA.

(b) State agency. A delegation pursuant to this section may be made only to a state agency with jurisdiction over the rates and charges of the intrastate pipelines that would be making the required filing.

(c) Terms of the delegation. Such delegation shall be contained in an agreement executed between the Commission and the state agency, and shall contain such terms and conditions as the parties deem appropriate. Notice of the delegation agreement will be published in the Federal Register.

SUBPART E - IDENTIFICATION OF STATE AND FEDERAL JURISIDICTIONAL AGENCIES

§ 274.501 Jurisdictional agency.

(a) Definition. Except as provided in paragraph (b), "jurisdictional agency" means:

(1) With respect to a well on the OCS, one of the following offices or the United States Geological Survey:

(i) for OCS wells located in the Gulf Coast Region:

Area Oil & Gas Supervisor
Suite 336
3301 N. Causeway Blvd.
Metairie, LA 70010

(ii) for OCS wells located in the Atlantic Region:

Area Oil & Gas Supervisor
Atlantic OCS Operations
Suite 204
1725 K Street, N. W.
Washington, DC 20244

(iii) for OCS wells located offshore Alaska:

Area Oil & Gas Supervisor
P. O. Box 259
Suite 109
800 A Street
Anchorage, AK 99510

(iv) for OCS wells located offshore California:

Area Oil & Gas Supervisor
7211 Federal Building
300 North Los Angeles Street
Los Angeles, CA 90012

(2) With respect to a well the surface location of which is on lands within the boundaries of a State (including Federal lands and offshore State lands), the agency specified in the following table:

State in which well is located	Jurisdictional Agency for wells on Federal lands	Jurisdictional Agency for wells on Other lands
Alabama	Area Oil & Gas Supervisor Suite 204 1725 K St., N. W. Washington, DC 20244	Oil & Gas Supervisor State Oil & Gas Board Drawer O University, AL 35486
Alaska	Area Oil & Gas Supervisor P.O. Box 259 Suite 109 800 A Street Anchorage, AK 99510	Oil & Gas Conservation Division Department of Natural Resources 3001 Porcupine Drive Anchorage, AK 99504
Arizona	Area Oil & Gas Supervisor P. O. Box 26124 505 Marquette Ave., N. W. Albuquerque, NM 87125	Oil & Gas Conservation Commission Suite 420 1645 W. Jefferson Phoenix, AZ 85007
Arkansas	Area Oil & Gas Supervisor 6136 E. 32nd Place Tulsa, OK 74135	Conservation & Commerce Oil and Gas Commission 314 East Oak El Dorado, AR 71730
California	Area Oil & Gas Supervisor 7211 Federal Building 300 N. Los Angeles St. Los Angeles, CA 90012	Department of Conservation Division of Oil & Gas 1416 Ninth St., Rm 1316 Sacramento, CA 95814

State in which well is located	Jurisdictional Agency for wells on Federal lands	Other lands
Colorado	Area Oil & Gas Supervisor P. O. Box 26124 505 Marquette Ave., N. W. Albuquerque, NM 87125	Oil & Gas Conservation Commission 1313 Sherman Street Room 721 Denver, CO 80203
Florida	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Administrator of Oil & Gas Bureau of Geology Department of Natural Resources 903 W. Tennessee Street Tallahassee, FL 32304
Georgia	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Department of Natural Resources Geologic & Water Resources Division 19 Martin Luther King Drive, SW Atlanta, GA 30334
Idaho	Area Oil & Gas Supervisor 7211 Federal Bldg. 300 North Los Angeles Street Los Angeles, CA 90012	Idaho Public Utilities Commission Statehouse Mail Boise, ID 83720
Illinois	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Department of Mines and Minerals Oil and Gas Division 704 Stratton Office Building 400 S. Spring Street Springfield, IL 62706
Indiana	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Department of Natural Resources Oil and Gas Division 606 State Office Bldg. 100 N. Senate Avenue Indianapolis, IN 46204

State in which well is located	Jurisdictional Agency for wells on Federal lands	Other lands
Kansas	Area Oil & Gas Supervisor 6136 East 32nd Place Tulsa, OK 74135	Corporation Commission State Office Building Topeka, KS 66612
Kentucky	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Department of Mines and Minerals Oil and Gas Division Box 680 Lexington, KY 40501
Louisiana	Area Oil & Gas Supervisor 6136 East 32nd Place Tulsa, OK 74135	Office of Conservation Box 44275 Baton Rouge, LA 70804
Maryland	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Energy and Coastal Zone Administration Department of Natural Resources Tawes State Office Bldg. Annapolis, MD 21404
Michigan	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Department of Natural Resources Box 30028 Lansing, MI 48909
Mississippi	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	State Oil and Gas Board Box 1332 Jackson, MS 39205
Montana	Area Oil & Gas Supervisor P. O. Box 2859 2002 Federal Bldg. & Post Office Casper, WY 82602	Oil and Gas Conservation Division Department of Natural Resources and Conservation 15 Poly Drive Billings, MT 59101

State in which well is located	Jurisdictional Agency for wells on Federal lands	Other lands
Nebraska	Area Oil & Gas Supervisor P. O. Box 2859 2002 Federal Bldg. & Post Office Casper, WY 82602	Oil and Gas Conservation Commission Box 399 Sidney, NE 69162
Nevada	Area Oil & Gas Supervisor 7211 Federal Bldg. 300 North Los Angeles Street Los Angeles, CA 90012	Department of Conservation and Natural Resources Division of Mineral Resources Capitol Complex, 201 S. Fall Street Carson City, NV 89710
New Mexico	Area Oil & Gas Supervisor P. O. Box 26124 Marquette Ave, N. W. Albuquerque, NM 87125	Department of Energy and Minerals Oil Conservation Division Box 2088 Santa Fe, NM 87501
New York	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Department of Environmental Conservation Bureau of Mineral Resources 50 Wolf Road Albany, NY 12233
North Carolina	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Department of Natural Resources and Community Development 512 N. Salisbury Street Raleigh, NC 27611

State in which well is located	Jurisdictional Agency for wells on Federal lands	Other lands
North Dakota	Area Oil & Gas Supervisor P. O. Box 2859 2002 Federal Bldg. & Post Office Casper, WY 82602	Geological Survey University Station Grand Forks, ND 58202
Ohio	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Ohio Department of Natural Resources 1932 Belcher Drive Fountain Square Columbus, OH 43224
Oklahoma	Area Oil & Gas Supervisor 6136 East 32nd Place Tulsa, OK 74135	Corporation Commission Jim Thorpe Building Oklahoma City, OK 73105
Oregon	Area Oil & Gas Supervisor 7211 Federal Bldg. 300 North Los Angeles Street Los Angeles, CA 90012	Department of Geology & Mineral Industries 1069 State Office Bldg. Portland, OR 97201
Pennsylvania	Area Oil & Gas Supervisor Suite 204 1725 E Street, N. W. Washington, DC 20244	Department of Environmental Resources Division of Oil & Gas 1205 Kossman Bldg. 100 Forbes Avenue Pittsburgh, PA 15222
South Carolina	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	South Carolina Public Service Commission P. O. Drawer 11649 Columbia, SC 29211

State in which well is located	Jurisdictional Agency for wells on Federal lands	Other lands
South Dakota	Area Oil & Gas Supervisor P. O. Box 2859 2002 Federal Bldg. & Post Office Casper, WY 82602	Geological Survey Science Center University Vermillion, SD 57069
Tennessee	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Tennessee Department of Conservation G-5 State Office Bldg. Nashville, TN 37219
Texas	Area Oil & Gas Supervisor P. O. Box 26124 505 Marquette Ave., N. W. Albuquerque, NM 87125	Railroad Commission Drawer 12967 Austin, TX 78711
Utah	Area Oil & Gas Supervisor P. O. Box 26124 505 Marquette Ave., N. W. Albuquerque, NM 87125	Division of Oil, Gas and Mining Utah Department of Natural Resources 1588 West North Temple Salt Lake City, UT 84116
Virginia	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Secretary of Commerce and Resources P. O. Box 1475 Richmond, VA 23212
Washington	Area Oil & Gas Supervisor 7211 Federal Bldg. 300 North Los Angeles Street Los Angeles, CA 90012	Oil and Gas Supervisor Department of Natural Resources Olympia, WA 98504

State in which well is located	Jurisdictional Agency for wells on Federal lands	Other lands
West Virginia	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Oil and Gas Division Department of Mines State Capitol Charleston, WV 25305
Wyoming	Area Oil & Gas Supervisor P. O. Box 2859 2002 Federal Bldg. & Post Office Casper, WY 82602	Oil and Gas Conservation Commission Box 2640 Casper, WY 82602

(b) Waiver. In the case of any determination to which a waiver under Subpart C of Part 274 is applicable, "jurisdictional agency" means the Commission.

(c) Federal lands. For purposes of this section, "Federal lands" means

(1) all lands leased under:

(i) the Mineral Lands Leasing Act, as amended, 30 U.S.C. §§ 181 et seq.; and

(ii) the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. §§ 351 et seq.; and

(2) all Indian lands which are under the supervision of the United States Geological Survey (30 CFR Part 221).

(d) Agreements. If the United States Geological Survey and

any state jurisdictional agency enter into an agreement authorizing such state agency to make determinations under Subpart A with respect to wells located on Federal lands, such agreement shall be filed with the Commission. If such an agreement is filed, then such state agency shall be considered the jurisdictional agency with respect to wells on Federal lands in such state to the extent provided in the agreement.

PART 275 - COMMISSION DETERMINATIONS AND REVIEW OF JURISDICTIONAL AGENCY DETERMINATIONS

Subpart A - [Reserved]

Subpart B - Procedure for Commission Review of Jurisdictional Agency Determinations

Sec.

275.201 Publication of notice from jurisdictional agency.
275.202 Commission review of final determinations.
275.203 Protests to the Commission.
275.204 Contents of protests to the Commission.
275.205 Procedure for reopening determinations.
275.206 Confidentiality.

Authority: This part is issued under the National Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350.

SUBPART A - [RESERVED]

SUBPART B - PROCEDURE FOR COMMISSION REVIEW OF JURISDICTIONAL AGENCY DETERMINATIONS

§ 275.201 Publication of notice from jurisdictional agency.

Upon receipt of a notice of determination by a jurisdictional agency under § 274.104, the Commission shall publish notice of such determination in the Federal Register. Such notice shall include:

(a) the date on which the jurisdictional agency notice was received;

(b) certain information contained in Part I of the FERC Form No. 121;

(c) a statement that the application and a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent the material is treated as confidential under § 275.206, at the offices of the Commission; and

(d) a statement that persons objecting to the final determination may, in accordance with this subpart, file a protest with the Commission within 15 days after the publication.

§ 275.202 Commission review of final determinations.

(a) Review by Commission. Except as provided in paragraph (b) of this section, a determination submitted to the Commission by a jurisdictional agency shall become final 45 days after the date on which the Commission received notice of the determination, unless within the 45 day period, the Commission:

(1) makes a preliminary finding that:

(i) the determination is not supported by substantial evidence in the record on which the determination was made; or

(ii) the determination is not consistent with information which is contained in the public records of the Commission and which was not part of the record on which the jurisdictional agency made the determination, and

(2) issues written notice of such preliminary finding, including the reasons for the preliminary finding. Copies of the written notice will be sent to the jurisdictional agency which made the determination, to the persons identified in the notice under § 274.104 of such determination, and to any persons who have filed a protest.

(b) Incomplete notice. Notwithstanding the provisions of paragraph (a) of this section, the 45-day period for Commission review of a determination shall not begin if:

(1) the notice forwarded to the Commission pursuant to Subpart A of Part 274 does not contain all the information required in § 274.104(a)(4) and (5); and

(2) the Commission notifies the jurisdictional agency within 45 days after the date on which the Commission receives notice of the determination that the notice is incomplete.

(c) Public notice. The Commission shall publish notice of the preliminary finding in the Federal Register and shall post the notice in its Office of Public Information. The notice shall set forth the reasons for the preliminary finding.

(d) Procedures following notice of preliminary finding. Any state or federal agency or any person may, within 30 days after issuance of the preliminary finding, submit written comments and request an informal conference with the Commission staff. Any jurisdictional agency, any state agency and any person receiving notice under paragraph (a)(2) may request an informal conference with the Commission staff. All timely requests for conferences will be granted. Notice of, and permission to attend, such conferences will be given to persons identified in paragraph (a)(2) and to state or federal agencies or persons who submitted comments under this paragraph.

(e) Commission review. In any case in which a protest was filed with the Commission pursuant to this subpart and a preliminary finding was issued, the Commission will issue a final order within 120 days after issuance of the preliminary finding, either affirming, reversing, or remanding the determination of the jurisdictional agency. Such order shall state the specific basis for the Commission's action. Notice of the issuance of such order shall be given to the jurisdictional agency, to participants in the proceeding before the jurisdictional agency and to participants in the proceeding before the Commission under paragraph (d) of this section and under § 275.203. In the event that the Commission fails to issue a final order within such 120 day period, the determination of the jurisdictional agency shall become final.

§ 275.203 Protests to the Commission.

(a) Who may file. Any person may file a protest with the Commission with respect to a determination of a jurisdictional agency.

(b) Grounds. Protests may be based only on the grounds that the final determination is:

(1) not supported by substantial evidence;

(2) not consistent with information which is contained

in the public records of the Commission and which was not part of the record on which the determination was made;

(3) not consistent with information submitted with the protest for inclusion in the public records of the Commission, which information was not part of the record on which the determination was made; or

(4) not based on an application which complied with the filing requirements set forth in Subpart B of Part 274, or alternative filing requirements approved pursuant to § 274.207.

§ 275.204 Contents of protests to the Commission.

Each protest shall include:

(a) an identification of the determination protested;

(b) the name and address of the person filing the protest;

(c) a statement of whether or not the person filing the protest participated in the proceeding before the jurisdictional agency, and if not, the reason for his non-participation;

(d) a statement of the effect the determination will have on the protestor;

(e) a statement of the precise grounds under § 275.203 for the protest, and all supporting documents or references to any information relied on which is in the record on which

the determination is based or is in or to be inserted in the public files of the Commission; and

(f) a statement that the protestor has served, in accordance with §§ 1.17 and 1.51 of this chapter a copy of the protest together with all supporting documents on the jurisdictional agency and all persons who participated in the proceeding before the jurisdictional agency.

§ 275.205 Procedure for reopening determinations.

(a) Grounds. At any time subsequent to the time a determination becomes final pursuant to this subpart, the Commission, on its own motion, or in response to a petition filed by any person aggrieved or adversely affected by the determination, may reopen the determination if it appears that:

(1) in making the determination, the Commission or the jurisdictional agency relied on any untrue statement of material fact; or

(2) there was omitted a statement of material fact necessary in order to make the statements made not misleading, in light of the circumstances under which they were made to the jurisdictional agency or the Commission.

(b) Contents of petition. A petition to reopen the determination proceedings shall contain the following information, under oath:

(1) the name and address of the person filing the petition;

(2) the interest of the petitioner in the outcome of the determination proceeding;

(3) the statement of material fact that is alleged to be untrue or omitted;

(4) a statement explaining why the outcome of the determination proceeding would have been different had the statement or omission not occurred; and

(5) copies of all documents relied on by the petitioner, or references to such documents if they are contained in the public files of the Commission.

(c) Procedures after reopening. In the event the Commission reopens a determination pursuant to this section it shall:

(1) give notice to the jurisdictional agency and all persons who participated, before both that agency and the Commission, in the proceedings resulting in the determination in question;

(2) permit the jurisdictional agency and other persons receiving notice pursuant to subparagraph (1) to submit whatever documentary evidence such agency or persons deem relevant; and

(3) take such other action or hold or cause to be

held such proceedings as it deems necessary or appropriate for a full disclosure of the facts.

(d) Final order of Commission. Within 150 days after issuance of the notice under paragraph (c)(1) of this section, the Commission shall issue a final order. If the Commission finds that the grounds referred to in paragraph (a) of this section exist, it shall vacate the determination, and order refund or other appropriate action, and the right to collect the previously determined maximum lawful price shall terminate.

§ 275.206 Confidentiality.

(a) Except as provided in paragraph (b), the Commission will accord confidential protection to, and not disclose to the public, any information submitted to the Commission by a jurisdictional agency under § 274.104(a)(4), if:

(1) the jurisdictional agency, on its own motion or on request of the applicant, afforded such information confidential treatment before the jurisdictional agency; and

(2) the agency order or the applicant's request stated grounds for confidential treatment which fall within one of the exemptions described in paragraphs (1) through (9) of 5 U.S.C. 552(b).

(b) Upon receipt of a request for disclosure of information treated as confidential under paragraph (a), the Commission will determine in accordance with 5 U.S.C. 552 whether the information is exempt under 5 U.S.C. 552(b). If it determines the information is not exempt, the information will be made public. If it determines that the information is exempt, the Commission will not make it public unless the Commission determines that its conduct of the proceeding to review the jurisdictional agency determination requires making such information available to the public or to particular parties, subject to such conditions (including a protective order) as the Commission may prescribe. Before making any information public under this paragraph, the Commission shall provide at least 10 days notice to the person who submitted the information.

PART 276 - REPORTS

Subpart A - Reports For Sales Of Natural Gas Under Sections 105, 106(b), and 109 Of The NGPA

Sec.

276.101 Reporting entities.
276.102 Existing intrastate contracts.
276.103 Intrastate rollover contracts.
276.104 Other categories of natural gas.
276.105 Elective filing for certain sellers.
276.106 Definition.
276.107 Record retention.

Authority: This part is issued under the Natural Gas Act, as amended, 15 U.S.C. 717 et seq., Energy Supply and Environmental Coordination Act, 15 U.S.C. 791 et seq., Federal Energy Administration Act, 15 U.S.C. 761 et seq., Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350, Department of Energy Organization Act, P.L. 95-91, E.O. 12009, 42 F.R. 46267.

SUBPART A - REPORTS FOR SALES OF NATURAL GAS UNDER SECTIONS 105, 106(b), AND 109 OF THE NGPA

§ 276.101 Reporting entities.

(a) General rule. Except as provided in paragraph (b), any person who makes a first sale of natural gas with respect to which a maximum lawful price under section 105, 106(b), or 109 of the NGPA applies, shall file with the Commission reports in accordance with the provisions of this subpart.

(b) Exceptions. (1) Any person who, in the 12 month period which began on December 1, 1977 and ended on November 30, 1978, sold less than a total of

10,000 MMcf of natural gas (including the sales by any affiliate of such person and including all sales whether such sales occurred in inter- or intrastate commerce) may, in lieu of the reports otherwise required under §§ 276.102 and 276.103 of this subpart, elect to make, under oath, the elective filing described in § 276.105 of this subpart.

(2) In the case of a first sale under sections 105 and 106(b) of the NGPA to an interstate pipeline or an intrastate pipeline, the provisions of paragraphs (a) and (b)(1) of this section shall not apply and the reports specified in §§ 276.102 and 276.103 of this subpart shall be filed by the purchasing interstate pipeline or intrastate pipeline. With regard to first sales reported under this subparagraph, the person making the first sale must file an oath statement with the Commission in accordance with §§ 276.102(e) and 276.103(e).

§ 276.102 Existing intrastate contracts.

(a) Any person who makes a first sale of natural gas under an existing intrastate contract shall file with the Commission on March 1, 1979, and annually thereafter, a report in accordance with forms and instructions issued by the Commission which contains:

(1) with respect to each existing intrastate contract under which first sales of natural gas occurred in the reporting period, a statement identifying:

(i) the date the existing intrastate contract, and all successors to the existing intrastate contract, were entered into;

(ii) the contract price on November 9, 1978, (as defined in § 271.504 of Subpart E), if any;

(iii) if the contract price on November 9, 1978, is less than or equal to $2.060 per MMBtu, a copy or summary of the contract price escalator terms, if any;

(iv) the duration of the contract;

(v) the identity of all purchasers under the contract;

(vi) the contract price on December 31, 1984;

(2) a statement under oath to be filed by a responsible official of such person: (i) that to the best of such official's information, knowledge and belief:

(A) all information submitted in the report is true; and

(B) all first sales of natural gas occurring in the reporting period were made in compliance with the maximum lawful prices specified in section 105 of the NGPA and the Commission's regulations under Subpart E of Part 271; and

(ii) that books and records kept and maintained by such person reflect all the information reported pursuant to this section and that such person undertakes to retain such records for a period of 3 years after the expiration of any contract under which any first sales have occurred during the reporting period.

(b) In the case of any report filed with the Commission under this section, the report shall include the volumes sold under each existing intrastate contract during the reporting period, the highest price per MMBtu charged and collected with respect to any sale under each such contract during the reporting period, an identification of the month in which such highest price was charged, and an identification of all contract modifications described in § 271.505(b) of this subchapter executed during the reporting period.

(c) Any person filing annual reports with the Commission under this section may exclude from his report any information which had been previously reported to the Commission under an earlier report filed by such person under paragraph (a) of this section.

(d) An interstate or intrastate pipeline purchasing natural gas under an existing intrastate contract shall file on March 1, 1979, and annually thereafter a report with

the Commission or, in the case of an intrastate pipeline, the appropriate state regulatory agency if a delegation of functions has been made to such state regulatory agency pursuant to Subpart D of Part 274. Such report shall contain the information specified in this section for all purchases by the reporting pipeline under existing intrastate contracts except that, in lieu of the oath filing required under paragraph (a)(2), the reporting pipeline shall make a statement under oath by a responsible official of such pipeline that to the best of such official's information, knowledge and belief all of the information contained in the report is true.

(e) Any person who makes a first sale of natural gas to any interstate or intrastate pipeline under an existing intrastate contract shall file with the Commission by March 1, 1979, and annually thereafter, a statement under oath by a responsible official of such person:

(1) that to the best of such official's information, knowledge and belief, any first sales of natural gas occurring in the reporting period under existing intrastate contracts were made in compliance with applicable maximum lawful prices specified in section 105 of the NGPA and the Commission's regulations under Subpart E of Part 271; and

(2) that books and records kept and maintained by such person reflect all the information required to be reported by the purchasing and reporting pipeline under paragraph (d) of this section and that such person undertakes to retain such records for a period of 3 years after the expiration of any contract under which any first sales have occurred during the reporting period.

§ 276.103 Intrastate rollover contracts.

(a) Any person who makes a first sale of natural gas under an intrastate rollover contract shall file with the Commission on March 1, 1979, and annually thereafter, a report in accordance with forms and instructions issued by the Commission which contains:

(1) with respect to each intrastate rollover contract under which first sales of natural gas occurred in the reporting period, a statement identifying:

(i) the effective date on which first sales began under the intrastate rollover contract;

(ii) identification of the expired contract;

(iii) the identity of all parties to the existing intrastate contract which expired and to the intrastate rollover contract;

(iv) a specification of all changes, if any, in price related terms in the intrastate rollover contract from those price related terms contained in the existing intrastate contract which has expired;

(v) the contract price paid, or which would have been paid, under the existing intrastate contract for the month in which first sales began under the rollover contract;

(vi) the price charged for the month in which first sales began under the intrastate rollover contract; and

(2) a statement under oath to be filed by a responsible official of such person:

(i) that to the best of such official's information, knowledge and belief:

(A) all information submitted in the report is true; and

(B) any first sales of natural gas occurring in the reporting period were made in compliance with the maximum lawful prices specified in section 106(b) of the NGPA and the Commission's regulations under Subpart F of this part;

(ii) that books and records kept and maintained by such person reflect all the information reported pursuant to this section and that such person undertakes to retain such records for a period of 3 years after the expiration of any contract under which any first sales have occurred during the reporting period.

(b) In the case of any report filed with the Commission under this section, the report shall include the volumes sold under each intrastate rollover contract during the reporting period, and the highest price per MMBtu charged and collected for sales of natural gas under each such contract during the reporting period, an identification of the month in which such highest price was charged, and an identification of all contract provisions described in § 271.604(b) of this subchapter executed during the reporting period.

(c) Any person filing annual reports with the Commission under this section may exclude from his report any information which had been previously reported to the Commission under an earlier report filed by such person under paragraph (a).

(d) An interstate or intrastate pipeline purchasing natural gas under an intrastate rollover contract shall file on March 1, 1979, and annually thereafter a report with the Commission or, in the case of an intrastate pipeline, the appropriate state regulatory agency where a delegation of functions has been made to such state regulatory agency pursuant to Subpart D of Part 274. Such report shall contain all of the information specified in this section for

all purchases by the reporting pipeline under intrastate rollover contracts except that, in lieu of the oath filing required under paragraph (a)(2), the reporting pipeline shall make a statement under oath by a responsible official of such pipeline that to the best of such official's information, knowledge and belief all of the information contained in the report is true.

(e) Any person who makes a first sale of natural gas to any interstate or intrastate pipeline under an intrastate rollover contract shall file with the Commission by March 1, 1979, and annually thereafter, a statement under oath by a responsible official of such person:

(1) that to the best of such official's information, knowledge and belief, any first sales of natural gas occurring in the reporting period under intrastate rollover contracts were made in compliance with applicable maximum lawful prices specified in section 106(b) of the NGPA and the Commission's regulations under Subpart E of Part 271; and,

(2) that books and records kept and maintained by such person reflect all the information required to be reported by the purchasing and reporting pipeline under paragraph (d) of this section and that such person undertakes to retain such records for a period of 3 years after

the expiration of any contract under which any first sales have occurred during the reporting period.

§ 276.104 Other categories of natural gas.

A person who makes a first sale of natural gas which qualifies under Subpart I of Part 271 shall file in accordance with forms and instructions issued by the Commission, a report with the Commission on March 1, 1979, and annually thereafter, which contains the following items:

(a) the volumes of natural gas sold in such first sale during the reporting period;

(b) a statement that the natural gas sold in the reporting period was not committed or dedicated to interstate commerce on November 8, 1978; or if such natural gas was so committed or dedicated, a just and reasonable rate was not in effect under the Natural Gas Act on such date for the natural gas (including the basis for such conclusion); and with respect to any natural gas sold in the reporting period which was not committed or dedicated to interstate commerce on November 8, 1978, the natural gas sold in the reporting period is not subject to an existing intrastate contract as defined in § 270.102(b)(8) or intrastate rollover contract as defined in § 270.102(b)(11);

(c) a statement that the natural gas does not qualify for a maximum lawful price under any subpart of Part 271 that is lower than the maximum lawful price permitted under § 271.902;

(d) (1) if the natural gas was committed or dedicated to interstate commerce on November 8, 1978, a statement that a notice of change in rate schedule pursuant to § 154.94 of this chapter has been filed;

(2) if the natural gas was not committed or dedicated to interstate commerce on November 8, 1978, a statement identifying the well, reservoir and acreage from which the the natural gas is produced;

(e) a statement under oath to be filed by a responsible official of such person that to the best of such official's information, knowledge and belief:

(1) all information submitted in the report is true; and

(2) any first sales of natural gas occurring in the reporting period were made in compliance with the maximum lawful prices specified in section 109 of the NGPA and the Commission's regulations under Subpart I of Part 271.

(f) Any person filing annual reports with the Commission under this section may exclude from his report any information which had been previously reported to the Commission under an earlier report filed by such person under this section.

§ 276.105 Elective filing for certain sellers.

(a) Any person described in paragraph (b)(1) of § 276.101 who elects to file an oath statement and undertaking, in lieu of reports otherwise required under §§ 276.102 and 276.103 of this subpart, shall file with the Commission no later than March 1, 1979, and annually thereafter, a statement under oath to be filed by a responsible official of such person:

(1) that such person in the 12 month period which began December 1, 1977, and ended on November 30, 1978, sold less than a total of 10,000 MMcf of natural gas (including the sales by any affiliate of such person and including all sales which occurred both in inter- and intrastate commerce);

(2) that books and records kept and maintained by such person reflect all the information required to be reported under §§ 276.102 and 276.103 of this subpart and that such person undertakes to retain such records for a period of 3 years after the expiration of any contract under which any first sales have occurred in the reporting period;

(3) that to the best of such person's knowledge, information and belief all first sales occurring during the reporting period were made in compliance with the

applicable maximum lawful prices specified in section 105 and 106 of the NGPA and the Commission's regulations under Subparts E and F of Part 271.

(b) Any person filing annual statements with the Commission under this section, beginning with the report to be filed by March 1, 1980, shall only be required to file the information required by paragraphs (a)(2) and (a)(3).

§ 276.106 Definition.

For the purposes of this subpart, the term "reporting period" means:

(a) in the case of the March 1, 1979, report, the period which begins on December 1, 1978, and ends on January 31, 1979; and

(b) in the case of annual reports filed beginning with March 1, 1980, the period which begins on February 1 of the preceding calendar year and ends on January 31 of the reporting year.

§ 276.107 Record retention.

Each person who makes a first sale under section 105, 106(b) or 109 of the NGPA shall maintain such books and records as may be necessary to reflect all the information required to be reported under §§ 276.102, 276.103 or 276.104, or which would be required to be reported but for an election under

§ 276.105 of this subpart. Such books and records shall be retained for a period of three years after the expiration of any contract under which any first sales have occurred in the reporting period.

FERC FORM NO. 123 NGPA § 105
INITIAL REPORT-SALES NOT COMMITTED OR DEDICATED UNDER NGA 11-9-78
Regulation § 276.102

Filing Party (Name)_____ (Code) _____ Pipeline Purchaser ☐ First Sales Seller ☐

Sales Identification Codes			Seller or Purchaser 1/		Contract Price ¢/MMBtu			Sales Volumes
State	County	Date of Contract	Name	Code	11-9-78 2/	12-31-84	Contract Term (yrs)	12-1-79 thru 1-31-79 Mcf

1/ If more than one report additional name on separate sheet.
2/ If price is less than $2.060/MMBtu, attach copy of summary of contract price escalator terms.

FERC FORM NO. 121 NGPA § 106(b)
INITIAL REPORT - INTRASTATE ROLLOVER CONTRACT
Regulation § 276.103

Filing Party (Name) _____ (Code) _____ Pipeline Purchaser ☐ Seller ☐

Sales Identification Codes		Expired	Seller or Purchaser 1/		Date of	Sales Comm. Date - New	Last Price Under Expired	Initial Price Under New	Sales Volumes 12-1-78 thru
State	County	Contract Date	Name	Code	New Contract	Contract	Contract ¢/MMBtu	Contract ¢/MMBtu 2/	1-31-79 Mcf

1/ Identify on separate sheet all parties to the existing contract which expired and to the successor contract.
2/ Identify all changes in price resulting from changes in terms contained in the superseded contract.

FERC FORM NO. _____ NGPA § 105 and 106(b)
ANNUAL REPORT OF SALES OR PURCHASES UNDER
Regulation § 276.102, 276.103

Filing Party(Name) _____ (Code) _____ Pipeline Purchaser ☐ Seller ☐

Sales Identification	Annual Sales Vol. Mcf	Highest Price During Report Period-Month	NGPA Pricing Section

FERC FORM NO.____ NGPA §109
INITIAL REPORT-OTHER CATEGORIES OF NATURAL GAS
§ 276.104 of Regulations

Filing Party:_____ Code:_____

API No.	Basis For Qualification	Purchaser	Code	Contract Date	Annual Production (MMcf)	Contract Price ($/MMBtu)	Max. Lawful Price ($/MMBtu)

SUBCHAPTER I - OTHER REGULATIONS UNDER THE NATURAL GAS POLICY ACT OF 1978

PART 280 - [RESERVED]
PART 281 - [RESERVED]
PART 282 - [RESERVED]
PART 283 - [RESERVED]

PART 284 - CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS

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Authority: This part is issued under the Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350.

SUBPART A--CERTAIN TRANSPORTATION BY INTERSTATE PIPELINES

§ 284.101 Applicability.

This subpart implements section 311(a)(1) of the NGPA and applies to the transportation of natural gas by interstate pipelines on behalf of:

(a) intrastate pipelines; and

(b) local distribution companies.

§ 284.102 Transportation by interstate pipelines.

(a) General rule. (1) Except as provided in paragraph (b) of this section and subject to the provisions of this subpart, any interstate pipeline, without prior Commission approval, may transport natural gas on behalf of:

(i) any intrastate pipeline; and

(ii) any local distribution company.

(2) Rates charged for transportation under this paragraph may not exceed just and reasonable rates as provided in § 284.103.

(3) Transportation arrangements under this paragraph shall be subject to such further terms and conditions as provided by rule or order of the Commission pursuant to § 284.104.

(4) Transportation arrangements under this paragraph may be extended as provided in § 284.105.

(5) Interstate pipelines engaging in transportation arrangements under this paragraph shall file reports as provided in § 284.106.

(b) Transactions in excess of two years. (1) An interstate pipeline proposing to enter into transactions for the transportation of natural gas on behalf of any intrastate pipeline or local distribution company for a fixed period in excess of two years shall apply to the Commission for prior approval of the transaction.

(2) The interstate pipeline shall apply for approval as provided by § 284.107.

(3) The Commission may, by order, approve or deny an application. An order approving an application shall specify the applicable rates and charges, duration and reporting requirements and such other terms and conditions as the Commission deems appropriate and in the public interest.

§ 284.103 Rates and charges.

(a) Rates and charges for transportation of natural gas by interstate pipelines under § 284.102(a) shall be determined as provided in paragraphs (b) through (d) of this section.

(b) If an interstate pipeline has on file with the Commission a transportation rate schedule applicable to

transportation arrangements under § 284.102(a), the interstate pipeline shall use the rates contained in that schedule.

(c) If an interstate pipeline does not have on file with the Commission a transportation rate schedule applicable to transportation arrangements under § 284.102(a), the interstate pipeline may elect either:

(1) to base its rates upon the methodology and cost used in designing rates to recover the transmission and related storage costs included in its then effective sales rate schedules; or

(2) to use the rates contained in a transportation rate schedule on file with the Commission which the interstate pipeline determines covers service comparable to transportation service under this subpart.

(d)(1) Except as provided in subparagraphs (2) and (3) all revenues received for transportation rendered pursuant to an arrangement under this subpart in excess of an allowance of one cent per Mcf for out-of-pocket expenses shall be credited to Account No. 191 and flowed back to the interstate pipeline's customers.

(2) An interstate pipeline is not required to credit revenues to Account No. 191 pursuant to subparagraph (1):

(i) to the extent revenues attributable to such services fall within representative levels which have been credited in arriving at a test period cost of service; or

(ii) to the extent that volumes transported fall within

representative levels which have been included in billing determinants for the purpose of establishing rates.

(3) An interstate pipeline is not required to credit to Account No. 191 pursuant to subparagraph (1) of this paragraph any amount which it is able to demonstrate, upon application to the Commission, represents actual out-of-pocket expenses in excess of one cent per Mcf.

§ 284.104 Terms and conditions.

(a) Contracts for the transportation of natural gas pursuant to § 284.102(a) shall provide:

(1) that service under the contract shall be conditioned upon the availability of capacity sufficient to provide the service without detriment or disadvantage to the interstate pipeline's existing customers who are dependent on the pipeline's general system supply; and

(2) that the transportation arrangement is subject to the provisions of this subpart.

(b) Transportation arrangements under § 284.102(a) may be for a period not exceeding two years and may be extended as provided in § 284.105.

(c) The Commission may prospectively, by rule or order, impose further terms and conditions as it deems appropriate and in the public interest.

§ 284.105 Extensions.

(a) Interstate pipelines seeking to extend transportation arrangements under § 284.102(a) shall file an extension report as required in § 284.106(c).

(b) If an extension report as required in § 284.106(c) is duly filed, the proposed extension may take effect unless the Commission, prior to the beginning of the proposed extension, and after opportunity for written comments, determines, by order, that the proposed extension is not approved. If the Commission determines, by order, that the proposed extension shall be modified, the extension may take effect only as modified.

(c) Extensions may be for a period not exceeding two years unless otherwise ordered by the Commission.

§ 284.106 Reporting requirements.

(a) Initial report. Within thirty days after commencing transportation under § 284.102(a), an interstate pipeline shall file with the Commission an initial report, under oath, signed by a senior official of the company, containing the following information:

(1) the exact legal name of the interstate pipeline and the name, title and mailing address of the person or persons to whom communications concerning the transportation arrangement pursuant to this subpart should be addressed;

(2) a description of the transportation service, including:

(i) the identity of the parties;

(ii) the dates of commencement and projected termination of the service;

(iii) the estimated total and daily volumes of natural gas to be transported;

(iv) the points between which the natural gas is to be transported; and

(v) the rate to be charged, and with respect to the rate:

(A) if the interstate pipeline is charging a rate contained in a rate schedule under § 284.103(b), the identity of the rate schedule;

(B) if the interstate pipeline is charging a rate computed pursuant to § 284.103(c)(1), an explanation of how the rate is computed; or

(C) if the interstate pipeline is charging a rate contained in a rate schedule under § 284.103(c)(2), a statement of the basis upon which the interstate pipeline determined that the rate schedule used was for comparable service;

(3) a statement that the contract provides that:

(i) service under the contract is conditioned upon the

availability of capacity sufficient to provide the service without detriment or disadvantage to the interstate pipeline's existing customers who are dependent on the pipeline's general system supply; and

(ii) the transportation arrangement is subject to the provisions of this subpart.

(b) Subsequent reports. If any significant change occurs with respect to the information filed under paragraph (a) of this section, the interstate pipeline shall file with the Commission, under oath, signed by a senior official of the company, appropriate amendments to its initial report.

(c) Extension report. Not less than ninety days prior to the expiration of a contract for the transportation of natural gas pursuant to § 284.102(a), an interstate pipeline seeking to extend the transportation arrangement beyond the initial two-year period or any period of extension shall file with the Commission an extension report, under oath, signed by a senior official of the company, stating:

(1) current information with respect to any matters required to be reported under paragraph (a) of this section; and

(2) the proposed terms of the extension.

(d) Final report. Within thirty days after the termination of any transportation arrangement under § 284.102(a), or, if extended, within thirty days after the end of the period of the extension, the interstate pipeline shall file with the Commission a report, under oath, signed by a senior official of the company, stating:

(1) current information with respect to the matters required to be reported under paragraph (a) of this section;

(2) actual total and daily volumes of natural gas transported pursuant to the arrangement; and

(3) total revenues received and a complete statement of the manner in which the revenues were treated.

§ 284.107 Application.

An interstate pipeline seeking Commission approval for a transportation arrangement for any fixed period in excess of two years under § 284.102(b) shall file with the Commission a transportation rate schedule for the transportation service to be provided, and an application, under oath, signed by a senior official of the company, containing the following information:

(a) the exact legal name of the interstate pipeline and the name, title and mailing address of the person or persons to whom communications concerning the transportation arrangement pursuant to this subpart should be

addressed;

(b) a description of the transportation service, including:

(1) the identity of the parties;

(2) the dates of commencement and termination of the service;

(3) the estimated total and daily volumes of natural gas to be transported;

(4) the points between which the natural gas is to be transported;

(c) a statement that the contract provides that:

(1) service under the contract is conditioned upon the availability of capacity sufficient to provide the service without detriment or disadvantage to the interstate pipeline's existing customers who are dependent on the pipeline's general system supply; and

(2) the transportation arrangement is subject to the provisions of this subpart.

SUBPART B - CERTAIN TRANSPORTATION BY INTRASTATE PIPELINES

§ 284.121 Applicability.

This subpart implements section 311(a)(2) of the NGPA and applies to the transportation of natural gas by intrastate pipelines on behalf of interstate pipelines and local distribution companies served by interstate pipelines.

§ 284.122 Transportation by intrastate pipelines.

(a) General rule. (1) Except as provided in paragraph (b) of this section, and subject to the provisions of this subpart, any intrastate pipeline may, without prior Commission approval, transport natural gas on behalf of:

(i) any interstate pipeline; and

(ii) any local distribution company served by an interstate pipeline.

(2) Rates charged for transportation under this subpart may not exceed fair and equitable rates as provided in § 284.123.

(3) Transportation under this paragraph shall be subject to such further terms and conditions as provided by rule or order of the Commission pursuant to § 284.124.

(4) Transportation arrangements under this paragraph may be extended as provided in § 284.125.

(5) Intrastate pipelines engaging in transportation arrangements under this paragraph shall file reports as required by § 284.126.

(b) Transactions in excess of two years. (1) An intrastate pipeline proposing to enter into transactions for the transportation of natural gas on behalf of any interstate pipeline or local distribution company served by an interstate pipeline for a fixed period in excess of two years shall apply to the Commission for prior approval of the transaction.

(2) The intrastate pipeline shall apply for approval as provided in § 284.127.

(3) The Commission may, by order, approve or deny an application. An order approving an application shall specify the applicable rates and charges, duration and reporting requirements and such other terms and conditions as the Commission deems appropriate and in the public interest.

§ 284.123 Rates and charges.

(a) Rates and charges for transportation of natural

gas pursuant to this subpart shall be fair and equitable as determined in accordance with paragraph (b) of this section.

(b)(1) The intrastate pipeline may elect either:

(i) to base its rates upon the methodology and cost used:

(A) in designing rates to recover the cost of gathering treatment, processing, transportation, delivery or similar service (including storage service) included in its then effective firm sales rate schedules for city-gate service on file with the appropriate state regulatory agency; or

(B) in determining the allowance permitted by an appropriate state regulatory agency or for city-gate service by the intrastate pipeline; or

(ii) to use the rates contained in a transportation rate schedule for intrastate service on file with the appropriate state regulatory agency which the intrastate pipeline determines covers service comparable to service under this subpart.

(2) In the case of an intrastate pipeline which does not make an election under subparagraph (1), the intrastate pipeline shall file with the Commission the proposed rates and charges, supported by information showing that the proposed rates and charges are fair and equitable. The intrastate pipeline may commence the

transportation service and charge and collect the proposed rates, subject to refund of amounts which the Commission may, by order, after affording notice and opportunity for the oral presentation of views, data and arguments, and written comments, determine to be in excess of those shown to be fair and equitable or in excess of the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.

(c) The Commission presumes that all revenues received by an intrastate pipeline in connection with transportation arrangements pursuant to § 284.122(a) and computed in accordance with paragraph (b)(1)(i) or (ii) of this section have been or will be taken into account for purposes of establishing rates charged by the intrastate pipeline for service to intrastate customers.

(d) If the intrastate pipeline is charging a rate computed pursuant to § 284.123(b)(1)(i) or (ii), the rate charged is presumed to be:

(i) fair and equitable; and

(ii) not in excess of the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.

§ 284.124 Terms and conditions.

(a) Contracts for the transportation of natural gas pursuant to § 284.122(a) shall provide that the transportation arrangement is subject to the provisions of this subpart.

(b) Transportation arrangements pursuant to § 284.122(a) may be for a period not exceeding two years and may be extended for periods not exceeding two years.

(c) The Commission may prospectively, by rule or order, impose further terms or conditions as it deems appropriate and in the public interest.

§ 284.125 Extensions.

(a) An intrastate pipeline seeking to extend a transportation arrangement under § 284.122(a) shall file an extension report as required in § 284.126(c).

(b) If an extension report as required in § 284.126(c) is duly filed, the proposed extension may take effect unless the Commission, prior to the beginning of the proposed extension, and after opportunity for written comments, determines, by order, that the proposed extension is not approved. If the Commission determines, by order, that the proposed extension shall be modified, the extension may take effect only as modified.

§ 284.126 Reporting requirements.

(a) Initial report. Within thirty days after commencing transportation service pursuant to this subpart, an intrastate pipeline shall file with the Commission and the appropriate state regulatory agency an initial report, under oath, signed by a senior official of the company, containing the following information:

(1) the exact legal name of the intrastate pipeline; and the name, title and mailing address of the person or persons to whom communications concerning the transportation arrangement pursuant to this subpart should be addressed;

(2) a general description of the intrastate pipeline's existing operations;

(3) a description of the transportation service, including:

(i) the identity of the parties;

(ii) the dates of commencement and projected termination of the service;

(iii) the estimated total and daily volumes of natural gas to be transported;

(iv) the points between which the gas is to be transported; and

(v) the rate to be charged, and with respect to the rate:

(A) if the intrastate pipeline is charging a rate computed pursuant to § 284.123(b)(1), an explanation of how the rate is computed; or

(B) if the intrastate pipeline is charging a rate contained in a rate schedule under § 284.123(b)(2), a statement of the basis upon which the intrastate pipeline determined that the service provided is comparable to service provided for under the rate schedule; and

(4) a statement that the appropriate state regulatory agency has been notified that the Commission has presumed that all revenues received by an intrastate pipeline in connection with the transportation arrangement pursuant to § 284.122(a) and computed in accordance with § 284.123(b)(1)(i) or (ii), have been or will be taken into account by the appropriate state regulatory agency for purposes of establishing transportation rates for intrastate service.

(b) Subsequent reports. If any significant change occurs with respect to the information filed under paragraph (a) of this section, the intrastate pipeline shall file with the Commission and the appropriate state regulatory agency, under oath, appropriate amendments to

its initial report, signed by a senior official of the company.

(c) Extension report. Not less than 90 days prior to the expiration of a contract for the transportation of natural gas pursuant to this subpart, an intrastate pipeline seeking to extend the transportation arrangement beyond the initial two-year period or any period of extension shall file with the Commission and the appropriate state regulatory agency, under oath, an extension report, signed by a senior official of the company stating:

(1) current information with respect to any matters required to be reported under paragraph (a) of this section; and

(2) the proposed terms of the extension.

(d) Final report. Within thirty days after the termination of any transportation arrangement under § 284.122(a) or, if extended, within thirty days after the end of the period of the extension, the intrastate pipeline shall file with the Commission and with the appropriate regulatory agency a report, under oath, signed by a senior official of the company, providing:

(1) current information with respect to any matters required to be reported under paragraph (a) of this section;

(2) actual total and daily volumes of natural gas transported; and

(3) total revenues received and a complete statement of the manner in which such revenues were treated.

§ 284.127 Application.

An intrastate pipeline seeking Commission approval for a transportation arrangement for any fixed period in excess of two years under § 284.122(b) shall file with the Commission a transportation rate schedule for the transportation service to be provided supported by information showing that the proposed rates and charges are fair and equitable, and an application, under oath, signed by a senior official of the company, containing the following information:

(a) the exact legal name of the intrastate pipeline and the name, title and mailing address of the person or persons to whom communications concerning the transportation arrangement pursuant to this subpart should be addressed;

(b) a description of the transportation service, including:

(1) the identity of the parties;

(2) the dates of commencement and termination of the service;

(3) the estimated total and daily volumes of natural gas to be transported;

(4) the points between which the natural gas is to be transported;

(c) a statement that the contract provides that the transportation arrangement is subject to the provisions of this subpart.

§ 284.128 Definition.

For the purposes of this subpart the term "appropriate state regulatory agency" means a state agency which regulates rates and charges for transportation by the intrastate pipeline on a cost-of-service basis.

SUBPART C - [RESERVED]

SUBPART D - ASSIGNMENT OF CONTRACTUAL RIGHTS TO RECEIVE SURPLUS NATURAL GAS

§ 284.161 Applicability.

This subpart implements section 312 of the NGPA and applies to assignment by any intrastate pipeline to any interstate pipeline or local distribution company of its contractual right to receive surplus natural gas.

§ 284.162 General rule.

Except as provided in § 284.163, no assignment pursuant to this subpart may take place unless the Commission in its discretion approves, by order, an application for assignment filed in accordance with § 284.165(a) upon a determination that the assignment is consistent with the NGPA and this subpart and is necessary or appropriate in the public interest.

§ 284.163 Special rule.

An intrastate pipeline may assign, without compensation, to any interstate pipeline or local distribution company

all or any portion of its contractual right to receive surplus natural gas without prior approval of the Commission, if:

(a) a state agency having regulatory jurisdiction over the intrastate pipeline which would be entitled to receive the natural gas in the absence of the assignment has determined that such natural gas exceeds the then current demands on such pipeline for natural gas;

(b) the price per MMBtu for the natural gas delivered in any month under the contract to be assigned does not and will not exceed an amount equal to the maximum lawful price per MMBtu prescribed under § 271.202; and

(c) the reports required under § 284.165(d) are filed with the Commission within 60 days of the commencement of deliveries under the assignment.

§ 284.164 Terms and conditions.

(a) Upon approval by the Commission of an application for assignment, filed in accordance with § 284.165(a) or in the case of compliance with § 284.162, an intrastate pipeline may assign, without compensation, to any interstate pipeline or local distribution company all or any portion of its contractual right to receive surplus natural gas. Rates charged for any gathering, treatment, processing, transportation, delivery

or similar service (including storage service) performed in connection with an assignment under this subpart shall be computed in accordance with Subpart B of this part.

(b) Upon receipt and review of reports required under § 284.165(e) for assignments without prior Commission approval, the Commission reserves the right, by order to compel termination of the assignment if it determines such termination is required in the public interest.

(c) Any assignment under this subpart shall be subject to any further terms or conditions that the Commission determines prospectively, by rule or order, are appropriate and in the public interest to impose.

§ 284.165 Filing requirements.

(a) An application for authorization of an assignment pursuant to this subpart shall be filed by the intrastate pipeline, under oath, with the Commission, and shall set forth the following information:

(1) a description of the proposed assignment agreement, including:

(i) the identity of the parties;

(ii) the estimated volumes of natural gas, on a total and daily basis;

(iii) the price per MMBtu applicable to volumes to be

delivered pursuant to the assignment and any other terms of the assignment relating to price; and

(iv) the point of delivery;

(2) a copy of the contract which covers the natural gas being assigned as surplus natural gas and any ancillary agreements;

(3) evidence of the determination by the state agency having regulatory jurisdiction over the intrastate pipeline that the quantity of natural gas to be assigned is in excess of the volume of natural gas available to the intrastate pipeline and needed to satisfy then current demands;

(4) an attestation that the particular supplies of natural gas were not committed or dedicated to interstate commerce on November 8, 1978; and

(5) the computation of any rates to be charged pursuant to Subpart B of this part for any gathering, treatment, processing, transportation, delivery or similar service (including storage service) to be performed by the intrastate pipeline under the assignment agreement.

(b) An interstate pipeline or local distribution company to which an intrastate pipeline would make an assignment under this subpart shall file with the Commission a statement, under oath, signed by a senior official of the

company, in support of the application under paragraph (a), that to the best of his knowledge, information and belief the price to be paid for the natural gas under the assignment (exclusive of any rates to be charged pursuant to Subpart B of this part) does not and will not exceed the maximum lawful price applicable to first sales of such gas under the NGPA and Part 271 of this Chapter.

(c) An interstate pipeline to which an intrastate pipeline would make an assignment under this subpart shall, in addition to the statement required under paragraph (a), file, under oath, with the Commission a statement in support of the application under paragraph (a) containing the following:

(1) the extent of curtailment, if any, anticipated to occur in the period in which the natural gas is to be delivered pursuant to the assignment;

(2) the effect which the price of the natural gas is expected to have on the interstate pipeline's average purchased gas cost in the period in which the natural gas is to be delivered pursuant to the assignment; and

(3) the reasons why in the opinion of the interstate pipeline the assignment should be authorized as necessary or appropriate in the public interest.

under an assignment made without prior approval of the Commission pursuant to the special rule in § 284.163, the following information shall be filed, under oath, with the Commission:

(1) by the intrastate pipeline:

(i) a description of the proposed assignment, including:

(A) the identity of the parties;

(B) the volumes of natural gas delivered and estimated to be delivered, on a total and daily basis;

(C) the price per MMBtu applicable to volumes delivered and to be delivered pursuant to the assignment and any other terms of the assignment relating to price; and

(D) the point of delivery;

(ii) a copy of the contract which covers the natural gas being assigned as surplus natural gas and any ancillary agreements;

(iii) evidence of the determination by the state agency having regulatory jurisdiction over the intrastate pipeline that the quantity of natural gas to be assigned is in excess of the volume of natural gas available to the intrastate pipeline and needed to satisfy then current demands;

(iv) an attestation that the particular supplies

(d) Within 60 days of the commencement of deliveries under an assignment made without prior approval of the Commission pursuant to the special rule in § 284.163, the following information shall be filed, under oath, with the Commission:

(1) by the intrastate pipeline:

(i) a description of the proposed assignment, including:

(A) the identity of the parties;

(B) the volumes of natural gas delivered and estimated to be delivered, on a total and daily basis;

(C) the price per MMBtu applicable to volumes delivered and to be delivered pursuant to the assignment and any other terms of the assignment relating to price; and

(D) the point of delivery;

(ii) a copy of the contract which covers the natural gas being assigned as surplus natural gas and any ancillary agreements;

(iii) evidence of the determination by the state agency having regulatory jurisdiction over the intrastate pipeline that the quantity of natural gas to be assigned is in excess of the volume of natural gas available to the intrastate pipeline and needed to satisfy then current demands;

(iv) an attestation that the particular supplies of natural gas were not committed or dedicated to interstate commerce on November 8, 1978; and

(v) the computation of any rates charged or to be charged pursuant to Subpart B of this part for any gathering, treatment, processing, transportation, delivery or similar service (including storage service) performed or to be performed by the intrastate pipeline under the assignment agreement;

(2) by the interstate pipeline or local distribution company to which the assignment is made, a statement under oath, signed by a senior official of the company that to the best of his knowledge, information and belief the price for natural gas under the assignment (exclusive of any rates charged or to be charged pursuant to Subpart B of this part) does not and will not exceed the maximum lawful price applicable to first sales of such gas under the NGPA and Part 271 of this chapter.

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